

LEASE AGREEMENT  
BETWEEN  
MONTGOMERY COUNTY, MARYLAND  
AND  
BOARD OF EDUCATION OF MONTGOMERY COUNTY

Dated: 8/17/2016

Table of Contents

1. Leased Facilities, Acceptance of Leased Facilities
2. Term and Early Termination
3. Use of the Board Facilities
4. Parking
5. Alterations and Improvements
6. Fixtures and Equipment
7. Maintenance, Operating Expenses, Utility Metering and County Responsibilities
8. Condition of Board Facilities and Shared Facilities
9. Liability, Property Damage and Fire Insurance
10. Board's Duties and Covenants
11. County's Duties and Covenant
12. Damages to or Destruction of Board Facilities
13. Board Event of Default, Penalties, Counties Rights
14. County Default
15. Eminent Domain
16. Right of Entry
17. Return of the Board Facilities and Shared Facilities
18. Holdover
19. Assignment
20. The County's Title and Covenant of Quiet Enjoyment
21. Cumulative Remedies
22. Benefit and Burden
23. Disputes
24. Waiver
25. Non-Discrimination
26. Contract Solicitation
27. Ethics Requirement

28. Force Majeure
29. Mailing Notices
30. Governing Law
31. Claims
32. Waiver of Jury Trial
33. Rules and Regulations
34. Traffic Management Plan
35. County and Board Liability
36. Entire Agreement

Exhibit A Overall Site Plan  
Exhibit A-1 East Side MASP and Shared  
Facilities  
Exhibit B East Side MASP  
Exhibit B-1 Board Facilities  
Exhibit C Rules and Regulations  
Exhibit D Traffic Management Plan

## LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease"), dated this 17<sup>th</sup> day of August, 2016, by and between MONTGOMERY COUNTY, MARYLAND, a political subdivision of the State of Maryland ("the County"), and the BOARD OF EDUCATION OF MONTGOMERY COUNTY ("the Board") (the Board and the County together the "Parties").

## BACKGROUND

A. The County is the owner of the property known as the "Multi-Agency Service Park" located at the intersection of Turkey Thicket Drive and Snouffer School Road in Montgomery County, Maryland (the "Property" or "MASP"). The Property is shown on the site plan attached hereto as Exhibit A;

B. The Smart Growth Initiative, ("SGI") was initiated to provide substantial economic opportunities for future growth in Montgomery County. The renovation of aged County-owned facilities, is one of the many ways economic growth will be achieved. As part of this initiative, the County is entering into this Lease with the Board for the Board to utilize facilities at MASP for use by its Department of Food and Nutrition Services (DFNS) and its Department of Maintenance (DOM). The Board's DOM will by separate agreement between the Board and Maryland-National Capital Park and Planning Commission (M-NCPPC) co-locate with the M-NCPPC Maintenance Depot to accommodate needed growth and to include best environmental management practices. Montgomery County Public Safety Training Academy will also be located at MASP;

C. The Board and M-NCPPC shall each lease by separate agreement with the County, facilities located in the East Side MASP upon the completion of their construction ("The "East side MASP") The East Side MASP shall include the Site Number, Building Name and square footage listed on Exhibit B.

D. The facilities to be leased by the Board as set forth herein include: the Food Distribution Facility (Site 2A), the Covered Storage Building (Site 4D), the Covered Large Truck Parking Building (Site 4E), the Bulk Material Storage Building (Site 4F), the first floor of the Main Building (Site 4A), and a portion of the Fleet Maintenance Building (Site 4B), as more particularly described in Exhibit B and shown in Exhibit B-1 (together, the "Board Facilities");

E. The Board and M-NCPPC shall have general non-exclusive common use of certain shared facilities including the Parking Garage Area and the Central Utility Plant (Site 2B), as well as hallways, entrances, stairwells, restrooms, elevators, loading areas, drive aisles, sidewalks, parking spaces, landscaping, and grounds surrounding the Board and M-NCPPC facilities in the East Side MASP (together, the "Shared Facilities") and as more particularly depicted on Exhibit A-1; and

F. The Board and M-NCPPC shall enter into an operating agreement detailing the responsibilities of each party for the operation and maintenance of the Shared Facilities (the "Operating Agreement"), a copy of which will be provided to the County upon execution by the Board and M-NCPPC, however no later than three hundred sixty (360) days after the occupancy by the Board of the Shared Facilities.

1. LEASED FACILITIES, ACCEPTANCE OF LEASED FACILITIES:

A. The County hereby leases to the Board and the Board hereby leases from the County, the Board Facilities and the Shared Facilities located at MASP comprising approximately 309,345 square feet, as shown on Exhibit B-1.

B. Other than the Food Distribution Facility (Site 2A) and the Parking Garage (Site 2B), which the County has delivered and the Board has accepted "as is", the County shall allow the Board to participate in the substantial completion inspection and final completion walk-through of each building or portion of a building comprising the Board Facilities and Shared Facilities. Upon acceptance, the Board shall occupy each building or portion of a

building in its "as is" condition, and the County shall not be required to make any repairs or improvements to the Board Facilities and Shared Facilities other than as agreed to in advance by the County in writing or as set forth elsewhere herein. Notwithstanding the foregoing, the County warrants that, upon delivery, the Board Facilities and Shared Facilities shall be structurally sound, waterproof, in compliance with all applicable laws, including, but not limited to, hazardous materials laws (as defined in Section 12(B)), and the Americans with Disabilities Act, 42 U.S.C. 12101, *et seq.*, and that the mechanical, electrical, plumbing, life safety systems shall be in good working order and meet all applicable county code requirements.

C. Existing warranties and guarantees with respect to the Board Facilities and Shared Facilities, shall be transferred to or assigned to the Board by the County and to the extent any such warranties or guarantees are not assignable, then at the request and sole expense of the Board, the County agrees to enforce the same for the benefit of the Board.

## 2. TERM AND EARLY TERMINATION:

A. The term of this Lease (the "Term") is for ninety (90) years commencing on the date written here above (the "Commencement Date"). Each twelve (12) month period, beginning with the Commencement Date, shall be referred to as a "Lease Year."

B. This Lease and all rights and obligations hereunder may be terminated by the County, for any reason, if the Chief Administrative Officer determines that termination of this Lease is in the best interest of the County. A termination pursuant to this Section 2 shall be an "County Early Termination," and in such circumstances, the Parties shall work together to identify a suitable alternative location for the Board's operations. Such termination shall be effective no later than 3 years after the County has identified a suitable alternative location for the Board's operations and a replacement facility has been constructed.

C. This Lease and all rights and obligations hereunder may be terminated by the Board, for any reason, at any time and at no cost to the Board, if the Board determines that

termination of this Lease is in its best interest. A termination pursuant to this Section 2 shall be an "Board Early Termination." Such termination shall be effective on the later to occur of (i) two (2) years after delivery of written notice, or (ii) a date mutually agreed to by the Parties in writing.

