

**INTERGOVERNMENTAL COOPERATION AGREEMENT  
FOR SHARED USE OF FACILITIES**

THIS AGREEMENT made and entered into this 2nd day of June, 2003, by and between the Board of Education of Indian Prairie Community Unit School District No. 204, DuPage and Will Counties, Illinois (hereinafter referred to as "School District") and the Board of Park Commissioners of the Naperville Park District of DuPage and Will Counties, Illinois (hereinafter referred to as "Park District").

**WITNESSETH:**

**WHEREAS**, the School District has constructed schools commonly known as BROOKDALE, COWLISHAW AND PATTERSON ELEMENTARY SCHOOLS on the school sites described in the attached Exhibit No. 1; and

**WHEREAS**, through previous intergovernmental agreements, the park district contributed funds to the construction and equipping of enhanced recreational facilities at BROOKDALE, COWLISHAW AND PATTERSON SCHOOLS in exchange for guaranteed use of the facilities pursuant to agreed schedules; and

**WHEREAS**, the parties desire to continue the relationship begun under the previous agreements and to incorporate all of the previous agreements into one Agreement containing uniform terms and conditions; and

**WHEREAS**, the Park District and the School District have mutually determined that it would be in the best interests of the citizens of the community for the Park District to continue to utilize certain portions of BROOKDALE, COWLISHAW AND PATTERSON ELEMENTARY SCHOOLS during non-school hours, for community recreational activities sponsored by the Park District; and

**WHEREAS**, the School District has determined that the Park District's continued utilization of the aforesaid BROOKDALE, COWLISHAW AND PATTERSON ELEMENTARY SCHOOLS for community recreational activities during non-school hours will not interfere with the School District's delivery of educational services to its students and residents, and has further determined that said usage may enhance the delivery of such educational services; and

**WHEREAS**, this Intergovernmental Cooperation Agreement is authorized by the Illinois Constitution of 1970 and the Intergovernmental Cooperation Act of the State of Illinois, providing for the execution of agreements and implementation of cooperative activities between public agencies of the State of Illinois (5 ILCS 220/1, et seq. (2002)).

**NOW, THEREFORE**, in consideration of the foregoing, as well as the mutual covenants and agreements hereinafter set forth, the School District and the Park District hereby agree as follows:

## **I. TERM OF AGREEMENT**

A. The parties to this Agreement understand and agree that it shall extend in perpetuity until either part effects termination as hereinafter set forth.

B. Neither party shall have the right to terminate this Agreement with an effective date prior to April 1, 2013. Either party has the right to terminate this Agreement effective on or after April 1, 2013 under the following terms and conditions:

1. Notification - The party desiring to terminate this Agreement shall serve the other party with a two (2) year written notice ("Termination Notice"). The Termination Notice shall be served upon the Secretary of the Board of the public agency in question and shall set forth the reasons for termination. Following such notification, the parties shall use every reasonable effort to resolve the causes stated for termination in the Termination Notice. Termination shall be deemed effective two years from the date of service of the Termination Notice upon the receiving District.

2. Termination by the Park District - In the event the Park District issues the Termination Notice, then the Park District shall forfeit all of the construction costs paid by the Park District for the additions and enlargements at the subject school. (Hereinafter, the construction costs paid by the Park for the additions and enlargements is referred to as the "Improvements"). In such event, Improvements shall become the sole and exclusive property of the School District.

On or before the effective date of termination under this paragraph B.2., the Park District shall execute and deliver to the School District any and all documents necessary to convey all of its right, title and interest in and to the Improvements to the School District.

3. Termination by the School District - In the event the School District issues the Termination Notice, then the School District shall pay to the Park District the depreciated value of the Improvements for the school(s) subject to termination. The depreciated value of the Improvements shall be determined through use of a 30-year straight-line depreciation method dated from the date of occupancy for the subject school.

Such payments shall be paid by the School District to the Park District in four (4) annual installments, with the first payment due on the effective date of termination and each subsequent payment due on or before each such succeeding

anniversary date of said effective date of termination until the entire sum has been paid in full. All sums remaining from time to time unpaid shall accrue interest at the rate of six (6%) per cent per annum, which interest shall commence on the effective date of termination and continue until all outstanding principal and interest is paid in full; provided, however, that there shall be no prepayment penalty. The aforesaid annual installments shall include and be first applied to interest being payable in lawful money of the United States of America at the Park District's administrative offices or such other place as the Park District may from time to time in writing appoint.

