

FACILITY USE LICENSE AGREEMENT (FULA)

ActiveMONTGOMERY

RECITALS

- R-1. State law, Md. Code Ann., Educ. § 7-108, requires that each county board of education make its public school facilities available for community purposes upon written application. These purposes include public speaking, educational, social, recreational, religious, and other lawful activities. All meetings must be open to the public. School facilities may be used only at times that will not interfere with regular school sessions or other bona fide school activities. Section 7-109 of the Education Article authorizes the county board of education to choose childcare providers for the public schools.
- R-2. In Montgomery County, the Interagency Coordinating Board for Community Use of Public Facilities (ICB) schedules the non-school use of school facilities. The Office of Community Use of Public Facilities (CUPF) administers and implements the Board's policies, procedures, and guidelines. In addition to school facilities, CUPF is also responsible for scheduling community use of public facilities designated by the Chief Administrative Officer.
- R-3. This Agreement governs the terms and conditions under which CUPF will schedule community use of schools and other public facilities designated by the Chief Administrative Officer.

AGREEMENT

1. **Definitions.** Unless the specific context indicates otherwise, terms defined in the regulation on Community Use of School and Other Public Facilities have the same meaning in this Agreement.
2. **License Granted.** User acknowledges that they received a permit to engage in the Activity specified in the Application, at the Facility specified in the Application, during the time(s) specified in the Application. This permit is not renewable. Upon expiration of the permit, the User may apply for a new permit. The issuance of this permit does not guarantee the issuance of any future permit.
3. **Fees.** The User must pay the appropriate fees, as set forth in the current fee schedule and payment terms, including any security deposit, in full with the Application unless an alternate payment schedule has been approved by CUPF. Payment by money order or certified check may be required for events less than three weeks away from time of application or past submission of non-transactional checks. A security deposit may be required for auditorium, kitchen and special event use permits. Checks, money orders and MasterCard, Visa or payments from other major credit cards are accepted. The current Community Use of Public Facilities Fee Schedule is available online at www.montgomerycountymd.gov/cupf and at CUPF's offices in Rockville, Silver Spring and Germantown.
4. **Accurate Information.** The User certifies that all information the User provides, or will provide, to CUPF is true and correct and can be relied upon by CUPF in taking any action with respect to this Agreement. If the User provides any false or misleading information, CUPF may reject the User's application, immediately terminate the Activity, preclude the User from future use of Facilities, and/or pursue any other appropriate remedy. User is also responsible for reviewing a permit issued or modification of an issued permit for accuracy and responding to CUPF upon notification of permit approval, or other deadline set by CUPF, of any errors by CUPF. Absent notification of an error, the permit will be considered accurate.
5. **Acknowledgement of Conditions of Use.** The user must not proceed with the activity until the User has read and agreed to the Conditions of Use applicable to the requested facility
6. **Limitations of Use.**
 - A. The User must:
 1. Comply with all directions and conditions given by CUPF;
 2. Ensure that the Activity conforms to the use described in the Facility Use Application; Group may only use equipment or facilities or areas listed in the permit. User or User's participants may not trespass into other areas.
 3. Provide adequate security, traffic, and crowd control for its Activity, as determined by CUPF;
 4. Remain at the Facility during the Activity and carry the license on his or her person during the Activity unless modified by 10.C.;
 5. Adequately supervise the Activity; and ensure that all participants comply with the provisions of the FULA and permit;
 6. Obtain and pay for any necessary licenses and permits, including licenses and permits required to distribute food, sell goods, and sponsor a public performance. The User is liable for any applicable taxes, fees, and similar costs; and
 7. Comply with all applicable federal, state, and local laws, rules, regulations, and guidelines, including regulations and guidelines issued by the ICB and MCPS. This includes compliance with all applicable federal, state, and local nondiscrimination laws, including Title VII of the 1964 Civil Rights Act and the Americans with Disabilities Act. The User must keep the program or activity open to the public as required by state law and must not discriminate on the basis of race, color, creed, religion, ancestry, national origin, age, sex, marital status, disability, or sexual orientation.

