

MEMORANDUM OF UNDERSTANDING

BETWEEN

HARFORD COUNTY, MARYLAND AND THE

HARFORD COUNTY BOARD OF EDUCATION

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made this 4th day of June, 2021, by and between the Harford County Board of Education ("the Board"), a body corporate and politic of the State of Maryland and Harford County Maryland, ("the County"), a body corporate and politic of the State of Maryland (hereinafter collectively referred to as "Parties"), is made as follows.

WHEREAS, the County and the Board have historically maintained separate vehicle maintenance facilities; and,

WHEREAS, the County is currently constructing an upgraded vehicle maintenance Facility for the inspection, servicing and repair of vehicles owned by the County and the Board and for the management of student transportation services, hereinafter "Facility," located at 1304 Enterprise Court, Bel Air, Maryland, 21015; and,

WHEREAS, the maintenance of County-owned vehicles is currently being performed by First Vehicle Services, Inc., hereinafter "FVS" under Contract 18-176, dated June 1, 2018 hereinafter "FVS Contract"; and the maintenance of Board-owned buses and vehicles is currently being performed by Board employees; and,

WHEREAS, the Parties believe substantial cost benefits and efficiencies will result if the Board integrates its fleet maintenance functions into the fleet management information and inventory control system currently utilized by the County; and,

WHEREAS, the Parties believe substantial cost benefits and efficiencies will result by the Board moving its fleet maintenance functions into the Facility; and

WHEREAS, the Parties, as a result of the above, wish to enter into this MOU for the purposes of establishing the rights and obligations of each relative to use of the Facility.

NOW, WHEREFORE, in consideration of the promises and mutual covenants and conditions contained herein, the Parties agree as follows.

ARTICLE 1: DEFINITIONS

As used in this MOU, the terms listed in this section shall have the following meanings.

- 1.1 Board shall mean the Board of Education as a party hereto and its employees, agents, or contractors.
- 1.2 Board Areas shall mean areas in the Facility dedicated exclusively to the control and use of the Board or its contractors and which are designated as such on Exhibit A attached hereto.
- 1.3 County shall mean Harford County, Maryland as a party hereto, its employees, agents, or contractors.

- 1.4 Common Areas shall mean areas in the Facility that are to be used and shared jointly by the Board and the County or their respective contractors which are designated as such on Exhibit A attached hereto.
- 1.5 County Areas shall mean areas in the Facility dedicated exclusively to the control and use of the County or its contractors which are designated as such on Exhibit A attached hereto.
- 1.6 Faster shall mean the County's fleet management information and inventory control system known and designated as Faster Asset Solutions.
- 1.7 Fixed Equipment shall mean physical items which are attached and integral to the function of the Facility building and which would be considered fixtures under the ordinary legal meaning of such term.
- 1.8 Inventory shall mean Non-Fixed Equipment used for Services and Parts which either party keeps on hand or can order through its ordering system.
- 1.9 Non-Fixed Equipment shall mean physical items including but not limited to materials, tools and supplies used to provide Services and which are owned by either of the Parties hereto.
- 1.10 Parts shall mean physical items which are installed on or in vehicles.
- 1.11 Services shall mean inspection, diagnostic testing, repair, or maintenance of a vehicle owned by a party hereto.

