

ORANGE COUNTY
BOARD OF EDUCATION

AGENDA ITEM ABSTRACT

Meeting Date: September 24, 2012

AGENDA ITEM No. 12-09-(2)-17

ACTION ITEM: (Y/N) N

SUBJECT: Facilities Use Report

INFO. CONTACT: Jonathan Blumberg / Patrick Rhodes PHONE: 919-732-8126

ATTACHMENTS:

1. Memorandum dated September 19, 2012 re: Facility Use Policy, Procedures & Practices.
2. Emails dated September 17 and 19, 2012 re: Facilities Use.
3. Facility Use for July 1, 2010 thru June 30, 2011.
4. Facility Use for July 1, 2011 thru June 30, 2012.
5. Facility Use for July 1, 2012 thru June 30, 2013.
6. Template – Level 4 Joint Use Agreement.

PURPOSE: The purpose of this agenda item is to hear a report on the facilities use categories currently in place in Orange County Schools.

BACKGROUND: In the spring of 2012, the Board of Education began review of the facilities use policies and agreements in the district. As part of the ongoing review of the school system's facilities use policy and practices, Attorney Blumberg will present new optional facilities rental categories for consideration and discussion by the Board.

FINANCIAL IMPACT: Financial impacts were not calculated for this report.

RECOMMENDATION: The Superintendent recommends the Board of Education receive and discuss the facilities use report.

Memorandum

To: Orange County Board of Education
From: Jonathan Blumberg
CC: Patrick Rhodes
Subject: Facility Use Policy, Procedures & Practices
Date: September 19, 2012

I. School Facilities Use Law

As a part of the Board's review of the school system's facilities use policy, procedures, and practices, please note the following legal points:

1. The NC Community Schools Act, among other things, requires school boards to "develop programs and plans for increased community use of public school facilities..." See 115C-203 through 115C-209.1.
2. The school system is "authorized and directed" to permit the use of school buildings without charge, except custodial and utility fees, by political parties for the express purpose of annual and biennial precinct meetings and county and district conventions: "Provided, that such use of buildings by political parties shall not be permitted when school is in session or which would interfere with normal school activities or functions normally carried on in such buildings, and such use shall be subject to reasonable rules and regulations of the school board and other governing authorities." See General Statute § 163-99.
3. General Statute § 115C-524 states, in part, as follows: "local boards of education may adopt rules and regulations under which they may enter into agreements permitting non-school groups to use school real and personal property, except for school buses, for other than school purposes so long as such use is consistent with the proper preservation and care of the public school property. **No liability shall attach to any board of education, individually or collectively, for personal injury suffered by reason of the use of such school property pursuant to such agreements.**" (*emphasis added*)
4. In a court case (*Seipp v. Wake County Board of Education*, 132 NC App 119 (1999)), a school board was **not** entitled to immunity for injuries sustained by an individual while attending a haunted house on school property sponsored by the school PTA, where the PTA used the school property pursuant to a **verbal** agreement with the

principal and failed to comply with the board of education rules requiring, among other things, a signed facility use application. (*emphasis added*) Dr. McFarley's survey of existing free citizen use of the property is attached for your consideration. In addition, the school system's Facility Rental Data for the last two years is attached.

5. General Statute § 115C-129 states, in part, the county board of elections shall be entitled to demand and use any school or other State, county, or municipal building, or a part thereof, or any other building, or a part thereof, which is supported or maintained, in whole or in part by or through tax revenues for the purpose of conducting registration and voting for any primary or election, and it may require that the requisitioned premises, or a part thereof, be vacated for these purposes.
6. General Statute § 160A-274 states that any governmental unit may, upon such terms and conditions as it deems wise, with or without consideration, lease to any other governmental unit any interest in real property. This statute also states: any school board may, upon such terms and conditions as it deems wise, lease to another governmental unit for one dollar (\$1.00) per year any real property owned by the board which has been determined by the board to be unnecessary or undesirable for public school purposes. A sample joint use agreement is attached.
7. The Board may delegate to the superintendent rentals of up to one year. Rentals beyond a year require Board approval. Rentals should not exceed 10 years as this triggers additional legal requirements. See 115C-272.

II. Orange County Schools Facilities Use and Concerns

Current review of the school system's Facility Use Policy, Procedures and Practices reflect that the concerns primarily arise in the area of implementation and clarification of the existing policy. Recommendations for moving forward include:

1. Assuring that all facility users go through the application process or enter into a separate agreement with the school board.
2. Assuring that non-school users are not accorded the status of school use.
3. Assuring that rentals beyond one year are approved by the school board.
4. Assuring that users are categorized properly into school use, non-profit, for-profit, and so on, in order the proper fees are paid.

