

**BUILDING AND FACILITY USE AGREEMENT  
BETWEEN  
THE CITY OF RIALTO  
AND  
THE RIALTO UNIFIED SCHOOL DISTRICT**

THIS BUILDING AND FACILITY USE AGREEMENT (“Agreement”) is entered into as of the 15th day of November, 2017, by and between the City of Rialto, a municipal corporation (“the City”), and the Rialto Unified School District, a regularly organized and existing school district under the laws of the State of California (“the School District”).

**RECITALS**

- A. The School District owns certain buildings and facilities which are used for various reasons related to the conduct of School District business.
- B. The City owns certain buildings and facilities which are used for various reasons related to the conduct of City business.
- C. The City and the School District desire to make mutual and better use of one another’s buildings and facilities and to minimize the paperwork and transfer of funds associated with buildings/facility rental.
- D. The City and the School District recognize that, by entering into this Agreement, each incurs costs associated with the use of one another’s facilities. Each agency also recognizes that on the whole and in consideration of the benefit to the community at large and youth in particular, the City and the School District ultimately and equally bear the financial liabilities incurred by virtue of this Agreement.
- E. Education is a crucial aspect of civic life. A program that benefits the schools benefits the community. It is, therefore, in the public interest that the City and the School District enter into this Agreement in order to provide for the mutual use, exempt from the Fair Rental Value of one another’s buildings and facilities.
- F. Unless otherwise stated in this Agreement, waiver of costs shall be per Board Policy 1330 (Attached) (page 2: #2): “The direct cost fee may be waived for summer and after-school recreation programs under the direction of the Rialto City Parks and Recreation Department (rename – Community Services), provided the City furnishes all the necessary supplies, equipment, supervision, and adequately cleans and secures premises upon completion of daily activity”.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, by reference and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledge, the City and the School District further agree as follows:

**Section 1. Initial Agreements**

- A. School District’s Warranties.** As an inducement to the City to enter into this Agreement, the School District represents, warrants and covenants as follows:

- 1) that it is a regular organized and existing school district under the laws of the State of California, duly organized, validly existing and in good standing under the laws of the State of California;
- 2) that it has power and authority to carry on its functions as a school district, to enter into this agreement, and to consummate the transaction herein contemplated;
- 3) that all actions taken by or on behalf of the School District to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken prior to the execution of the Agreement; and
- 4) that this Agreement is a valid and binding obligation of the School District, enforceable in accordance with its terms, except as the same may be affected by bankruptcy, insolvency, moratoria, or similar laws, or by legal or equitable principals relating to or limiting the rights of contracting parties generally.

**B. City's Warranties.** As an inducement to the School District to enter into this Agreement, the City represents, warrants and covenants as follows:

- 1) that it is a municipal corporation, duly organized, validly existing and in good standing under the laws of the State of California;
- 2) that it has power and authority to carry on its function as a City, to enter into this Agreement and to consummate the transaction herein contemplated;
- 3) that all actions required to be taken by or on behalf of the City to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken prior to the execution of the Agreement; and
- 4) that this Agreement is a valid and binding obligation of the City, enforceable in accordance with its terms except as the same may be affected by bankruptcy, insolvency, moratoria or similar laws, or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

**Section 2. The Buildings and Facilities.** The School District shall be permitted to use certain City-owned buildings and facilities exempt from the fair rental value. A list of the City-owned buildings and facilities covered under this Agreement is attached as "Exhibit A." Direct cost may apply for staffing on days and at times staff is not normally on duty.

The City shall be permitted to use certain School District-owned buildings and facilities exempt from the fair rental value. A list of the School District-owned buildings and facilities covered under this Agreement is attached as "Exhibit B." Direct cost may apply for staffing on days and at times staff is not normally on duty.

The direct cost fee may be waived for summer and after-school recreation programs under the direction of the Rialto Community Services Department, provided the City furnishes all the necessary supplies, equipment, supervision, and adequately cleans and secures premises upon completion of daily activity (Board Policy 1330) (attached).

Set up, take down and post-use cleaning of any building or facility owned by either entity, will be determined for each use via the Facilities Use Request form.