8. Ensure that participants respect the staff and the site (ex. staff should not be bullied, insulted or yelled at; property should not be damaged)
 9. Call the afterhours problem line to address problems with access, MCPS staff, equipment or condition of facility during the permitted time when the problem occurs.
- B. The Activity must not:
1. Present a clear and present danger to public safety or to the peace and welfare of the community, the county and/or the state;
 2. Present a danger of damage to public or private property;
 3. Constitute a public nuisance or create a traffic hazard;
 4. Provoke or add to a public riot or breach of peace;
 5. Interfere with or adversely affect the school's educational or county function; or
 6. Attract large numbers of unsupervised minors.
7. **Posting and Distribution of Signs and Advertisements in Schools.**
- A. A User must not post temporary or permanent signs, banners, pennants, etc. in the Facility or on Facility grounds except as follows:
 1. Materials associated with activities sponsored by the school or the school PTA; and
 2. Activities carried on in schools by the Board of Supervisors of Elections.
 - B. A User may only place temporary signs on Facility grounds during the actual hours of the scheduled Activity. At the conclusion of the use of the Facility, the User must immediately remove the signs.
 - C. The User, and persons acting under the User's authority, must comply with all applicable sign laws, including laws regarding the placement of signs upon utility poles, trees, fences or on municipal, county or state rights-of-way.
8. **Mailing Address.** A User must not use a Facility address as the User's mailing address.
9. **Sponsorship.** A User must clearly identify on all advertising materials the name of the User, the name of any individual or group sponsoring the use, and the purpose of the use. A User may not use initials, abbreviations or logos which are not expressly defined in the advertising material. The purpose of the use must be clearly stated and must conform to the purpose identified in the Application for use. Unless the Board of Education or the County sponsors an activity, all announcements and advertisements must include the following statement: *This activity is not sponsored by, associated with, or endorsed by Montgomery County Public Schools or Montgomery County Government.*
10. **Use Requirements/Restrictions.**
- A. The following are prohibited in all Facilities, except as noted below:
 1. Unpermitted use or possession of alcohol or other intoxicants;
 2. Gambling - bingo, lotteries, etc., except as permitted by state law with appropriate permits and/or licenses;
 3. Smoking, fires, grills, open flames or flammable material;
 4. Weapons, weapon facsimiles, firearms, ammunition except by officers of the law acting in an official capacity;
 5. Personal or private celebrations (including birthday or anniversary celebrations, funerals, wedding receptions, and other similar activities), except at the Silver Spring Civic Building, the Clarksburg Cottage, the Redbrick Courthouse, and the Animal Shelter;
 6. Dances unless sponsored by the school, public recreation departments or PTA groups;
 7. Excessive noise;
 8. Adult outdoor soccer tournament play except on artificial turf stadium fields; and
 9. Indoor football, soccer, lacrosse, hockey, cricket, softball, baseball and other activities typically played outside and prohibited by the MCPS Director of Athletics; and;
 10. Animals, except service animals, unless approved by the principal or tenant organization.
 11. Cooking on premises.
 - B. Users may not use fields when any of the following conditions exist:
 1. CUPF, MCPS or the Maryland-National Capital Park and Planning Commission has cancelled the Use;
 2. Use of grass fields is prohibited if:
 - a. One-half inch or more of rain has fallen within the previous 24 hours;
 - b. Water is standing on the field;
 - c. Soil is frozen;
 - d. Turf and mud can be displaced or dislodged from the ground;
 - e. Ground cakes or clings to shoes;
 - f. Lightning and/or Steady rain is falling, or
 - g. Bare areas are muddy;
 3. Use of Synthetic Turf fields is prohibited if:
 - a. Excessive heat conditions exist;
 - b. Lightning is occurring.
 - c. Field is covered in snow or ice.
 - C. Users conducting activities covered by MSDE Child Care Licensing must:
 1. Obtain any necessary licenses and permits and comply with any federal, state and municipal laws, codes, and regulations in connection with the performance of childcare services;