III. Review of Orange County Schools current user categories/priorities.

The school board current policy (5030) includes the following categories of users:

- A. School-Related
- B. School-age Care Programs
- C. Non-School Related Youth Groups
- D. Non-Profit Groups
- E. Orange County Government/Non-Profit
- F. For Profit Groups
- G. Religious Groups

The Board is the final authority on whether all these categories should be maintained or revised. In my opinion, the concerns have arisen more from implementation as opposed to defects in the policy. However, here is a possible simplification/clarification of the user groups for consideration by the Board:

The facilities use policy applies when a person or entity other than the school system itself wishes to use school property. The school system's own use of school property is restricted to activities and events approved by the principal or building supervisor that are directly a part of school system programs or functions, such as a school play or athletic event, the school system's own after-school program, school-sponsored student group meetings, faculty meetings, and other events that are a direct extension of the school day. Essential elements of any such use include: 1. The use is a direct continuation of an existing school program or function; 2. Any fees charged to participants are deposited to the school itself and treated in all respects as school system funds; and 3. School system staff acting in their role as school employees, and not in any private role, participate in and supervise the school use.

The school system has first priority on the use of its property. If the use of school property is not by the school system itself, it must fall in one of the following categories, listed in priority of use:

- A. *School-Related Group approved by the school system, whose sole purpose is to provide direct financial and other support to a school and when the specific school use is directly linked to its mission of supporting the school and when no fees are charged participants to attend the event with the exception of an approved fundraiser at which the funds will be provided in full to support the school. Examples include a PTA meeting on the topic of providing teachers' extra supplies at a school and an approved booster club fundraising activity when the funds will be used solely to aid a school program. A booster club's use of a school's indoor gym for its members to play basketball or for some other activity that is not directly linked to the mission of supporting the school does not meet the criteria of this user category. Any school-related group must agree to allow the school system, upon request, to review any records of the group, including any financial records.*

- B. *Non-Profit Entity or Individual whose central purpose is to serve school-aged children when the specific use is directly linked to its mission of serving school-aged children and when any fees charged participants must be nominal amounts designed to cover the entity's rental and other costs incident to the use of school property. The non-profit user must be approved by the federal government as a 501(c)3 charity. Examples include a YMCA camp for children or an AAU athletic event. As a condition of the rental, the entity must be willing to provide the school system, upon request, any records pertaining participant fees and other documents to assure the costs to participants is nominal.*

- C. *Other Non-Profit entities approved by the federal government as a 501(c)3 charity.*
- D. *All other users, including for-profit users.*

Notwithstanding these categories, the school board may enter into a joint use agreement with a governmental entity, in the best interest of the school system, on terms it deems wise. Any governmental use other than through a joint use agreement will be accorded the same status as a 501(c)3 charity for purposes of the above categories, with the understanding that the County Board of Elections may use a school free of charge for the purpose of conducting registration and voting for any primary or election. Further, political parties may use schools without charge, except custodial and utility fees, for the express purpose of annual and biennial precinct meetings and county and district conventions: provided, that such use shall not be permitted when school is in session or which would interfere with normal school activities or functions, and such use shall be subject to reasonable rules and regulations of the school board. Finally, the school board may enter any other facility use agreement for a period of less than 10 years, on terms and condition it deems wise, provided that the board identifies a specific benefit to the school system in entering into such an agreement.

Any facility rental for a period exceeding one year requires approval of the school board.

From: George McFarley [mailto:george.mcfarley@orange.k12.nc.us]
Sent: Wednesday, September 19, 2012 10:05 AM
To: Jonathan Blumberg; Pat Rhodes
Subject: Fwd: Facilities Use

I have received responses from all of our principals concerning use of their facilities by the public during non-school hours, to include weekends.

All of the elementary schools, with the exception of New Hope, report members of the public using their playgrounds at odd off-duty times...nothing organized. The track at Cameron Park is used by walkers in the community. New Hope, on the other hand, has little to no use of their playground, because the school is not located in a walking community.

All of the middle schools report use of the outdoor basketball goals, track for walking, and the occasional use of their football fields for pick-up games by neighborhood kids during non-duty hours.

Our two high schools and Partnership Academy have reported sporadic use of their practice football field (Cedar Ridge) and the lacrosse field (OHS) being used by the neighborhood kids to play soccer. Partnership Academy has portable basketball goals in the parking lot, and they are sometimes used by the neighborhood kids.

My query did not turn up any organized use of our facilities that were doing an end run around our facility use policy.

I hope this provides the information you were seeking.

George McFarley, Jr., Ed.D.
Chief Operating Officer
Orange County Schools
200 E. King Street
Hillsborough NC 27278
919.732.8126 ext. 11000 (office)
919.732.8120 (fax)

----- Forwarded message -----

From: George McFarley <george.mcfarley@orange.k12.nc.us>

Date: Mon, Sep 17, 2012 at 4:24 PM

Subject: Facilities Use

To: _All Principals <allprincipals@orange.k12.nc.us>

Principals,

I have been asked to query you about the use of your school's grounds , both after school and on the weekends. For example, your playgrounds, tracks, practice fields, etc. Please be as specific as you possibly can.

