

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") made this 11th day of July, 2022 by and between THE BOARD OF EDUCATION OF MONTGOMERY COUNTY (the "Board"), and MONTGOMERY COUNTY, MARYLAND (the "County") (each individually a "Party", and together, the "Parties").

WITNESSETH

WHEREAS, the Board has fee simple title in the property known as Viers Mill Elementary School, located at 11711 Joseph Mill Road, Silver Spring, Maryland, 20906 (the "Building"), in Montgomery County, Maryland; and

WHEREAS, the Amended FY 2005-2010 Capital Improvements Program included funding from the County to the Board for the Board's construction of a childcare suite at Viers Mill Elementary School as part of the school's modernization project; and

WHEREAS, the Board completed the modernization project at Viers Mill Elementary School which included the construction of the childcare suite for the County's use; and

WHEREAS, the Board previously leased to the County the portion of the Building consisting of a childcare suite pursuant to that certain Lease Agreement between Montgomery County Board of Education and Montgomery County, Maryland, dated as of December 21, 2009 (the "Original Lease"); and

WHEREAS, the original term of the Original Lease commenced on July 1, 2010, and expired on June 30, 2015; and

WHEREAS, the Original Lease provided for two (2), five (5) year extension options (the "Extension Options"), but those extension options were not exercised; and

WHEREAS, the County has continued to occupy the childcare suite on a month-to-

month basis since the termination of the Original Lease; and

WHEREAS, the County now desires to lease the childcare suite from the Board, and the Board desires to lease the childcare suite to the County, pursuant to the terms and conditions set forth in this Lease; and

WHEREAS, the County shall license the childcare suite to a selected childcare provider (the "County Licensee") for the sole purpose of operating a childcare program; and

WHEREAS, it is the desire and intent of the Parties that the childcare suite at Viers Mill Elementary School be maintained and operated in accordance with and subject to the terms and conditions as set forth in this Lease.

NOW, THEREFORE, in consideration of the above recitals, each of which is incorporated into the terms of this Lease as if fully stated herein, and the mutual covenants contained in this Lease, and of the payment of rent to the Board by the County, and for other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged by the Parties, the Parties hereto mutually agree as follows:

1. LEASED PREMISES: The Board hereby leases to the County and the County rents from the Board that portion of the Building designated as Rooms 101, 102 and 103, containing approximately 3,091 square feet of space (the "Leased Premises"). The Leased Premises includes the area shown cross-hatched on the Exhibit A, which is attached and incorporated into this Lease.
2. TERM: The term of this Lease shall be for a period of five (5) years, having commenced on July 1, 2021 (the "Effective Date"), and terminating on June 30, 2026 (the "Term"), unless terminated for cause as provided below before the expiration of the Initial Term. The "Rent Commencement Date" herein is the Effective Date
3. RENEWAL OPTION: Subject to the terms, conditions and limitations contained in this Lease, including, without limitation, that no default of this Lease shall have occurred and be continuing,

the County shall have the option to extend the Term of this Lease for two (2), five-year periods (each a "Renewal Term"). The County agrees to provide written notice to the Board of its intent to exercise its renewal option not less than six (6) months prior to the expiration of the Term or the applicable Renewal Term. All of the terms, conditions and covenants in this Lease shall apply during each Renewal Term.

4. RENT: In consideration of the lease of the Leased Premises, the County shall pay to the Board rent ("Rent") in the amounts and in the manner set forth herein. For the first Lease Year of the Initial Term, the Parties acknowledge and agree that the County has paid Rent to the Board, as reimbursement of operating costs, an amount equal to Twelve Dollars and Fifty Cents (\$12.50) per square foot of the Leased Premises for an annual cost of Thirty Eight Thousand Six Hundred Thirty-seven Dollars and Fifty Cents (\$38,637.50), and equal to twelve (12) monthly installments of Three Thousand Two Hundred Nineteen Dollars and Seventy-nine Cents (\$3,219.79). The first "Lease Year" shall be deemed to begin on the Effective Date and continue through June 30, 2022. Thereafter, a "Lease Year" begins on July 1 and continues through June 30 of the following year. From and after the Effective Date, before each July 1 during the Initial Term and any Renewal Term, the Board will establish a per square foot rate to be paid by the County for the following Lease Year, based on the rates charged to joint occupancy tenants in Montgomery County Public Schools ("MCPS"). The Board agrees to provide the County with at least one hundred eighty thirty (180) days written notice of any increase in Rent payable for the upcoming Lease Year. All payments are to be made in advance on the first day of each month without any prior demand therefore and without any set-off or deduction whatsoever and shall be payable to Division of Controller, Montgomery County Public Schools, 45 West Gude Drive, Suite 3202, Rockville, Maryland 20850.

5. USE OF THE LEASED PREMISES: The Leased Premises shall be used for a licensed full-day infant and childcare program, year-round, Monday through Friday, and for no other use.

6. USE OF OUTDOOR PLAYGROUND AREAS: The County (and the County Licensee, defined in Section 22, below) shall have access to the outdoor playground areas adjacent to the Leased Premises when used in connection with the childcare program during its normal hours of

operation or to any other age-appropriate playground area designated by the school principal that does not conflict with MCPS's use thereof. The Parties acknowledge and agree that the County's indemnification under Section 12 shall expressly apply to this Section 6.

7. SERVICES: The Board shall provide the services indicated in subsections A and B of this Section 7 to the Leased Premises, except (i) when the Building is closed (i.e., outside the Board's normal, daily operating hours of Monday thru Friday, 7:00 a.m. to 6:30 p.m.) (ii) when full-year MCPS employees are not required to work (i.e., Election Day, Winter/Spring Break and other days set forth on the Board's website for such closures each calendar year: <https://www.montgomeryschoolsmd.org>; and (iii) and when the administrative offices are closed and such building services are not otherwise required to be provided under the terms of this Lease, in which case the provisions of subsection C shall apply.

