



# **JOINT USE AGREEMENT**

**THE TOWN OF APPLE VALLEY**

**AND**

**LEWIS CENTER FOR EDUCATIONAL RESEARCH**

**ACADEMY FOR ACADEMIC EXCELLENCE**

THIS JOINT USE AGREEMENT (“AGREEMENT”) is entered by and between The Town of Apple Valley, hereinafter called TOWN, and the Lewis Center for Educational Research – Academy for Academic Excellence, hereinafter called SCHOOL.

## **IT IS HEREBY AGREED AS FOLLOWS:**

### **R E C I T A L S**

WHEREAS, SCHOOL is the owner of real property and improvements thereon in the Town of Apple Valley, including facilities and active use areas (“SCHOOL FACILITIES”), which are capable of being used by TOWN for community recreational and educational purposes; and

WHEREAS, TOWN is the owner of public parks, recreational facilities and active use areas in the Town of Apple Valley (“TOWN FACILITIES”) which are capable of being used by SCHOOL for educational and recreational purposes; and

WHEREAS, TOWN and SCHOOL desire to use and improve SCHOOL FACILITIES and TOWN FACILITIES (together, “FACILITIES”) for community recreational and educational purposes; and

WHEREAS, this AGREEMENT is entered into pursuant to the provisions of Education Code section 10900, et seq.

NOW, THEREFORE, for and in consideration of the collaborative agreements herein contained, the parties hereto agree as follows:

## 1. TERM AND COMMENCEMENT

This AGREEMENT shall commence as of the date on which the latter of TOWN and SCHOOL approve and execute this AGREEMENT, and shall continue for a period of five (5) years, unless sooner terminated as provided for hereinafter in Section 11. This AGREEMENT may be renewed for successive five (5) year terms. Such renewal shall be deemed automatic unless AGREEMENT is terminated sooner as provided for hereinafter in Section 11 or upon written notice of intent not to renew given to the other party at least one (1) year prior to the expiration of AGREEMENT.

## 2. FACILITIES COVERED

The term "FACILITIES" shall be used for the purposes of this AGREEMENT to mean any buildings, classrooms, multi-use rooms, auditoriums, and/or kitchens. The term "ACTIVE USE AREAS" shall be used for the purposes of this AGREEMENT to mean any fields, playgrounds, restrooms, tennis courts, gymnasiums, parking lots or other active use and recreational areas.

Terms of this AGREEMENT shall apply to all FACILITIES in the Town of Apple Valley owned by TOWN or SCHOOL with the exception of Town Hall, the Police Building, Public Works Yard, Aquatics Center and Animal Shelter.

## 3. PERMITTED USES OF FACILITIES

A. SCHOOL shall be entitled to the exclusive use of SCHOOL FACILITIES for public school and school-related educational and recreational activities, from thirty (30) minutes before the beginning of the school day until thirty (30) minutes after the end of the school day Monday through Friday, on each and every day school is in session during the school year, including summer school, and during SCHOOL sponsored events on weekends and holidays. At all other times, SCHOOL shall permit TOWN to use SCHOOL FACILITIES, without charge, for TOWN recreational and educational purposes pursuant to this AGREEMENT. For any use of SCHOOL FACILITIES by TOWN while SCHOOL FACILITIES are being used by SCHOOL, TOWN shall obtain prior written permission from SCHOOL. If SCHOOL determines to modify its school calendar by adding or reorganizing instructional days, summer school, operating a single track or multi-track or other alternative school year, then the TOWN shall be provided written notice of such modification at least one (1) month prior to the start of the school year the modified school calendar is to be implemented.

B. TOWN shall permit SCHOOL to use TOWN FACILITIES, without charge, for SCHOOL educational and recreational activities pursuant to this AGREEMENT, as long as such use does not conflict with the regular conduct of park, recreation, and community service activities sponsored by TOWN.

## 4. SCHEDULING USE OF FACILITIES

A. TOWN shall have the responsibility for scheduling all use of TOWN FACILITIES.

B. SCHOOL shall have the responsibility for scheduling all use of SCHOOL FACILITIES.

C. Scheduling requests for TOWN FACILITIES and SCHOOL FACILITIES and ACTIVE USE AREAS shall be submitted on the applicable facility use form and submitted a minimum of two (2)

weeks in advance of requested use. TOWN and SCHOOL shall provide the other with a minimum of fifteen (15) calendar days notice when canceling approved FACILITIES use dates. If either TOWN or SCHOOL cancels any approved reservation, the canceling party shall make a reasonable effort to provide an appropriate alternative reservation site.