I have to respond by Thursday, so your prompt attention to this matter is greatly appreciated.

Thanks.

George McFarley, Jr., Ed.D.
Chief Operating Officer
Orange County Schools
200 E.King Street
Hillsborough NC 27278
919.732.8126 ext. 11000 (office)
919.732.8120 (fax)

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Facility Use for July 1, 2010 - June 30, 2011

No.	Organization	Schedule ID	Date	Description	Payment Amount
1	Orange Community Players	47280	7/11/2010	Orange High	\$ 1,340.00
2	Cothene L. Watson	47277	7/17/2010	Cameron Park	\$ 75.00
3	Kenneth Bradsher	47274	7/25/2010	Pathways	\$ 90.00
4	Carolina TarWheels	47279	8/7/2010	Cam. Park/Central Office	\$ 130.00
5	Crosslink Church	47281	8/10/2010	Gravelley Hill	\$ 95.00
6	Victory in Jesus Ministries	47255	8/17/2010	Pathways	\$ 250.00
7	Child Evangelism Fellowship	47283	8/2010-5/27/11	Hillsborough Elem.	\$ 457.50
8	Lucinda Richmond	47282	8/24/2010	Grady Brown	\$ 100.00
9	Snipes Family Reunion	47278	9/5/2010	Gravelley Hill	\$ 75.00
10	Orange County Pop Warner	47286	Sept & Oct 2010	AL Stambaek	\$ 430.00
11	Crosslink Church	47289	9/19/2010	Gravelley Hill	\$ 60.00
12	Abrakadoodle Remarkable Art	47285	Sept, Oct, Dec. 2010	New Hope	\$ 210.00
13	Child Evangelism Fellowship	47291	Oct 2010-Mar 2011	Pathways	\$ 412.50
14	Champion Youth Outreach	47395	10/15/2010	Cameron Park	\$ 30.00
15	Brant Merrill	47292	Oct 2010-Apr 2011	Hillsborough Elem.	\$ 930.00
16	Churton Grove HOA	47284	10/27/2010	Stanford	\$ 75.00
17	Child Evangelism Fellowship	47296	11/1/2010	Cameron Park	\$ 97.50
18	Efland United Methodist Church	47287	11/6/2010	Efland Cheeks	\$ 450.00
19	United Voices of Efland	47294	11/13/2010	Efland Cheeks	\$ 200.00
20	Orange Co. Parks & Rec.	47300	Nov 2010-Jan 2011	Hillsborough Elem.	\$ 800.00
21	Orange Co. Parks & Rec.	47301	Dec 2010-Feb 2011	Hillsborough Elem.	\$ 1,400.00
22	Golden Tone Quartet	47293	11/21/2010	Efland Cheeks	\$ 450.00
23	Orange Co. Youth Theater Group	47298	12/9/2010	Pathways	\$ 270.00
24	Crosslink Church	47305	Jan 2011-Dec 2011	Gravelley Hill	\$ 30,842.00
25	Orange Co. Parks & Rec.	47312	Feb. 2011	Hillsborough Elem.	\$ 240.00
26	NC TrACS, UNC	47310	2/27/2011	Gravelley Hill	\$ 180.00
27	HYAA		Mar-Jun 2011	ALS, OHS, OHS, GHS, CRHS	\$ 750.00
28	NC Gators	47304	Mar-Jun 2011	AL Stambaek	\$ 750.00
29	NC Gators / Lady Elite	47326	Mar-Jun 2011	AL Stambaek	\$ 810.00
30	Orange Co. Youth Theater Group	47316	3/17/2011	Pathways	\$ 270.00
31	Child Evangelism Fellowship	47321	Mar-Apr 2011	Cameron Park	\$ 187.50
32	Habitat for Humanity	47317	4/7/2011	Efland Cheeks	\$ 60.00
33	Orange Co. Democratic Party	47315	4/9/2011	AL Stambaek	\$ 195.00
34	Piedmont Electric	47325	4/15/2011	Orange High	\$ 623.00
35	Beckett's Ridge HOA	47323	4/17/2011	New Hope	\$ 165.00
36	Brant Merrill	47328	Apr-Oct 2011	Hillsborough Elem.	\$ 825.00
37	Orange Co. Parks & Rec.	47303	4/16/2012	Cedar Ridge	\$ 210.00
38	Organization of Central High School Classes	47309	5/27/2012	OHS	\$ 475.00
39	Child Evangelism Fellowship	47336	5/27/2012	HES	\$ 5.00
40	Orange Co. Parks & Rec.	47342	June - Aug 2011	ALS	\$ 875.00
41	Orange Co. Chapter of NCCU Alumni	47322	6/25/2012	PES	\$ 120.00
Total					\$ 46,010.00

