

STATE OF NORTH CAROLINA

FACILITIES AGREEMENT

COUNTY OF MADISON

**THIS FACILITIES AND SERVICES AGREEMENT**, (the "Agreement") is entered into to be effective the 1st day of July, 2022 (the "Effective Date"), by and between Madison County Schools ("MCS"), and the Community Action Opportunities ("CAO"), a North Carolina non-profit corporation; MCS and CAO being sometimes hereinafter referred to collectively as the "Parties", and singularly as a "Party".

WITNESSETH:

**WHEREAS**, MCS operates public schools in Madison County, North Carolina (collectively the "Services"); and,

**WHEREAS**, MCS is in need of a modular classroom at Hot Springs Elementary School as a result of K-3 class size legislation and is in the process of developing additional classroom space that will take longer than one year to open, and desires to utilize one modular classroom located at the Jerrie Honeycutt Child Development Center located at 830 Bailey Street Mars Hill, NC 28754, on the campus of Mars Hill Elementary School. CAO is not currently utilizing the modular classroom as a result of lack of expansion funds that had been anticipated and is willing to provide such modular classroom for MCS use subject to the terms and conditions contained herein; and

**NOW, THEREFORE**, in consideration of the premises, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Statement of Intent**. Nothing in this Agreement is intended to or shall be construed to constitute or establish any agency or fiduciary relationship, joint venture or partnership between the Parties. Neither Party shall have the right or authority to act for or on behalf of the other Party except as contemplated by this Agreement. The Parties desire by this Agreement to establish a written agreement regarding shared facilities between the two Parties.
2. **MCS Services**. During the Term hereof, MCS shall perform the following contractual duties:
  - a. Move the modular classroom from the Mars Hill Elementary School campus to the Hot Springs Elementary School campus; and
  - b. Be responsible for all costs associated with moving the modular classroom to the Hot Springs Elementary campus; and
  - c. Keep the modular classroom and attached equipment in good working order
  - d. Be responsible for all costs associated with the return of the modular classroom to the Mars Hill Elementary campus in the same or better condition; and

- e. Provide CAO within five (5) business days of execution of this contract, a Certificate of Insurance evidencing appropriate insurance and liability coverage for the initial term of this Agreement.
3. **CAO Services.** During the Term hereof, CAO shall provide the following facilities to MCS:
    - a. **Facilities.** Use of one modular classroom suitable for classroom activities.
    - b. MCS shall be given possession of the modular classroom on the Effective Date to be returned on the completion of the agreement
  5. **Term.** The initial term of this Agreement shall commence on the Effective Date, and unless earlier terminated as provided herein, shall continue in full force and effect until June 30, 2023. The term may be extended based upon agreement by both parties.
  6. **Termination.** This Agreement may be terminated prior to expiration of the Initial Term as follows:
    - a. **Agreement.** The Agreement is terminated upon the mutual agreement of the Parties;
    - b. **For Cause.** Either Party terminates this Agreement at any time for cause. "Cause" shall mean a default by either Party in the performance of its obligations under this Agreement which remains uncured for a period of thirty (30) days after written notice is given by the non-defaulting Party detailing the nature of any such default. In the event that such default is not cured within said thirty (30) day period after notice is given, the Agreement shall terminate immediately upon notice of failure to cure such default.
    - c. **Bankruptcy.** This Agreement shall be deemed immediately terminated, without the requirement of further action, or notice by either Party, in the event that either Party shall become subject to Voluntary or involuntary bankruptcy, insolvency, receivership or like proceedings pursuant to applicable state or federal law.
  7. **Effect of Termination.** At the expiration, or earlier termination, of the Term, MCS shall return the modular classroom to the Mars Hill Elementary School campus and surrender the facilities occupied by MCS in a good and broom-clean condition, reasonable wear and tear excepted. MCS shall promptly repair any damage to such facilities caused by the removal of any furniture, trade fixtures, or other personal property removed by MCS.
  8. **Alteration of Facilities.** MCS shall make any interior alterations, additions and improvements in and to the classroom as needed and will return the classroom in the same or better as the initial interior at time of the Effective Date. Alterations shall be completed in a good and workmanlike manner and in accordance with all valid requirements of municipal or other governmental authorities.

9. **E-Verify & Iran Divestment Certification.** The Contractor hereby certifies that it shall comply with the requirements of G.S. Chapter 64, Article 2 (the “E-Verify Requirements”). The Contractor hereby certifies that it is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 147-86.58, the Iran Divestment Act of 2015 (S.L. 2015-118). In the event the Contractor utilizes a subcontractor to perform the Work of this Contract, the Contractor shall require any such subcontractor to comply with the E-Verify Requirements and the Iran Divestment Act.

10. **Notice.** All notices required to be given hereunder shall be in writing and shall be deemed properly given upon deposit at a United States Post Office depository by registered or certified mail, postage prepaid, return receipt requested as follows:

To CAO:  
Community Action Opportunities  
Brian Repass, Children, Family and Community Partnerships Department Director  
25 Gaston Street  
Asheville, NC 28801

To MCS:  
Madison County School System  
Dr. Will Hoffman, Superintendent  
5738 Hwy 25/70,  
Marshall, NC 28753

Either Party may change the address to which any notice should be sent by written notification to the other Party in the manner set forth in this Section 11.

11. **Hold Harmless.** MCS shall release and hold CAO harmless against all liabilities and loss, including but not limited to damages, costs, judgments, expenses and reasonable attorney’s fees, for personal injury and/or property damage arising out of or related to MCSs activities, save and excepting therefrom any liabilities and losses that arise out of or related to the sole negligence of CAO.

12. **Assignment.** This Agreement may not be assigned by MCS or CAO, except upon the other's written consent, such consent not to be unreasonably withheld.

13. **Invalidity of Provision.** In the event that any provision of this Agreement is found to be illegal, invalid, or unenforceable, it shall be ineffective to the extent of such illegality, invalidity or unenforceability without invalidating the remaining provisions of the Agreement.

14. **Governing Law.** This Agreement shall be governed by the laws of the State of North Carolina and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service, and subject to the exclusive jurisdiction of the state courts located in Madison County North Carolina and federal courts located in Asheville, North Carolina. Where this

Agreement is in conflict with state or federal law, those laws shall be superior to the provisions of this Agreement.

15. **Non-Waiver of Default.** The failure of either Party to insist, in any one or more instances, on the performance of any terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or of the future performance of any such term or condition, and the obligations of the non-performing Party with respect thereto shall continue in full force and effect.
16. **Entire Agreement.** This Agreement, including exhibits, constitutes the entire agreement between the parties with respect to the subject matter, and supersedes all prior written and oral proposals, understandings, agreements and representations, all of which are merged herein. No amendment or modification to this Agreement shall be effective unless it is in writing and executed by all parties hereto.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by its duly authorized officers to be effective the day and year first above written.

Community Action Opportunities

MCS

By: \_\_\_\_\_  
Vicki Heidinger, Executive Director

By: \_\_\_\_\_  
Dr. Will Hoffman, Superintendent