A. Facilities maintenance services as follows:

- i. Routine facility inspections;
- ii. Preventive maintenance including, but not limited to, inspecting the roof and waterproofing, electrical system, HVAC system, and fire protection systems;
- iii. Repair and replacement of electrical, mechanical, plumbing and structural systems and components installed or constructed as a part of the original childcare facility, which includes, but is not limited to, electronic systems, such as fire, security alarm and audio systems; electric lamp replacement; roofs, locks, doors, windows, walls, ceilings, walks, etc. (except to the extent such repair or replacement is necessitated due to the negligence or willful misconduct of the County, the County's Licensee or each of their respective agents, employees, contractors or invitees, in which such case, such maintenance and repair shall be done by Landlord but at the County's sole cost and expense)
- iv. Refuse removal and disposal and
- v. The Board agrees to provide routine maintenance to the Playground, which includes the provision of surface material that the Board uses in the playground area to provide for the safety of the children or else required by Code.
- vi. Major repair or replacement of the designated childcare Playground equipment shall be

the responsibility of the County.

B. Maintenance, security, sanitizing and utility services as follows:

- i. Interior cleaning and sanitizing services, which will include the provision of paper towels, hand soap and toilet tissue in its restrooms, if such restrooms are within the Leased Premises.
- ii. Strip waxing of the interior of the Licensed Premises if the Board is providing the same service to the other premises in the Building
- iii. exterior grounds maintenance which will include the removal of all snow and ice from sidewalks, parking areas and any other part of the Building grounds that require removal of snow and ice necessary for the operation of the Building;
- iv 24-hour security services; and
- v. Electrical, water, sewage and other utility services.

C. On days when the Board is not required to provide such services as set forth in paragraph A and B above, and the County Licensee chooses to continue its use of the Leased Premises, the County shall require and cause the County Licensee to contract directly with the Community Use of Public Facilities (“CUPF”) for necessary support services (which may include items A and B, but will include snow and ice removal set forth in paragraph Biii whose address is 255 Rockville Pike, Suite 201, Rockville, Maryland 20850. Main Office Number: (240) 777-2725 Email: cupf@montgomerycountymd.gov. It shall be the responsibility of the County to require the County Licensee to pay either directly to CUPF or through the County for any additional support services on the days that the Board is not required to provide such services as set forth herein.

8. RESPONSIBILITIES OF COUNTY: The County covenants and agrees to the following responsibilities and shall include them in any license agreement it enters into with the County Licensee (or any substitute therefor):

- A. The County will not and will require the County Licensee to not, strip, overload, damage or deface the Leased Premises or hallways, stairways, or other approaches thereto, of said

Building, or the fixtures therein or used therewith, nor to suffer or permit any waste to, in or upon the Leased Premises or any part of the Building.

- B. The County will not and will require the County Licensee to not, use or allow anyone else to use the Leased Premises or any part thereof for any illegal, unlawful, or improper purpose, or for any activity which will constitute a nuisance to adjacent properties or the adjacent neighborhood or disrupt school activities or operations.
- C. All covenants of the County relating to the use or misuse of the Leased Premises, the Building, and of the property of which they are a part or anything therein shall be construed to include use or misuse thereof by the County's agents, employees, contractors and invitees, and the County's Licensee, agents, employees, contractors and invitees.
- D. The County will not engage in, and will prohibit the County Licensee from engaging in, the following activities in the Leased Premises at all times:
 - i. Use or possession of alcoholic beverages or other intoxicants;
 - ii. Smoking or use of tobacco products;
 - iii. Gambling;
 - iv. Fires, grilling, open flames, and the use of flammable materials;
 - v. Parties and celebrations that are essentially private in nature, including, but not limited to, wedding receptions and other similar activities;
 - vi. Use or possession of weapons, firearms, ammunition;
 - vii. Creating noxious odors; and
 - viii. Excessive noise.
- E. The County shall conduct and require the County Licensee to conduct, all of its operations hereunder in an efficient, safe, and careful manner and to comply with all rules and regulations for the Building promulgated from time to time by the Board, and any violation of said rules and regulations shall be a violation of this Lease.
- F. To the extent that the County or the County Licensee make improvements to the Leased

Premises, as approved by MCPS, the County will, and will require the County Licensee to, comply with the Americans with Disabilities Act and all federal, state and local laws regarding providing access and services to disabled persons. The Board agrees that the Leased Premises as delivered to the County will comply with the Americans with Disabilities Act and all federal, state and local laws regarding providing access and services to disabled persons.

- G. The County will require the County Licensee not to discriminate against children whose parents participate in state or local subsidy programs.
- H. The County agrees to maintain reports relating to the County Licensee's license(s) or certification(s) as a childcare provider for inspection and evaluation for Board review. The County will report to the Board any violation or revocation of the County Licensee's Maryland State Department of Education ("MSDE") license of which it has knowledge, within ten (10) days of the County's receiving notice of a violation or revocation.
- I. The County agrees to, and to require the County Licensee to, not place upon the Leased Premises any placard, sign, lettering, or awning except such, and in such place and manner as shall have been first approved in writing by the Montgomery County Public Schools Department of Facilities Management ("MCPS DFM").
- J. The County agrees to require the County Licensee to pursue accreditation of the County Licensee's program by MDSE.
- K. The County will require the County Licensee to use the Leased Premises only for the provision of infant and childcare services contemplated under this Lease and those activities reasonably related to such services.
- L. The County will require the County Licensee to provide its childcare program in the manner set forth in its written proposal and presentation to the Childcare Selection Committee, if applicable; provided that in the event of any inconsistency between any provision of the

written proposal or presentation and this Lease, this Lease shall govern.