Facility Use for July 1, 2011 - June 30, 2012

No.	Organization	Schedule ID	Date	Description	Payment Amount
1	LaTonya Whitfield	47338	7/23/2011	HES	\$ 195.00
2	Kenneth Bradsher	47333	7/24/2011	FES	\$ 90.00
3	Orange Community Players	47359	July 17 - 31 2011	OHS	\$ 1,670.00
4	Tanwheels MS Team	47319	4/16/2011	HES	\$ 80.00
5	Victory In Jesus Ministries	47318	8/6/2011	FES	\$ 250.00
6	Carolina TarWheels	47341	8/13/2011	CP	\$ 130.00
7	Hillsborough Sports Club	47344	Aug - Sept 2011	ALS	\$ 100.00
8	Child Evangelism Fellowship	47416	Aug 2011 - May 2011	HES	\$ 457.50
9	Orange County Democratic Party	47375	8/22/2011	ALS	\$ 74.00
10	Orange County Pop Warner	47386	Sept - Oct 2011	ALS	\$ 510.00
11	Sharon Lipster	47381	10/1/2011	EC	\$ 135.00
12	Orange Co. Democratic Party	47411	10/17/2011	ALS	\$ 145.00
13	Child Evangelism Fellowship	47407	Oct '11 - Apr '12	EC	\$ 187.50
14	Berry's Grove Baptist Church	47393	Oct '11 - Apr '12	FES	\$ 405.00
15	Churton Grove HOA	47380	10/27/2011	CWS	\$ 80.00
16	OHS Quarterback Club	47379	10/29/2011	OHS	\$ 80.00
17	Beyond Measure Barbering Institute	47389	10/29/2011	GHMS	\$ 230.00
18	Eftand United Methodist Church	47406	1/5/2011	EO	\$ 350.00
19	Dispute Settlement Center	47414	Nov - Dec 2011	ALS	\$ 180.00
20	Tracy Stewart	47413	Nov 19 2011	NH	\$ 60.00
21	Orange Co. Parks & Rec.	47426	Nov 11 - Dec 11	HES	\$ 886.25
22	Orange Co. Parks & Rec.	47427	Nov 11 - Feb 12	ALS	\$ 2,200.00
23	Billy Lockamy	47419	10/28/2011	NH	\$ 90.00
24	Crosslink Church	47421	12/18/2011	GHMS	\$ 305.00
25	Kimes Chapel	47417	12/18/2011	GHMS	\$ 225.00
26	Crosslink Church	47422	12/23/2011	GHMS	\$ 332.00
27	Crosslink Church	47430	Jan '11 - Jun '11	GHMS	\$ 23,077.95
28	Music Makers After School, Inc	47424	Jan - June '12	HES	\$ 240.00
29	Orange Co. Democratic Party	47423	1/23/2012	ALS	\$ 56.00
30	North Carolina Gators (East)	47433	Feb - June '12	ALS	\$ 450.00
31	North Carolina Huntington's Disease Society	47416	2/25/2012	GHMS	\$ 325.00
32	Duke University Cycling	47436	2/25/2012	GAB	\$ 80.00
33	North Carolina Gators	47429	Mar - June '12	ALS	\$ 1,560.00
34	Carolina Lady Elite	47465	3/11/2012	CRHS	\$ 80.00
35	KBC, Inc	47448	Mar - May '12	GHMS	\$ 390.00
36	Chi Rho Eta Step Team	47438	3/24/2012	CRHS	\$ 120.00
37	Beckett's Ridge HOA	47450	4/1/2012	NH	\$ 177.50
38	Durham Symphony	47452	4/15/2012	CP	\$ 110.00
39	Piedmont Electric	47455	4/20/2012	OHS	\$ 1,004.50
40	Central High School Organization of Class	47451	4/28/2012	HES	\$ 250.00
41	Beyond Measure Ministries	47453	5/6/2012	GHMS	\$ 99.00
42	H.T. "Buddy" Hartley	47464	May - June '12	OHS	\$ 150.00
43	H.T. "Buddy" Hartley	47462	5/9/2012	OHS	\$ 30.00
44	H.T. "Buddy" Hartley	47460	4/18/2012	OHS	\$ 30.00
45	H.T. "Buddy" Hartley	47456	4/4/2012	OHS	\$ 60.00
46	Triangle Flying Disc Association	47455	5/26/2012	GHMS	\$ 185.00
47	Habitat for Humanity	47471	5/2/2012	CWS	\$ 70.00
48	KBC, Inc	47475	June '12	GHMS	\$ 210.00
49					
50	OHS Basketball Ruggout Club (Outstanding)	47476	June/July 2012	OHS	\$ 5,780.00
51					
52					