ARTICLE 2: BOARD RESPONSIBILITIES

- 2.1 The Board shall utilize the Facility at its sole cost, except as provided herein, and without supervision or control by the County, to perform Services for Board-owned vehicles, and administrative and operational duties subject to the provisions of this MOU.
- 2.2 The Board may request that the County perform Services for any of the Board's vehicles per the labor rates as defined in the FVS Contract 18-176, if agreeable to FVS.
- 2.3 Except as expressly provided herein, the Board shall supply, at its' sole cost any Non-Fixed Equipment which it requires in order to perform Services upon Board-owned vehicles.
- 2.4 The Board shall be solely responsible for providing, maintaining, repairing, replacing, replenishing, and securing any Non-Fixed Equipment owned by the Board, or owned or controlled by Board employees, which is located or brought into the Facility.
- 2.5 The Board shall be responsible for managing a shared calendar to schedule use of Common Areas, designated as Shared Meeting/Training Rooms/Other on Exhibit A
- 2.6 Upon termination of this agreement, the Board shall be responsible for restoring the Board Areas to their original condition, ordinary wear and tear excepted.
- 2.7 In the event of a regulatory Maryland Occupational Safety and Health or United States Occupational Safety and Health Administration inspection, the Board shall be responsible for any remedial action required and/or for any fines imposed for any violation of the regulations of either of the above agencies if such violation is caused by the act or omission of the Board. In the event it cannot reasonably be determined which entity is responsible for the violation, the party which is, per section 1.2 and 1.5 hereof, assigned the area where the violation occurred shall be responsible for any remedial action required and/or for any fines owed for any such violation.

- 2.8 Contractors shall be required to utilize a sign in and out process and adhere to proper protocol and safety measures.
- 2.9 The Board shall repair or replace, at its sole cost, or reimburse the County for repair or replacement performed or provided by the County of any County-owned Fixed or Non-Fixed Equipment or part of the Facility that is damaged as a result of the negligence or intentional, wrongful acts or failure to act of the Board, its employees, agents, contractors, or subcontractors.

ARTICLE 3: COUNTY RESPONSIBILITIES

- 3.1 Except as provided herein, the County shall, at its sole cost, construct, repair and maintain the Facility in good and working order, including all Fixed Equipment reasonably needed to perform Services on vehicles.
- 3.2 The County shall, at its sole cost provide snow removal for the parking lots and sidewalks at the Facility site.
- 3.3 The County shall, at its sole cost, provide full-time, 24/7 video security for the Facility and the immediate premises appurtenant thereto and shall grant access giving rights to the Board with respect to any security video recording relating to the Board Area. The Board shall be granted access to video recordings for areas other than the Board Area.
- 3.4 Except as provided herein, the County shall, at its sole cost, be solely responsible for maintaining, repairing, replacing, replenishing, and securing any Non-Fixed Equipment owned by the County, or owned or controlled by County employees, which is located or brought into the Facility.
- 3.5 The County shall provide to the Board the quiet use and enjoyment of all areas designated as Board Areas on Exhibit A.
- 3.6 The County shall, at the County's sole expense, provide the Board with network access for Internet and phone service.
- 3.7 The County, at its sole cost, provide a Central Inventory Room as designated on Exhibit A.
- 3.8 The County shall allow the Board, as needed, to purchase Inventory under the terms of the FVS Contract, at the same price the County paid or would pay for such items, which is either located in, or which can be ordered utilizing the Faster. The County shall provide staff to operate and manage the Inventory control area as well as Faster. FVS owns all inventory until it is issued.
- 3.9 The County shall request that FVS purchase non-obsolete and serviceable parts from the current Board Inventory at fair market value price; however, FVS shall be under no obligation to purchase all or any of such Inventory and the Board is under no obligation to sell any or all of such inventory.
- 3.10 The County shall, at its sole cost, provide staff to operate and manage the Inventory Control Room as well as the Faster.
- 3.11 The County shall assist the Board as needed with the disposal of the Board's obsolete parts.
- 3.12 The County shall provide the Board with tablets, computers or other devices which the County determines are reasonably necessary for the Board employees to document services performed upon Board-owned vehicles. The County shall own and, except as provided herein, maintain such devices at its' sole cost and shall upgrade or replace such devices as from time to time may, in the opinion of the County, be necessary.
- 3.13 The County shall, at its sole cost, be responsible for providing at least one County employee or

contractor employee who shall be responsible for writing work order tickets for the Board. If this County employee or contractor is unavailable, the County and the Board, in the spirit of cooperation, will work together to provide coverage for this responsibility.