- M. The County will require the County Licensee to provide its childcare program in accordance with all applicable state, local and federal laws pertaining to the operation of childcare centers and to maintain its license or certification necessary to provide such services in accordance with the requirements of the entity issuing such license or certification.
- N. The County will require the County Licensee to not have pets in or about the Leased Premises. This provision does not limit the County or the County's Licensee, employees or invitees right to have legally recognized service animals on the Leased Premises in accordance with MCPS regulation ACG-RC, attached hereto and made a part hereof as Exhibit B. The County agrees to and will require the County Licensee to, be solely responsible for the proper care of such service animals in the Leased Premises and in keeping the Leased Premises clean and free of debris and waste associated with the care and feeding of such service animals.
- O. Upon the Effective Date of the Lease, the County or County's Licensee shall be provided keys to the Building, Leased Premises, and bathroom directly from the Office of MCPS-DFM. The County or the County's Licensee shall provide prior notice to the Offices of MCPS-DFM that it will be picking up said keys. The contact is the following: David Creedon: Carpenter, Area Assistant Supervisor, Down County Service Center, Office 240-740-2626, and Cell 240-372-7156. The County agrees to, and to will require the County Licensee to: (i) close and lock all entrance doors and windows in the Leased Premises when the Leased Premises are not in use, (ii) before closing and leaving the Leased Premises at any time, close all windows and doors and secure the Leased Premises, (iii) not place any additional locks or bolts of any kind upon any of the entrance or interior doors or windows, (iv) not prop open any doors, other than for the purposes of moving furniture and equipment into or out of the Leased Premises or moving children to outdoor play areas; in all other cases, doors must remain closed. The County and the County Licensee shall not change any existing locks without prior written approval of MCPS DFM, which shall be granted or withheld in the sole discretion of MCPS DFM. In the event an approved change is made to

the existing locks, the County and/or County Licensee must promptly provide MCPS DFM with keys to the new locks. Upon the termination of this Lease, the County and/or the County Licensee must promptly return all keys of the Building, offices, and bathrooms, either furnished to, or otherwise procured by, the County and/or the County Licensee to MCPS DFM. In the event of the loss of any keys provided to the County, the County must pay the Board the cost of replacing such keys and/or locks and/or the cost of changing such locks necessitated by such loss (to be determined by the Board in its sole and absolute discretion).

- P. The County agrees to perform any and all obligations under this Lease in a timely manner.
- Q. The County agrees to repair any damage, at its sole cost and expense, to the Leased Premises caused by removal of the County's or the County Licensee's property from the Leased Premises, so that the Leased Premises are in substantially the same condition as at the commencement of the Lease Term, reasonable wear and tear excepted.
- R. The person executing this Lease on behalf of the County warrants they are authorized to do so and have the power and authority to bind the County to this Lease. The person executing this Lease on behalf of the Board warrants they are authorized to do so and have the power and authority to bind the Board to this Lease.
- S. The County agrees to verify and acknowledge that, at the time of the execution of a license agreement with the County Licensee, the County Licensee is in good standing and/or qualified to do business in the State of Maryland.
- T. The County agrees to require that the County Licensee take appropriate measures to conserve and efficiently use energy and other resources (i.e., heat, cooling, water, and utilities). The County agrees to abide by the Board's standards, policies, rules and regulations for operating and maintaining schools, as attached hereto as Exhibit C and made a part hereof, titled "Resource Conservation Policy and Guidelines"

U. The County agrees to require that the County Licensee abide by emergency orders requiring that the Building or all school facilities and central offices be closed, during which time no programs will operate in the Building, except for weather related incidents where the child care centers may remain open.

9. PARKING: Parking arrangements for the County Licensee on the site of the Building are determined by the school principal, building service manager, or other so designated administrative staff. Any vehicles parked at the site shall be at the sole risk of the County Licensee or vehicle owner. Upon the Effective Date, the Board will designate five (5) parking spaces, in writing to the County, for use by the County and the County Licensee.

10. COUNTY'S IMPROVEMENTS: The County Licensee shall be permitted to perform minor, cosmetic, non-structural, remodeling, alterations and/or improvements to the Leased Premises when requested in writing by the County Licensee and approved in writing by Montgomery County's Office of Real Estate. to be given or withheld in its sole discretion. Before performing any minor remodeling, alterations and/or improvements, the County will obtain written (which may be in the form of e-mail) approval from the MCPS Director of Facilities Management. Any work shall be performed in a manner that will cause minimal disturbance and interference to the instructional program at the school operating in the Building. Drawings or written plans for such remodeling, alterations and/or improvements may be required. Such remodeling, alterations and/or improvements are limited to installation of shelving, minor changes in office arrangements (not to include moving of the County Licensee's own furniture), the addition of electrical outlets, office repainting, carpet repairs, and other cosmetic, non-structural changes. Any such work performed under this Section 10 shall be completed in a good and workmanlike manner and in accordance with current construction and life safety codes and all other applicable Laws. No structural, electrical or mechanical systems shall be altered without the prior written consent of the Board, which such consent may be granted or withheld in its sole, but reasonable, discretion.

11. MODERNIZATION OF ENTIRE BUILDING: The Board and the County agree that if modernization of the entire Building is undertaken by the Board, the Leased Premises shall also be modernized as part of the same. The County shall share in the design and construction costs on

a pro-rata basis, using the gross square footage of the Building as the denominator. The County reserves the option of relocating the childcare facility within the Building, as space and other factors allow, for the period during which the Building is being modernized. The County will cooperate, and shall require the County Licensee to cooperate, with the Board on modernization projects by moving as required. The Board must provide the County and the County Licensee with not less than 180 days written notice of any approved modernization project to enable the participants in the County Licensee's childcare program to make alternate child care arrangements. All costs to provide a childcare facility on a temporary basis at another public school owned by the Board shall be borne by the County at the same Rental as set forth in this Lease; provided, however, if such temporary facility is not available on any Board-owned property, the Board shall obtain for the County temporary space at property owned by a third party (a "Non-Board Relocation Space") and the Board shall pay for the County and the County's Licensee's reasonable costs incurred in moving to such Non-Board Relocation Space. If the County is temporarily moved to a Non-Board Relocation Space, the County shall reimburse the Board for the cost of the rent for such Non-Board Relocation Space (but in no event in excess of the Rental otherwise due under this Lease) and the Rental otherwise due under this Lease shall be waived until such time as the County is able to reoccupy the Leased Premises.