**Section 3. The Buildings, Facilities and Sports Fields.** City shall have first scheduling priority for City activities to be held in City buildings and facilities, and School District shall have first scheduling priority for School District activities to be held in School District buildings and facilities. Use of City buildings and facilities by District and use of District buildings and facilities by City shall have second scheduling priority, customers paying to rent either City or District facilities shall have third scheduling priority. Dates of use is to be determined based on application and availability.

- a. Fees and direct costs for the use of any City or District facility are to be frozen at current rates for 3 years.
- b. The City use of RUSD restrooms will be at direct cost.
- c. The City is permitted the use of RUSD artificial turf fields for City sponsored events at direct cost (city/district to summarize costs); no third party events will be allowed.
- d. The City's use of RUSD theatres will require a District approved AV Tech and will be billed at direct cost (City/District to summarize costs).

The City's use of the District's Performing Arts Theatres will be based upon a fee specific to the use of School District equipment and/or personnel. Fee shall be waived when City provides "trained/certified" designated personnel agreeable to the School District.

Buildings and facilities shall be scheduled through the appropriate contact person listed on "Exhibit A" and "Exhibit B."

**Section 4. Maintenance and Good Repair.** The City hereby covenants to maintain in good repair City buildings, facilities and equipment that may be used by the School District. The School District hereby covenants to maintain in good repair School District buildings, facilities and equipment that may be used by the City.

**Section 5. Term.** The initial term of this Agreement shall commence on November 15, 2017, and terminate on November 30, 2020, unless sooner terminated as herein provided, or extended for an additional term of three (3) years. Upon expiration of the Agreement(s), City and District agree to continue the existing Agreement in full force and effect Month to Month, until such time as the City and District approve or opt out of negotiations for renewing a new Agreement.

**Section 6. Insurance, Indemnification and Risk of Loss.**

- A. The School District and the City shall bear the risk of loss for their own buildings and facilities, whether or not such buildings or facilities are damaged or destroyed by fire, theft, flood, collision, other casualties, or the acts of third parties while the School District or the City is maintaining or using the other party's buildings or facilities; provided, however, that the parties hereto shall indemnify each other as set forth in subsections ( C ) and ( D ) of this Section 6 for all loss and damages to buildings or facilities, and personal injury which may occur in said buildings and facilities, resulting from negligence of the City or School District while using the other party's building or facilities.
- B. During the term of this Agreement, the School District and the City shall maintain, at their own expense, the following types of insurance:

- (i) Workers' compensation insurance covering all employees as required by California State Law;
- (ii) Commercial general liability insurance covering their party liability risks in the minimum amount of \$1,000,000 combined single limit per occurrence for bodily injury, and personal injury, and property damage; and
- (iii) Commercial auto liability insurance covering combined single limit per occurrence for bodily injury, personal injury and property damage.

Provided, however, that a comparable self-insurance program satisfactory to both the School District and the City shall also constitute compliance with this Section 6. B.

- C. The City shall indemnify, defend and hold the School District and its elected and appointed officials, employees and agents free and harmless from any and all actions, claims, liabilities or damages to persons or property that may be asserted or claimed by any person, firm, entity, corporation, political subdivision or other organization arising out of or in connection with the City's or its elected officials', officers', employees', or agent's use or maintenance of the buildings and facilities covered under this Agreement, excepting such actions, claims, damages to persons or property, penalties, obligations or liabilities arising from the sole negligence or willful misconduct of the School District or its elected or appointed officials, officers, employees or agents.
- D. The School District shall indemnify, defend and hold the City and its elected and appointed officials, employees and agents free and harmless from any and all actions, claims, liabilities or damages to persons or property that may be asserted or claimed by any person, firm, entity, corporation, political subdivision or other organization arising out of or in connection with the School District or its elected officials', officers', employees', or agent's use or maintenance of the buildings and facilities covered under this Agreement, excepting such actions, claims, damages to persons or property, penalties, obligations or liabilities arising from the sole negligence or willful misconduct of the City or its elected or appointed officials, officers, employees or agents.