- 3.14 In the event of a regulatory Maryland Occupational Safety and Health or United States Occupational Safety and Health Administration inspection or any other regulatory agencies, the County shall be responsible for any remedial action required and/or for any fines imposed for any violation of the regulations of any of the agencies if such violation is caused by the act or omission of the County. In the event it cannot reasonably be determined which entity is responsible for the violation, the party which is, per section 1.2 and 1.5 hereof, assigned the area where the violation occurred shall be responsible for any remedial action required and/or for any fines owed for any such violation.
- 3.15 The County shall cause the Facility to be open and available for operation Monday through Friday, 5:00 AM to 11:00 PM.
- 3.16 At any time outside of the operational hours set forth in 3.15 above, the Board shall have the right to access the Facility in the event of an emergency or weather event. The County shall provide the Board with the name and contact information for a County representative who shall have the authority and logistical capability to provide such access and to arrange for access to the Inventory control area.
- 3.17 The County shall, at its sole cost, provide the Board with such number of key cards which the Board reasonably requires in order for the Board to properly and fully provide Services to Board-owned vehicles.
- 3.18 The County shall repair or replace, at its sole cost, or reimburse the Board for repair or replacement performed by the Board of any Board-owned Non-Fixed Equipment or part of the Facility that is damaged as a result of the negligence, or intentional, wrongful acts of the County, its employees, agents, contractors, or subcontractors.

ARTICLE 4: MUTUAL RESPONSIBILITIES

- 4.1 The Parties will mutually develop, approve, and utilize operating procedures for the Facility. Approved operating procedures may be modified only if agreed upon by both parties.
- 4.2 Each party may consent to the use of such party's area by the other party which consent shall not be unreasonably withheld.
- 4.3 Regulatory Inspection. In the event of a regulatory Maryland Occupational Safety and Health ("MOSH") or United States Occupational Safety & Health Administration ("OSHA") inspection, a Board representative, Board Risk Manager, County representative and the County Risk and Safety Officer will be onsite and present during the inspection.
- 4.4 Only vehicles purchased, owned, or controlled by the Board or the County may be serviced at the Facility. No Services shall be permitted to be performed upon privately-owned and/or privately controlled vehicles, except the County shall be permitted to service emergency response vehicles.
- 4.5 In the event the FVS Contract expires or is terminated, the provisions of this MOU referencing FVS shall apply to the successor fleet management contractor.

ARTICLE 5: DESIGNATED REPRESENTATIVES

5.1 The following individuals are designated as Representatives for their respective Parties (name and address):

Board Cathy Bendis, Director of Transportation
102 S. Hickory Ave
Bel Air, MD 21014
E-mail: Cathy.Bendis@hcps.org
Phone: 443-903-4208 (Cell)

Copy to: Cornell Brown Jr., Assistant Superintendent of Operations
102 S. Hickory Avenue
Bel Air, MD 21014
Cornell.Brown@hcps.org
410-588-5256

County Warren Patrick, County Fleet Manager
1304 Enterprise Road
Bel Air, Maryland 21015
E-mail: wrpatrick@harfordcountymd.gov
Phone: 443-243-8000

Copy to: Erin L. Schafer, Chief, Facilities and Operations
611 N. Fountain Green Road
Bel Air, Maryland 21015
elschafer@harfordcountymd.gov
410-638-3212

Karen D. Myers, Director of Procurement
220 S. Main Street
Bel Air, Maryland 21014
kdmymers@harfordcountymd.gov
410-638-3550

ARTICLE 6: TERMINATION

- 6.1 This MOU shall remain in full force and effect unless terminated for reasons as stated herein.
- 6.2 Termination by either party. Either party may terminate this MOU for failure of the other to comply with any material provision of this MOU. Prior to such termination, notification shall be made, in writing, of the alleged grounds for termination. If, within thirty (30) days of receipt of such notice, the responsible party has not corrected, or is not making reasonable progress towards correcting the alleged breach, then the damaged party may terminate this MOU by written notice, effective ninety (90) days following the written notice.

