



Office of Community Use of Public Facilities Montgomery County, Maryland

FACILITY USE LICENSE AGREEMENT (FULA) PUBLIC SCHOOL FACILITIES

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 Reservation Request. 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.
- R-3. This Agreement governs the terms and conditions under which CUPF will schedule community use of schools.

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 reservation to engage in the activity specified in the Reservation Request, at the facility specified in the Reservation Request, during the time(s) specified in the Reservation Request. This reservation is not renewable. Upon expiration of the reservation, the User may apply for a new reservation. The issuance of this reservation does not guarantee the issuance of any future reservation.
- 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 Reservation Request 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 Reservation Request or past submission of non-transactional checks. 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 Wheaton and Silver Spring.

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 including the use of an Organizational account only for reservations for use by an organization, and use of an Individual account only for reservations for use by the individual submitting a request for facility use. If the User provides any false or misleading information, CUPF may reject the User's Reservation Request, 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 reservation issued or modification of an issued reservation for accuracy and responding to CUPF upon notification of reservation approval, or other deadline set by CUPF, of any errors by CUPF. Absent notification of an error, the reservation 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 or the requested use type. The current Community Use of Public Facilities Conditions of Use are available online at www.montgomerycountymd.gov/cupf and at CUPF's offices in Wheaton and Silver Spring
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 Reservation Request;
 3. Group may only use equipment or facilities or areas listed in the reservation. User or User's participants may not trespass into other areas;
 4. Provide adequate security, traffic, and crowd control for its activity, as determined by CUPF;
 5. Remain at the facility during the activity and carry the license on his or her person during the activity unless modified by 10.D.;
 6. Adequately supervise the activity; and ensure that all participants comply with the provisions of the FULA and reservation;
 7. 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
 8. 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;
 9. Ensure that participants respect the staff and the site (ex. staff should not be bullied, insulted or yelled at; property should not be damaged);
 10. Automobiles are strictly prohibited on sidewalks, curbs, grassy areas, playgrounds, walking/running tracks, athletic fields, outdoor basketball courts, tennis courts,

paved play area pads, asphalt play area pads, or any areas other than those clearly designated for driving or parking;

11. **Contact the afterhours help line via call or text to 240-490-CUPF (2873)** 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.**

- 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 Reservation Request 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. Use without a reservation;
2. Use or possession of alcohol or other intoxicants;
3. Gambling - bingo, lotteries, etc., except as permitted by state law with appropriate permits and/or licenses;
4. Smoking, fires, grills, open flames or flammable material;
5. Weapons, weapon facsimiles, firearms, ammunition except by officers of the law acting in an official capacity;

6. Personal or private celebrations (including birthday or anniversary celebrations, funerals, wedding receptions, and other similar activities);
7. Dances unless sponsored by the school, public recreation departments or PTA groups;
8. Excessive noise;
9. Portable restrooms;
10. Driver education activities involving behind-the-wheel instruction for student drivers;
11. Food and drink in any areas of the school other than the cafeteria or all-purpose room;
12. Use of any equipment not arranged for in the Reservation Request;
13. Storage of any items by user group;
14. Propping open entry doors or gates to facility;
15. Arriving prior to arrival time shown on reservation or remaining after scheduled departure time shown on reservation;
16. Use of tape or any similar adhesive, paint, or marker on the athletic fields, floor, tennis courts or any other surfaces;
17. Use of Promethean board and Lightbox units;
18. Recreational operation of unmanned aircraft systems (UAS), including model aircraft and drones, is not permitted at MCPS facilities;
19. Launching of model rockets propelled by sources other than compressed air or water;
20. Cooking on premises;
21. Use of the following appliances:
 - a. Microwave ovens;
 - b. Toaster ovens or toasters;
 - c. Coffee machines;
 - d. Hot plates;
 - e. Popcorn poppers;
 - f. Electric grills, gas grills, charcoal grills;
 - g. Space heaters;
 - h. Dehumidifiers;
 - i. Air cleaners;
 - j. Refrigerators, except Childcare providers under MSDE Childcare Licensing;
 - k. Any other appliance prohibited by MCPS;
22. Dodge Ball;
23. Indoor football, soccer, lacrosse, hockey, cricket, softball, baseball and other activities typically played outside and prohibited by the MCPS Director of Athletics with the following exceptions in the gymnasiums:
 - a. All participants are 10 years old or younger;
 - b. Activities are limited exclusively to drills and conditioning; no scrimmaging or