**Section 7. Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental action, civil commotion, fire, to other casualty, or other occurrences beyond the reasonable control of the party obligated to perform any term, covenant or condition of this Agreement, shall excuse the performance by such party, for a period equal to any such prevention, delay or stoppage, provided that the obligated party could not have voided such delay through the exercise of due diligence, and provided further that the obligated party notified the other party within a reasonable time after the obligated party becomes aware that such occurrence will or is likely to result in such prevention, delay or stoppage.

**Section 8. Termination of Agreement.** Either party may terminate the Agreement upon thirty (30) days advance written notice to the other party. Should termination of

this Agreement occur, the parties agree to make every effort to accommodate events which have been previously schedule under the terms of this Agreement.

**Section 9.     Miscellaneous.**

**A. Notice.** Any notice which is required to be given by any provision of this Agreement may be given by hand delivery, by any overnight courier service providing dated evidence of delivery, or by U.S. Certified Mail return receipt requested. Each notice shall be addressed as follows:

If to the City:                               Perry Brents  
Director of Community Services  
City of Rialto  
150 S Palm Ave  
Rialto, CA 92376

If to the School District:     Iris Chu, Director of Facilities Planning  
Rialto Unified School District  
625 W. Rialto Avenue  
Rialto, CA 92376

**B. Entire Agreement.** This Agreement is the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements between the parties with respect to the matters contained in this Agreement.

**IN WITNESS WHEREOF**, the parties have caused their duly authorized representative to execute this Agreement as of the date first written above.

**CITY OF RIALTO**

**RIALTO UNIFIED SCHOOL DISTRICT**

By: \_\_\_\_\_ By: \_\_\_\_\_  
Deborah Robertson  
Mayor

*Attest:*

By: \_\_\_\_\_ By: \_\_\_\_\_  
Barbara McGee  
City Clerk

*Approved as to Form:*

By: \_\_\_\_\_  
Fred Galante, Esq.  
City Attorney

## Exhibit “A”

### City of Rialto Owned Buildings and Facilities Available for Rialto School District Use

- Community Center Classrooms and Gymnasium
- Senior Center Meeting Rooms
- Pool
- Sports Fields
- Parks and Picnic shelters
- Restrooms
- Theater
- Portable Classroom No. F-1 at Boyd Elementary School

Contact: Perry Brents, Director of Community Services  
214 N. Palm Avenue  
Rialto, CA 92376

## Exhibit “B”

### Rialto School District Owned Buildings and Facilities Available for the City of Rialto Use

- Sports Fields
  - Includes stadiums with artificial turf
  - Includes track and field stadium use
- Classrooms (except special use classrooms, i.e. science labs, workshops, engineering/design workshop and classrooms)
- Gymnasiums
- Outdoor Courts
- Theaters
- Multi-Purpose Rooms
- Restrooms
- Kitchen Facilities
- Portable classroom D.C. Building at Hughbanks Elementary School

Contact: Iris Chu, Director of Facilities Planning  
625 W. Rialto Avenue  
Rialto, CA 92376

## BOARD POLICY 1330

Rialto USD

Board Policy

BP 1330

### Community Relations Use Of School Facilities

The Board of Education shall make school facilities and grounds under its jurisdiction available as a civic center to citizens and community groups for the following purposes subject to district policies and regulations:

1. Public, literary, scientific, recreational, educational, or public agency meetings.
2. The discussion of matters of general or public interest.
3. The conduct of religious services.
4. Child-care or day-care programs to provide supervision and activities for children of preschool and elementary school age.
5. The administration of examinations for the selection of personnel or the instruction of precinct Board members by public agencies.
6. Supervised recreational activities including, but not limited to, sports league activities that are arranged for and supervised by entities, including religious organizations or churches, and in which youths may participate regardless of religious belief or denomination.
7. Mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare, including, but not limited to, the American Red Cross. The Board shall cooperate with these agencies in furnishing and maintaining such services as the Board may deem necessary to meet the needs of the community.
8. Other purposes deemed appropriate by the Board.