2. Provide to CUPF a copy of the MSDE license or a copy of the license application and a Certificate of Insurance naming the county as an additional insured when requesting shared space in MSDE licensed space. Failure to have an appropriate licensing permit for primary and alternate space is grounds to deny priority before and after-school childcare placement;
 3. Submit an application which demonstrates principal's designation of primary and alternate areas to be licensed by MSDE and schedule of use to include periods of inclement weather, primary, general and special elections, administrative holidays, and other use outside the normal school year use schedule;
 4. Obtain the approval of the school principal before storing supplies at the school; and
 5. Ensure that its designee remain at the Facility during the Activity and comply with all applicable provisions of this Agreement.
11. **Certification Regarding Activities Involving Minors.** This section applies only to Activities involving minors (under 18).
- A. The User certifies no one who will have any contact with minors during the Activity has ever been convicted of or pleaded (1) guilty, (2) "no contest" or (3) *nolo contendere* to a felony (whether or not resulting in a conviction).
 - B. The User certifies no one who will have any contact with minors during the Activity has ever been convicted of or pleaded (1) guilty, (2) "no contest" or (3) *nolo contendere* to a misdemeanor involving sexual misconduct (whether or not resulting in a conviction).
12. **Restoration of Property.** The User must restore the Facility to its prior condition upon completion of its use and prevent the waste or deterioration of the Facility.
13. **Inspection and Investigation.** The User must permit CUPF to inspect the Facility at any time to ensure compliance with this Agreement. The User must cooperate with the inspection. CUPF may examine the User's records to determine and verify compliance with this Agreement and to resolve or decide any claim or dispute arising under this Agreement. The User must cooperate with any investigation by CUPF.
14. **Termination/Modification.**
- A. CUPF may deny the requested use, unilaterally terminate or modify this Agreement and/or a permit issued to the User, and/or preclude (temporarily or permanently) User from future use of one or more Facilities, upon written notice to the User, for any of the following reasons:
 1. The User or any Person acting under the User's authority misused, damaged, or destroyed property at a Facility or failed to leave the Facility as clean as it was before the Activity;
 2. The User or any Person acting under the User's authority provided false or misleading information to CUPF, including false or misleading information about the User or the proposed use;
 3. CUPF assessed damages against the User or any Person acting under the User's authority;
 4. CUPF deems the use inappropriate for the Facility, inconsistent with the size, location, and available services at the Facility, or inconsistent with public health, safety, or welfare standards; or
 5. The User or any Person acting under the User's authority failed to fully complete or comply with the Agreement or a previous Agreement, including non-payment by virtue of a returned check or failure to make scheduled payments.
 - B. Termination is effective 10 calendar days after the notice is issued, unless a different time is given in the notice. Neither the county nor the Board of Education is responsible for User's losses as a result of termination or modification under this section, above and beyond refund of any fees User paid to CUPF for the use of the Facility.
 - C. CUPF may terminate any permits or agreements that apply to other locations that CUPF has permitted the User to occupy.
 - D. Before reinstating a permit, CUPF may require the User to comply with other conditions including meeting with the CUPF Director or designee, participating in user training, and paying for supervision by staff such as MCPS Security.
 - E. CUPF may relocate, reschedule or cancel a permitted use that is in conflict with the school's academic programming or when it is in the best interest of the county or the Board of Education to do so. Neither the county nor the Board of Education is responsible for any losses or damages that occur as a result of the relocation, rescheduling, or cancellation of use.
15. **Emergency Closures/Snow Policy.**
- A. Community use activities will automatically be cancelled Monday-Friday when schools close early or for the entire day.
 - B. On weekends and holidays CUPF will make cancellation decisions as soon as possible.
 - C. Closings will be broadcast on local radio and television stations, posted online on a county website and Alert Montgomery. Neither the county nor the Board of Education is responsible for the User's losses as a result of emergency or snow cancellations above and beyond the payments made to CUPF for the use of the Facility.
16. **Refunds/Cancellations.** CUPF will refund fees paid by the User to CUPF to license the use of the Facility in accordance with its cancellation policy but only if the User completes a Cancellation/Adjustment request and submits to CUPF within the timeframe noted. The User must pay CUPF the cancellation fee set forth in the fee schedule for each Facility. In the event of cancellation by CUPF due to inclement weather or other emergency, CUPF will credit the user's account in full. CUPF is not responsible for advertising, food, or any other costs associated with an Activity when Facilities are closed due to inclement weather or other emergency. Refunds for field use must be requested by the User by the appropriate deadline.
17. **Accidents or Damage.**
- A. For the purposes of this section, the county and the Board of Education includes their boards, agencies, agents, officials and employees.
 - B. **Notice of Accidents or Damage.** User must give the county (and the Board of Education in the case of a school facility) prompt written notice of any accidents or injury upon, or damage to, the Facility.
 - C. **Responsibility for Accidents or Damage.** User is financially responsible for any loss, personal injury, death, or any other damage (including

incidental and consequential) arising from the exercise by it, or any person acting under the User's authority, of the right of access under this Agreement or arising out of a breach of this Agreement by User. The county (the Board of Education in the case of a school facility) will determine the dollar amount in the case of property damage to the Facility and will charge the User accordingly. User must reimburse the county (the Board of Education in the case of a school facility) for any damage to the Facility within 30 calendar days after notice from the county.

