

MEMORANDUM OF UNDERSTANDING  
RELATING TO COOPERATIVE USE SPACE  
BETWEEN  
THE MAYOR AND CITY COUNCIL OF BALTIMORE CITY  
Acting by and through the  
DEPARTMENT OF RECREATION AND PARKS  
AND  
THE BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS

This MEMORANDUM OF UNDERSTANDING RELATING TO COOPERATIVE USE SPACE (this “MOU”) between the Baltimore City Board of School Commissioners (the “School Board”) and Mayor and City Council of Baltimore City (the “City”) acting by and through the Department of Recreation and Parks (the “Department”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 2016.

Recitals

WHEREAS, pursuant to the Baltimore City Public Schools Construction and Revitalization Act of 2013 (Chapter 647 of the Laws of Maryland of 2013)(the “Act”), the School Board, the City, the Maryland Stadium Authority, and the Interagency Committee on School Construction entered into a Memorandum of Understanding for the Construction and Revitalization of the Baltimore City Public Schools on September 25, 2013 (the “ 21<sup>st</sup> Century Schools MOU”); and

WHEREAS, the City pledged all revenues and receipts from the Beverage Container Tax imposed by Baltimore City Ordinance No. 12-45, ten percent of Video Lottery Facility rent, and contributed the City’s share of proceeds of table games at the Video Lottery Facility in the City to the payment of revenue bonds authorized by the Act; and

WHEREAS, Section 8 of the 21<sup>st</sup> Century Schools MOU requires each renovation and replacement school facility to include Cooperative Use Space (defined below) in a school building which includes, but not limited to, community meeting, health, and recreational space which serves school children and the general community; and

WHEREAS, the Department will operate recreational and other programming in the renovated and replacement school facilities constructed pursuant to the Act; and

WHEREAS, Section 8C and 8G of the 21<sup>st</sup> Century Schools MOU direct the City and School Board to enter into this MOU to further define access, operations, costs, security, liability insurance, permit processes, maintenance and other matters relating to recreation centers and community programs offered by the City in Cooperative Use Spaces.

NOW, THEREFORE in consideration of the premises and the mutual obligations of the parties hereto, the School Board and the City agree as follows:

Section 1. Scope. This MOU governs operation of Cooperative Use Space only in School Buildings constructed pursuant to Baltimore City Public Schools' ("City Schools") 21<sup>st</sup> Century Building Plan. The School Buildings are identified in Schedules 1 (projects funded in phase 1) and 2 (unfunded 21<sup>st</sup> Century School Buildings), attached hereto.

Section 2. Definitions

"City Schools" means the Baltimore City Public Schools System administered by the Chief Executive Officer under the direction and supervision of the School Board.

"City" means the Mayor and City Council of Baltimore City.

"Cooperative Use Space" means, but is not limited to, recreation centers, athletic fields and tracks; playgrounds; game courts; gymnasiums; pools and associated locker rooms; designated multi-purpose and resource rooms; cafeterias; libraries; auditoriums, and bathrooms located in a School Building, that is allocated to serve school children and the general community.

"Department" means the Baltimore City Department of Recreation and Parks.

"Dedicated Use Space" means space which is utilized for a specific use by an entity other than City Schools.

"Hours of Operation by the Department" shall mean the hours of operation of Scheduled Use Space by the Department which exceed the hours of regular use by the School Board for school purposes.

"Maintenance" means all activities that are performed at a School Building to: (a) continue operation or upkeep (including custodial services) or (b) prevent deterioration.

"Scheduled Use Space" means Cooperative Use Space, which is reserved for use by the Department during a specific time.

"School Building" means a public school facility, which is used primarily for educational instruction, which was constructed as Renovation or a Replacement as defined under the 21<sup>st</sup> Century School MOU.

Section 3. Term. This MOU will begin on the dated date of this MOU and will continue for the useful lives of the School Buildings constructed pursuant to the 21<sup>st</sup> Century Building Plan unless sooner terminated.