- open play;
 - c. All equipment placed on the floor is padded to prevent scratching or similar damage;
 - d. All balls are soft (ex. “nerf”) and not inflatable;
24. Animals, except service animals;
25. Use of water requiring more than minimal water use including but not limited to waterslides and car washes;
26. Portable lights on athletic fields or any other areas of the property is strictly prohibited unless an exception is granted MCPS Central Office;
27. Activity other than an authorized sport is prohibited in gymnasium facilities unless a written exception is granted by the CUPF Director/designee;
28. Access to indoor restroom facilities with field use reservation unless arrangements with payment are made in advance and reserved accordingly;
29. Inflatables (moon bounces, bounce houses, etc.) unless all of the following requirements are met:
- a. The vendor or person supplying the inflatable must install and operate the inflatable(s) in compliance with all applicable regulations and industry standards;
 - b. Inflatable may not be used indoors;
 - c. Inflatable may not be used in intense winds, rain, or other severe weather conditions;
 - d. Inflatable must be placed on flat surfaces free of objects that can puncture the inflatable;
 - e. Inflatable must be located clear of buildings, walls, overhead power lines, utility equipment, trees, streets and parking lots, and other potentially hazardous objects;
 - f. The vendor must properly secure all inflatables, taking into consideration weather factors such as wind;
 - g. Underground utilities must be marked prior to inflatables installation, as needed (such as when stakes are used);
 - h. If stakes are used to secure inflatables, protruding ends must be covered to prevent impalement;
 - i. If inflatables are placed on hard surfaces, such as asphalt or concrete, adequate padding must be provided on top of the hard surface;
 - j. Portable generators must be positioned well behind equipment and far enough away to keep exhaust gases and odors away from people and buildings;
 - k. Fuel for the generator must be stored in an appropriate safety can and secured properly during the event, and the generator must be turned off while refueling;
 - l. A portable fire extinguisher, with a vendor employee trained to operate it, must be available when a generator is present;
 - m. Appropriate and undamaged electrical cords must be used, and cords may not be run into a building;
 - n. Electrical cords may not be placed on sidewalks or walking areas where they can

- create tripping hazards;
 - o. The vendor must have ample staff to supervise use of the inflatable and to monitor/service equipment;
 - p. Use approved by MCPS Systemwide Safety Programs.
- B. Users conducting activities in athletic field, stadium, or running track agree to the following:**
- 1. Proper athletic footwear must be worn at all times;
 - 2. Press box, PA system and scoreboard are not available;
 - 3. Goals are not guaranteed;
 - 4. Tents, canopies, or other similar equipment is not allowed;
 - 5. Adult soccer tournament play is prohibited except on synthetic turf stadium fields;
 - 6. Use of Natural 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;
 - h. Use is conducted December 1 through March 14.
 - 7. 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.
 - 8. Use of Running Tracks is prohibited if:
 - a. Excessive heat conditions exist;
 - b. Lightning is occurring;
 - c. Track is covered in snow or ice.
- C. Users conducting activities in outdoor Tennis courts, outdoor Pickleball courts, and outdoor Basketball courts agree to the following:**
- 1. Only tennis and pickleball are allowed on tennis courts;
 - 2. Pickleball may only be played on tennis courts with pickleball lines painted by MCPS;
 - 3. No representations are made as to the condition of any court and installed accessory equipment such as net and net post, rim, backboard, fencing, etc.
 - 4. Proper athletic footwear must be worn at all times;
 - 5. Tents, canopies, or other similar equipment is not allowed;
 - 6. Only half of the total number of courts at each school is available for reservation to ensure that there are always courts open to the public on a first come first serve basis for general walk-on play by residents for personal recreational exercise;
 - 7. Organized activity, including but not limited to business or commercial use requires a reservation.

8. Exceptions to only half of the courts being reserved may be granted for approved tournament use only on a case-by-case basis by the CUPF Director or designee;
9. Use is prohibited if:
 - a. Excessive heat conditions exist;
 - b. Lightning is occurring;
 - c. Steady rain is falling;
 - d. Court is covered in snow, ice, mud, debris, standing water, or leaves.
- D. **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 a Reservation Request 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 reservation 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 reservations or agreements that apply to other locations that CUPF has permitted the User to occupy.
 - D. Before reinstating a reservation, 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 reservation 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/Inclement Weather 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. Natural grass field closure decisions are available online at: www.rainoutline.com
 - D. 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 Reservation Request.
- 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 reservations 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.** Amendment of this Agreement must be in writing, approved 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 when all parties approve the Agreement in writing.
- 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.