18. **Interest.** CUPF will assess a late payment penalty not to exceed 12% interest per annum on all amounts overdue in excess of 30 calendar days.
19. **Indemnification.** The User agrees to indemnify, defend, and hold harmless the county and the Board of Education (and the lessee where the use occurs in a closed school) from any loss, injury, liability, damage, claim, lien, cost or expense, including reasonable attorneys' fees and costs, arising from the use of the Facility by the User, by any person acting under the User's authority, or by any person in the facility as a participant or potential participant in any activity the User conducts in the Facility or arising out of a breach of this Agreement by User. The User's foregoing responsibility to indemnify, defend, and hold harmless the county and the Board of Education extends to any incidents resulting from the failure to use caution near architectural structures, such as a raised stage, stairs, an orchestra pit, stage equipment, fittings, curtain and prop lifts, gymnasium bleachers and any other school equipment. This agreement to indemnify and hold harmless will survive expiration and termination of this Agreement. The User need not indemnify, defend, or hold harmless the county or the Board of Education for any loss, cost, damage, claim, or other expense arising out of the county's or the Board of Education's sole negligence or intentional misconduct. For the purposes of this section, the county and the Board of Education includes their boards, agencies, agents, officials and employees.
20. **Insurance.** All commercial or enterprise users and any User proposing certain Activities such as childcare, sports leagues or activities identified by Montgomery County's Risk Management office must maintain insurance with an insurance company licensed to do business in Maryland in an amount sufficient to indemnify, defend and hold the county and the Board of Education harmless as required above.
 - A. The User must maintain a policy of commercial general liability insurance with limits of at least \$300,000 for each occurrence and an aggregate amount of \$300,000. The insurance limit for dog training classes must be at least \$1,000,000 for each occurrence and aggregate amount of \$1,000,000.
 - B. The policy must list Montgomery County as an additional named insured and also the Board of Education if the Activity takes place in a school Facility.
 - C. The User must provide CUPF with a copy of the certificate of insurance within 10 calendar days following submission of the completed Application.
 - D. The User must notify the county and the Board of Education, if the activity occurs in a public school building, 30 days before the cancellation of the insurance. This Agreement and any associated permits are cancelled immediately upon the cancellation of any applicable insurance policy.
 - E. Nothing in this Agreement may be construed to create any rights or claims in any third parties.
 - F. The County may waive these provisions for use of the building by entities covered by a Federal or State tort claims act.
21. **Release.** User releases the county and the Board of Education from all claims and demands of any kind which User has had, claims to have had, or might subsequently accrue to him arising from the exercise by User, or any person acting under the User's authority, of the right of access under this Agreement or arising out of a breach of this Agreement by User. Neither the Board of Education nor the county accepts responsibility for any equipment left in school or county facilities by the User. The release does not include any claim arising out of the county's or the Board of Education's intentional misconduct. For the purposes of this section, the county and the Board of Education includes their boards, agencies, agents, officials and employees.

User will allow CUPF to take pictures, videos or make voice recording or electronic images of a permitted activity and information related to the sponsoring group, the nature of the activity, and the names of persons involved in the activity to be retained in an electronic file for the purposes of sharing the information, recordings, and images on a County website or social media platforms used by the County. The images and recordings become the sole property of the County.

22. **Other Important Provisions.**
 - A. **Modification and Waiver.** Except where expressly provided to the contrary, any amendment of this Agreement must be in writing, signed by the Parties. A party wishing to waive any rights under this Agreement must do so expressly in writing. A waiver will be narrowly construed so as not to waive any other rights or any other instance to which that right might apply.
 - B. **Severability.** Whenever possible, each provision of this Agreement must be interpreted in such a manner as to be valid under applicable law. But if any provision of this Agreement is deemed invalid, that provision must be severed and the remaining provisions must otherwise remain in full force and effect.
 - C. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties. All terms and conditions contained in any other writings previously executed by the Parties and all prior and contemporaneous arrangements and understandings between the Parties are superseded by this Agreement. No agreements, statements, or promises about the subject matter of this Agreement are binding or valid unless they are contained in this Agreement.
 - D. **Applicable Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Maryland without regard to its conflict of laws principles. For purposes of litigation involving this contract exclusive venue and jurisdiction must be in the Circuit Court for Montgomery County, Maryland or in the District Court of Maryland for Montgomery County.
 - E. **Headings and Construction.** Descriptive headings are inserted only for convenience and do not affect the meaning of any provision. Where the context requires, the singular must be construed as the plural and neuter pronouns must be construed as masculine and feminine pronouns and vice versa. This Agreement must be construed according to its fair meaning and any rule of construction to the effect that

ambiguities are to be resolved against the drafting party must not apply in the interpretation of this Agreement.

- F. **No Agency.** This Agreement does not make either one of the Parties, its officers, employees or agents, an officer, employee or agent of the other Party.
- G. **No Partnership, Third Parties.** This Agreement does not create any partnership, joint venture or other arrangement between the Parties. This Agreement is not for the benefit of any non-party, and no third party has any right or cause of action under this Agreement.
- H. **Warranty of Authority.** The persons executing this Agreement warrant that they are authorized by the respective party whom they represent to execute this Agreement.
- I. **Effective Date.** This Agreement is effective after it is signed by all Parties.
- J. **Transfer.** The User must not transfer this Agreement by assignment, sublease, or otherwise without the express written consent of CUPF.
- K. **Time of Essence.** Time is of the essence for performance of all of the Parties' obligations under this Agreement.
- L. **Incorporation of Documents and Recitals.** The recitals and any exhibits are incorporated by reference and made a part of this Agreement.
- M. User submitting a facility use request and responsible for the activities of the group must be at least 18 years of age.