Section 4. Cooperative Use Space

- A. Public Access to Cooperative Use Space: All Cooperative Use Space other than Dedicated Space or Scheduled Use Space shall be made available to members of the public and community organizations pursuant to School Board Policy and Regulations FKA, KCB, FKA-RA and KCB-RA, as amended, available at <http://www.boarddocs.com/mabe/bcpss/board.nsf/public.>, relating to Public Use of Board School Facilities and City Schools' permitting system.
- B. Dedicated Use Space: Dedicated Use Space shall be made available on the terms set forth in Dedicated Use Space Agreements for each School Building.
- C. Scheduled Use Space: Scheduled Use Space shall be made available to the Department on a priority basis over other users on the terms set forth in the individual Scheduled Use Space License Agreements for each School Building ( the "License Agreement"). The Department will use best efforts to cooperate with the School Board's partners under existing agreements as of the date of this MOU. The Form for Scheduled Use Space License Agreement is set forth in Exhibit A, attached hereto.

Section 5. Costs. The parties agree that the costs for the operation of programming of the Cooperative Use Space under the auspices of the Department shall be the responsibility of the Department.

Section 6. Criminal Background Checks. Only City employees and volunteers who have successfully completed a criminal background check in accordance with Maryland law may have access to the Cooperative Use Space. The City will not knowingly employ any individual to work at the Cooperative Use Space who is a registered sex offender. The cost associated with criminal background checks for the Department employees and volunteers who will have access to the school will be borne by the Department.

Section 7. Maintenance. Department personnel shall perform regular custodial services during Hours of Operation by the Department. During the first year of each License Agreement, the Department shall pay an annual maintenance fee of \$.50 per square foot of Scheduled Use Space to cover the costs of normal usage. This annual maintenance fee will increase 2.5 percent per year during the term of the License Agreement. The average annual maintenance cost for each building will be substituted for this calculation in subsequent years after the first full year of operation by the Department. The School Board shall bill the Department quarterly and the Department shall have 45 days to remit payment to the School Board. The costs of snow removal shall be paid by the School Board unless the Department specifically requests additional snow removal services. Additional snow removal services will be billed to the Department at the rate of \$45.00 per hour.

Section 8. Restrooms. Access to restrooms adjacent or near to Cooperative Use Spaces shall be provided to the Department and everyone participating in and assisting with the Department's programming of the Cooperative Use Spaces.

Section 9. Security. City Schools' Police will provide any additional security services requested by the Department for Scheduled Use Spaces. In the event that the Department requests additional security services, the costs of such security shall be paid by the Department.

Section 10. Supervision and Conduct. The Department shall be responsible for the supervision and control of its employees, volunteers and invitees and their activities on the Scheduled Use Space during agreed upon hours of use.

Section 11. Utilities. The School Board shall provide for the same customary and appropriate heating, air conditioning, lighting, telephone, internet, water and electrical services in Cooperative Use Spaces as provided when the Scheduled Use Space is operated by the School Board during regular school hours. During the first year of each License Agreement, the Department shall pay for the costs of utilities at the rate of \$0.000440183 per square foot of Scheduled Use Space multiplied by the Hours of Operation for each building. The average utility cost for each building will be substituted for this calculation in subsequent years after the first full year of operation by the Department. The School Board shall bill the Department quarterly and the Department shall have 45 days to remit payment to the School Board.

Section 12. Repairs.

A. The Department shall be financially responsible for the repair of damage to Scheduled Use Space or School Buildings caused by the Department's employees or agents.

B. Inspection and Notification. The School Board will promptly inspect each Cooperative Use Space site within 12 hours after use by the Department and report any damage to the Department's designated employee within 48 hours after inspection. Such notification shall consist of sending written notification with supporting documentation by letter, facsimile, or email to the Department's designated employee identifying the Cooperative Use Space, date of detection, name of inspector, description of damage and estimated or fixed costs of repair or property placement.

C. The School Board agrees to make repairs within the estimated and/or fixed costs agreed upon. If it is mutually determined that the Department is responsible for the damage, then the Department agrees to reimburse the School Board at the reasonable estimated and/or fixed costs agreed upon. The School Board shall have the right to make immediate emergency repairs or replacements of property without voiding the Department's right to disagree.