- 6.3 At termination or expiration of this MOU, each party shall return any Non-Fixed Equipment in its possession, purchased, or otherwise owned by the other party, in reasonable condition, ordinary wear and tear excepted. The party possessing Non-Fixed Equipment, purchased, or otherwise owned by the other party, shall repair/replace any such Non-Fixed Equipment which is stolen, lost, or rendered unserviceable due to the negligence, or intentional, wrongful act of the former party.

ARTICLE 7: GENERAL PROVISIONS

- 7.1 **MOU Representatives.** This MOU shall be construed as being between the Board and the County, two independent entities and not a joint venture or partnership. The Board has designated the person identified in Article 5 as the Representative of the Board with full authority to give and receive any notice required herein or take any action in regard to the interest of the Board under this MOU. County has designated the person identified in Article 5 as the Representative of the County with full authority to give and receive any notice required herein or take any action in regard to the interest of the County under this MOU.
- 7.2 **General Compliance with Laws.** Each party hereto shall comply with all federal, State, and local laws, codes, rules, and regulations that affect obligations or performance hereunder or any materials, equipment or employees connected in any manner whatsoever with such obligations or performance, including any federal, State, or local requirement.
- 7.3 **Force Majeure.** Neither party shall be deemed to be in default under the provisions hereof for delay arising from causes beyond its control or the control of its agents or employees, including, but not limited to, the inability to secure needed materials or equipment, or severe weather beyond reasonable anticipation that impedes performance, or acts of God.
- 7.4 **Governing Law.** This MOU shall be governed in accordance with the laws of the State of Maryland.
- 7.5 **Severability.** If any provisions hereof shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such provisions shall not affect any of the remaining provisions hereof, and this MOU shall be construed and enforced as if such invalid and unenforceable provision had not been contained herein.
- 7.6 **Amendments.** This MOU may be amended from time to time by written amendment duly authorized and executed by the Parties hereto. Oral statements purporting to amend this MOU shall be null and void.
- 7.7 **Merger.** This MOU merges and supersedes all prior negotiations, representations, and MOUs between the Parties hereto relating to the subject matter hereof, and constitutes the entire MOU between the Parties hereto in respect thereof. The Board and the County are parties to a separate MOU for Fuel which will remain in effect.
- 7.8 The Board shall not assign this MOU, in whole or in part, or sublet the Facility, or any part or portion thereof, or grant any license or concession for any part of the Facility.
- 7.9 **Execution in Counterparts.** This MOU may be executed in one or more counterparts and shall be deemed valid if delivered electronically (e.g., facsimile, PDF, ink, or digital stamp, etc.), each of which will be considered an original instrument, but all of which will be considered one and the same contract and will become binding when one or more counterparts have been signed by each of the Parties hereto and delivered to the other.

ARTICLE 8-INDEMNIFICATION

- 8.1. County. The County, to the extent required by law and subject to available appropriations, shall defend and indemnify the BOE, and save it harmless against and from any and all suits, claims, costs, expenses, civil penalties, fines, losses, and damages which the BOE may, at any time or times, incur, suffer, sustain, and or be subjected to, directly or indirectly, by reason of, on account of or in any way resulting from the acts or omissions of the County, its employees, contractors, agents, and representatives, or due to the release or threatened release of used oil or other contaminant disposed of at the Facility. The County shall not be obligated to defend or indemnify the BOE against costs, expenses, civil penalties, fines, losses, or damages arising from the negligent or intentional acts or omissions of the BOE, or its employees, contractors, successors, or assigns.
- 8.2. BOE. The BOE, to the extent required by law, shall defend and indemnify the County and save it harmless against and from any and all suits, claims, costs, expenses, losses, and damages which the County, may incur as a result of the acts or omissions of the BOE or its employees, contractors, invitees, successors, or assigns in the performance of this MOU. The BOE shall not be obligated to defend or indemnify the County against costs, expenses, losses, or damages arising from the negligent or intentional acts or omissions of the County, its employees, contractors, invitees, successors, and assigns.
- 8.3. Indemnification Procedures. (1) The party seeking indemnification (the "Indemnitee") shall provide a written and reasonably detailed notice (the "Indemnity Notice") to the indemnifying party (the "Indemnitor") promptly and no later than 90 days after first learning of the facts or circumstances, which could reasonably be anticipated to provide the basis of a claim for indemnification (the "Indemnity Claim"), provided that an Indemnitee's untimely Indemnity Notice shall not bar an Indemnity Claim but shall reduce the Indemnitor's liability to the extent the delay demonstrably increases the amount or magnitude of the Indemnity Claim. The Indemnitee shall not prepare a defense, response, or other proceeding, or enter into any settlement, or settlement negotiation with any party, regulatory authority, or other governmental entity, for an Indemnity Claim, which arises from a claim or demand by a third party (a "Third-Party Claim") prior to providing the Indemnity Notice.
- 8.4. In the case of a Third-Party Claim, the Indemnitor shall notify the Indemnitee whether the Indemnitor elects to participate in or has any information to dispute the Third-Party Claim no later than 30 days after its receipt of the Indemnity Notice (the "Election Date"). During the Election Period, the Indemnitee may file, at Indemnitor's expense, any pleading Indemnitee deems necessary to protect its interests, provided that such pleading does not result in an adverse final conclusion against Indemnitor.
- 8.5. If, at any time, Indemnitee proceeds to enter into any settlement, or settlement negotiations with any party, regulatory authority, or other governmental entity, for an Indemnity Claim without Indemnitor's prior written consent, or if Indemnitee files any pleading, which results in an adverse