D. Unless otherwise agreed to by site-specific agreement, TOWN shall maintain TOWN FACILITIES and SCHOOL shall maintain SCHOOL FACILITIES in a state of good repair, provide day-to-day maintenance, provide janitorial services including cleaning and stocking restrooms throughout the day, conduct structural repair, and replace or repair any major equipment. TOWN reserves, and shall always have, the right to enter TOWN FACILITIES, and SCHOOL reserves, and shall always have, the right to enter SCHOOL FACILITIES for the purpose of viewing and ascertaining the condition thereof.

## 5. OBLIGATIONS OF TOWN

During the term of this AGREEMENT, TOWN hereby covenants and agrees to the following:

A. Leave SCHOOL FACILITIES in as good order and condition as SCHOOL FACILITIES were at the beginning of TOWN's use, normal wear and tear excepted.

B. Be responsible for any obligation to provide custodial services necessary to keep TOWN FACILITIES in a neat, orderly, and sanitary condition at all times during the use thereof of said TOWN FACILITIES under this AGREEMENT.

C. During TOWN's use of SCHOOL FACILITIES, allow no vehicles to enter upon SCHOOL FACILITIES except in designated public parking lots or as may be necessary and authorized for the limited purposes of maintenance, operation, and delivery of goods and services.

D. Enforce all SCHOOL rules, regulations, and policies while directing TOWN recreational and educational activities on SCHOOL FACILITIES. SCHOOL shall provide TOWN with rules, regulations, and policies for each SCHOOL FACILITY.

E. Provide personnel necessary for the direction or supervision of activities sponsored by the TOWN at SCHOOL FACILITIES.

F. Perform the normal maintenance of its own TOWN FACILITIES as required under normal working conditions and fair wear and tear, unless otherwise addressed in a site-specific agreement.

G. Permit SCHOOL to jointly use specialized TOWN-owned equipment at no cost including but not limited to, televisions, DVD players, VCR's, overhead projectors, etc. Requests for specialized TOWN-owned equipment must be submitted on the approved standard form fifteen (15) days prior to event date.

H. Upon SCHOOL's approval, TOWN may provide and maintain additional toilet facilities at SCHOOL FACILITIES including, as may be permitted by SCHOOL, portable, mobile, temporary or fixed facilities ("Toilet Facilities") at no cost to SCHOOL. If TOWN desires to provide such Toilet Facilities, TOWN shall submit a site map to SCHOOL depicting the proposed location(s) and type(s) of Toilet Facilities and the duration of time TOWN is requesting to maintain the Toilet Facilities at the

identified locations. SCHOOL may approve, conditionally approve or deny such request in its reasonable discretion.

## 6. OBLIGATIONS OF SCHOOL

During the term of this AGREEMENT, SCHOOL hereby covenants and agrees to the following:

A. Leave TOWN FACILITIES in as good order and condition as TOWN FACILITIES were at the beginning of SCHOOL's use, normal wear and tear excepted.

B. Be responsible for any obligation to provide custodial services necessary to keep SCHOOL FACILITIES in a neat, orderly, and sanitary condition at all times during the use thereof of said SCHOOL FACILITIES under this AGREEMENT.

C. During SCHOOL's use of TOWN FACILITIES, allow no vehicles to enter upon TOWN FACILITIES except in designated public parking lots or as may be necessary and authorized for the limited purposes of maintenance, operation, and delivery of goods and services.

D. Enforce all TOWN rules, regulations, and policies while directing community educational and recreational activities at TOWN FACILITIES. TOWN shall provide SCHOOL with rules, regulations, and policies for each TOWN FACILITY.

E. Provide personnel necessary for the direction or supervision of activities sponsored by SCHOOL at TOWN FACILITIES.

F. Perform normal maintenance on SCHOOL FACILITIES as required under normal working conditions and fair wear and tear.

G. Permit TOWN to jointly use specialized SCHOOL-owned equipment at no cost including, but not limited to, televisions, DVD players, VCR's, overhead projectors, etc. Requests for specialized SCHOOL-owned equipment must be submitted on the approved standard form fifteen (15) days prior to event date.

H. Upon TOWN's approval, SCHOOL may provide and maintain additional toilet facilities at TOWN FACILITIES including, as may be permitted by TOWN, portable, mobile, temporary or fixed facilities ("Toilet Facilities") at no cost to TOWN. If SCHOOL desires to provide such Toilet Facilities, SCHOOL shall submit a site map to TOWN depicting the proposed location(s) and type(s) of Toilet Facilities and the duration of time SCHOOL is requesting to maintain the Toilet Facilities at the identified locations. TOWN may approve, conditionally approve or deny such request in its reasonable discretion.