3. USE OF THE BOARD FACILITIES: The Board shall use the Board Facilities solely for activities related to the Board's food service and nutrition programs, maintenance of its facilities, parking, and other services related to the Board (the "Permitted Use"). The Board agrees that its use of the Board Facilities shall be subject to all applicable rules, regulations, statutes, permits, or any other requirements for the use and occupancy of the Board Facilities as established by all authorities having jurisdiction in the County and the State of Maryland.

4. PARKING: The Board is entitled to use of the Parking Garage Area in common with M-NCPPC. The allocation of parking spaces, the responsibilities for maintenance, repair and replacement, and the compliance with any applicable laws, including, but not limited to, the Americans with Disabilities Act, 42 U.S.C. 12101, *et seq.*, in the Parking Garage Area shall be set forth in the Operating Agreement. The County has no obligations to either maintain, repair or keep in compliance with any applicable laws, the Parking Garage Area.

5. ALTERATIONS AND IMPROVEMENTS:

A. For the purposes of this Lease, "Alterations" shall mean any modifications, alterations, improvements, additions, or renovations.

B. The Board is permitted to make any non-structural Alterations to the Board Facilities or the Shared Facilities, without the prior written approval of the County. If the Board desires to make any Structural Alterations (as defined below) to the Board Facilities or the Shared Facilities or any Alterations to major building systems of the Board Facilities or the Shared Facilities, the Board shall submit detailed plans and specifications to the County for approval prior to the performance of any Structural Alterations. Structural Alterations shall be defined as including major underpinning of a building, total replacement of floors, including new

joists, damp proof membrane, total replacement of ceilings or roof including new joists/timbers, total re-plastering (back to brickwork) of the entire walls of the majority of a building. Written approval by the County shall not be unreasonably withheld, conditioned, or delayed. If such plans are approved, the Board shall cause the work to be performed in a good and workmanlike manner by either its employees or licensed and qualified contractors. All such work shall comply with applicable laws and building codes. The Board shall perform any such work at its sole cost and expense.

C. Any Alterations made by the Board to the Board Facilities or the Shared Facilities that cannot be removed or are fixtures shall become and remain a part of the Board Facilities or the Shared Facilities and remain the County's property upon the termination of the Board's occupancy of the Board Facilities; provided, however, that if County gives written notice to the Board at least forty-five (45) days prior to the expiration or Early Termination of this Lease, it may require the Board to remove any Alterations made to the Board Facilities or the Shared Facilities by the Board and require the Board to restore such portion of the Board Facilities or the Shared Facilities to their original condition.

6. FIXTURES AND EQUIPMENT: All moveable partitions, trade fixtures, floor coverings, or equipment (the "Fixtures and Equipment") installed within the Board Facilities or the Shared Facilities by the Board and at the Board's expense shall remain the property of the Board and may be removed by the Board at the Board's expense at the expiration or Early Termination of this Lease. Upon removal of the Board's Fixtures and Equipment from the Board Facilities or the Shared Facilities, the Board, at its sole expense, shall repair any damage to the Board Facilities or the Shared Facilities caused by such removal so that the Board Facilities or the Shared Facilities are in substantially the same condition as at the commencement of the Term, reasonable wear and tear excepted.

7. MAINTENANCE, OPERATING EXPENSES, UTILITY METERING AND COUNTY RESPONSIBILITIES:

A. The Board shall at its' sole cost and expense, assume full responsibility

for all facility maintenance services, repairs, and replacement of major systems (mechanical, electrical, utility, and other control systems) within the Board Facilities, in their proportionate share of the Shared Facilities as defined in the Operating Agreement, and all improvements thereon, including but not limited to the repair or replacement of all building elements and the building envelope, structural elements and equipment, fixtures, roof, windows, floors, ceiling tiles, walls, electrical systems, heating and air conditioning systems, plumbing systems, waterproofing systems, and interior and exterior painting, subject to any warranties or guarantees as described in Section 1.C. Any maintenance, repairs, or replacements of major systems within the Board Facilities shall be at the Board's sole cost and expense. Any maintenance, repairs, or replacements of major systems within the Shared Facilities shall be at the sole cost and expense of the Board and M-NCPPC together, as further described in the Operating Agreement. The County shall have the right to determine in its reasonable discretion, and shall notify the Board in writing, that such maintenance, repair, and replacement is required to protect the Board Facilities from damage and deterioration and the Board shall comply with the County's request.

B. The Board shall be fully responsible, at the Board's sole cost and expense, for all operating expenses related to the Board Facilities, including, but not limited to, utility bills and expenses, janitorial services, trash removal, pest control, preventive facility maintenance services, and maintenance services.

C. The Board and M-NCPPC together shall be fully responsible, at their cost and expense, for all operating expenses for the Shared Facilities. The County has no obligations to either maintain, repair or keep in compliance with any applicable laws, the Shared Facilities.

D. The Operating Agreement will specify the responsibilities between the Board and M-NCPPC as to utilities and the metering of utilities. The Board assumes responsibility herein for the utilities that cannot be separately metered.

E. Except as otherwise provided herein, the County shall not be obligated to make repairs, replacements, or improvements of any kind to the Board Facilities or the Shared Facilities, or to any equipment, facilities, or fixtures therein.



8. CONDITION OF BOARD FACILITIES AND SHARED FACILITIES:

A. The Board agrees to maintain the Board Facilities, including all improvements therein, in a good condition and state of repair throughout the Term. The Board agrees to keep the Board Facilities clean and neat in appearance at all times. The Board agrees to make repairs and replacements as necessary for the safe use of the Board Facilities, and the protection of the Board Facilities from damage or deterioration, including changes necessary to comply with state, federal or local laws, including, but not limited to changes, if required, to comply with the Americans With Disabilities Act, 42 U.S.C. 1210, *et seq.*

B. The Board and M-NCPPC, shall maintain the Shared Facilities including all improvements therein, in good condition and state of repair throughout the Term and any extension thereof.

9. LIABILITY, PROPERTY DAMAGE AND FIRE INSURANCE:

A. The County and the Board are both members of the Montgomery County Self-Insurance Program. The limits of liability for the County for tort claims filed against the County are stated in the Local Government Tort Claims Act (the "LGTC"), *Md. Ann. Code, Cts. & Jud. Proc.* §§ 5-301 *et seq.*, (2016 Replacement Volume) as amended. The limits of liability for the Board for tort claims filed against it are stated in Section 4-105 of the Education Article, Annotated Code of Maryland. Membership in the Montgomery County Self-Insurance Program must be maintained continuously by the County and the Board during the Term of this Lease.

