



Sample Recreational Agreement #2

Use of School Facilities or Grounds

[NOTE: This sample recreational agreement covers the minimum essential elements of a “recreational agreement” as defined under section 895.523 of the Wisconsin Statutes and also includes several additional terms and conditions. Some school districts may choose to additionally require users of district property to undertake further obligations and agreements in connection with such use.

For example, some school districts require proof of insurance, require the user to obtain participant waivers and releases, and/or require the user to fully indemnify and hold the school district harmless from various costs, fees, damages, and other liabilities.

However, it is important that any such additional obligations and agreements do not, for example, (1) conflict with the terms and conditions of the applicable recreational agreement; (2) contain an “entire agreement” clause that serves to nullify the applicable recreational agreement; and/or (3) impose any terms or conditions that are inconsistent with the state laws applicable to recreational agreements (such as imposing costs or fees beyond those permitted in connection with a recreational agreement).

Legal advice should be obtained as necessary or prudent to address these and other issues.

Provided that the two documents are not inconsistent, one possible use of this sample “recreational agreement” would be to attach it as an addendum to the District’s standard facilities use agreement/permit.

Alternatively, a District could attempt to combine the two documents (the standard permit/use agreement and the “recreational agreement”) into a single document, along the lines of Sample #1.]

RECREATION AGREEMENT

The _____ School District (hereinafter the “District”) and _____ (hereinafter “User”) hereby enter into this recreational agreement (hereinafter the “Agreement”).

A. Purpose of the Agreement

The purpose of this Agreement is for the District to provide written authorization that permits public access to all or a specified part of the school grounds for any “recreational activity,” as that phrase is defined in section 895.523 of Wisconsin Statutes. In general, the law defines the term “recreational activity” to include any indoor physical activity or any outdoor activity that is undertaken for the purpose of exercise, relaxation, diversion, education, or pleasure and that is not organized and held by the District.

B. User’s Contact Information

Name of group/organization/individual: _____

Address _____

City _____ State _____ Zip _____

Phone _____ Email address _____

Contact information for the primary person who will responsible for the use of the District facilities under this Agreement and for on-site coordination during each activity

Name of group/organization/individual: _____

Address _____

City _____ State _____ Zip _____

Phone _____ Email address _____

Contact information for the individual responsible for filling out and executing this Agreement (if different than the contact person listed above):

Name of group/organization/individual: _____

Address _____

City _____ State _____ Zip _____

Phone _____ Email address _____

C. Conditions of Use

1. **Location/Facility, Date(s), and Time(s).** The User shall have access to the following District facilities on the date(s) and at the time(s) identified below for the recreational activity or activities described in this Agreement. : *[Note: The table below is partially filled in solely to show possible examples. The District could pre-fill columns 1 and 2 of the table with its most commonly requested facilities if it chose to do so. Accordingly, this section may need to be customized based on the number of schools and specific facilities that the district is willing to permit for recreational use.]*

School/Property	Facility/Room**	On (mm/dd/yy)	From (start time)*	To (end time)*
High School	gymnasium			
Middle School	hallways			
Elementary School	cafeteria			
Athletic Complex on Highway C	varsity baseball field			

* Starting times and ending times may be used to determine fees, custodial coverage, etc. The time period should include any time that the User needs to be on-site for any set-up or clean-up.

** Section 895.523 of the Wisconsin Statutes, regarding recreational agreements, does not limit the liability of the school district (or its officers, employees, or agents) for the death of or injury to a person participating in a recreational activity, pursuant to a recreational agreement, that involves the use of (1) a weight room, (2) a swimming pool, or (3) gymnastics equipment.

Use this space to supplement or clarify the information that is provided in the table above, or as an alternative to using the table if the table cannot appropriately capture the intended **location, dates, and times** of the activities (e.g., “The Middle School’s lower-level hallways will be used each Wednesday between September 1 and November 30 from 7:00 p.m. to 9:00 p.m.”).

2. **Identification and Description of Recreational Activity or Activities.** Describe the recreational activity or activities that will be held on school grounds pursuant to this Agreement:

By date of use and by activity, identify the estimated number of (1) participants; and (2) spectators and other attendees. **The User agrees to notify the District in writing if the expected number of participants or spectators/others changes and exceeds the estimates below by more than 15%.**

Activity	Date of Use	Number of Participants	Number of Spectators/ Other Attendees

3. **Eligibility Requirement(s).** For each activity that will be held under this Agreement, describe any eligibility requirements for participation in the activity or activities. Differentiate, as needed, by activity description or by date as appropriate. (Examples of eligibility requirements include age ranges, residency, prior experience, club/organization membership, registration forms, fees, etc.).