Upon payment in full of all sums due from the School District to the Park District under this paragraph B.3., the Park District shall execute and deliver to the School District any and all documents necessary to convey all of its right, title and interest in and to the Improvements to the School District.

## **II. The Park District Usage of Brookdale, Cowlshaw, and Patterson Elementary Schools of Indian Prairie School District 204**

### **Facility Usage**

A. The School District hereby grants to the Park District certain usage of the gymnasiums at Brookdale, Cowlshaw, and Patterson Elementary Schools as follows: The Park District shall be allowed to conduct all lawful park and recreational activities in the gymnasiums located in Brookdale, Cowlshaw, and Patterson Elementary Schools during those non-school hours as set forth below. Said use of the gymnasiums shall include Park District use of the storage rooms, restrooms and dressing rooms immediately adjacent thereto (the gymnasiums, storage rooms, restrooms and dressing rooms are collectively referred to as "gymnasiums"). The Park District shall also be entitled to reasonable modes of ingress and egress to and from the gymnasiums and to the use of the school parking lots during those times when it uses the gymnasiums. For purposes of this Agreement, "non-school hours" shall be defined as follows:

1. **Weekdays** – From 4:00 p.m. to and including 11:00 p.m., Monday through Friday, throughout the school term;
2. **Weekends** – From 8:00 a.m. to and including 11:00 p.m. on Saturday and Sunday, throughout the school term;
3. **Holidays** – From 8:00 a.m. to and including 11:00 p.m. for that extended period of time when school is not in session during regular School term, including, but not limited to, Thanksgiving, Winter and Spring vacations; and
4. **Summer** – From 8:00 a.m. to and including 11:00 p.m. for that period of time during the months of June, July and August outside of the school term,

except for periods scheduled for maintenance and cleaning as set forth in Section II. B. below.

B. It is understood and agreed that the Park District shall be allowed to conduct its recreational activities at the gymnasiums during the non-school hours set forth in sub-paragraph A, above. However, the parties recognize that the needs of the School District will require its usage of the gymnasiums during non-school hours on certain days throughout the calendar year. The maximum number of days the School District will be entitled to usage of the gymnasiums during non-school hours are as follows:

1. Weekdays – Two weekdays per week during the school term for School programs or assignments;
2. Weekends – One full weekend period, as that term is defined above, per School quarter as established in the annual School Calendar;
3. Holidays – Five (5) consecutive days during the winter holiday season; and
4. Summer – Scheduled maintenance and cleaning periods designated by the School District during the first two full weeks of August. Notice of any change to this maintenance and cleaning period schedule shall be delivered to the Park District by February 1<sup>st</sup> of each year that this Agreement is in effect.

The School District and the Park District understand and agree that the Park District will have the use of the gymnasiums during all other non-school hours, as defined in paragraph A., above.

C. General Use Conditions

1. It is understood and recognized by the School District and the Park District that elementary educational facilities are utilized from time to time by the School District and various other community organizations for School-sponsored and other community activities. It is the belief of both the School District and the Park District that, with proper planning, all reasonable School District, Park District and other community-sponsored activities can be fully accommodated. Toward that end, authorized representatives of the School District and the Park District shall meet semi-annually, not later than May 15 during the spring of each year, in order to establish a schedule for the appropriate use of the gymnasiums for the following school year pursuant to paragraphs A. and B., above, and not later than October 15 during the fall of each year to verify that schedule.

2. The Park District Storage Closets located at each of the gymnasiums shall be used solely and exclusively by the Park District for storage of supplies and equipment needed for Park District programming at the gymnasiums. Organization and cleaning of the storage closets will be the responsibility of the Park District. Storage of School District supplies and equipment within the closets shall not occur without prior written approval by the Park District.