final conclusion against Indemnitor without Indemnitor's prior written consent, any such action by Indemnitor shall release the Indemnitor from any and all liability for the Indemnity Claim.

- 8.6. Indemnitor and Indemnitor shall cooperate reasonably, including as to contested claims, counterclaims, availability of witnesses and documents.
- 8.7. Indemnitor shall not consent to any judgment or enter into any settlement without the written consent of Indemnitor, which shall not be unreasonably withheld, but if Indemnitor rejects any written, firm, bona fide compromise, then the Indemnitor's liability for the Third-Party Claim shall be limited to the amount of such proposed compromise
- 8.8. If the Indemnity Claim is not a Third-Party Claim, then the Indemnitor shall deliver written notice to Indemnitor specifying any dispute of the Indemnity Claim and the basis for any such dispute no later than 30 days after the Indemnity Notice. If the Indemnitor does not timely dispute an Indemnity Claim, then Indemnitor shall be liable for and pay promptly the amount of the Indemnity Claim. If the Indemnitor timely disputes an Indemnity Claim, then the parties shall have all rights and remedies at law or equity, including the right to commence an action to resolve the dispute.
- 8.9. Nothing set forth herein shall be construed as a waiver on the part of either party of any defense, immunity, limitation of liability, or restriction on damages provided for it under applicable law including but not limited to Section 5-518 of the Courts and Judicial Proceedings Article, Section 4-105 of the Education Article, or Title 5, Subtitle 3 of the Courts and Judicial Proceedings Article of the Maryland Annotated Code, as amended.

IN WITNESS WHEREOF, the Parties have executed this MOU to be effective on the day and year first above written.

Teri Schmid

WITNESS

Susan Swehla

WITNESS

BOARD OF EDUCATION

Seán W. Bulson

SEAN W. BULSON, ED.D.
SUPERINTENDENT

HARFORD COUNTY, MARYLAND

Barry Glassman

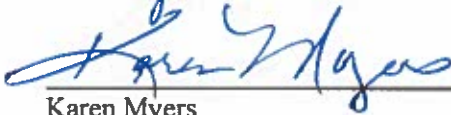
BARRY GLASSMAN
COUNTY EXECUTIVE

Approved as to legal sufficiency
And form this 1st day of JUNE, 2021.



Margaret Hartka
Senior Assistant County Attorney

Reviewed and concur this 1st
day of June, 2021



Karen Myers
Director of Procurement

Approved this 2 day of June, 2021



Robert F. Sandlass, Jr.
County Treasurer

Reviewed and concur this 1st
day of June, 2021



Erin L. Schafer, Chief
Division of Facilities and Operations