Total \$ 37,993.10

Facility Use for July 1, 2012 - June 30, 2013

No.	Organization	Schedule ID	Date	Description	Payment Amount
1	Celine Sinnott & Gina Bachelor	47470	July '12	CP	\$ 510.00
2	H.I "Buddy" Hartley	47479	July - Aug '12	OHS	\$ 120.00
3	Scott Lanier	47480	July-Aug '12	HES	\$ 345.00
4	Kenneth Bradsher	47477	7/22/2012	PES	\$ 90.00
5	Victory In Jesus Ministries	47449	8/11/2012	PES	\$ 250.00
6	Beyond Measure Barbering Inst.	47482	8/5/2012	GHMS	\$ 325.00
7					
8					Total: \$1640.00
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NORTH CAROLINA
ORANGE COUNTY

LEVEL 4 JOINT USE AGREEMENT FOR
(SPECIFIC FIELD(S)/OUTDOOR FACILITIES @ SCHOOL)

This Agreement for the joint use of the <Specific Field(s)/Outdoor Facilities @ School> (hereinafter referred to as "Agreement") made and entered into this ___ day of _____ 20___, by and between the TOWN OF _____, a Municipal Corporation of the State of North Carolina (hereinafter referred to as "Town"), and the ORANGE COUNTY BOARD OF EDUCATION (hereinafter referred to as "Board").

WITNESSETH

THAT WHEREAS, the parties recognize that joint cooperation and action between the Board and Town shall ensure that the best facilities and services are provided to the citizens of Orange County with the least expenditure of public funds; and

WHEREAS, Board and Town are mutually interested in quality education and recreation programs for Orange County students and citizens; and

WHEREAS, Board and Town are authorized to enter into agreements with each other to do any and all things necessary or convenient to aid and cooperate in the cultivation of citizenship by providing quality programs and facilities; and

WHEREAS, Board owns certain real property at <street address> which is the campus for <Name of Board Property> (hereinafter referred to as "<abbreviation of Board Property>"); and

WHEREAS, Board and Town desire to enter into an agreement for the use of Board Property; and

WHEREAS, Board and Town desire to jointly use the <designated field(s)/outdoor facilities at School> for the benefit of the school and community; and

WHEREAS, Board has determined that the areas to be jointly used are not necessary at all times after normal school hours for public school purposes during the term of this Agreement; and

WHEREAS, Town desires to perform the maintenance of the <designated field(s)/outdoor facilities @ the School for joint use>; and

WHEREAS, Board desires to permit <Town> to use and schedule the use of <designated field(s)/ outdoor facilities @ the School>, when such are not scheduled or being used by the Board; and

WHEREAS, community use of school property and facilities is encouraged by the Community Schools Act North Carolina General Statute (N.C.G.S.) 115C-203 *et seq.*; and

WHEREAS, Board and Town desire that all members of the community shall have access to <designated field(s)/outdoor facilities @ the School>, and

WHEREAS, Board and Town are authorized to enter into this Agreement pursuant to the provisions of N.C.G.S. 115C, Article 13; N.C.G.S. 115C-518; N.C.G.S. 115C-524(b); and N.C.G.S. 160A-274:

NOW, THEREFORE, pursuant to N.C.G.S. 115C, Article 13, N.C.G.S. 115C-524(b), and N.C.G.S. 160A-274 and in consideration of the above-stated desires of the parties and such other mutual promises and covenants as are hereinafter set forth, Board and Town do hereby agree as follows:

1. **Property Description.** <Name of Board Property> is located at <street address and city>, specifically identified as Orange County Property Identification Number <XXXX> or <legal filing location - Book and page>.

2. **Term.**
The term of this Agreement shall be for a period of twenty-five (25) years from the date of execution of the Agreement.

3. **Liability.**
Town agrees that Board is authorizing the use of its property pursuant to this Agreement only to the extent permitted by N.C.G.S. 115C-524(b), and that the Board does not incur any liability to the Town or any member of the public for permitting this use. No liability shall attach to the Board of Education, individually or collectively, for any injury suffered by reason of any Town use or maintenance of Board Property pursuant to this Agreement. The Town shall indemnify, protect, and hold harmless the Board, its agents, and employees from and against claims or damages, including attorney's fees, caused by the negligence or intentional wrongdoing of the Town its agents, invitees, contractors, or employees.

4. **Enhancements, Modifications, Renovation, or New Construction on Board Property by <Board and Town>**.
The Board and Town shall consult, plan, and coordinate prior to making improvements to the Town Licensed Areas. The Board may make any enhancements, modifications, renovations, or new construction on Board Property necessary for educational programming needs. The Board may make such enhancements, modifications, renovations, or new construction in its sole discretion and without approval from the Town; however, the Board shall notify the Town that it is making such improvements. The Town shall be responsible for any enhancements, modifications, renovations, or new construction for Town needs; however, the Town shall make no such improvements without the Board or Board designee's prior *written* approval. After the Board approves the plans and schedule for such improvements proposed by the Town, the Town shall proceed with such improvements at its expense. The Town shall plan and coordinate such improvements with the Board to ensure that such improvements pursuant to this Agreement are completed with minimal impact on the operations of <abbreviation of Board Property>. Town will be responsible for and shall repair at its sole expense any damage to drive accesses, parking areas or other Board Property incurred due to their use or construction.