3. The School District and the Park District recognize and understand that this is a unique Agreement providing for the optimum use by two public agencies of the gymnasiums being provided for the taxpayers of both agencies. It is, therefore, recognized by both the School District and the Park District that there will be need, from time to time, for periodic review and modification of the schedule set forth above after formal adoption and execution of this Agreement. Such reviews shall take place as needed, at the request of either the School District or the Park District. It is also understood and agreed by the School District and the Park District that there may be occasions when either party may need to utilize the gymnasiums in order to accommodate special uses by that particular District as needs arise. Therefore, upon a minimum of thirty (30) days written notification, either party may request a modification of the usage schedule set forth above for use of the gymnasiums. The schedule set forth above may be modified only upon the mutual agreement of the parties, with appropriate adjustments to be made to the established cost sharing formulas hereinafter set forth. If a Park District program is relocated under this paragraph the School District shall, if possible, provide the Park District with another gymnasium within the School District to hold the Park District activity at no additional cost to the Park District. Said alternate location shall not include a gymnasium already provided to the Park District under this Agreement. Additionally, at those times when either the School District or the Park District has the gymnasium(s) scheduled for a particular activity but elects not to use the facility for that activity, this Agreement shall not preclude the other District's use of the gymnasium(s) for a function appropriate to its governmental purpose, upon the prior approval from the non-using District.

4. In the event the Park District determines that School District equipment or facilities require repair, replacement or renovation in order for the Park District to effectively continue operation of any program being conducted at one of the gymnasiums, the Park District shall immediately notify the School District. The School District shall, as soon as possible, undertake the repair, replacement or renovation and complete the same as soon as practicable in order to minimize the impact on the Park District's program. In the event that the repairs cannot be completed in fourteen (14) calendar days, the School District shall, to the best of its ability, provide the Park District with alternative gymnasium space at no additional cost to the Park District. Said alternate space shall not include a gymnasium already provided to the Park District under this Agreement.

5. In entering into this Intergovernmental Cooperation Agreement, and as additional consideration therefor, the Park District agrees that all residents of the School District shall be considered residents of the Park District when registering for Park District programs conducted solely or primarily at Brookdale, Cowlshaw, and Patterson Elementary Schools, so that School District's residents may make maximum use of the gymnasiums and services intended to be provided by this Intergovernmental Cooperation Agreement.

6. In executing this Intergovernmental Cooperation Agreement and accepting its benefits, the Park District agrees that it shall use the gymnasiums solely for lawful park district activities

#### Operational Costs

A. The Park District understands and agrees that through its utilization of the gymnasiums, it will render the School District liable for additional heating, electrical and custodial costs. Therefore, the Park District agrees to reimburse the School District for the heating, electrical and custodial costs associated with the Park District's usage of the gymnasiums as follows:

1. The School District agrees to provide reasonably required heating and electrical services during those times that the Park District uses the gymnasiums. The parties acknowledge that the square footage of the gymnasiums represent 12.7% of the total square footage of the Brookdale, Cowlshaw, and Patterson Elementary Schools. The parties further acknowledge that the time reserved for the Park District's use of the gymnasiums is 34% of the year. Accordingly, the Park District hereby agrees to reimburse the School District in an amount equal to 4.32% (34% of 12.7%) of the total heating and electrical cost of the Brookdale, Cowlshaw, and Patterson Elementary Schools. The percentages set forth in this paragraph will be reviewed and revised annually to reflect changes in facilities or usage, as necessary.

2. The School District agrees to provide reasonably required custodial services with a quality of maintenance equal to ongoing school custodial services during the time that the Park District uses the gymnasiums. The Park District agrees to reimburse the School District for the direct cost of custodial expenses directly attributable to the Park District's usage of the gymnasiums (i.e., custodial expenses which the School District would not otherwise have incurred but for the Park District's use of the gymnasiums). For purposes of this Agreement, direct costs of custodial services shall include the hourly salary or wages paid to the custodians in question, plus all employment insurance, workers' compensation insurance, health insurance, life insurance, Illinois Municipal Retirement Fund Contributions and other costs directly attributable to such custodial personnel.

3. The School District shall submit to the Park District an itemization of all heating, electrical and custodial costs attributable to the Park District's usage of the gymnasiums no less than quarterly per calendar year, whereupon the Park District shall, within thirty (30) days, remit to the School District its reimbursement for the said heating, electrical and custodial costs incurred.

