

**MARYLAND DEPARTMENT OF NATURAL RESOURCES
PROGRAM OPEN SPACE
JOINT-USE AGREEMENT**

THIS JOINT-USE AGREEMENT (this Agreement) is made this _____ day of _____, 20____, by and between:

- (a) _____
(hereinafter, the Local Government)
- (b) _____
(hereinafter, the Third Party), and
- (c) The Department of Natural Resources, acting for and on behalf of the State of Maryland (hereinafter, the Department)

WHEREAS, the Local Government is applying Program Open Space funds appropriated by the Maryland General Assembly and administered by Program Open Space under Title 5, Subtitle 9 of the Natural Resources Article (2012 Replacement Volume, as amended) for recreational facilities on lands owned by the Third Party.

NOW, THEREFORE, the Local Government, the Third Party, and the Department agree as follows:

1. This Agreement applies to the facility described in the Program Open Space, Development and Capital Renewal Application and Project Agreement # _____ - _____ - _____, set forth in **Attachment A**, which is hereby incorporated herein by reference (the Project).
2. Any additional agreements between the Local Government, the Third Party, and any other parties with respect to the Project are set forth in **Attachment B**, which is hereby incorporated herein by reference. In the event of a conflict between the terms of **Attachment B** and the terms of this Agreement, the terms of this Agreement shall prevail.
3. The Local Government shall operate and maintain, or have operated and maintained, the Project throughout its estimated life of 20 years from the date of Board of Public Works approval as set forth in **Attachment A** and associated documents.
 - a. The Project shall be maintained so as to appear attractive and inviting to the public.
 - b. Sanitation and sanitary facilities shall be maintained in accordance with applicable State and local health standards.
 - c. The Project shall be kept reasonably safe for public use.
 - d. Buildings, roads, trails and other structures and improvements shall be kept in reasonable repair so as to prevent undue deterioration and to encourage public use.
4. The Local Government and the Third Party shall ensure that:
 - a. The Project shall be open for public use at all reasonable hours and times of the year, according to the type of area and facility.
 - b. The Project shall be open to entry and use by all persons, regardless of race, color, religion, sex, age, handicap, marital status, sexual orientation, gender, or ancestry or national origin, and shall be operated in compliance with Title VII of the Civil Rights Act of 1964, P.L. 88-354 (1964) and its amendments, the Americans with Disabilities Act of 1990, P.L. 101-336 and its amendments, and Section 20-601 et. seq. (Discrimination in Employment) of the State Government Article of the Annotated Code of Maryland (2014 Repl. Vol. and 2016 Supp.)
 - c. The Project shall be retained and used for public outdoor recreation or open space purposes. The Project shall not be converted to any other use without the prior written approval of the Secretary of the Department of Natural Resources, the Secretary of the Department of Budget and Management, and the Secretary of the Department of Planning. Said approval shall not be granted unless the Local Government and/or Third Party replace the Project with facilities of at least equivalent area and of at least equivalent recreation or open space value. The monetary value of the replacement facility shall be

- equal to or greater than the original Program Open Space grant(s). The Secretaries, at their sole discretion, shall determine the relative recreation and open space value of the properties, considering the fair market value, usefulness, quality and location of the properties and/or facilities.
- d. The Department, its agents and employees shall have the right to inspect the Project for compliance with this Agreement.
5. To the extent permitted by law and subject to available appropriations, the Local Government agrees:
 - a. To protect, indemnify and save harmless the Department, its officers, agents, and employees from and against any and all claims, demands, causes of action, and liability of any kind arising out of the operation and use of the Project.
 - b. That if the Project is rendered unusable for any reason whatsoever, the Local Government shall immediately notify the Department of said condition. The Local Government, at its own expense, shall repair the Project, taking any action necessary to restore use and enjoyment of the Project by the public.
 - c. That any violation of this Agreement shall render the Local Government liable to the Department to replace the Project with land of at least equivalent area and public recreational value, and to construct on this replacement land facilities of the same type, size, and quality of construction as those in the Project.
 - d. That in the event of a violation of any provisions of this Agreement, the State, in addition to pursuing other remedies, may impose the following sanctions until the violation has been corrected to the satisfaction of the Department:
 - i. Withhold approval of any Program Open Space and Community Parks and Playgrounds project request submitted by the Local Government to the Department;
 - ii. Withhold reimbursement from Program Open Space and Community Parks and Playgrounds funds for the State's share of the cost of the Project;
 - iii. Withhold reimbursement from Program Open Space and Community Parks and Playgrounds funds for the State's share of the cost of any or all outstanding projects of the Local Government;
 - iv. Maintain, operate, or repair the Project, charging the cost of said maintenance, operation, or repair to the Local Government as a debt due and owing the Department.
 6. If the Third Party is a Board of Education that holds title to the land on which the Project is located, then, the Third Party shall permit the Project to be open to the general public, as regulated by the Third Party or the Local Government at all hours and times consistent with the type of facility, so long as same does not interfere with specific school activities.
 7. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns, including assigns and successors by way of privity of estate and contract. Nothing in this Agreement, expressed or implied, is intended to confer upon or against any person, corporation, or government unit not a party to this Agreement, any right or remedy under or by reason of this Agreement.
 8. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures, including notary signatures, provided by electronic means including, by way of example and not of limitation, facsimile, Adobe, PDF, and sent by electronic mail, or via an electronic signature program, shall be deemed to be original signatures.

[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF the parties have executed this Agreement causing the same to be signed the day and year first written above.

WITNESS:

THE LOCAL GOVERNMENT:

NAME: _____

TITLE: _____

WITNESS:

THE THIRD PARTY:

NAME: _____

TITLE: _____

WITNESS:

THE DEPARTMENT:

NAME: _____

TITLE: _____

Approved as to legal form and sufficiency. Approved means the document meets the legal requirements for a contract if the signature blocks are executed properly; it does not mean approval or disapproval of the transaction. Approval is of the typed language only; any modification requires re-approval.

Office of the Attorney General
Department of Natural Resources

Note: **Attachment B** should set forth the respective roles of the Local Government and the Third Party for construction and development of the Project and for the operation, maintenance, supervision and scheduling of the Project. It may also include other agreements between the Local Government, the Third Party and any other parties with respect to the Project.

If there is no **Attachment B** to this Agreement, please initial here: _____ Local Government

_____ Third Party