5. **Town Licensed Area(s).**
The Board hereby gives and grants to the Town permission to use areas on Board Property defined pursuant to this Agreement as the Town Licensed Areas of <abbreviation of Board Property>:
A. Town Licensed Area(s):
1. All areas to be jointly used shall be identified in the document.

6. **Ownership.**

All improvements made to or upon Board Property shall be the property of the Board.

7. **Appropriate Use.**

No use of <abbreviation of Board Property> shall be inconsistent with the proper care and preservation of public school property.

8. **Joint Use and Scheduling of Town Licensed Area(s).**

The Board and Town agree that use of Town Licensed Areas as shown on Attachment B shall be in accordance with the following conditions and provisions:

A. **Administrative Control.**

1. The Superintendent of the Orange County Schools or designee shall have administrative control of <abbreviation of Board Property> at all times.
2. Normal school hours are defined as daily student and teacher workdays from 7a.m.-6p.m. From time to time, specific school activities, events, or games may end before or extend beyond normal school hours.
3. Non-school hours are defined as daily after normal school hours, weekends, holidays, staff vacation days, and during school breaks including spring, summer and winter breaks.

B. **Scheduling and Use.**

1. Use of the Town Licensed Areas at <abbreviation of Board Property> after normal school hours and after school events shall be in accordance with the following conditions and provisions:
 - a. Field maintenance shall be in accordance with the Landscape Maintenance Standards. (Attachment A.2).
 - b. Board and Town designees shall:
 - (1) Establish times available for use at the campus level.
 - (2) Make determinations for field accessibility and use based on turf conditions and safety level. Fields should not be used when weather has rendered the fields unsuitable for recreational and physical development activities.
 - c. Field conditions may limit use.
2. Town agrees that the Board shall have first priority for scheduling and use of Board property.
3. Town will be allowed to schedule the use of the <specify field(s)/outdoor facilities> during those times that <specify field(s)/outdoor facilities> are not needed for school system activities.
4. Board and Town agree to meet a minimum of three times per year to coordinate use, establish maintenance schedules, develop and update the <abbreviation of Board Property> master calendar as well as inspect Town Licensed Areas.
 - a. Board and Town designees shall maintain on-going, open, reciprocal communication between one another while acting in good faith to build a positive reciprocal relationship.
 - b. Town shall designate one person as the point-of-contact for communication with the school's designated contact person. Town's designee and/or other responsible members shall:
 - (1) Participate in the site coordination meetings (at least three times each year),
 - (2) Communicate on a weekly basis to confirm or update the <abbreviation of Board Property> master calendar,
 - (3) Be aware of special circumstances such as emergency weather conditions, and
 - (4) Be responsible for making participants aware of any cancellations or rescheduling of municipality activities.
 - c. Town agrees to utilize the OCS electronic scheduling system once it is made available.

Template

Printed 9/19/2012

5. Inclement Weather.
The Board in its sole discretion will make decisions on when to close its school campuses due to inclement weather. The Town agrees to comply with the Board's inclement weather determinations and will not access Board property on these days.
- C. Supervision and Security of Town Licensed Areas.
 1. When Town is using the campus for its activities, Town will provide appropriate supervision and adhere to all school rules and policies.
 2. Town will provide extra campus security as appropriate to provide a safe environment for the participants and protect school system property.
 3. In the event of damage attributed to use or maintenance, the municipality shall make restoration to school property.
 4. During school hours, all maintenance personnel shall make their presence known on site by signing in at the school office upon arrival.
- D. Fees/Charges.
Board and Town agree that, except as expressly stated in this Agreement, there shall be no additional fees and/or charges associated with each party's use of the Town Licensed Areas unless mutually agreed upon.
- E. Income from Town Program.
<Board and Town> agree that the income from Town programs and events operated on Town Licensed Area(s) that are subject to this Agreement shall go to the Town.
- F. Income from School Program.
Town agrees that the income from Board programs and events, such as receipts from school ball games or fundraisers, shall go to the school.
- G. Concession Operations.
 1. The Board or its operating agent has the right to operate concessions on Board Property when used for Board purposes and the proceeds shall go to the Board.
 2. The Town or its operating agent has the right to operate concessions on Town Licensed Areas when used for Town purposes and the proceeds shall go to the Town.
 3. Proceeds from concessions shall be shared by the Board and Town based upon a mutually agreed upon percentages when operated jointly or when Board and Town events are simultaneously scheduled.
9. **Housekeeping, Routine/Preventive Maintenance, and Major Repair or Life-Cycle Replacement (refer to Maintenance Charts, Attachment <X>)**
 - A. General Guidelines
 1. Board and Town designees shall discuss maintenance needs and schedules during the site calendar coordination meetings at least three times each year.
 2. Upon this signed Agreement, Board and Town designees shall develop a Facility Inspection and Evaluation Checklist based on the landscape maintenance standards and establish procedures for emergency maintenance requests.
 3. Board and Town shall use the Facility Inspection and Evaluation Checklist to monitor the conditions, identify damage, denote safety issues and repair concerns of the Town Licensed Areas.
 4. The Board reserves the right to take any action at any time on <abbreviation of Board Property> that the Board in its sole discretion deems necessary related to the goals of this provision.
 5. The Town shall be responsible for general cleanup activities, events, and programs to maintain acceptable appearance and required safety levels.
 6. Town agrees to comply with the OCS recycling procedures and guidelines.
 7. Board shall allow time to be scheduled during the school day for Town to have access to the facility to provide routine, preventive maintenance and repairs as prescribed in this