D. Reimbursement Procedure. The School Board shall send an invoice to the Department's designated representative within 5 business days of completion of repairs or

replacement of damaged property. The invoice shall itemize all work hours, equipment and materials with cost rates as applied to the repair work. If the repair is completed by a contractor, a copy of the contractor's itemized statement shall be attached including any backup documentation requested by the Department. Actual costs shall be reimbursed if less than estimated and/or fixed costs. The Department shall reimburse the School Board within 60 days from receipt of such invoice.

Section 13. Compliance with Law. During their respective use of the Scheduled Use Space, the Department and School Board shall comply with all applicable federal, state and local laws and regulations, including those issued by the Baltimore City Fire Department and Baltimore City Health Department.

Section 14. Insurance. The Department shall have the right to carry self-insurance that covers the Cooperative Use Spaces and activities set forth in this MOU.

Section 15. Indemnity:

A. It is the intent of the parties to this MOU that each party is responsible for its own actions and omissions under this MOU and neither party shall hold the other party liable with respect to any matter not arising from the other party's actions or omissions.

B. The School Board shall defend and hold harmless the City, its elected/appointed officials, employees, agents and volunteers from any and all claims, demands, suits and actions, including reasonable attorneys' fees and court costs, connected therewith, brought against the City, its elected/appointed officials, employees, agents and volunteers arising as a result of any direct or indirect, willful or negligent act or omission of the School Board, its elected/appointed officials, employees, agents, or volunteers, EXCEPT for activities caused by the sole negligent act or omission of the City, its elected/appointed officials, employees, agents and volunteers arising out of this MOU. The School Board's liability pursuant to this provision is governed by the provisions and limits of Sections 4-105 and 4-106 of the Education Article, Annotated Code of Maryland. The obligations of this section shall survive this MOU.

C. The City shall defend and hold harmless the School Board, its elected/appointed officials, employees, agents and volunteers from any and all claims, demands, suits and actions, including reasonable attorneys' fees and court costs, connected therewith, brought against the School Board, its elected/appointed officials, employees, agents and volunteers arising as a result of any sole direct or indirect, willful or negligent act or omission of the City, its elected/appointed officials, employees, agents and volunteers arising out of this MOU. The City's liability pursuant to this provision is subject to available appropriations and shall be limited to an amount not greater than the maximum liability of a local government under the Local Government Tort Claims Act, Section 5-301 of the Courts and Judicial Proceedings Article, Annotated Code of Maryland. The obligations of this section shall survive this MOU.

Section 16. Termination. This MOU may only be terminated upon the written agreement of the School Board and the City.

Section 17. Signage. The Department shall be permitted to provide signage of reasonable size and design consistent with the scale and design of the 21<sup>st</sup> Century Schools to be located on or at School Buildings which clearly identifies the Department of Recreation and Parks recreation facilities subject to the prior approval of the School Board.

Section 18. Notices. All notices or communications under this MOU by either Department or the School Board shall be sufficiently given or delivered by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service, or (c) hand-delivery (if receipt is evidenced by a signature of the addressee or authorized agent), and addressed as follows:

City Schools:

Dr. Gregory E. Thornton, Chief Executive Officer  
200 E. North Avenue  
Baltimore, Maryland 21202

Department:

Ernest W. Burkeen, Jr., Director  
Department of Recreation and Parks  
Druid Hill Park, 3001 East Drive  
Baltimore, Maryland. 21217

City Solicitor  
Baltimore City Department of Law  
City Hall  
Baltimore, Maryland 21202

Section 19. Entire Agreement. This MOU constitutes the entire and full understanding between the parties hereto and neither party shall be bound by any representations, statements, promises or MOUs not expressly set forth herein. The recitals and attachments appended hereto or delivered pursuant this MOU, together withal documents incorporated by reference therein, form an integral part of this MOU and are hereby incorporated into this MOU wherever reference is made to them to the same extent as if they were set out in full at the point at which such reference is made.

Section 20. Waiver. The waiver of any term of this MOU, or the failure of the parties to insist on strict compliance and prompt performance of any terms of this MOU, followed by the acceptance of such performance thereafter, shall not constitute or be construed as a waiver or

requirement of any right by either of the parties to enforce all of the terms strictly in the event of a continuous or subsequent default.

Section 21. Amendment. Any and all modifications to the terms of this MOU must be by a written Amendment executed and approved in the same manner as this MOU.