12. PROPERTY DAMAGE AND LIABILITY INSURANCE:

- A. Notwithstanding any of the insurance requirements set forth in this Section 12, the County and the Board shall have the right to self-insure. The Parties are both members of the Montgomery County Self-Insurance Program. Section 20-37(c) of the Montgomery County Code restricts the legal defense fund to members of the fund and does not allow for outside entities. The insurance coverage for the County is subject to the limitations set forth in the Local Government Tort Claims Act (the "LGTC"), Md. Ann. Code, Cts. & Jud. Proc. §§ 5-303 et seq. (2016 Replacement Volume). The insurance coverage for the Board is subject to the limitations set forth in § 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 and during any Renewal Term. Notwithstanding anything to the contrary set forth in this Lease, each Party

agrees to notify the other Party, in writing, no later than thirty (30) days prior to any changes to such notifying Party's coverage.

- B. The County agrees, and will require the County Licensee to agree to, not keep in or upon the Leased Premises or any part thereof, any article, supplies, or equipment, which may be prohibited by the standard form of fire or hazard insurance policy, or to do any act or thing upon the Leased Premises or in or about the Building which makes void or voidable any insurance on the Leased Premises or the Building. In the event that the County or the County Licensee keeps articles on the Leased Premises that cause any increase in the insurance premiums for the Leased Premises or the Building, the County, or the County Licensee, shall pay the additional premiums as they become due and payable within ten (10) days after notice or demand therefor. The Parties agree that the County's Division of Risk Management or the County Licensee will purchase and maintain any required additional policies. The County agrees to conform to all rules and regulations from time to time established by the Maryland Insurance Rating Bureau, or any other authority having jurisdiction and will require the same of the County Licensee.
- C. The County agrees to hold harmless and hereby indemnifies the Board, from and against any and all claims, actions, damages, liability, and expense (including, reasonable attorneys' fees and court costs that may be awarded by a court of law) in connection with loss of life, personal injury, or damage to property arising from or out of any occurrence, or occasioned by any negligent act or omission or willful misconduct of the County at or upon the Leased Premises or in the Building, or the exterior areas designated for the County's use by the Board. For the purposes of this Section 12, the "County" includes Montgomery County, Maryland and its officers, directors, managers, and officials. 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. Any indemnification by the County is subject to the availability of appropriations from its funding authorities. The County shall not, however, be liable for damage or injury occasioned by the acts or omissions of the Board or its employees or agents, or the Board's failure to comply with its

obligations hereunder. Nothing herein shall be construed to abrogate, impair, or waive any defense to liability, damages limitation, or governmental immunity of the County, its officials, officers, employees, or agents pursuant to Maryland law, or otherwise.

- D. The Board agrees to hold harmless and hereby indemnifies the County, from and against any and all claims, actions, damages, liability, and expense (including, reasonable attorneys' fees and court costs) in connection with loss of life, personal injury, or damage to property arising from or out of any occurrence, or occasioned by any negligent act or omission or willful misconduct of the Board or its employees at or upon the Leased Premises, or the occupancy or use by the Board of the Leased Premises. For the purposes of this Section 12, the "Board" includes the Board of Education of Montgomery County and its officials, officers, employees, and agents. This indemnification is subject to the notice requirements and the liability and damage caps stated in the Maryland Education Article of the Annotated Code of Maryland. Nothing herein shall be construed to abrogate, impair, or waive any defense to liability, damages limitation, or governmental immunity of the Board, its officials, 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 the County or the County's Licensee or either of their respective agents, employees, contractors or invitees, or the County's failure to comply with its obligations under this Lease.
- E. The County shall deliver to MCPS DFM a certificate of insurance or other reasonably acceptable proof evidencing the coverage described above within thirty (30) days after the execution of this Lease.
- F. The County shall require the County Licensee to provide evidence of insurance coverage for the lease of the Leased Premises (not for services rendered) as follows:
- i. A policy of comprehensive general liability insurance, including fire legal liability coverage, issued by an insurance company authorized to do business in Maryland and

in a form satisfactory to the Board with coverage of not less than One Million Dollars (\$1,000,000) limit of liability per occurrence and not less than Two Million Dollars (\$2,000,000) aggregate.

- ii. Automobile Liability coverage with a limit of liability of Five Hundred Thousand Dollars (\$500,000.00) combined limit for bodily injury and property damage (if the County Licensee has any company owned vehicles);
 - iii. Workers' Compensation per State of Maryland statute and Employers' Liability coverage in at least the amounts of \$100,000 each accident, \$100,000 each employee for disease and \$500,000 policy limit for disease.
 - iv. All liability policies shall contain provisions naming the County and the Board as additional insureds, and shall contain a provision that each said policy shall not be canceled or terminated without thirty (30) days written notice to the County and to the Board per the Notice provisions in Section 30 of this Lease.
 - v. The County will require the County Licensee to provide the Board copies of the County Licensee's insurance policies upon request and certificates of insurance within thirty (30) days of the execution of the County's license agreement with the County Licensee and on an annual basis thereafter.
- G. All certificates of insurance shall be issued to: The Board of Education of Montgomery County, c/o Montgomery County Public Schools, Department of Facilities Management, 45 West Gude Drive, Suite 4000, Rockville, Maryland 20850.
- H. The County will require the County Licensee to indemnify, defend and hold harmless the County and the Board from all claims, actions, damages, liability, and expenses (including, without limitation, reasonable attorneys' fees, and court costs), arising out of any occurrence or occupancy of the Leased Premises or of the exterior use of the Building arising under any license agreement between the County and the County Licensee.
- I. If a casualty or other occurrence which should be covered by the insurance required by this Lease occurs, the County will require the County Licensee to look solely to its insurer for reimbursement, and the County Licensee shall ensure that such insurance is so written that

the County Licensee's insurer waives all rights of subrogation and shall have no cause of action against the County, the Board, or their respective agents, employees, contractors or invitees as a result of such casualty or occurrence. The County will require the County Licensee to waive and release all right of recovery which it might otherwise have against the County or the Board or their respective agents, employees, contractors or invitees by reason of any loss or damage resulting from such casualty or other occurrence.