B. The Board agrees that it will not keep in or upon the Board Facilities or any part thereof, any article, which may be prohibited by the standard form of fire or hazard insurance policy for the types of operations described in Section 3 of this Lease. If the Board keeps articles on the Board Facilities that cause any increase in the insurance premiums for the Board Facilities, the Board shall acquire and maintain any required additional insurance

coverage if necessary.

C. The Board shall deliver to the County a certificate of insurance evidencing the coverage described above within thirty (30) days after acceptance of each portion of the Board Facilities.

D. Board agrees to hold harmless and hereby indemnifies the County from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury or damage to property arising from any occurrence, or occasioned by any act or omission of the Board or its employees at or upon the Board Facilities or the Shared Facilities, or the occupancy or use by the Board of the Board Facilities or the Shared Facilities, or the Board's use of the exterior areas designated by the County for the comfort and convenience of the Board. For the purposes of this Section 9, the Board includes the Board of Education of Montgomery County and its officers, officials, agents, and employees. This indemnification is subject to the notice requirements and the liability and damage caps stated in the Maryland Education Article. Nothing herein shall be construed to abrogate, impair, or waive any defense to liability, damages limitation, or governmental immunity of the Board, its members, officers, employees, or agents pursuant to Maryland law, or otherwise. Any indemnification by the Board is subject to the availability of appropriations from its funding authorities. This indemnification is not intended to create any rights or causes of action in third parties. The Board shall not, however, be liable for damage or injury occasioned by the acts or omissions of County or its employees or agents, or the County's failure to comply with its obligations under this Lease.

E. The County agrees to hold harmless and hereby indemnifies the Board from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury or damage to property arising from or out of any occurrence, or occasioned wholly by any act or omission of the County or its employees at or upon the Board Facilities or the Shared Facilities. For the purposes of this Section 9, the County includes Montgomery County, Maryland and its officers, officials, agents, and employees. This indemnification is subject to the notice requirements and the liability and damage caps stated in the LGTCA. This indemnification shall not be considered to be a waiver of governmental

immunity and is not intended to create any rights or causes of action in third parties. The County shall not, however, be liable for damage or injury occasioned by the acts or omissions of any third party or of the Board or its employees or agents, or caused the Board's failure to comply with its obligations hereunder.

F. The Board shall give the County prompt written notice of any accident, casualty, damage or other similar occurrence in or to the Board Facilities or the Shared Facilities upon the Board's knowledge.

#### 10. BOARD'S DUTIES AND COVENANTS:

A. The Board shall not strip, overload, damage, or deface buildings, nor suffer or permit any waste in or upon the Board Facilities or the Shared Facilities.

B. The Board shall not keep or store gasoline, other flammable material, any explosive, or hazardous material as defined under State, Federal and County laws and regulations, within the Board Facilities or the Shared Facilities which shall increase the rate of fire insurance beyond the ordinary risk established for the type of operations described in Section 3 of this Lease. Any such increase in the insurance rate due to the above shall be borne by the Board. The Board shall not willfully do any act or thing in or about the Board Facilities or the Shared Facilities which may make void or voidable any insurance on the Board Facilities or the Shared Facilities, and the Board agrees to conform to all reasonable rules and regulations established by the County, the Maryland Insurance Rating Bureau, or any other authority having jurisdiction over such matters.

C. The Board shall not permit any trade or occupation to be carried on or use made of the Board Facilities and the Shared Facilities outside of the scope of this Lease as described in Section 3 hereof. Further, the Board shall not use or allow to be used the Board Facilities or the Shared Facilities or any part thereof for any illegal, unlawful, or improper purpose or for any activity which shall constitute a nuisance to adjacent properties or the adjacent neighborhood. The Board acknowledges that all of its responsibilities relating to the

use or misuse of the Board Facilities or the Shared Facilities and anything therein shall be construed to include use or misuse thereof by the Board's agents, employees, patrons, and guests.

D. The Board shall not place upon the Board Facilities or the Shared Facilities any placard, sign, or lettering ("Signage") that requires a permit to install, except as first approved in writing by the County. Any such Signage must be permitted under Chapter 59 of the Montgomery County Code (2004), as amended, (the "Zoning Ordinance") and must be approved by the County agency responsible for administering the Zoning Ordinance, which may withhold its approval for any reason.

E. The Board verifies and acknowledges that the persons executing this Lease on behalf of the Board have the legal authority to bind the Board to the duties and obligations set forth herein. The Board further verifies and acknowledges that, together, each person's signature creates a binding obligation on the part of the Board for the term of this Lease.

F. The Board agrees to and shall perform any and all obligations under this Lease in a timely manner. It is understood, agreed, and covenanted by and between the Parties that the Board, at the Board's expense, shall promptly comply with, observe and perform all of the requirements of applicable statutes, ordinances, rules, orders, and regulations now in effect or hereafter promulgated whether required by the Federal Government, State of Maryland, Montgomery County, or any local government with jurisdiction over the Board Facilities.

## 11. COUNTY'S DUTIES AND COVENANTS

A. County Maintenance Responsibilities: The County at its sole cost and expense and consistent with all other County properties shall be responsible for (i) the maintenance of the forest conservation area, (ii) the maintenance, repair, and snow removal of the Turkey Thicket Drive roadway (iii) the maintenance of the storm water management area, all shown on Exhibit A.

B. The County hereby represents and warrants to the Board that, to the best

of the County's knowledge, the Board Facilities and the Shared Facilities are free of hazardous materials and in compliance with all hazardous materials law. If any hazardous material is found, or is otherwise released, discharged, disposed of, or permitted to spill or leak on or about the Board Facilities or the Shared Facilities and is not caused by the Board, its members, officials, employees, or agents, the County shall ensure, at no cost to the Board, that such release, discharge, disposal, spill, or leak is completely removed from the Board Facilities or the Shared Facilities.

C. The County shall provide as-built plans, operating and maintenance manuals, and attic stock for the Board Facilities to the Board, and for the Shared Facilities to the Board within 120 days of acceptance by the Board for each building or portion thereof.

D. The County agrees to and shall perform all obligations under this Lease in a timely manner. It is understood, agreed, and covenanted by and between the Parties that the County, at the County's expense, shall promptly comply with, observe and perform all of the requirements of applicable statutes, ordinances, rules, orders, and regulations now in effect or hereafter promulgated whether required by the Federal Government, State of Maryland, the County, or any local government with jurisdiction.

## 12. DAMAGES TO OR DESTRUCTION OF BOARD FACILITIES

A. The Board shall provide the County with notice, as soon as practicable, of accidents on or damage to the building structure or major building systems of the Board Facilities of which it has knowledge, and of any major defects in major building systems and equipment, including the roof, plumbing, electric, and heating and cooling systems of the Board Facilities.