The Board shall not grant the use of school facilities for any of the following activities:

1. Any use by an individual, society, group or organization for the commission of any untended to further any program or movement whose purpose is the overthrow of the Government of the United States or of the State of California by force, violence or other unlawful means.
2. Any use of school facilities or ground which is inconsistent with the use of the school facilities or grounds for school purposes or interferes with the regular conduct of school or school work.
3. Any use which is discriminatory in the legal sense.



4. Any use which involves the possession, consumption or sale of alcoholic beverages or any restricted substances on school property.

### Fees for Use of School Facilities

Fees for the use of school facilities and grounds shall be charged in accordance with the following classifications:

1. Free Use: The Board shall not charge any room fees for the use of school facilities or grounds under its control, for groups that meet after a school day, when an alternative location is not available, for activities of non-profit organizations, and clubs or associations with a participation of at least 50% Rialto youth which promote youth and school activities and do not otherwise qualify for the Fair Rental Value Fee.

Should any of the above groups prefer to use school facilities at a time when custodial services are not normally available, the district may charge a fee not to exceed the direct costs. The Principal or designee shall first ensure the availability of other times during the week when the facility could be provided without charge, and this availability shall be pointed out to the free-use group.

2. Direct Costs Fee: Activities other than those specified for free use or fair rental value and which are included herein through subsequent Board action shall be charged a fee not to exceed direct costs to the district, for groups that use school facilities or grounds under its control on a Saturday, Sunday or holiday.

The direct cost fee may be waived for summer and after-school recreation programs under the direction of the Rialto City Parks and Recreation Department, provided the City furnishes all the necessary supplies, equipment, supervision, and adequately cleans and secures premises upon completion of daily activity.

3. Fair Rental Value Fee: Groups which use school facilities or grounds for the following activities shall be charged fair rental value:

Entertainment or meetings where admission is charged or contributions solicited and the net receipts are not to be expended for charitable purposes or for the welfare of the district's students. (Education Code 38134)

### Priorities of Users

Applications for use of school facilities should be given preference in the following order:

1. In-school uses (clubs, class events, etc.).
2. School support groups, youth and senior citizens groups.
3. Public agencies and public affairs groups.
4. Community recreational and cultural groups (non-profit).
5. Non-profit special interest groups (Audubon Society, etc.).

6. Private, non-school-connected classes and educational events.
7. Profit-making or commercial events, out-of-town groups, etc.

### Damage to School Property

Groups or persons using school facilities under the provisions of this policy shall be liable for any cleaning or repairs to damaged property caused by the activity. Further use of school facilities may be denied the responsible party.

### Regulations for Application and Use of Facilities

The Superintendent shall establish rules and regulations governing application procedures and the use of school facilities, which shall include, but not be limited to:

1. Providing encouragement and assistance for any of the users listed above.
2. Preserving order and protecting school buildings and school grounds including, as necessary, appointment of a person who shall have charge of the school facilities and grounds for purposes of their preservation and protection.
3. Ensuring that use of facilities or grounds under this policy is consistent with school purposes and does not interfere with the regular conduct of school work.

In accordance with Education Code 38136, and in addition to any other forms required by the district, persons or organizations applying for facilities shall submit a statement of information which assures the Board that:

1. The facility applied for will not be used for any purposes intended to advocate the overthrow of the Government of the United States or the State of California by force, violence, or other unlawful means.
2. The organization applying does not advocate the overthrow of the Government of the United States or the State of California by force, violence, or other unlawful means.
3. The organization is not a Communist action organization or Communist front organization required by law to be registered with the Attorney General of the United States.

At the Board's discretion, an organization's statement may remain in effect for six months from the date of application.

### Member Group

Any persons applying for the use of school property on behalf of any society, group, or organization shall be a member of the applicant group and, unless he/she is an officer of the group, must present written authorization from the applicant group to make the application.

### Hold Harmless

All persons or organizations applying for the use of school facilities shall complete and place on file the district's "Hold Harmless" agreement.

## Regulations

A copy of the Board's policy and regulations governing use of school facilities shall be issued to those persons or groups requesting use of district facilities or grounds.

## Authority

The Superintendent or designee may grant the use of school facilities subject to the provisions of this policy and following conditions:

## Charges

Charges levied for use of school facilities and ground shall be according to the hourly fee schedule and begin when the facilities are opened, by qualified district staff, until completion of the activity, including stand-by time of school employees assigned to cover the use period.