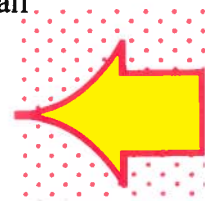
Section 22. Severability. Each provision of this MOU shall be deemed a separate, severable, and independently enforceable provision. The invalidity or breach of any provision shall not cause the invalidity or breach of the remaining provisions or of the MOU, which shall remain in full force and effect.

Section 23. No Sub-Contract or Assignment. The parties may not subcontract or assign any duties under this MOU without the prior written consent of the other party.

Section 24. Governing Law. This MOU is made in the State of Maryland and Maryland law shall govern its interpretations, performance and enforcement, exclusive of its conflict of laws rules. Furthermore, the parties agree that any suits or actions brought by either party against the other shall be brought in a court of competent jurisdiction in Baltimore City.

Section 25. Counterparts. This MOU may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

In Witness Whereof, each party hereto has caused this MOU to be executed on its behalf by its duly authorized representatives, the day and year first written above.



WITNESS: MAYOR AND CITY COUNCIL OF BALTIMORE

\_\_\_\_\_  
Custodian of Seal

By: \_\_\_\_\_  
Mayor

Approved for form and legal sufficiency this  
5<sup>th</sup> day of February, 2016

James Lee  
Chief Solicitor

Approved by the Board of Estimates this \_\_\_ day of \_\_\_\_, 2016

\_\_\_\_\_  
Clerk

WITNESS: BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS

My [Signature]  
Custodian of Seal

By: [Signature]  
Chief Executive Officer

Approved for form and legal sufficiency this  
4<sup>th</sup> day of February, 2016

Shawn A. Matlock  
Office of Legal Counsel  
Shawn A. Matlock



## SCHEDULE 1

Proposed Recreation Spaces: Schedule 1A	
<i>These school building projects are funded in Phase 1 of the 21<sup>st</sup> Century Schools Plan.</i>	
1	Fort Worthington ES
2	John Eager Howard ES
3	Frederick ES
4	Northwood ES
5	Mora Crossman/John Rurah ES/MS
6	Calvin Rodwell ES
7	Mary E Rodman ES

## SCHEDULE 2

Proposed Recreation Spaces: Schedule 2	
<i>These school building projects are proposed pending funding.</i>	
1	Gwynns Falls ES
2	John D Gross/Edgecomb Circle ES/MS
3	Mt. Royal ES
4	Fred B Leidig/Beechfield ES/MS
5	Robert C Marshall/Templeton ES
6	Collington Square ES
7	Carroll F Cook/Armistead Gardens ES/MS
8	Gardenville/Hazelwood ES/MS
9	James McHenry ES
10	Bentalou/Mary Winterling ES
11	Lakeland ES/MS
12	Woodhome ES
13	Cecil-Kirk ES
14	Coldstream ES
15	Ella Bailey/Thomas Johnson ES/MS

**EXHIBIT A**

**FORM OF  
SCHEDULED USE LICENSE AGREEMENT**

Relating to

[NAME OF SCHOOL/FORT WORTHINGTON ELEMENTARY SCHOOL]

This Scheduled Use Agreement (“Agreement”) between Baltimore City Board of School Commissioners (“School Board” or “City Schools”) and the DEPARTMENT OF RECREATION AND PARKS (the “Department”) OF MAYOR AND CITY COUNCIL OF BALTIMORE (“City”) is dated \_\_\_\_\_, 2016 (“Effective Date”).

WHEREAS, the City and School Board have entered into the Memorandum of Understanding relating to Cooperative Use Space for Recreational and Community Use of School Facilities on \_\_\_\_\_, 2016 (“Master Agreement”).

WHEREAS, the Department desires to use the Scheduled Use Space (defined below) for purposes of recreational programming.

NOW THEREFORE, City Schools grants to Department the right to use the Cooperative Use Space located at [NAME OF SCHOOL/FORT WORTHINGTON ELEMENTARY SCHOOL] subject to the following terms and conditions.

Section 1. Scheduled Use Space. City Schools operates School Building # [\_\_\_\_\_] located at [ADDRESS/2701 E Oliver St, Baltimore, MD 21213], the [NAME OF SCHOOL/FORT WORTHINGTON ELEMENTARY SCHOOL] (the “School Building”). The Department shall have the right to use the Scheduled Use Space, described in Exhibit A attached hereto, in the School Building. A floor plan showing the Scheduled Use Space is attached.