B. If the Board Facilities are substantially destroyed or damaged from whatever cause so as to render 25% or more of the Board Facilities unfit for the purposes for which such areas were leased, the County shall notify the Board in writing within thirty (30) days of the date of such destruction or damage whether or not it intends to repair the damage to

the Board Facilities. If the County elects not to repair the damage to the Board Facilities, then the Board shall be entitled to either repair the damage to the Board Facilities or terminate this Lease. The Board shall provide notice to the County of its decision to repair the damage or terminate the Lease within thirty (30) days of receipt of notice from the County of the County's intent not to repair the Board Facilities.

C. If the County or the Board decides to undertake the repair of the Board Facilities due to damage or destruction as described in this Section 12, the Party undertaking the repairs shall complete said repairs in a diligent manner according to a timeline agreed upon by the Parties, and this Lease shall not be affected, except that during reconstruction any obligations or responsibilities of the Board to the County corresponding to the portion of the Board Facilities to which the Board is denied normal occupancy and use shall be abated until the Board resumes occupancy.

### 13. BOARD EVENT OF DEFAULT, PENALTIES, COUNTIES RIGHTS:

A. Each of the following shall constitute an event of default ("Event of Default"):

- (1) Failure by the Board to substantially perform under any term, covenant, or condition of this Lease, and the continuance thereof for thirty (30) days after written notice from the County describing said failure to perform, or such greater time as may be reasonably required to correct such failure so long as the Board acts diligently.
- (2) The abandonment of the Board Facilities and Shared Facilities by the Board. Abandonment is defined as the failure of the Board to operate the Permitted Use for ninety one (91) consecutive days or longer, unless otherwise excused under the terms of this Lease.
- (3) Failure to execute the Operating Agreement between the Board and M-NCPPC within 360 days after M-NCPPC executes a lease with the

County for the M-NCPPC facilities unless otherwise agreed to by the Parties.

B. If an Event of Default occurs, and if Board fails to cure the default within the time period set forth in this Lease, then, the County is entitled to all remedies available at law or in equity, including, but not limited to, the right to terminate the Lease, and the right to re-let the Board Facilities and Shared Facilities (if the Lease has been terminated). Notwithstanding the termination of this Lease, the Board shall remain liable for any and all claims, costs, damages, expenses, fees, liabilities, and losses suffered by or incurred on behalf of the County as a result of the Board's Event of Default, and any costs the County incurs recovering possession of the Board Facilities and Shared Facilities, excluding attorneys' fees. The Board's right of possession shall end, the Lease shall be terminated by the County, and the County may proceed to recover possession under the laws of the State of Maryland.

C. The County may, but shall not be obligated to, without waiving such Event of Default, undertake appropriate action to correct the Event of Default at the reasonable expense of the Board, in which case the Board shall pay the County all incurred costs of such performance promptly upon receipt of an invoice and in accordance with the laws governing the Board's budgetary process.

D. If proceedings shall at any time be commenced for recovery of possession as aforesaid and a compromise or settlement shall be effected either before or after judgment whereby the Board shall be permitted to retain possession of the Board Facilities and Shared Facilities, then such proceedings do not constitute a waiver of any condition or agreement contained herein or of any subsequent breach of this Lease. No waiver of any breach of any condition contained herein shall be construed to be a waiver of that condition or of any subsequent breach thereof.

14. COUNTY DEFAULT: The County's failure to substantially perform under any term, covenant, or condition of this Lease, and the continuance thereof for thirty (30) days after written notice from the Board specifying said failure, or such greater time as may be reasonably

required to correct such failure, with the County acting diligently, shall constitute a "County Default." Upon a County Default, the Board may pursue any remedies provided in this Lease or available at law or in equity, including, but not limited to: (i) the right to undertake appropriate action to correct the County Default at the reasonable expense of the County, in which case the County shall pay the Board all incurred costs of such performance promptly upon receipt of an invoice, and (ii) the right to terminate this Lease, with any termination of this Lease to be effectuated by appropriate proceedings brought in any court of competent jurisdiction in Montgomery County, Maryland. Notwithstanding the termination of this Lease, and subject to non-appropriation, the County shall remain liable for any and all claims, costs, damages, expenses, fees, liabilities, and losses suffered by or incurred on behalf of the Board as a result of the County's Default, excluding attorneys' fees.

15. EMINENT DOMAIN:

A. The County is entitled to receive any award from a governmental authority for the fair market value of the land and improvements upon which the Board Facilities and Shared Facilities are located.

B. The Board is not precluded from claiming, proving, and receiving, in a separate claim filed by the Board against the authority exercising the power of eminent domain, such sums to which the Board may be entitled as compensation, provided that such a separate claim does not interfere with or reduce the County's award and is pursuant to the terms set forth in Section 12.B. herein.

C. The County or the Board may terminate this Lease upon exercise of eminent domain by a condemning authority that renders the Board Facilities and Shared Facilities unfit for the Permitted Use set forth in Section 3 herein.

16. RIGHT OF ENTRY:

A. The Board shall permit the County as landlord, its agents, or its



employees, at reasonable times and upon reasonable notice (not less than 72 hours prior notice), to enter the Board Facilities and or Shared Facilities without charge to: (1) examine, inspect, and protect the Board Facilities; (2) to perform maintenance and repairs that the County may in its reasonable discretion consider necessary or desirable; and (3) enforce the terms of the Lease and take action, including an inspection of the Board Facilities and or Shared Facilities at least annually, to assure that the Board complies with its obligations under the Lease. The County retains all of its rights as a government entity to enter onto the Board Facilities and Shared Facilities as permitted by law and for all lawful purposes.

B. In cases of an emergency involving imminent risk of injury or death to persons or damage to property, the County, its agents, or its employees, without prior notice to the Board, may enter onto the Board Facilities and or Shared Facilities; however, the County shall notify the Board of any such entry under this Section 16 as soon as it is practicable under the circumstances.

C. The Board shall be able to change exterior locks installed on the Board Facilities and or Shared Facilities. The Board shall provide the County with keys to the new locks installed at the Board Facilities within fifteen (15) days of such change.

#### 17. RETURN OF THE BOARD FACILITIES AND SHARED FACILITIES:

A. At the conclusion of the Term, as set forth in Section 2, or following the termination of this Lease for any other cause, the Board shall remove all of the Board's goods and effects from the Board Facilities and Shared Facilities consistent with Section 5 and Section 6 and return to the County all keys, locks, and other fixtures belonging to the County, in good repair, reasonable wear and tear and damage by casualty excepted. If the Board's property is not removed from the Board Facilities and or Shared Facilities after the termination of this Lease, the property remaining shall become the property of the County. The County shall dispose of such property in the manner it deems appropriate.

B. The Board shall return the Board Facilities and or Shared Facilities to the

County in the same condition as received at the beginning of the Term in "broom clean" condition, reasonable wear and tear and damage by casualty excepted. At the time of termination of this Lease, and at the County's option, the Board shall participate in a walk-through with the County's agent or employee to inspect the Board Facilities and or Shared Facilities.