- J. Notwithstanding anything to the contrary in this Lease, from and after the date hereof, (i) any goods, automobiles, property, or personal effects stored or placed by the County or the County Licensee in or about the Leased Premises shall be at the sole risk of such party, and the County and the County Licensee hereby expressly waive their right to recover against the Board, except to the extent of the Board's negligence or willful misconduct, and subject always to applicable Laws, and (ii) each of the Board and the County acknowledges to the other that neither Party shall be liable to the other for indirect, consequential, incidental or punitive damages or damages for lost profits, arising out of the loss or damage to any person or property of such Party, or otherwise in connection with this Lease.

13. DESTRUCTION OF LEASED PREMISES: In the event of damage or destruction of the Leased Premises by fire or any other casualty, this Lease shall not be terminated, but the Leased Premises shall be promptly and fully repaired and restored as the case may be by the Board to the extent of the Board's insurance proceeds, provided such repair and or restoration returns the Leased Premises to substantially the same condition prior to such damage or destruction. Due allowance, however, shall be given for reasonable time required for adjustment and settlement of insurance claims, and for such other delays as may result from government restrictions, and controls on construction, if any, and for strikes, national emergencies and other conditions beyond the control of the Board. It is agreed that in the event of damage or destruction, this Lease shall continue in full force and effect, except for abatement of rent as provided herein.

If the condition is such as to make the entire Leased Premises untenable, then the rent which the County is obligated to pay hereunder shall abate as of the date of the occurrence until the Leased Premises have been fully restored by the Board. Any unpaid or prepaid rent for the month

in which said condition occurs shall be prorated and credited or paid to the appropriate Party. If the Leased Premises are partially damaged or destroyed, then during the period that the County is deprived of the use of the damaged portion of said Leased Premises, the County shall only be required to pay rent prorated to reflect that portion of the Leased Premises which continues to be tenantable and appropriate for the County's use of the Leased Premises. The Board will proceed at its expense to the extent of its insurance proceeds, and as expeditiously as may be practicable to repair the damage.

Notwithstanding any of the foregoing, the Board shall not be required to expend any funds, other than insurance proceeds, to repair the Leased Premises which have been damaged by casualty. In the event that the Board elects not to repair the damage because of a lack of insurance proceeds, or because the damages are so extensive to make repair economically unfeasible, in which event and at the Board's sole option, the Board may terminate this Lease forthwith, by giving the County a written notice of its intention to terminate within sixty (60) days after the date of the casualty. No compensation, or claim, or diminution of rent other than as described above will be allowed or paid, by the Board, by reason of inconvenience, annoyance, or injury to business, arising from the necessity of repairing the Leased Premises or any portion of the Building of which they are a part.

14. HAZARDOUS MATERIALS:

- A. For purposes hereof, the term "Hazardous Materials" means Hazardous Material, Hazardous Substance, Pollutant or Contaminant, and Petroleum and Natural Gas Liquids, as those terms are defined or used in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and any other substances regulated because of their effect or potential effect on public health, public safety, or the environment, including, without limitation, PCBs, lead paint, asbestos, urea formaldehyde, radioactive materials, putrescible materials, and infectious materials. The term Hazardous Materials excludes common cleaning and maintenance supplies in sufficient quantities to permit the efficient operation of the childcare center on the Leased Premises, provided that such supplies are stored, contained and otherwise dealt with in accordance with applicable Hazardous Materials Law. The term "Hazardous Materials Law" means any present or

future federal, state, or local law, code, rule, regulation, ordinance, order, standard, permit, license, guidance document, or requirement (including consent decrees, judicial decisions and administrative orders) together with all related amendments, implementing regulations and re-authorizations, relating to industrial hygiene, environmental or unsafe conditions and/or the protection, preservation, conservation, or regulation of the environment.

- B. The County will not use or permit the Leased Premises to be used in violation of any Hazardous Materials Laws. The County assumes sole and full responsibility for, and will remedy at its cost, all such violations, by the County or County's Licensee or any of their respective agents, employees, contractors or invitees, provided that County must first obtain the Board's written approval of any remedial actions, which approval the Board may not unreasonably withhold. The County will not use, generate, release, store, treat, dispose of, or otherwise deposit, in, on, under or about the Lease Premises, any Hazardous Materials, nor will the County permit or allow County Licensee to do so, without the Board's prior written consent; provided however, that the County and its affiliates, including its County Licensee, without the Board's consent, may use toner, ordinary cleaning supplies, and other substances commonly found in educational facilities or used in the normal business operations of a childcare center as long as they are used and stored in compliance with Hazardous Materials Law.

15. BOARD'S RIGHT OF INSPECTION: The Board shall be entitled to visit and inspect the Leased Premises during reasonable hours and with at least 48 hours' prior notice but shall be under no obligation to make any visits or inspections. In the event of fire, property damage, or other emergency, the Board, its employees, or agents may have immediate access to the Leased Premises without the need to provide any notice to the County or the County Licensee to prevent further damage or injury. The Board, with at least 48 hours' prior notice shall have access to the Leased Premises at any other time for the purpose of performing any work required to be performed by the Board, or which the Board considers necessary or desirable, or for any purpose for the reasonable protection of said Leased Premises or of the Building of which the Leased Premises are a part.

16. CONDITION OF LEASED PREMISES: The County agrees to maintain the Leased Premises, including all improvements therein, in good condition and state of repair throughout the Term of this Lease and any Renewal Terms.