B. The parties understand and agree that, during the duration of this Intergovernmental Cooperation Agreement, the School District may need to repair and/or replace carpet due to ongoing wear and tear. In this regard, the parties agree that the Park District shall be responsible for and pay over to the School District 34% of the costs of such repair and/or replacement. The School District will submit plans for said repair and/or replacement to the Park District for its review and comment. Notwithstanding the foregoing, if damage to the furnishings, fixtures and other improvements to the gymnasiums or any other area of the Brookdale, Cowlshaw, and Patterson Elementary Schools are determined to be a sole and direct result of Park District activity, the Park District agrees that it shall reimburse the School District for all of its direct cost of necessary repairs or replacements to the furnishings, fixtures, or improvements. Any request for reimbursement by the School District in this regard shall include a complete itemization of all damages sustained and costs incurred to repair or replace the furnishings, fixtures or improvements, including statements and/or bills for materials and services and proof that the School District's insurance coverage for the loss was denied. If damage to said furnishings, fixtures and other improvements to the gymnasiums are the sole and direct result of School District activity, the School District alone shall be responsible for the cost of necessary repairs or replacements of said furnishings, fixtures or improvements so damaged.

C. The Park District agrees to provide and assume, at its cost, personnel sufficient and necessary to properly schedule and supervise Park District activities at the gymnasiums in accordance with the terms and conditions of this Agreement.

D. It is understood by and between the parties that certain items of equipment provided by the Park District for its programs may, upon request of the School District, be utilized jointly for School District and Park District activities. The School District agrees to reimburse the Park District for the direct cost of repair to or replacement of said equipment if such is damaged as a sole and direct result of the School District's usage of said equipment. Any request for reimbursement by the Park District in this regard shall include a detail of all damages sustained and costs incurred, including statements and/or bills for materials and services necessary to correct such damage.

It is understood by and between the parties that certain items of equipment provided by the School District for its programs may, upon request of the Park District, be utilized jointly for School District and Park District activities. The Park District agrees

to reimburse the School District for the direct cost of repair to or replacement of said equipment if such is damaged as a sole and direct result of the Park District's usage of said equipment. Any request for reimbursement by the School District in this regard shall include a detail of all damages sustained and costs incurred, including statements and/or bills for materials and services necessary to correct such damage.

E. The School District understands and agrees that it shall provide both property damage and liability insurance for the physical facilities known as the Brookdale, Cowlshaw, and Patterson Elementary Schools, which insurance shall include the additional gymnasiums. In order to protect the interests of the School District and the Park District, the School District agrees that such policies of insurance shall name the Park District, its officers, employees, volunteers, agents and assigns, as additional insureds. Similarly, the parties understand that the Park District shall be required at its own expense to purchase liability insurance in an amount approved by the School District for the gymnasiums and its usage thereof, including all School District property utilized or available to the Park District in connection therewith. In order to fully protect the parties herein, the Park District agrees that all policies of insurance purchased, or risk management pools of which the Park District is a full-paid participating member, relative to the gymnasiums shall name the Board of Education of Indian Prairie Community Unit School District No. 204, DuPage and Will Counties, Illinois and the Regional Board of School Trustees of DuPage County, Illinois, as additional insureds.

### III. MISCELLANEOUS PROVISIONS

A. Notice: Any and all notices required hereunder to be sent to the School District shall be served in writing by United States certified mail, postage prepaid, return receipt requested, to the Secretary of the Board of Education of Indian Prairie Community Unit School District No. 204, DuPage and Will Counties, Illinois, at the following address:

Secretary, Board of Education of Indian Prairie  
Community Unit School District No. 204,  
DuPage and Will Counties, Illinois  
Post Office Box 3990  
Naperville, Illinois 60567.

Any and all notices required hereunder to be sent to the Park District shall be served in writing by certified mail, return receipt requested, to the Secretary of the Board of Park Commissioners of the Naperville Park District, DuPage and Will Counties, Illinois, at the following address:

Secretary, Board of Park Commissioners of  
Naperville Park District, DuPage and  
Will Counties, Illinois  
320 West Jackson Avenue  
Naperville, Illinois 60540.

B. Default: In the event that either the School District or the Park District defaults in faithfully performing its obligations hereunder and continue such default for a period of sixty (60) days, then the non-defaulting party may withhold cooperation and participation in this Agreement until all said defaults are cured and/or take such further legal or equitable action as shall otherwise be available.

C. Modification: The agreements, covenants, terms and conditions herein contained may be modified only through the written mutual consent of the parties hereto.