## Payment

A two-hour minimum deposit shall be submitted to the Facilities Planning Office seven days prior to use. All monies paid in advance are refundable if cancellation notice is given to the Facilities Planning Office at least 48 hours before the scheduled activity.

## Insurance

Organizations granted use of school facilities may be required to file with district Business Services office prior to use, a Certificate of Insurance naming the Rialto Unified School district as an additional insured on the organization's liability insurance policy.

## City/County Ordinances

Any city or county ordinances governing such group activities are considered applicable to activities under these rules and regulations.

## Illegal Activities

Gambling, illegal drugs, alcoholic beverages, and/or tobacco products are not allowed on school facilities or grounds.

## Furniture Set-up

Removal of furniture from rooms and/or changes of any kind other than simple room furniture arrangements are not permitted. Special furniture arrangements, setting up chairs, tables, etc., will be charged at the hourly personnel rate.

## Custodian

There shall be a custodian in charge at each activity whose duties shall include opening and closing the building and grounds. No charge shall be levied during normal custodial work hours.

The Direct Cost Fee will be levied during non-regular work hours.

#### Use of Kitchen Facilities

If the use of the cafeteria equipment or dishes is involved, the kitchen and equipment must be left in a clean and ready condition for normal school operation. The Director of Food Services shall be consulted and arrangements made for a district cafeteria employee to be in supervision of any cafeteria usage.

#### Limited Usage

The custodian assigned to the activity shall make no other facility or equipment available other than that specifically set forth in the approved application.

#### Tips/Compensation

Under no circumstances is the custodian to be compensated directly by the persons or organizations using the facilities. Gratuitous tips in any form to school employees when performing services for the district are specifically prohibited.

#### Non-Available Days

On holidays, it may be necessary to deny use of the facilities if a qualified district employee is not available on that date.

#### Availability of District Personnel

Use of school facilities by community groups on days other than the above shall be dependent upon the availability of school personnel to assume the responsibility of supervision of school equipment and buildings.

#### Restroom Facilities

In the case of activities involving a large number of participants, the Facilities Planning Department requires the use of a rented port-a-potty to be maintained by the participants.

#### Security/Clean-Up

Costs of providing security and clean-up shall be charged to using organizations on a prorata basis to be agreed upon by district officials and the reserving organizations.

#### Restroom Keys

Access to site restrooms are not permitted. The cost of security and custodial services will apply as needed.

#### Shared Use

No use shall be granted in such a manner as to constitute a monopoly for the benefit of any person or organization.

#### Six Month Maximum Per Permit

Rialto Unified School District exercises a six month permit maximum to be renewed upon expiration.

Legal Reference:

EDUCATION CODE

10900-10914.5 Community recreation programs 32282 School safety plan

38130-38138 Civic Center Act: use of school property for public purposes

BUSINESS AND PROFESSIONS CODE

25608 Alcoholic beverage on school premises

UNITED STATES CODE, TITLE 20

7905 Equal access to public school facilities

COURT DECISIONS

Good News Club v. Milford Central School, (2001) 533 U.S. 98

Lamb's Chapel v. Center Moriches Union Free School District, (1993) 508 U.S. 384

Cole v. Richardson, (1972) 405 U.S. 676

Connell v. Higgenbotham, (1971) 403 U.S. 207

ACLU of So. Calif, v. Board of Education of Los Angeles, (1961) 55 Cal .2d 167 Ellis v. Board

of Education, (1945) 27 Cal.2d 322 ATTORNEY GENERAL OPINIONS 82 Ops.Cal.AttyGen.

90 (1999)

79 Ops.Cal.Atty.Gen. 248 (1996)

Management Resources:

CDE LEGAL ADVISORIES

1101.89 School District Liability and “Hold Harmless” Agreements, LO: 4-89

Policy RIALTO UNIFIED SCHOOL DISTRICT

adopted: May 26, 1999 Rialto, California

revised: June 23, 2004

revised: May 11, 2005

revised: September 27, 2006