

## MEMORANDUM OF UNDERSTANDING

THIS Memorandum of Understanding (the "MOU") is effective this 1st day of August, 2021 between Shaler Area School District ("the District") and the Private Industry Council of Westmoreland/Fayette, Inc. ("PIC"), operating the Pre-K Counts Program.

1. **PREMISES.** District hereby grants a non-exclusive license to PIC use property located at Marzolf Primary, 101 Marzolf Road Extension, PA 15209; Reserve Primary, 2107 Lonsdale Street Pittsburgh, PA 15212 and Scott Primary consisting of space for one classroom with storage area, non-exclusive access to rest rooms, and sufficient off-street parking for PIC's employees, agents and invitees and a playground ("the Premises") at each location. PIC shall use the Premises as a classroom center and related services for children who qualify for its Pre-K Counts services and for storage.

2 **DISTRICT RESPONSIBILITIES.** The District, in supporting the Pre-K Counts Program shall, in addition to the Premises identified above, offer ancillary services, as may be necessary, which may include food service (breakfast and lunch), custodial service (cleaning the Premises and refuse collection) and nurse services (to include basic first aid and, as needed, emergency services). In addition, PIC will have its families complete the free and reduced meal forms, which it will provide to the District and the District will invoice PIC according to the families' eligibility. The District will include Pre-K Counts staff in professional development activities and include Pre-K Counts students in appropriate special programs or school activities, such as musical programs. The District will also invite Pre-K Counts parents to become members of the appropriate Parent Teacher Organizations and accept developmental or other pertinent family & student information for those participating in the Pre-K Counts program. Further, the District will attend all necessary meetings and trainings related to the Pre-K Counts program.

3. **PIC RESPONSIBILITIES.** PIC will, at all times, operate the Pre-K Counts program as a separate and independent program unrelated to the District's operations. As such, PIC will have full financial control and responsibility for the program with no financial contribution or obligation of the District, hire and monitor staff as PIC's employees, being responsible for all tax and insurance requirements, and maintain total classroom functions including equipment, supplies and implementation. PIC will pursue professional development opportunities, and provide student information to the District including developmental records, screening information and other pertinent family & student information. PIC agrees to abide by school applicable District Policies and attend all necessary meetings and trainings related to the Pre-K Counts program.

4. **TERM.** The term of this MOU shall commence on August 1, 2021, and end on June 30, 2022, unless sooner terminated or extended as provided herein (the "Term"). It shall automatically renew for the next academic year upon the same terms and conditions, unless one party sends written notice to the other of its desire to terminate this MOU at least thirty days prior to June, 30, 2022. If such notice to terminate is provided, the MOU shall automatically terminate at the end of the term, unless the parties mutually agree upon new terms at the time of renewal.

5. **COSTS.** The parties agree that PIC shall pay the District \$18,000 per term, payable in nine (9) equal monthly installments of \$2,000 on the 15<sup>th</sup> of each month beginning September 15<sup>th</sup> of the applicable Term, provided sufficient funding is provided by the State.

6. **INSURANCE.**

(a) PIC shall maintain a comprehensive general liability insurance policy against claims for bodily injury, death or property damage, occurring in or on the Premises, or resulting from PIC's use, occupancy or maintenance thereof. Such insurance shall be in the amount of at least \$1,000,000.00 combined single limit (or in such higher amounts as the parties may agree). District shall be named as an additional insured on the policy.

(b) District shall maintain a comprehensive general liability insurance policy against claims for bodily injury, death or property damage, occurring in or on the Premises, resulting from District's acts or omissions. Such insurance shall be in the amount of at least \$1,000,000.00 combined single limit (or in such higher amounts as the parties may agree from time to time).