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Agreement. Maintenance work shall be coordinated between the Board and Town designees to ensure:

- a. Minimal disruption of the school day.
 - b. Necessary maintenance resources are available.
 - c. Maintenance area(s) are secured for safety until completion.
8. During school hours, all maintenance personnel shall make their presence known on site by signing in at the school office upon arrival.
- B. Routine/Preventive Maintenance, Major Repair, or Life-Cycle Replacement Maintenance shall be the sole responsibility of the Town.
- <List by Town Licensed Areas>:
1. Routine/Preventive maintenance shall be performed as prescribed in the Landscape Maintenance Standards and the Maintenance Charts (Attachment A.1).
 2. Major Repair/Life Cycle Replacement responsibilities: (Defined per the terms of each joint-use agreement specific to the site.)

10. Utilities.

The Town shall be responsible for the all utilities (i.e., electricity, water, sewer, etc.) for the Town Licensed Areas. When possible, separate meters necessary for the use and operation of the outdoor amenities: <such as the athletic fields, concession buildings, tennis courts, and parking areas> shall be installed at the sole responsibility of the Town.

11. Insurance.

- A. Town shall maintain at all times during the term of this Agreement and during any and every extension thereof public liability insurance in the amount of \$1,000,000 / \$2,000,000, or the minimum required by North Carolina State Law, covering personal injury for each accident or occurrence growing out of the Town use or maintenance of the said Town Licensed Areas and at least \$1,000,000 or the minimum required by North Carolina State Law to cover property damage growing out of each accident or occurrence. The Board shall be named as an additional insured on all insurance policies. The Town shall furnish the Board with evidence of such insurance and of its renewal as the premiums become due. The Town shall provide the Board with thirty days prior written notice of any reduction in coverage or cancellation of such insurance. Town agrees to obtain fire and hazard insurance in the amount equal to the replacement value of the insurable structure and areas.
- B. Board and Town are each responsible for insuring the replacement value of their respective personal property.

12. Use of Care.

The Town acknowledges that construction, maintenance, and use pursuant to this Agreement will take place on a school site at which children, school employees, and members of the public are present. The Town shall take reasonable care under the circumstances to protect and secure the construction and maintenance areas to minimize the possibility of injury to students, staff and the public. The Town agrees to keep the Town Licensed Area(s) in a clean and safe condition at all times and to ensure that any equipment, materials, or supplies brought onto the Town Licensed Area(s) by the Town are properly and safely stored when not in use.

13. Nondiscrimination.

The Town shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, age, religion, or national origin. Neither the Town nor its employees shall discriminate against any person or organization on the basis of race, color, creed, sex, age, religion, or national origin by refusing to furnish such person or organization services for privileges offered to or enjoyed by residents of Orange County, nor shall the Town or their employees publicize the

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facilities provided hereunder in any manner that would directly or inferentially reflect negatively on any person because of race, color, creed, sex, religion, or national origin.

14. Nonperformance.

- A. In the event either party should fail to keep, perform or abide by any term, condition or covenant of this Agreement for a period of thirty days after written notice of such failure by the non-breaching party, then in addition to any other remedies available at law or equity, the non-breaching party shall have the right to remedy such nonperformance. In such event, the breaching party shall reimburse the non-breaching party for any expenses incurred by the non-breaching party in effecting such remedy. Such reimbursements shall be due and payable within thirty days after receipt by the breaching party of written notice specifying the amount due. If the Board is the non-breaching party, it may suspend Town use of its property until the Town demonstrates to the Board's satisfaction that Town has corrected its breach and is fully performing its obligations under the terms, conditions, and covenants of this Agreement.
- B. The Board and/or Town reserve the right to request an Oversight Committee review.