C. Following termination of this Lease, the Board shall remove any and all Signage erected by or on behalf of the Board and shall pay for or repair any damage caused by the installation or removal of such signage.

18. HOLDOVER: If the Board holds over after the expiration of this Lease, the tenancy created by such holding over shall be a month-to-month tenancy that is terminable immediately by the County. If the Board holds over, the terms of this Lease shall govern.

19. ASSIGNMENT: The Board shall not assign this Lease without the prior written consent of the County, nor shall any assignment hereof be effected by operation of law or otherwise without the prior written consent of the County. Any assignment consented to by the County shall not relieve the Board from any of its obligations under this Lease, and such consent by the County shall not be effective unless and until (i) the Board gives written notice thereof to the County, which notice shall state the name and address of the proposed assignee, and identify the nature and character of the proposed use of the Board Facilities by assignee, (ii) such assignee shall deliver to the County a written agreement in form and substance satisfactory to the County, pursuant to which such assignee assumes all of the obligations and liabilities of the Board hereunder, and (iii) the Board shall deliver to the County a copy of the proposed assignment agreement. The Board shall also provide any additional information the County reasonably requests regarding such proposed assignment. The County shall not approve any assignment if such an assignment results in any profit or financial gain in excess of permitted costs and expenses. Any assignment without the County's written consent may be declared null and void by the County and, at the County's election, constitute an Event of Default hereunder. The County shall not assign this Lease without the consent of the Board, which consent shall not be unreasonably withheld, conditioned, or delayed.

20. THE COUNTY'S TITLE AND COVENANT OF QUIET ENJOYMENT: The County covenants that it has full right and power to execute and perform this Lease, and that it shall put the Board into complete and exclusive possession of the Board Facilities. The County covenants and agrees that, if the Board performs all of its obligations under this Lease, the Board shall, at all times during the Term, and any extensions thereof, have the peaceable and quiet enjoyment and possession of the Board Facilities for the purposes stated in this Lease.

21. CUMULATIVE REMEDIES: Except as otherwise expressly set forth herein, all remedies granted in this Lease otherwise provided by law shall be cumulative and, unless inconsistent, may be exercised separately, concurrently, or successively.

22. BENEFIT AND BURDEN: The provisions of this Lease shall be binding upon, and shall inure to the benefit of the Parties and each of their respective successors, assigns or representatives.

23. DISPUTES: The Parties agree not to institute proceedings in any court of competent jurisdiction on any dispute between the Parties without first giving thirty (30) days' notice in writing of such intent or such other notice and opportunity to cure as set forth herein.

24. WAIVER: The waiver at any time by either of the Parties of any particular covenant, condition, obligation, or duty under this Lease shall extend to the particular case only, and for the particular time and in the particular manner specified, and such waiver shall not be construed or understood as waiving any further or other rights of either Party.

25. NON-DISCRIMINATION: The Board assures the County that in accordance with its own policies and regulations and all applicable laws; it does not, and agrees that it will not discriminate in any manner on the basis of race, color, religious creed, sex, marital status, national origin, ancestry, disability, sexual orientation, or genetic status. The County assures the Board that in accordance with its own policies and regulations and all applicable laws; it does not, and agrees that it will not discriminate in any manner on the basis of race, color, religious

creed, sex, marital status, national origin, ancestry, disability, sexual orientation, or genetic status.

26. CONTRACT SOLICITATION: The Board represents that it has not retained anyone to solicit or secure this Lease from the County upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for bona fide employees of bona fide established, licensed, commercial selling or leasing agencies (the "Broker") maintained by the Board for the purpose of securing business or an attorney rendering professional legal services consistent with the canons of ethics of the profession. The Board is responsible for paying any Broker's fees or commissions for any Broker with whom the Board has any contract or agreement and for paying all of the Board's attorneys' fees in connection with the negotiation of this Lease.

27. ETHICS REQUIREMENT: The Board assures the County that it shall adhere to its own ethics policies and regulations as authorized and approved by the State of Maryland pursuant to Maryland Code General Provisions, Title 5, Subtitle 8, Part III.

28. FORCE MAJEURE: Neither party shall be deemed in default with respect to the performance of any of the terms, covenants, and conditions of this Lease if same shall be due to any strike, lockout, civil commotion, war-like operation, invasion, rebellion, hostilities, military or insurgency, sabotage, inability to obtain any material or service, through natural or other causes beyond the control of either of the Parties. For purposes of this provision, lack of funds shall not be considered a cause beyond the control of a party.

29. MAILING NOTICES: All notices required by this Lease shall be in writing and shall be given by either party by first class mail, postage prepaid, return receipt requested or with a nationally recognized receipted delivery service, addressed to the County or the Board, respectively. Notice to the Parties shall be addressed as follows:

COUNTY:

Montgomery County, Maryland  
Department of General Services

BOARD:

Montgomery County Public Schools  
Department of Facilities Management

Office of Real Estate  
101 Monroe Street, 9<sup>th</sup> Floor  
Rockville, Maryland 20850  
Attn: Director of Real Estate

45 West Gude Drive, Suite 4000  
Rockville, Maryland 20850  
Attn: Director of Facilities Management

With copy that does not constitute a notice:

Office of the County Attorney for Montgomery County, Maryland  
101 Monroe Street, 3<sup>rd</sup> Floor  
Montgomery County Public Schools

Office of the General Counsel  
850 Hungerford Drive, Rm. 122  
Rockville, Maryland 20850  
Attn: General Counsel

30. GOVERNING LAW: This Lease and its performance is governed, interpreted, construed and regulated by the laws of Montgomery County and the State of Maryland. Should any provision of this Lease be found invalid or unenforceable no other unrelated provision shall be affected and shall continue in full force and effect.

31. CLAIMS: Any claim or action brought by or on behalf of either Party in connection with the performance of this Lease shall be filed and maintained in a court of competent jurisdiction located in Montgomery County, Maryland.

32. WAIVER OF JURY TRIAL: The County and the Board hereby waive trial by jury in any action, proceeding, or counter claim brought by either of them against the other with respect to any matter whatsoever arising out of or in any way connected with this lease, the Board Facilities and Shared Facilities, or the land, the relationship of the County and the Board hereunder, the Board's use or occupancy of the Board Facilities and Shared Facilities, or any claim of injury and damage.

33. RULES AND REGULATIONS: The County has no existing rules and regulations governing the use of the Board Facilities or the Shared Facilities, but it reserves the right to promulgate rules and regulations at a later date to be attached to this Lease as Exhibit C hereof, provided such rules and regulations are reasonable and enforced to all similarly situated

properties in a uniform and consistent manner. The County reserves the right to amend any rules and regulations from time to time, at the County's reasonable discretion, and after providing forty-five (45) days written notice to the Board prior to amendments becoming effective. The Board shall comply with any and all rules and regulations adopted by the County and provided in writing to the Board consistent with this Section 33. The Board's failure to obey the rules and regulations except as otherwise stated in this Section 33 constitutes an Event of Default under this Lease for which the County may pursue any or all of the remedies set forth in Section 13.B., County's Remedies. In the event of a conflict between the rules and regulations and this Lease, the Lease is controlling.