D. Indemnification: The School District shall indemnify and hold harmless the Park District, including its Board Members, in their individual and official capacities, the Board's employees, agents and volunteers, and their respective successors and assigns, from any claim or loss, including, but not limited to, attorney's fees, costs and expenses of litigation, for any claim against the Park District for property damage, personal injury or death resulting from the School District's use of Brookdale, Cowlishaw and Patterson Elementary Schools, except to the extent of the fault of the Park District. The Park District shall have the same obligation to the School District, including its Board Members, in their individual and official capacities, the Board's employees, agents and volunteers, and their respective successors and assigns, with respect to the Park District's use of Brookdale, Cowlishaw and Patterson Elementary Schools.

E. Legal Title: No legal title or leasehold interest in the subject schools shall be deemed or construed to have been created or vested in the Park District by anything contained in this Agreement.

F. No other Relationship: Nothing contained in or done pursuant to this Agreement shall be construed as creating a partnership, agency, joint employer or joint venture relationship between the Park District and the School District. Except as otherwise expressly provided in this Agreement, no party shall become bound, with respect to third parties, by any representation, act or omission of the other party. Nothing contained in this Agreement shall be construed as creating an employment relationship between the Park District and the School District. Each party shall have exclusive control of its time during its use period of the gymnasiums (subject to the terms of this Agreement) and shall be responsible for the direct supervision of all of its employees, agents, volunteers, program participants and subcontractors, if any. Each

party shall provide all workers' compensation and unemployment insurance, social security and other related benefits for its employees, if any, as required by law.

G. Representations and Warranties: Neither party makes any representations or warranties, except as specifically set forth in this Agreement.

H. Non-Assignment: Neither party may assign any rights or duties under this Agreement without the prior written consent of the other party.

I. Time is of the Essence: Time is of the essence of this Agreement.

J. Time for performance: Except for facility scheduling provisions of this agreement, whenever the time for performance of any duty under this Agreement falls on a Saturday, Sunday or legal holiday, such time for performance shall be extended to the next business day.

K. Counterparts: This Agreement may be executed in Counterparts, each of which shall constitute an original, but altogether shall constitute one and the same Agreement.

L. Governing Law, Interpretation, Venue: This Agreement and all questions of interpretation, construction and enforcement thereof, and all controversies hereunder, shall be governed by the applicable constitutional, statutory and common law of the State of Illinois. Venue for all purposes hereunder shall be the Eighteenth Judicial Circuit, Wheaton, DuPage County, Illinois.

M. Captions: The captions at the beginning of the several paragraphs, respectively, are for convenience in locating the contents, but are not part of the context.

N. Severability: . It is mutually understood and agreed that all agreements and covenants herein are severable and that in the event any of them shall be held to be invalid by any court of competent jurisdiction, this Agreement shall be interpreted as if such invalid agreement or covenant were not contained herein. All remaining terms and provisions of this Agreement shall not be effected thereby, but each such term and provision shall be valid and shall remain in full force in effect.

O. Entire Agreement: This Agreement and the Exhibits attached hereto, and made a part hereof, or required hereby, embody the entire Agreement between the parties hereto with respect to this transaction and supersedes any and all prior Agreements and understandings, written or oral, formal or informal. No extensions, changes, modifications or amendments to or of this Agreement of any kind whatsoever shall be made or claimed by the parties, and no notices of any extension, change,

modification or amendment made or claimed by the parties shall have any force or effect whatsoever unless the same shall be in writing and signed by the duly authorized representatives.

P. No waiver: The failure of either party to this Agreement to insist upon the performance of any of its terms and conditions, or the waiver of any breach of any of the terms and conditions of this agreement, shall not be construed as thereafter waiving any such terms and conditions, but they shall continue and remain in full force and effect as if no forbearance or waiver had occurred.

Q. Binding on successors and assigns: This Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

BOARD OF EDUCATION OF  
INDIAN PRAIRIE COMMUNITY UNIT  
SCHOOL DISTRICT NO. 204,  
DUPAGE AND WILL COUNTIES, IL

BOARD OF PARK COMMISSIONERS  
OF NAPERVILLE PARK DISTRICT,  
DUPAGE AND WILL COUNTIES, IL

By: Kathleen H. Baldwin  
Its President

By: [Signature]  
Its President

Attest: [Signature]  
Its Secretary

Attest: Pam Swafford  
Its Secretary

## **Exhibit 1**

### **Brookdale, Cowlshaw and Patterson School Sites**