17. QUIET POSSESSION: The Board covenants and warrants that it has delivered to the County exclusive possession of the Leased Premises for the purposes set forth in this Lease and, so long as the County complies with all of the County's obligations under this Lease, the Board shall, provided the Lease is in full force and effect, take all necessary steps to secure and to maintain for the benefit of the County and the County Licensee the quiet and peaceful possession and enjoyment of the Leased Premises and all rights appurtenant thereto.

18. NOTICE OF ACCIDENTS AND/OR DEFECTS: The County shall give and shall require the County Licensee to give, prompt written notice to the MCPS DFM of accidents on or about or of damages or defects in the Leased Premises or the Building in which the Leased Premises are a part.

19. EMINENT DOMAIN: Upon the condemnation or exercise of the power of eminent domain by any applicable governmental authority over the Leased Premises or the Building, the Board is entitled to receive any award from a governmental authority for the fair market value of the land and improvements upon which the Leased Premises are located. Provided that such condemnation or exercise of eminent domain is not a result of the acts or omissions of the County, the County Licensee or any of their respective agents, employees, contractors or invitees, then the County shall not be precluded from claiming, proving, and receiving, in a separate claim filed by the County against the authority exercising the power of eminent domain, such sums to which the County may be entitled as compensation, provided that such a separate claim does not interfere with or reduce the Board's award. The County or the Board may terminate this Lease upon exercise of eminent domain by a condemning authority that renders the Leased Premises unfit for the use set forth in Section 5 herein.

20. EVENT OF DEFAULT AND RIGHTS OF THE PARTIES:

- A. The County shall be in default of this Lease if it fails in the payment when due of any Rent, or any other fee or charge due under this Lease, and such failure continues for ten (10) days from the date the Board delivers the County with written notice of such failure.
- B. The Board or the County shall be deemed to be in default of this Lease if either Party fails to perform any provision, covenant, condition, or agreement of this Lease (other than the payment of Rent) continuing for more than thirty (30) after the defaulting Party receives written notice from the non-defaulting Party stating the manner in which the defaulting Party has failed to perform. The defaulting Party shall be liable for any and all loss or damage resulting to the other Party from any such default to the extent permitted by applicable law.
- C. If the defaulting Party fails to cure the event of default, the non-defaulting Party may, upon giving not less than thirty (30) days' written notice, terminate this Lease and, upon such termination, the Board may re-enter the Leased Premises and have the possession of the same on the date of termination, or on any later date specified in the notice. Notwithstanding anything to the contrary set forth herein or elsewhere in this Lease, each Party shall have the rights and remedies as set forth in Section 43 of this Lease.

21. WAIVER: No waiver by the Board or the County of any breach of any covenant, condition, or agreement herein contained shall operate as a waiver of the covenant, condition, or agreement itself or of any subsequent breach thereof.

22. ASSIGNMENT AND LICENSING: The County shall not assign this Lease without the prior written consent of the Board, provided that such consent will not be unreasonably withheld, conditioned or delayed. Following the Montgomery County Health and Human Services Re-Bid process and the election of a County Licensee, the County agrees to provide a copy of any proposed license agreement to the MCPS DFM director for approval prior to presentation to a County Licensee. MCPS DFM shall approve or reject the license agreement within 10 days of receipt, in its sole, but reasonable, discretion, and the failure to do so within such 10- day period shall be deemed an approval of the license agreement by MCPS DFM. The above notwithstanding, the Board hereby approves the licensing of the Leased Premises to Bright Eyes, Inc., as the County

Licensee hereunder, the licensed childcare provider selected by the County for the sole purpose of operating a childcare program in the Leased Premises.

23. SURRENDER OF POSSESSION:

- 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 County must remove, and require the County Licensee to remove, all of its goods and effects from the Leased Premises and return to the Board all keys, locks, and other fixtures belonging to the Board, in good condition and repair, reasonable wear and tear excepted.
- B. The County shall return the Leased Premises to the Board in the same condition as received at the beginning of the Initial Term, in “broom clean” condition, reasonable wear and tear excepted.
- C. In the event that the County’s property or the County Licensee’s property is not removed from the Leased Premises within 72 hours after the termination of this Lease, the property remaining will become the property of the Board. Following termination of this Lease, the County must remove any and all signs erected by or on behalf of the County or the County Licensee and must pay for or repair any damage caused by the installation or removal of such signage. At the time of termination of this Lease, and at the Board’s option, the County must participate in a walk-through with the Board’s agent or employee to inspect the Leased Premises.

24. HOLDOVER: In the event that the County or the County Licensee shall continue to occupy said Leased Premises or any part thereof after the conclusion of the Term or any Renewal Term, the tenancy thus created shall be deemed to be upon a month-to-month basis and may be terminated by either Party giving the other not less than thirty (30) days’ written notice, to expire on the day of the month from which the tenancy commenced. During any month-to-month tenancy, both Parties shall continue to observe all agreements and covenants contained in this Lease.

25. REVIEW OF MSDE RECORDS. The County agrees that its license agreement with its County Licensee shall include a provision that gives the County and the Board written authorization to review relevant records maintained by the (MSDE), Office of Child Care, on the County Licensee's operations, as permitted by law.

26. NON-APPROPRIATION: This Lease shall terminate automatically on July 1 of any year for which the Montgomery County Council does not make an appropriation of funds for the County to pay the obligations stated in this Lease. The County shall give the Board at least thirty (30) days written notice of the lack of appropriation. The County shall not make or to be entitled to make any claims for reimbursement of any kind, except for prepaid items or as otherwise agreed to in this Lease in writing by the Parties.

27. BENEFIT AND BURDEN: All of the covenants, provisions, terms, agreements, and conditions of this Lease shall inure to the benefit of and be binding upon the Board, its successors or assigns, and upon the County, its successors or assigns.

28. THIRD PARTY BENEFICIARIES: The Parties agree that the County's Licensee is a third-party beneficiary of this Lease. Other than the County Licensee, none of the provisions of this Lease are intended for the benefit of any other third party, and no such other third party shall have the right to enforce the provisions of this Lease.