#### 34. TRAFFIC MANAGEMENT PLAN:

A. The Board must participate in a traffic management plan (the "Plan") if the County, during the term of the Lease, decides that such a plan is in the best interest of the County and the surrounding community. The Parties agree that a Plan will later be attached to this Lease as Exhibit D and will be incorporated herein in its entirety.

B. Requirements: Any traffic management plan must accomplish the following:

- (1) Operating Plan: Establish an operating plan for both routine activities and special events that clearly identifies on-site access, circulation and parking rules and regulations, and the use of off-site parking areas other than on-street parking to prevent a detrimental impact on surrounding residential areas.
- (2) Monitoring: Establish regular monitoring activities to facilitate identification and implementation of operational access and circulation improvements.

C. A traffic management plan is subject to review and modification as deemed necessary by the County.

35. COUNTY AND BOARD LIABILITY. Any obligation or liability of the County or the Board arising in any way from this Lease, including indemnification, is subject to, limited by, and contingent upon the appropriation and availability of funds, as well as the damage caps and notice requirements provided for in state law, including the Local Government Tort Claims Act and the Maryland Education Article. This Lease is not intended to create any rights or causes of action in any third parties or to increase the liability of the County or the Board above the caps established by law.

36. ENTIRE AGREEMENT: This Lease (which includes the Exhibits attached hereto) embodies the entire agreement of the Parties hereto, and no representations, inducements, or agreements, oral or otherwise, between the Parties not contained in this Lease shall be of any force or effect. This Lease may not be modified, changed or terminated in whole or in part in any manner other than by an agreement in writing duly signed by the County and the Board. If an inconsistent provision is identified between this Lease and the M-NCPPC Lease, The County agrees to work cooperatively with both agencies to resolve the inconsistent provision and further agrees to amend the Leases if necessary.


**[Signature Pages to Follow]**

IN WITNESS WHEREOF, the Parties have caused this agreement to be properly executed.

WITNESS:

By: 

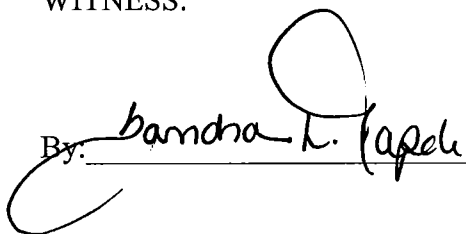
THE BOARD:  
BOARD OF EDUCATION OF  
MONTGOMERY COUNTY, MARYLAND

By:   
Michael A. Durso

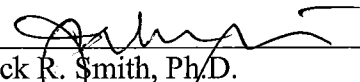
Title: President

Date: 7-15-16

WITNESS:

By: 


APPROVED BY:

By:   
Jack R. Smith, Ph.D.

Title: Superintendent of Schools

Date: 7/18/16

THE COUNTY:  
MONTGOMERY COUNTY, MARYLAND

By:   
Ramona Bell-Pearson

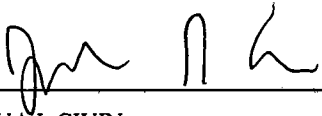
Title: Assistant Chief Administrative Officer

Date: 8/17/16



APPROVED AS TO FORM & LEGALITY

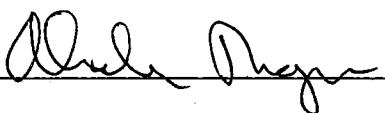
OFFICE OF THE GENERAL COUNSEL

By:   
JOSHUA I. CIVIN  
GENERAL COUNSEL

Date: 7/12/16


APPROVED AS TO FORM & LEGALITY

OFFICE OF THE COUNTY ATTORNEY

By: 

Date: 6/28/16

RECOMMENDED

By:   
Greg Ossont  
Deputy Director, Department of General  
Services

Date: 6-28-16

# Project 3 - Public Safety Training Academy

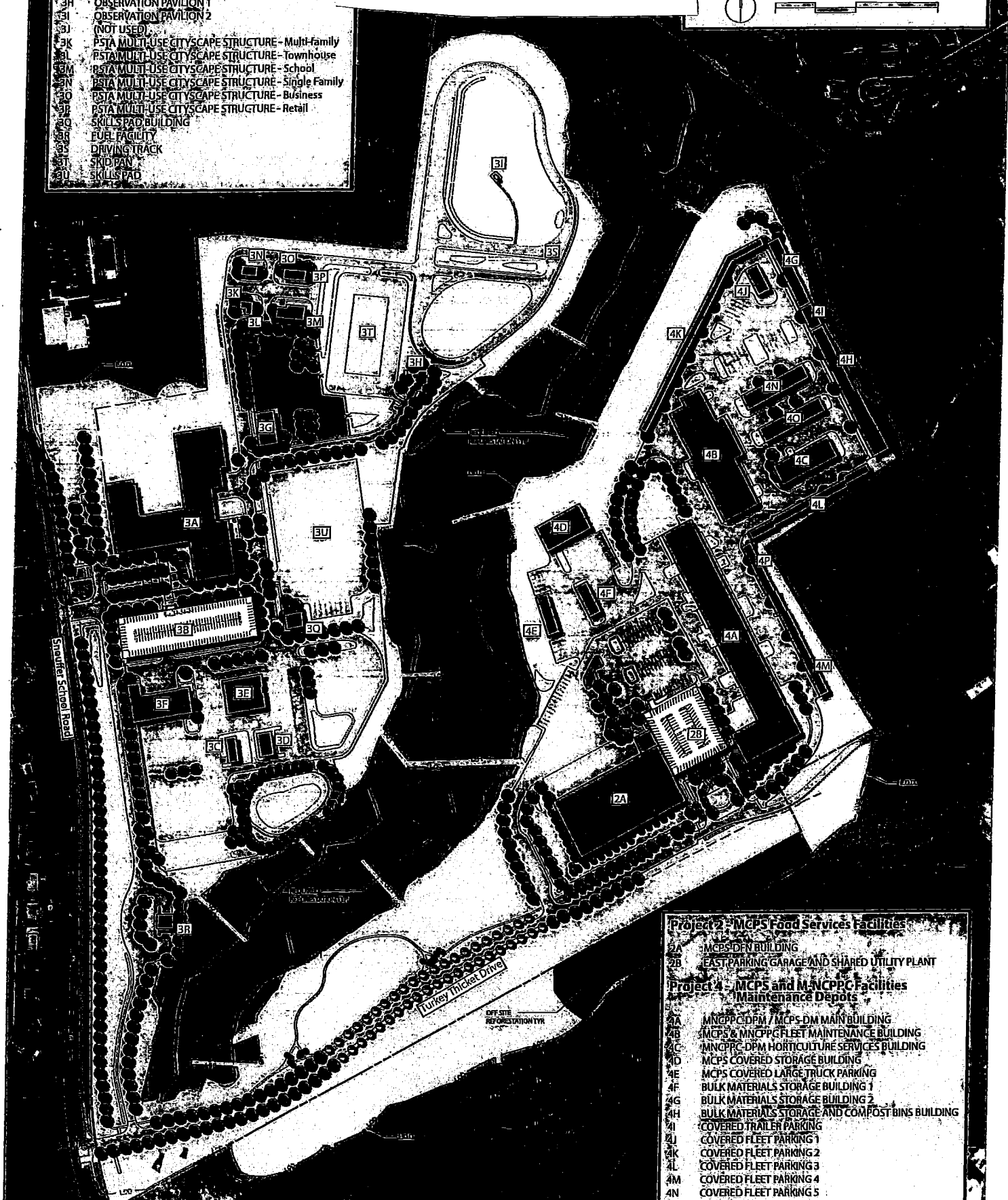
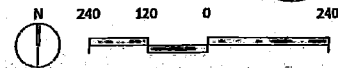
- 3A PSTA ACADEMIG BUILDING
- 3B WEST PARKING GARAGE
- 3C PSTA FIRE TRAINING BUILDING - Residential
- 3D PSTA FIRE TRAINING BUILDING - Commercial
- 3E PSTA HIGH BAY & FIRE TRAINING SUPPORT BUILDING
- 3F PSTA APPARATUS BUILDING
- 3G PSTA CANINE TRAINING BUILDING
- 3H OBSERVATION PAVILION 1
- 3I OBSERVATION PAVILION 2
- 3J (NOT USED)
- 3K PSTA MULTI-USE CITYSCAPE STRUCTURE - Multi-family
- 3L PSTA MULTI-USE CITYSCAPE STRUCTURE - Townhouse
- 3M PSTA MULTI-USE CITYSCAPE STRUCTURE - School
- 3N PSTA MULTI-USE CITYSCAPE STRUCTURE - Single Family
- 3O PSTA MULTI-USE CITYSCAPE STRUCTURE - Business
- 3P PSTA MULTI-USE CITYSCAPE STRUCTURE - Retail
- 3Q SKILLSPAD BUILDING
- 3R FUEL FACILITY
- 3S DRIVING TRACK
- 3T SKID PAN
- 3U SKILLSPAD