7. **COMPLIANCE.** District shall be responsible for compliance with all federal, state and local laws, regulations and ordinances in existence from time to time governing or related to the Premises and PIC's use thereof, including but not limited to environmental laws and regulations, laws or regulations covering the disabled, and land use and zoning laws and regulations. If during the term or any extension thereof, the District is notified that substantial repairs or renovations are required for the premises to be compliant with any federal, state or local law, the District may elect to make such repairs or may elect to terminate the MOU during the term after providing thirty (30) days written notice of termination.

8. **INDEMNIFICATION.** Subject to and without waiver of any immunities from liability or any limitations of damages afforded the District under statutory or common law, District shall indemnify and hold harmless PIC, from and against all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable attorneys' fees, which may be imposed upon or incurred or asserted against PIC caused by or resulting from or claimed to have been caused by or to have resulted from any act, omission or negligence of District or anyone claiming under District (including, but without limitation, PICs, concessionaires, employees and contractors of District). Similarly, PIC shall indemnify and hold harmless District, from and against all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable attorneys' fees, which may be imposed upon or incurred or asserted against District caused by or resulting from or claimed to have been caused by or to have resulted from any act, omission or negligence of PIC or anyone claiming under PIC (including, but without limitation, invitees, employees and contractors of PIC). As to claims by an employee of PIC against the District for which the District is entitled to indemnification under this provision, the indemnification obligation of PIC shall not be limited on amount or type of damages, compensation, or benefits payable by or for PIC under workers' compensation acts, disability benefits or any other employee benefit acts, unless both District and PIC are provided protection under such acts.

**9. REPAIRS AND MAINTENANCE.** Throughout the Term, District, at its sole cost and expense, shall keep and maintain the Premises in good order and condition and make all necessary repairs to the Premises. Repairs affecting health or safety (e.g., sewage backup) must be performed within twenty-four (24) hours. All other repairs must be performed within fourteen (14) days. If during the term or any extension thereof, substantial repairs or renovations are required, the District may elect to make such repairs or may elect to terminate the MOU during the term after providing thirty (30) days written notice of termination. District shall also be responsible for and shall maintain in good condition and repair the parking areas and sidewalks (including snow and ice removal), and the exterior and structural portions of the Premises, including the roof, exterior walls, foundation, flooring, boiler and heating system, duct work and electrical wiring. PIC will pay for any damages caused by its employees or invitees, not considered normal wear and tear.

**10. DAMAGE, DESTRUCTION.** In the event the Premises are damaged or rendered totally or partially uninhabitable by fire, other casualty or condemnation, PIC shall have the option to terminate the MOU. If such damages casualty or condemnation occurs during the term or any extension thereof, the District may elect to repair such damages or may elect to terminate the MOU during the term after providing thirty (30) days written notice of termination. In the event the Premises are rendered so uninhabitable as to prevent PIC from operating PIC's business at the Premises, and neither PIC nor the District terminates the MOU, rental payments shall abate on a per diem basis until the Premises are repaired to reasonably allow such operation of PIC's business.

**11. QUIET ENJOYMENT.** PIC shall peaceably and quietly hold, occupy, and enjoy the Premises for the Term (and any extensions of the Term) without hindrance, ejection or interruption by District.

**12. ENTRY ON PREMISES BY DISTRICT.** District or its agents may enter the Premises at reasonable times with reasonable advance notice for the purpose of: (a) inspecting the same; (b) making any necessary repairs to the Premises and performing any work in the Premises that may be necessary; and (c) showing the Premises to prospective purchasers or lessees. District understands and agrees that PIC may insist that such entry or work be done when children are not on the premises.

**13. DEFAULT; REMEDIES OF DISTRICT.** The following constitutes a default by PIC: Failure to perform or to observe any other covenant, term or condition of this MOU within thirty (30) days after written notice by District; provided, however, that if such failure is not cured within such thirty (30) day period, the District may terminate this MOU by written notice of termination to PIC. In the event District exercises its right to terminate this MOU, in addition to any other remedies available under applicable law or in equity, District shall be entitled to recover as damages for the breach by PIC the full amount of the Minimum Rent for the remainder of the Term, all of which shall accelerate and be due and payable at once.