29. MAILING NOTICES: All notices required or desired to be given hereunder by either Party shall be given in writing and shall be addressed as follows:

COUNTY:

Montgomery County, Maryland
Department of General Services
Office of Real Estate
101 Monroe Street, 9th Floor
Rockville, Maryland 20850
Attn: Director of Real Estate

BOARD:

Board of Education of Montgomery County
c/o Montgomery County Public Schools
Department of Facilities Management
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, 3rd Floor
Rockville, Maryland 20850
Attn: County Attorney

Montgomery County Public Schools
Office of the General Counsel
850 Hungerford Drive, Room 156
Rockville, MD 20850
Attn: General Counsel

30. COMPLIANCE WITH LAWS: The Parties agree to promptly comply with, observe, and perform all of the requirements of all applicable Federal, State, County and Local statutes, ordinances, rules, orders, and regulations in effect during the Term or any Renewal Term (collectively, “Laws”). The County shall require the County Licensee to comply with all applicable statutes, ordinances, rules, regulations and Board policies and MCPS regulations which have been provided to the County in writing and that are available for review at www.montgomeryschoolsmd.org/departments/policy/.

31. NON-DISCRIMINATION: The County agrees to comply with and will require the County Licensee to comply with the non-discrimination policies of the Board and all applicable laws regarding discrimination, including employment discrimination. The County 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, gender identity, or genetic status and to require the County Licensee, other agents, or related parties to follow the same non-discrimination requirements.

32. MARYLAND LAWS REGARDING SEX OFFENDERS AND PERSONS WITH UNCONTROLLED ACCESS TO CHILDREN: Maryland Law requires that any person who enters into a contract with a local school system “may not knowingly employ an individual to work at a school” if the individual is a registered sex offender. Under § 11-722 of the Criminal Procedure Article of the Maryland Code, an employer who violates this requirement is guilty of a misdemeanor and, if convicted, may be subject to up to five year’s imprisonment and/or a \$5000

fine. Effective July 1, 2015, amendments to § 6-113 of the Education Article of the Maryland Code further require that a contractor or subcontractor for a local school system may not knowingly assign an employee to work on school premises with direct, unsupervised, and uncontrolled access to children, if the employee has been convicted of, or pled guilty or nolo contendere to, a crime involving:

- A. A sexual offense in the third or fourth degree under § 3-307 or § 3-308 of the Criminal Law Article of the Maryland Code or an offense under the laws of another state that would constitute an offense under § 3-307 or § 3-308 of the Criminal Law Article if committed in Maryland;
- B. Child sexual abuse under § 3-602 of the Criminal Law Article, or an offense under the laws of another state that would constitute child sexual abuse under § 3-602 of the Criminal Law Article if committed in Maryland; or
- C. A crime of violence as defined in § 14-101 of the Criminal Law Article, or an offense under the laws of another state that would be a violation of § 14-101 of the Criminal Law Article if committed in Maryland, including: (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking; (11) armed carjacking; (12) sexual offense in the first degree; (13) sexual offense in the second degree; (14) use of a handgun in the commission of a felony or other crime of violence; (15) child abuse in the first degree; (16) sexual abuse of a minor; (17) an attempt to commit any of the crimes described in items (1) through (16) of this list; (18) continuing course of conduct with a child under § 3-315 of the Criminal Law Article; (19) assault in the first degree; (20) assault with intent to murder; (21) assault with intent to rape; (22) assault with intent to rob; (23) assault with intent to commit a sexual offense in the first degree; and (24) assault with intent to commit a sexual offense in the second degree.

The County shall require the County Licensee to submit within no later than thirty (30) days after execution of the License Agreement, a letter confirming that its direct employees and those

of any subcontractors and/or independent contractors assigned to perform work in the Leased Premises meet the obligations set forth above. Additionally, the County shall require the County Licensee to confirm that it continues to meet this obligation throughout the Term and/or when there are changes in the workforce that the County Licensee and/or its subcontractors use to operate its childcare program in the Leased Premises. The term “workforce” includes all of the County Licensee’s direct employees, subcontractors, and their employees, and/or independent contractors and their employees that the County Licensee uses to operate its childcare program in the Leased Premises.

33. MARYLAND CRIMINAL BACKGROUND CHECK LAW: The County shall require that its County Licensee comply with Maryland laws regarding required criminal background checks. § 5-551 of the Family Law Article of the Maryland Code requires that any local school system or childcare center, and any contractor or subcontractor of a local school system or childcare center, ensure that any individuals in its workforce undergo a criminal background check, including fingerprinting, if the individuals will work in a school or childcare facility in circumstances where they have direct, unsupervised, and uncontrolled access to children. Upon the execution of the County’s license agreement with the County Licensee, the County shall require the County Licensee to:

- A. Implement the background check process in accordance with Maryland law and MSDE childcare licensing requirements as set forth in Code of Maryland Regulations 13A.16.06;
- B. Comply with any determination by MSDE to prohibit the employment of an individual based on the criminal background check;
- C. Ensure that all individuals in the County Licensee’s workforce receive training on recognizing, reporting, and preventing child abuse and neglect in accordance with Code of Maryland Regulations 13A.16.06.02; and
- D. Provide all individuals in the County Licensee’s workforce with an identification badge to be worn at all times in the Building.

34. PESTICIDES USE IN SCHOOL: The Board has implemented a regulation regarding integrated pest management in schools, labeled ECF-RB, attached hereto and incorporated herein as Exhibit D in accordance with the Annotated Code of Maryland, Agriculture Article. The County agrees to comply with, and will require the County Licensee to comply with, the integrated pest management program established for the Building within its Leased Premises by following the procedures outlined in the regulation.