Activity	Eligibility Requirements

Additional explanation/clarification of eligibility requirements:

4. **User’s Supervision-Related Responsibilities.**

The School District has no responsibility for providing or for monitoring the supervision of any participant, spectator, volunteer, or other person who may be present on school grounds in connection with any event or activity that is covered by this Agreement. More specifically, unless the District

has executed a written “Supervision Addendum” to this Agreement, the User is solely responsible for identifying a reasonable and appropriate number of adult supervisors for each event/activity and for monitoring the actual presence of adequate adult supervision at each event/activity. The District’s approval of this Agreement does not reflect any assessment that the User’s supervision plan is legally sufficient or any type of review or approval of the supervision plan. However, the District retains discretion to reject the User’s application due to any determination, upon cursory examination, that the User’s proposed plan for supervision is inadequate. Any failure by the User to provide or monitor the adult supervision at any event/activity in substantial conformity with the plan described below, if brought to the District’s attention, is grounds for cancellation of the activity in question, termination of this Agreement as to all subsequent activities, and for the rejection of future applications for use of facilities.

The User is responsible for observing all local, state and federal laws/ordinances, fire codes, and safety regulations in connection with its activities, including the provision of appropriate crowd managers. The User is responsible for becoming informed of applicable laws/ordinances, codes, and regulations.

Describe how the User will provide for the supervision and monitoring of participants and other individuals who will be present on school grounds at each of the User’s events/activities:

What will be the approximate ratio of **participants who are minors** to adult supervisors?

____ minors for each adult supervisor. _____ Not applicable.

What will be the approximate ratio of **spectators and other non-participants who are minors** to adult supervisors who are specifically assigned by the User to supervisor/monitor non-participants?

____ minors for each adult supervisor. _____ Not applicable.

Identify the adults who will be responsible for the supervision of any minors (check all that apply):

____ Adults who are employees or agents of the User will be present and assigned to supervise and monitor all minors who are in attendance at each event/activity covered by this Agreement.

____ The parents/guardians of any minors who attend the activity/event are required to be present and to supervise their minor children. The User will monitor this expectation as follows:

____ Other types of supervisors. Describe in the space provided below:

5. Fees.

The District may charge fees addressing reasonable costs for maintenance, security, cleaning, and, if applicable, any District supervision of participants who are minors. Unless addressed/invoiced in a separate document, the fees charged to the User are shown below and are due in advance of the first activity held under this Agreement, unless the District establishes a specific due date in writing. The District may void this Agreement, deny future applications, and revoke User’s permission to use District facilities for any failure to make full and timely payment.

Fee Description	Fee
	\$
	\$
	\$
	\$
Total Fees	\$

Request for waiver of fees

Community groups/organizations and non-profit entities pay reduced fees for facilities use relative to commercial/for-profit entities. However, District policy provides that community groups/organizations and non-profit entities may request a full or partial waiver of applicable fees under the following circumstances:

[Note: Insert any local fee waiver requirements, such as the following:]

The User/Applicant meets ALL of the following requirements

- a. The User/Applicant is based within the School District.
- b. The activity/event primarily serves District residents.
- c. The activity/event will involve fewer than 50 people .
- d. The participants/attendees are not charged a fee in connection with their participation/attendance.

- e. The event/activity does not involve use of the pool, kitchen facilities, the auditorium/performing arts center, or other specialty facility.
- f. The event/activity is held when the relevant building is otherwise open and staffed by at least one District employee.
- g. The same User/Applicant requests to use District facilities no more than five times during any July 1 to June 30 school year.
- h. Participation in the activity/event is not limited in a manner that would violate the District's student nondiscrimination policy.

Is the User/Applicant Requesting a Waiver of Fees?

Yes No

6. Immunity from Liability and Negation of Legal Duties for the District, its School Board, and all Officers, Employees and Agents of the District.

As to any person who enters school grounds to engage or participate in a recreational activity organized or held pursuant to this Agreement, the District, its school board, and all officers, employees and agents of the District are immune from liability to the fullest extent provided by state law and have (a) no duty to keep the school grounds safe for the recreational activity; (b) no duty to inspect the school grounds; and (c) no duty to give warning of an unsafe condition, use, or activity on the school grounds. The sole exceptions to the elimination of these specific duties and to the immunity and limitations on liability provided by Section 895.523 of the Wisconsin Statutes involve the following:

- g. A death or injury caused by a malicious act or by a malicious failure to warn against an unsafe condition of which an officer, employee, or agent of the school board knew, which occurs on the school grounds designated for use in this Agreement and being used by a person for a recreational activity held pursuant to this Agreement.
- h. The death of or injury to a spectator that occurs on the school grounds designated for use in this Agreement during the recreational activity.
- i. The death of or injury to a person participating in a recreational activity involving any of the following: (1) a weight room; (2) a swimming pool; or (3) gymnastics equipment.