15. Default/Termination.

- A. In the event either party should fail to keep, perform or abide by the terms, conditions or covenants of this Agreement for a period of thirty days after written notice of such failure by the non-breaching party, then the non-breaching party may elect to terminate this Agreement upon an additional thirty days written notice. If Town is the breaching party and Board should exercise this right of termination, then and in that event, Town shall relinquish any interest in any of the improvements made to <Name of Board Property> under this Agreement and no reimbursement shall be due. Town shall leave <Name of Board Property> in a condition approved by the Board.
- B. The Board reserves the right to terminate this Agreement at any time that the Board in its sole discretion deems the property necessary for school purposes. The Board shall give the Town at least a ninety-day notice. If the Board should exercise this right of termination during the term of this Agreement then the Board shall reimburse the Town for a pro rata portion of the Town's initial construction costs and other improvements completed on <Name of Board Property>. Construction costs shall be amortized over the term except that the Town shall not be entitled to reimbursement for maintenance or improvements to parking areas or entrance drives.
- C. If the Town should exercise this right of termination at any time during the term of this Agreement, then and in that event, Town shall complete any improvements begun on <Name of Board Property> and leave <Name of Board Property> in a condition that is safe and acceptable to the Board. The Town shall relinquish any interest Town may have in any of the improvements that Town made to Board property under this Agreement, and no reimbursement shall be due the Town.
- D. The Board and/or Town reserve the right to request an Oversight Committee review.

16. Notices.

All notices, requests, approvals, or consents required to be given hereunder shall be in writing and hand delivered or sent by certified mail, return receipt requested, postage prepaid, and addressed as follows:

Board: The Board of Education
 Orange County Schools
 200 E. King Street
 Hillsborough, NC 27278

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Town: Town Manager
 Town of _____
 Address
 Town, North Carolina 27XXX

or to such other address as either party may specify in the manner hereinabove prescribed.

17. Severability.

In the event any term or provision of this Agreement shall be adjudged to be partially or completely invalid or unenforceable, then such term or provision shall be severed from this Agreement, and the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

18. Preservation and Care of Public School Property.

Town agrees to regulate the use of <Name of Board Property> consistent with the Board's standards and understanding of how to best maintain the property to prevent deterioration of the property. The Town may only schedule use of the Town Licensed Areas of <Name of Board Property> so long as its use is consistent with the proper care and preservation of the public school property and the maintenance is performed at or above the prescribed standards (Attachment A).

19. Non-Assignment.

The Town may not assign this Agreement. Town may use Board Property only as provided in this Agreement.

20. Entire Agreement.

The Town agrees that this document and its Attachments listed below constitute the entire agreement between the parties and may only be modified by a written mutual agreement signed by the parties. To the extent that there is any conflict between the terms of this Agreement and any prior understanding or agreement between the parties, as well as any applicable Interlocal Agreement, the terms of this Agreement shall control.

- Attachment A - A.1 Maintenance Charts
- A.2 Landscape Maintenance Standards
- Attachment B - Diagram showing Town Licensed Area(s)
- Attachment C - Master Plan or Site Plan (if appropriate)

21. Agreement in Counterparts.

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Orange County Board of Education has caused this Agreement to be signed by its Chair, attested by its Secretary, and sealed with its corporate seal, and the Town has caused this Agreement to be signed by its <Mayor/Chair>, attested to by the <Town Clerk /Secretary>, and sealed with its seal, by order of the respective governing board duly given the day and year first written above.

ORANGE COUNTY BOARD OF EDUCATION

ATTEST

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By: _____ (SEAL)
Chair

By: _____ (SEAL)
Superintendent/Secretary
(Affix Corporate Seal)

TOWN OF _____

ATTEST

By: _____ (SEAL)
Mayor or Chair

By: _____ (SEAL)
Town Clerk or Secretary
(Affix Town Seal)

NORTH CAROLINA
ORANGE COUNTY

The undersigned, a Notary Public of the County and State aforesaid, hereby certified that _____ personally appeared before me this day, and being duly sworn by me, acknowledged that he/she is Superintendent/Secretary of the Orange County Board of Education, and that by authority duly given and as the act of the Board the forgoing instrument was signed by its chair, sealed with its corporate seal and attested by him/her as its Superintendent/Secretary.

Witness my hand and notary seal this ____ day of _____ 20__.

My Commission expires: _____
Notary Public

The undersigned, a Notary Public of the County and State aforesaid hereby certified that _____ personally appeared before me this day, and being duly sworn by me acknowledged that he/she is Town Clerk of the Town of _____, and that by authority duly given and as the act of the Town, the forgoing instrument was signed by its Mayor, sealed with its corporate seal and attested by him/her as its Town Clerk.

Witness my hand and notary seal this ____ day of _____ 20__.

My Commission expires: _____
Notary Public