## EXHIBIT A

## MULTI AGENCY SERVICE PARK OVERALL SITE PLAN

## Multi-Agency Service Park Montgomery County, Maryland

Overall Site Plan  
March 12, 2013



### Project 2 - MCPS Food Services Facilities

- 2A MCPS DIN BUILDING
- 2B EAST PARKING GARAGE AND SHARED UTILITY PLANT

### Project 4 - MCPS and M-NCPPC Facilities Maintenance Depots

- 4A MNCPPC DPM / MCPS DM MAIN BUILDING
- 4B MCPS & MNCPPC FLEET MAINTENANCE BUILDING
- 4C MNCPPC DPM HORTICULTURE SERVICES BUILDING
- 4D MCPS COVERED STORAGE BUILDING
- 4E MCPS COVERED LARGE TRUCK PARKING
- 4F BULK MATERIALS STORAGE BUILDING 1
- 4G BULK MATERIALS STORAGE BUILDING 2
- 4H BULK MATERIALS STORAGE AND COMPOST BINS BUILDING
- 4I COVERED TRAILER PARKING
- 4J COVERED FLEET PARKING 1
- 4K COVERED FLEET PARKING 2
- 4L COVERED FLEET PARKING 3
- 4M COVERED FLEET PARKING 4
- 4N COVERED FLEET PARKING 5