## 7. EMPLOYEE CONTACT

A. TOWN appoints the Town Manager or his designee as the authorized individual with whom SCHOOL, or any other authorized agent of SCHOOL, may confer regarding the terms of this AGREEMENT.

B. SCHOOL appoints Rick Piercy or his designee as the authorized individual with whom TOWN, or any other authorized agent of TOWN, may confer regarding the terms of this AGREEMENT.

#### 8. LIABILITIES, INDEMNIFICATION AND INSURANCE

A. TOWN shall be financially responsible for property damage and personal injury caused by TOWN's use of SCHOOL FACILITIES and SCHOOL shall be financially responsible for property damage and personal injury caused by SCHOOL's use of TOWN FACILITIES.

B. TOWN shall indemnify, defend, and hold harmless SCHOOL, its officers, agents, employees, representatives, and volunteers from damage to property and for injury to or death of any person and from all claims, demands, actions, liability, or damages of any kind or nature arising out of or in connection with activities or programs sponsored by TOWN at SCHOOL FACILITIES in connection with TOWN's performance of this AGREEMENT, except those which arise out of the sole negligence of SCHOOL.

C. SCHOOL shall indemnify, defend, and hold harmless TOWN, its officers, agents, employees, representatives, and volunteers from damage to property and for injury to or death of any person and from all claims, demands, actions, liability, or damages of any kind or nature arising out of or in connection with activities or programs sponsored by SCHOOL at TOWN FACILITIES in connection with SCHOOL's performance of this AGREEMENT, except those which arise out of the sole negligence of TOWN.

D. TOWN and SCHOOL acknowledge and warrant that they are self-insured in compliance with the laws of the State of California, that their self-insurance covers persons acting on their behalf or under their control, and that their self-insurance covers their use of TOWN FACILITIES and SCHOOL FACILITIES as contemplated by this AGREEMENT. The parties further warrant that they will notify the other party of any insurance coverage change at least thirty (30) days prior to the change in accordance with the notice provisions of this AGREEMENT. Any coverage change must be approved by the other party, which approval shall not be unreasonably held.

E. TOWN and SCHOOL acknowledge and warrant that they maintain, and shall maintain for the term of this AGREEMENT, Worker's Compensation coverage as required by law.

#### 9. ASSIGNMENTS AND SUBLEASE

Neither TOWN nor SCHOOL shall assign or transfer this AGREEMENT, or any part thereof, without the written consent of the other party. Any such assignment without such consent shall be void.

#### 10. NOTICES

All notices, statements, demands, requests, consents, approvals, authorizations, appointments, or designations hereunder by either party to the other shall be in writing and shall be deemed given and served upon the other party if delivered personally or three (3) days after depositing in the United States mail, postage prepaid, addressed to:

If to TOWN:

If to SCHOOL:

Town of Apple Valley  
Attn: Frank Robinson, Town Manager  
14955 Dale Evans Parkway  
Apple Valley, CA 92307

Lewis Center for Educational Research  
Academy for Academic Excellence  
Attn: Rick Piercy  
17500 Mana Road  
Apple Valley, CA 92307

#### 11. TERMINATION

This AGREEMENT may be terminated at any time by mutual written agreement of TOWN and SCHOOL.

12. SEVERABILITY AND APPLICABLE LAW

Whenever possible, each provision of this AGREEMENT shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this AGREEMENT shall be invalid under the applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision, or the remaining provisions of this AGREEMENT. This AGREEMENT has been made and entered into in the State of California and the laws of said State will govern the validity and interpretation hereof and the performance hereunder by the parties herein.

13. AGREEMENT

This AGREEMENT sets forth the entire AGREEMENT between the parties. Both parties must in the form of a written amendment agree to any modifications.

14. WAIVER

The failure of TOWN or SCHOOL to insist upon strict performance of any of the terms, conditions, or covenants in this AGREEMENT shall not be deemed a waiver of any right or remedy which TOWN or SCHOOL may have and shall not be deemed a waiver of any right or remedy for a subsequent breach or default of the terms, conditions, or covenants herein contained.

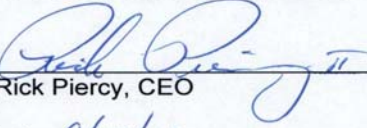
15. BINDING EFFECT

This AGREEMENT and all the terms, covenants, conditions, and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective successors.

IN WITNESS WHEREOF, this AGREEMENT has been duly approved by both SCHOOL and TOWN.

SCHOOL:  
Lewis Center for Educational Research  
Academy for Academic Excellence

TOWN:  
Town of Apple Valley

By:   
Rick Piercy, CEO

By: \_\_\_\_\_  
Frank Robinson, Town Manager

Dated: 9/18/08

Dated: \_\_\_\_\_