In addition to the immunities from liability and the negation of specific legal duties as provided under section 895.523 of the Wisconsin Statutes and as summarized within this Section (above), the District, its school board, and all officers, employees and agents of the District also fully retain all other legally enforceable (1) immunities from liability; (2) limitations on liability and monetary judgments; and (3) rights to seek or claim indemnification or subrogation.

7. Description of Participants' Assumption of Risk. Participation in recreational activities involves certain inherent risks to the participant. Generally, recreational activities involve risks that a participant

may suffer potentially serious and potentially permanent physical injuries, impairments, disfigurement, trauma and/or cognitive impairments. Death is also a risk of participation in recreational activities. A participant may also suffer damage to property or other loss of property in connection with participation in a recreational activity. The specific degree and types of risks associated with such participation varies by, for example: the specific nature of the activity; the nature of the location where the activity takes place; the nature of the equipment that is used; the degree and type of supervision and instruction that is provided; and each participant's individual skills, abilities, behavior, and physical condition. The fact that a recreational activity may not generally involve substantial physical contact between or among participants is not necessarily an indication that there is a low degree of risk of injury or death associated with the activity.

A participant who enters school grounds in connection with any recreational activity that is organized or held pursuant to this Agreement assumes all risk of personal injury, property damage, and/or death that is inherent in the particular recreational activity and of which the ordinary prudent person is or should be aware. Further, participants in recreational activities are subject to the provisions of Section 895.525 of the Wisconsin Statutes, unless an applicable exception or exclusion found within the statute applies. Section 895.525 also requires participants in recreational activities, as therein defined, to conform their conduct to certain minimum standards.

In addition, because of the various immunities from liability, limitations on liability, and waivers of liability that are provided for under the law or that may otherwise be legally enforceable, a participant who enters school grounds in connection with any recreational activity that is organized or held pursuant to this Agreement necessarily assumes substantial additional risk that he/she may suffer personal injury, damage to property, and/or death that is in no way compensable by the District or by any other person, and for which the participant will be unable to obtain any recovery or reimbursement of any related costs or damages. For example, a participant may suffer personal injury, damage to property, or death related to the failure of the District or its officials, employees or agents to keep school grounds safe; and, due to immunity from liability related to such a claim, the participant may have no means for seeking compensation, damages, or other recovery from the District, any insurer, or any other person or entity.

Users are notified by this paragraph that the District does not, in connection with authorizing access to and the use of District property under this Agreement, provide any User or any participant, spectator, attendee, or other invitee of the User with any type of personal insurance coverage, personal accident coverage, or other personal coverage for any other type of expense, damage, or loss, including but not limited to medical expenses. That is, neither the User nor any participant, spectator, attendee, or other invitee of the User under this Agreement is (in any of those respective capacities) an "insured" under any District insurance policies. Further, the District is not responsible for the theft of, any accidental loss of, or any accidental damage to the personal property belonging to the User or to any other person who is present on school grounds in connection with the activities held under this Agreement or in connection with their presence on school grounds. If any person brings personal property onto District

grounds in connection with this Agreement, he/she does so at his/her own risk of loss or damage. Neither the District nor any of its officers, employees or agents serves as a bailee in any form or capacity in connection with any activities conducted under this Agreement.

8. **User Accepts all Responsibility for Notifying Participants of Information that is Relevant to their Participation.** By this Agreement, the User accepts sole and exclusive responsibility for (a) providing participants with any legally-required notice(s); and (b) obtaining from participants (or their parents or guardians) any legally-required permissions as may be associated with holding a recreational activity under this Agreement. This responsibility of the User includes, but is not limited to, (a) the provision of any mandatory notices that must be provided regarding risks of participation and/or participants' assumption of risks; and (b) the provision and return, where applicable, of an information sheet related to head injuries and concussions.
9. **User's Liability.** Nothing in this Agreement limits, reduces or eliminates any legal duty or legal liability that the User may have or become subject to (a) in relation to accessing District property and the holding of any recreational activity pursuant to this Agreement; (b) as the organizer, sponsor or operator of any such recreational activity; or (c) as a participant in any such recreational activity. In connection with any recreational activity where there is at least one participant who is not also the User identified under this Agreement, the allocation of liability between the User and any such non-User participant shall be defined by applicable law and by any enforceable agreements, waivers, releases, etc. as those parties may separately execute between or among themselves.

The User agrees to be financially responsible to the District for the full amount of any costs associated with any damage to or loss of District property, accidental or otherwise, that arises from the User's conduct or omissions, or from the conduct or omissions of any of the User's invitees. Nothing in this Agreement prevents the User from seeking reimbursement/compensation/damages from any invitee or other person who may, in turn, be legally and financially responsible to the User.

