

## 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

## Two-Year Agreement

This Agreement is made this day of May 19, 2021 between Grade Point Resources (GPR) and Shaler Area School District for four behavior specialist consultants.

1. The term of this Agreement commences June 1, 2021 and concludes July 31, 2023. Notwithstanding the foregoing, either party may terminate this Agreement, at any time, with or without cause, upon 30 days written notice. In such event, GPR shall be entitled to payment for services rendered prior to termination.
2. Staff members will report on the first day of school for students through the last day of school for students and follow the school calendar for students.
3. GPR will provide four behavior specialist consultants to service the school district for the school years of 2021-2022 and 2022-2023 and execute the following duties:
  - Work with school team to identify antecedent behaviors and interventions to prevent difficult behavior
  - Provide crisis support
  - Participate in team meetings as requested
  - Utilize principles of applied behavior analysis to increase student pro-social behaviors and reduce inappropriate behavior
  - Work with classroom teachers to design and implement strategies for students with behavioral needs
  - Assist/complete functional behavior assessments
  - Complete positive behavior support plans and modify as needed
  - Design data collection tools to track progress for behavioral goals

Other duties may be required by the school district.

Grade Point Resources staff members assigned to provide the foregoing services are subject to the prior approval of the Shaler Area School District.

4. Shaler Area School District will provide GPR staff members the following resources in relation to the services to be provided:
  - School email address and access to internet
  - Entry badge
  - Mailbox in assigned building
  - Assistance, cooperation, and participation of Shaler Area School District's administrative, professional, and support staff in the development and implementation of the services outlined above
  - Access to copier, fax, laminator, office supplies as needed
  - Parking
  - Laptop
  - Private office

Except as stated above, GPR's fees are inclusive of all expenses incurred by GPR in the provision of services or the performance of its obligations under this agreement.

5. For services authorized by the district and satisfactorily completed by GPR, Shaler School District agrees to pay GPR the annual amount of \$237,744 as follows:
  - School Year #1 (2021-2022): Shaler Area School District agrees to pay 12 monthly installments of \$19,812 with the first invoice submitted by GPR in June 2021 for payment by July 10, 2021 and the last invoice presented in May 2022 for payment by June 10, 2022.
  - School Year (2022-2023): Shaler Area School District agrees to pay 12 monthly installments of \$19,812 with the first invoice submitted by GPR in June 2022 for payment by July 10, 2022 and the last invoice presented in May 2023 for payment by June 10, 2023. (\*Please note the double payments for June 2022)
  - GP shall submit invoices one month in advance.
  - Shaler Area School District shall make payment on invoices so that payment is received by the 10<sup>th</sup> of the following month.
  - A late payment charge of 1% will apply on any unpaid balance over sixty days past due.
  - Invoices shall include sufficient detail as to allow the verification of the services completed. The district will notify GPR of any disputed invoice entry or entries within seven days of receipt of the invoice, whereupon the parties will mutually endeavor to mutually resolve such dispute, and the district shall remit payment upon all undisputed entries.
  - Additional days' service beyond those identified in #1 above shall be at the rate of \$345 per day per each GPR staff member needed. ESY services will be at the rate of \$70 per hour per each GPR staff member. The district will notify GPR of its intent to contract for ESY services by May 1, 2022. Inservice days are not included.
  - If GPR's employees are asked to develop and provide an in-service training, the cost will be \$700 per each GPR staff member to allow for one day's work and presentation preparation.
6. GPR will provide to the district all certifications, licenses, and clearances of personnel as required by law and/or by the district prior to staff initiating work including, but not limited to, state and federal criminal history reports as required by Section 111 of the Public School Code, child abuse clearance statements as required by the Child Protective Services Act, and an employment history review as required by Section 111.1 of the Public School Code.
7. GPR shall provide evidence of liability insurance coverage during the contract period with limits of liability not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate general liability.
8. The parties agree to indemnify, defend, and hold harmless each other, their respective directors, officers, employees, and agents, against all claims, damages, losses or penalties for personal injury or death or damage to personal or real property owned or leased by such party, or the operation of maintenance of any equipment or vehicles provided or used by such party arising out of any acts or omissions of the party's employees. Any obligation of Shaler Area School District hereunder is subject to and with full reservation of any immunities or limitations of liability afforded to the district by applicable law, and this provision shall not obligate the district to provide indemnity upon any claim from which it is immune or for any damages exceeding any limitation of liability established by applicable law. None of the personnel provided by the parties shall be

considered employees or agents of the other party hereto for any purpose. The parties agree to indemnify, defend, and hold harmless each other against all claims, damages, losses or penalties resulting from any judicial administrative, or another determination that any staff member of one party hereto is an employee or agent of the other party hereto.