**14. DEFAULT BY DISTRICT.** Should District fail to perform any of District's obligations pursuant to this MOU and such failure shall have continued for thirty (30) days or more after written notice thereof from PIC, which notice shall specify the nature of each such failure, PIC

may, but shall not be obligated to, cure such failure. In addition to the above-stated remedies, District's failure to cure as provided in this Section shall entitle PIC to pursue any other available remedies under applicable law or in equity.

**15. SURRENDER.** On the last day of the Term or upon any earlier termination of the MOU, PIC shall surrender and deliver the Premises into the possession and use of District without delay and in the same condition as PIC received it, reasonable wear and tear excepted. Notwithstanding the foregoing, if PIC continues to occupy the premises after the surrender date, without having reached a new MOU agreement with the District, this MOU will continue except the term of the Agreement will be on a month to month basis.

**16. EARLY TERMINATION OF MOU.** District understands that PIC receives substantial government funding for its operations, which funding is not guaranteed. As such, District agrees that, if PIC does not receive sufficient funding for its PA Pre-K Counts program to continue this MOU, or if its overall funding is reduced by more than 10 % in any year, PIC shall be entitled to terminate the MOU upon thirty (30) days' notice with PIC being absolved of all liability to District except for damages caused by its employees or invitees. Similarly, if there is a change in the community or population served by the program so that PIC determines that it no longer needs all the rooms in the Premises or it is no longer advantageous to offer the program at the Premises, PIC shall have the right to terminate the MOU upon thirty (30) days' notice with PIC being absolved of all liability to District except for damages caused by its employees or invitees, provided that PIC explains the reason for its decision in the notice.

**17. CLEARNCES.** All PIC employees providing services on the Premises must obtain an Act 34 Pennsylvania State Police criminal history report, an Act 151 (Child Abuse) Clearance Statement, an Act 114 federal (FBI) criminal history report and a tuberculosis examination in accordance with regulations of the Pennsylvania Department of Health. Copies of these clearances and reports must be provided to the District prior to the employee reporting to the Premises, which reports District must hold in strict confidence as if the PIC staff were employed by the District. The cost of obtaining these clearances and reports shall be the responsibility of PIC or its employees.

**18. GENERAL PROVISIONS.**

(a) Any notice given in connection with this MOU shall be given in writing and will be deemed given (i) upon personal delivery or confirmed, transmission by telecopy or similar facsimile transmission device, (ii) upon the first business day after receipted delivery to a courier service that guarantees next business day delivery, or (iii) on the third business day after mailing by registered or certified United States mail, postage prepaid, to the appropriate party at the address set forth below:

If to District:

Shaler Area School District  
1800 Mt. Royal Blvd.  
Glenshaw, PA 15116-2196  
Att: Sean Aiken

If to PIC:

Private Industry Council of  
Westmoreland/Fayette Inc.  
219 Donohoe Road  
Greensburg, Pa. 15601  
Att: Shujuane Martin

(b) This MOU embodies the entire agreement between the parties hereto relative to the subject matter of this MOU. No modifications of or amendments to this MOU shall be binding upon any party unless in writing and executed by a duly authorized agent of each party.

(c) If any term or provision of this MOU, or the application of a term or provision of this MOU, shall be invalid or unenforceable, the remainder of this MOU shall not be affected thereby.

(d) All covenants and obligations as contained within the MOU shall bind and extend and inure to the benefit of District and PIC, their respective successors and assigns. PIC shall not assign this MOU or sublease the premises.

(e) This MOU and the rights and obligations of the parties hereto shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have set their hands and seals as of the day and year first written above.

**PRIVATE INDUSTRY  
COUNCIL OF WESTMORELAND/  
FAYETTE, INC.**

**SHALER AREA  
SCHOOL DISTRICT**

By: \_\_\_\_\_  
Shujuane Martin, CEO/President

By: \_\_\_\_\_  
Sean Aiken, Superintendent