The User further agrees to accept, assume, and be legally responsible for any and all liability related to (1) providing any mandatory notices to participants, and (2) obtaining mandatory permissions/acknowledgements from participants, including but not limited to defending against all claims and paying for all damages, fees, and costs related thereto.

The User agrees to be responsible for any citations or fines that arise as a result of the User's non-compliance with law/ordinances, codes or safety regulations and for any injuries and/or damages that result from User's non-compliance with laws, ordinances, codes or safety regulations.

10. **Termination or Cancellation by the District.** The District reserves the right, unilaterally and at its sole discretion, to prospectively terminate this Agreement, with respect to one or more remaining activities, at any time and for any reason. The District will give the User at least [10] days advance notice of such termination, except where (a) such termination (or other revocation of permission to use District facilities) is due to the User's conduct or the conduct of the User's invitees, or (b) such advance notice would be impractical due to unforeseen circumstances (e.g., the District employee who was scheduled

to open and monitor the facility is unexpectedly unable work and no replacement can be found) or due to newly-identified safety concerns.

The District further reserves the right, unilaterally and at its sole discretion, to cancel or require the User to reschedule any event or activity that the User plans to hold in connection with this Agreement. Such cancellation or requirement to reschedule may occur at any time and for any reason. The District will give the User at least [10] days advance notice of cancellation/rescheduling, except (a) where such cancellation or rescheduling (or other revocation of permission to use District facilities) is due to the User's conduct or the conduct of the User's invitees, or (b) where such advance notice would be impractical due to unforeseen circumstances (e.g., the District employee who was scheduled to open and monitor the facility is unexpectedly unable work and no replacement can be found) or due to newly-identified safety concerns.

If the District (1) unilaterally terminates this Agreement, as provided above, or (2) cancels any event or activity that the User intended to hold, as provided above; or if the User is unable to hold any activity as planned for any reason outside of the control of both the User and the District, then the User's sole and exclusive remedy under this Agreement shall be a return of any deposit or fees that have already been paid. **In such situations, the user waives any and all claims to any other damages (whether direct, indirect, consequential, compensatory, or punitive), reimbursement, or compensation.** Further, any prospective termination or cancellation does not affect in any way the enforceability of this Agreement as to any User activities that have already occurred.

11. **Cancellation of activities by the User.** The User may prospectively cancel any activities to be held under this Agreement at any time by providing written notice to the District, but all deposits and fees paid to date will be retained by the District unless the District receives notice of cancellation and termination that is BOTH (a) within [10] days of the date the User executes this Agreement; AND (b) at least [10] days prior to the date of the event/activity for which fee reimbursement is sought.
12. **Severability and Non-Enforceability Under State Law.** If any provision of this Agreement is ruled to be unenforceable but severable, or if this Agreement or any portion thereof is not specifically enforceable as a "recreational agreement" under Section 895.523, then the Agreement, or the remainder thereof, shall remain fully enforceable as a written and binding agreement between the parties.

In addition to abiding by the terms of this Agreement, the User is required to follow and enforce with respect to its invitees all District policies and rules involving use of its facilities, including following the terms and conditions associated with any separate agreements or permits that relate to the User's recreational or other activities. *[Note: The more specific a District can be in this paragraph with regard to identifying specific policies, rules, and procedures that the District expects the User to follow, the better off the District will be in terms of enforcing those expectations.]*

For the district:

Name and Title (please print) _____

Signature _____

Date _____

[Note: The relevant statute indicates that the “school board” enters into the recreational agreement. See Wis. Stat. § 895.523(1)(d). However, if the board wishes to delegate the authority to the District Administrator or other designated administrator to enter into this type of Agreement, it likely may do so through, e.g., an express delegation provision in policy.]

For the user:

The individual signing below affirms by his/her signature that he/she has authority to sign this Agreement on behalf of the User and to obligate the User to the Agreement’s terms and conditions.

Name and Position (please print) _____

Signature _____

Date _____

Last updated: June 2013

This publication was prepared by members of the Policy Services staff at the Wisconsin Association of School Boards and Public Health Law Center at William Mitchell College of Law, St. Paul, Minnesota, with assistance from Josie Lathrop at Health First Wisconsin and Jen Gilchrist Walker with the Wisconsin Clearinghouse for Prevention Resources at the University of Wisconsin, Madison.



This publication was prepared by the Public Health Law Center at William Mitchell College of Law, St. Paul, Minnesota, funded by the CDC’s Community Transformation Grant initiative.

The Public Health Law Center provides information and technical assistance on issues related to public health. The Public Health Law Center does not provide legal representation or advice. This document should not be considered legal advice. For specific legal questions, consult with an attorney.