# EXHIBIT A-1

## EAST SIDE MASP AND SHARED FACILITIES

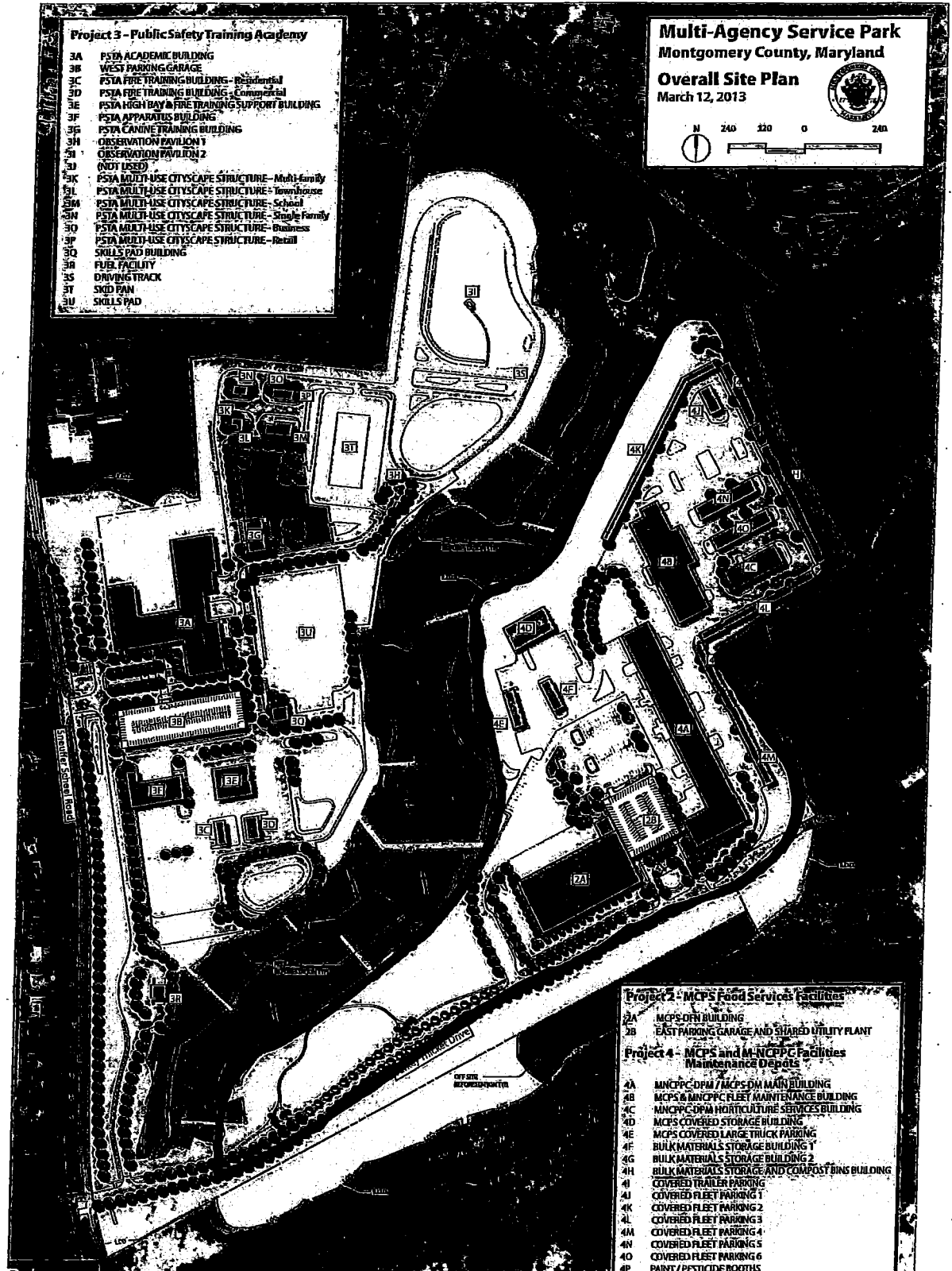


EXHIBIT B  
EAST SIDE MASP

BOARD

Site No.	Building Name	Square Footage	Number of Floors	Share Space
2 A	Food Distribution Facility	77,470	2	No
2 B	Parking Garage Area	100,756	4	Yes
2 B	Central Utility Plant	9,300		Yes
4 A	Main Building	77,750	2	Yes
4 B	Fleet Maintenance Building	23,000	1	Yes
4 D	Covered Storage Building	12,269	1	No
4 E	Covered Large Truck Parking	4,800	1	No
4 F	Bulk Material Storage Building	4,000	1	No

Total Square Footage occupied by Board: 309,345

Total Square Footage of Non-Shared Space: 98,539

M-NCPPC

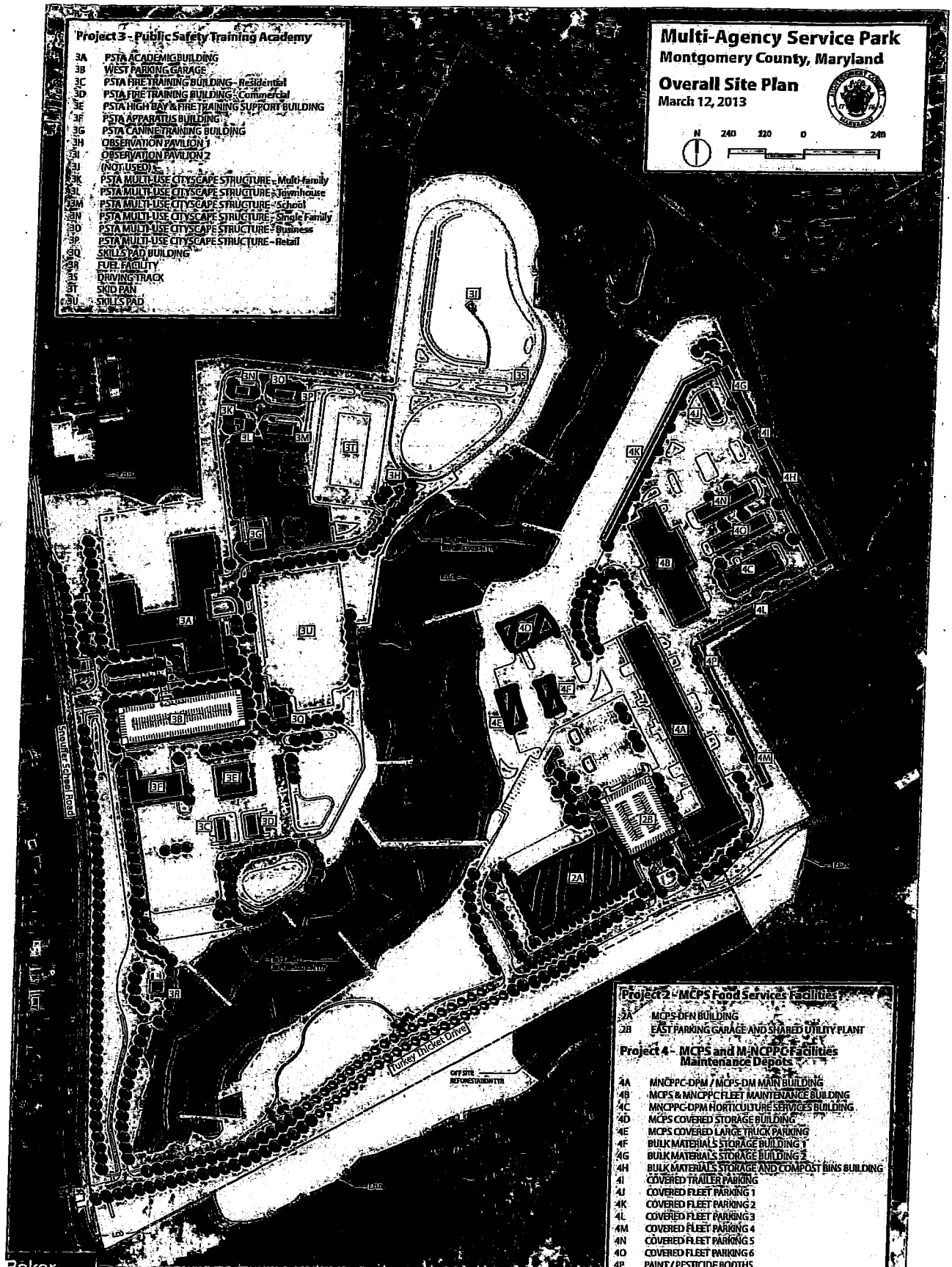
Site No.	Building Name	Square Footage	Number of Floors	Share Space
2 B	Parking Garage Area	60,025	4	Yes
2 B	Central Utility Plant	4,600		Yes
4 A	Main Building	77,750	2	Yes
4 B	Fleet Maintenance Building	23,000	1	Yes
4 C	Horticultural Services Building	11, 868	1	No
4 G,H	Bulk Material Storage Bdg(s)	25,327	1	No
4 I	Covered Trailer Parking	10,320	1	No
4 J-P	Covered Fleet Parking	72,926	1	No

Total Square Footage occupied by MNCPPC: 215,816

Total Square Footage of Non-Shared Space: 120,441

# EXHIBIT B-1

## BOARD FACILITIES



## Exhibit C

### Exhibit C – Rules and Regulations [Section 33]

At this time, the County has no existing Rules and Regulations, but reserves the right to promulgate such Rules and Regulation at a later date provided such Rules and Regulations are reasonable and enforced to all similarly situated properties in a uniform and consistent manner.

Exhibit D – Traffic Management Plan  
[Section 34]

At this time, the County has no existing Traffic Management Plan, but the Board agrees that it shall commit to participate in a Traffic Management Plan if the County, during the term and in accordance with Section 34 of the Lease, decides that such a plan is in the best interest of the County and the surrounding community.