Section 2. Term. This Agreement will begin on the dated date of this Agreement and will continue for the useful life of the School Building constructed pursuant to the 21st Century Building Plan unless sooner changed or terminated.

Section 3. Hours of Access. The Department shall have the right to use the Scheduled Use Space during the hours set forth in Exhibit A, attached hereto.

Section 4. Access and Security. The School Board will provide a school custodian to open and close the Scheduled Use Space and/or access codes, keys, security cards, and

training, as needed, to Department employees responsible for opening and closing the Scheduled Use Space.

Section 5. Use of Equipment. The City shall have the right to use the equipment identified on Exhibit A, attached hereto, during the term of this Agreement.

Section 6. [INSERT Special Provisions relating to this Scheduled Use Space]

Section 7. Communications. Planning Meetings. Communications relating to the Scheduled Use Space shall be made through Representatives of each of the parties identified below. By the 15<sup>th</sup> April, August, and December of each year, representatives of the School Board and the Department shall confer to evaluate the programs and procedures and to make any changes to improve the availability, operations, functionality, and scheduling of the Scheduled Use Space.

Section 8. Permits. The Department shall issue permits for use of the Schedule Use Space during hours of operation by the Department in accordance with Department policy and regulations.

City Schools:

[NAME]  
200 E. North Avenue, Room \_\_\_\_  
Baltimore, MD 21202  
[PHONE]  
[EMAIL]

City:

Ernest J. Burkeen, Jr., Director  
Department of Recreation and Parks  
Druid Hill Park  
3001 East Dr.  
Baltimore, Md. 21217  
[EMAIL]

Either party shall update contact information as needed.

Section 9 Applicable Law. This Agreement shall be construed and interpreted according to the laws of the State of Maryland.

Section 10 Entire Agreement. This Agreement, including Exhibit A, attached hereto, is entered into pursuant to the Master Agreement and is intended to implement and supplement the requirements of the Master Agreement.

Section 11 Relationship of the Parties. The parties do not intend that any agency or partnership relationship be created between them by this Agreement.

Section 12 Assignment. Neither party shall assign its rights under this Agreement without the prior written consent of the other party.

Section 13 Amendment. This Agreement may be modified upon the written agreement of the parties.

[The remainder of this page is intentionally blank.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on the dates below.

Board of School Commissioners

Mayor and City Council of Baltimore  
Acting by and through the Department of  
Recreation and Parks

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Dr. Gregory E. Thornton

Name: Ernest W. Burkeen, Jr.

Title: CEO

Title: Director

Date:

Date:

Approved as to for Form and  
Legal Sufficiency

\_\_\_\_\_  
Office of Legal Counsel

Approved as to for Form and  
Legal Sufficiency

\_\_\_\_\_  
Chief Solicitor

**Exhibit A to Scheduled Use Agreement Relating to [Ft Worthington]**

**SCHEDULED USE SPACE:**

[IDENTIFY SPECIFIC FACILITIES TO BE USED: GYM, MULTIPURPOSE ROOM, CAFETERIA, STAGE, ARTS AND CRAFTS ROOM, FIELDS, COURTS, PLAYGROUND, KITCHEN, OFFICES, STORAGE SPACE FOR LAPTOPS, SPORTS ETC. FLOOR PLANS TO BE PROVIDED]

**HOURS OF USE:**

**SCHOOL YEAR**

Monday-Friday 1 p.m.-9 p.m.

Saturday-Sunday 9 a.m.-9 p.m.

**SUMMER**

Academic Enrichment Summer Camp

Monday-Friday 8:30 a.m. -5:30 p.m.

Evening Programming

Monday-Friday 6 p.m. – 8 p.m.

Saturday-Sunday 9 a.m.-9 p.m.

On days that schools are scheduled to be closed, the Department operates on an 8a.m.-8p.m. schedule. On inclement weather days, the Department operates 12 p.m.-8 p.m. weather permitting.

**EQUIPMENT FOR USE:**

[TO BE PROVIDED, for example, use of computer labs and sports equipment]