9. GPR shall observe and comply with the provisions of the Individuals with Disabilities Education Act 2004 and all relevant portions of the Pennsylvania Public School Code, HIPAA, and all other applicable laws, rules, regulations and requirements of any and all governmental bodies having jurisdiction over services to be rendered by GPR. While present in district schools, GPRs' staff members shall abide by applicable school policies, including those prohibiting the use of tobacco and alcohol and the possession of weapons.
10. GPR shall ensure that the services it provides comply with all requirements of State and Federal law to the extent such compliance does not depend upon the performance or actions of any other individual or entity beyond the control of GPR. GPR agrees not to divulge or release any information developed or obtained in conjunction with any aspect of its performance under this Agreement, including personally identifiable information concerning students for which confidentiality is required by the Family Education Rights and Privacy Act and/or the Individuals with Disabilities Education Act, except to authorized district personnel or upon prior written approval of the Superintendent of the district. The district shall provide such action, assistance, or cooperation as is required to ensure that students referred to GPR's staff receive a Free Appropriate Public Education in compliance with all applicable provisions of state and federal law.
11. The relationship of GPR and Shaler School District under this Agreement shall be that of an independent contractor. GPR is subject to direction and control of district only as to the results to be accomplished. The means and methods for accomplishing the desired results shall be at the full discretion, skill and judgment of GPR. GPR agrees that GPR's staff are not employees of the district and shall not be entitled to any wages or benefits of the district employees. GPR further agrees that the district will not deduct income, social security, or other taxes on any payments to GPR hereunder and GPR further agrees that GPR is solely responsible for payment of any such taxes due to the proper taxing authorities. GPR shall indemnify and hold harmless the district from any assessments of such taxes and any interest and penalties imposed upon the district by reason of GPR's failure to pay such taxes.
12. GPR shall not subcontract or assign any of the services covered by this Agreement or any right to monies to be paid hereunder without the written consent of the district.
13. This Agreement has been jointly prepared by the parties hereto and, therefore, shall not be presumptively construed in favor of or adversely to either party to this Agreement.
14. This agreement contains all of the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or to bind any of the parties hereto. This Agreement may not be changed, modified, discharged or extended except by written amendment, duly executed by the parties and, as to the Shaler Area School District, unless approved by resolution of its Board of School Directors adopted at a duly constituted public meeting.
15. This Agreement shall be construed in accordance with the law of the Commonwealth of Pennsylvania.

16. Force Majeure:

Neither party shall be considered to be in breach or default of this agreement as a result of events beyond their reasonable control. For the purposes of this agreement, such acts shall include, but are not limited to: acts of God, acts of death or illness, acts of nature, or other events beyond the parties' reasonable control. Either party may opt to terminate the contract under "force majeure" with no further payments/services due other than what was owed for payments/services previously rendered prior to the claim of "force majeure". If the district declares "force majeure" and terminates the contract, the district may not communicate with or utilize the Behavior Specialist for any reason other than what was previously invoiced and paid for before the "force majeure" declaration and such communication must originate with GPR. If the district elects to continue with some job duties for the Behavior Specialist Consultants, then [RM1]the agreement will continue as written and all payment schedules/amounts and hours shall remain intact. New job duties must be approved by GPR if they are out of the scope of the job description above. The "force majeure" claim may not be utilized by the district if teaching staff continue to provide work to students or for financial reasons. The district agrees to work with GPR to create a set of job duties during "force majeure" that is appropriate for the contractors' job description provided they do not violate any local, state, or federal regulations/orders.

17. In the event of any litigation arising from the parties' performance of this Agreement, it is mutually agreed that the exclusive venue for any legal proceedings shall be the Court of Common Pleas of Westmoreland County. Both parties hereby waive any right to trial by jury.

WHEREFORE, intending to be legally bound hereby, the parties, by their duly authorized representatives have signed this Agreement.

GRADE POINT RESOURCES

SHALER AREA SCHOOL DISTRICT



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April 30, 2021