35. RECYCLING: All public facilities are required by the Montgomery County Government to recycle 50 percent of all solid waste material generated. The Board has implemented a regulation regarding recycling, labeled ECF-RC, attached hereto and incorporated herein as Exhibit E. The County agrees to comply with and will require the County Licensee to comply with the recycling plan for the Leased Premises by collecting recyclable waste material generated by its operation into appropriate receptacles provided by the County or the County Licensee for this purpose.

36. NO BROKERS: The Board and the County each represent and warrant to the other that it has not retained any broker, agent, or finder to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fee.

37. 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. The County assures the Board that it shall adhere to its own ethics policies and regulations pursuant to Chapter 19A and Section 11B-52 of the Montgomery County Code (2014), as amended.

38. NO PARTNERSHIP: Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture of or between the Board and the County, or to create any other relationship between the Board and the County other than that of landlord and tenant.

39. CERTAIN OBLIGATIONS TO SURVIVE: The provisions set forth in Section 12, Section 14, Section 20, and Section 45, as well as any other of the County's obligations and warranties,

which directly or indirectly are intended by their nature or by implication to survive the County's performance, including the County's obligation to pay Rent and any other sums of money due and payable to the Board under the terms of this Lease, shall survive the expiration, cancellation, or earlier termination of the Lease. Section 26, Non-Appropriation, is not affected by this Section 39.

40. FORCE MAJEURE: Neither Party shall be required to perform its obligations under this Lease, nor shall it be liable for loss or damage for failure to do so, where such failure arises from or through acts of God, global pandemic (such as COVID-19), strikes, lockouts, labor difficulties, explosions, sabotage, accidents, riots, civil commotions, acts of war, results of any warfare or warlike conditions in this or any foreign country, fire or casualty, energy shortage, or other causes beyond its reasonable control, unless such loss or damage results from its willful misconduct or negligence. Failure to meet monetary obligations shall not be excused by Force Majeure.

41. INVALIDITY OF PARTICULAR PROVISIONS: If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remaining terms and provisions of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

42. ENTIRE AGREEMENT: This Lease contains all of the agreements and conditions made between the Parties and may not be modified in any manner other than by an agreement in writing duly executed by the Parties or their respective successors in interest.

43. RIGHTS AND REMEDIES: In addition to any and all rights and remedies specifically mentioned in this Lease, the Parties shall have all rights and remedies granted by Law or in equity. Resort to one remedy shall not be construed as a waiver of any other remedy. Failure by the Parties to resort to any or all of their respective rights or remedies shall not be considered to be a waiver of such rights or remedies, nor to be acquiescence of any Party in any action or default.

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

WITNESS:

BOARD:

THE BOARD OF EDUCATION OF
MONTGOMERY COUNTY

By: bandra L. Japel

By: Monifa B. McKnight

Monifa B. McKnight, Ed.D
Superintendent of Schools

Date: 7.11.2022

WITNESS:

COUNTY:

MONTGOMERY COUNTY, MARYLAND

By: Fariba Kassiri

By: Fariba Kassiri

Fariba Kassiri, Deputy
Chief Administrative Officer

Date: 6/2/22

APPROVED AS TO FORM & LEGALITY RECOMMENDED:
OFFICE OF COUNTY ATTORNEY

By: Neal Anker

Neal Anker
County Attorney Associate

By: Cynthia L. Brenneman

Cynthia L. Brenneman, Direct
Office of Real Estate

Date: 5/25/2022

Date: 05-24-2022

44. CAPTIONS: The captions, numbers and index appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe or describe the scope or intent of any Section, nor in any way affect this Lease.

45. GOVERNING LAW: This Lease shall be governed by and enforced under the laws of the State of Maryland.

46. WAIVER OF JURY TRIAL: THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ONE AGAINST THE OTHER WITH RESPECT TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF THE COUNTY AND THE BOARD HEREUNDER, THE USE OR OCCUPANCY OF THE LEASED PREMISES BY THE COUNTY OR ITS COUNTY LICENSEE, OR ANY CLAIM OF INJURY OR DAMAGE, INCLUDING THE TERMINATION OF THIS LEASE OR THE COUNTY LICENSEE'S EVICTION FROM THE LEASED PREMISES.

47. COUNTERPARTS: This Lease may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same instrument. Each Party may rely on facsimile signature pages if such facsimile pages were originals.

[SIGNATURE PAGE TO FOLLOW]

EXHIBIT A
LEASED PREMISES

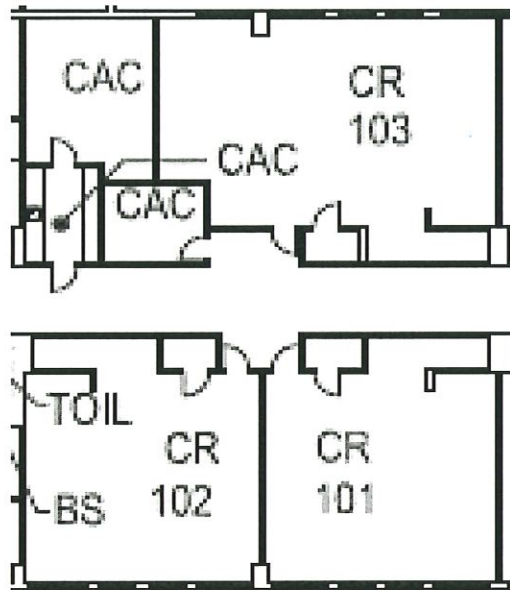


EXHIBIT B
MCPS REGULATION ACG-RC
“Service Animals in Schools”

EXHIBIT C

RESOURCE CONSERVATION POLICY AND GUIDELINES

BOARD OF EDUCATION POLICY ON ENERGY CONSERVATION

- **ELECTRICITY GUIDELINES**
 - **HEATING GUIDELINES**
- **FOOD PREPARATION GUIDELINES**
 - **WATER USE GUIDELINES**

EXHIBIT D
MCPS REGULATION ECF-RB
“Pesticides Use in Schools”

EXHIBIT E
MCPS REGULATION ECF-RC
“Recycling”

