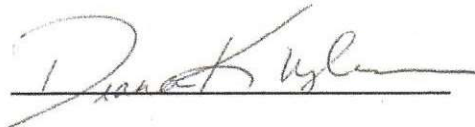


**MEMORANDUM OF UNDERSTANDING
WITH RESPECT TO THE
PUBLIC-PRIVATE PARTNERSHIP FOR THE DESIGN, CONSTRUCTION,
FINANCING, AND MAINTENANCE OF PRINCE GEORGE'S COUNTY PUBLIC
SCHOOLS ALTERNATIVE CONSTRUCTION FINANCING PACKAGE 1**

**Re: MOU Authorizing P3 Steering Committee Between PGCPS and Prince
George's County**

PGCPS Approved for Legal Sufficiency

Diana K. Wyles, Esq.
Office of General Counsel

Signature: 

Date: 9/23/2020

PGCPS Approved for Financial Adequacy

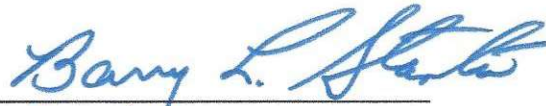
Michael Herbstman
Chief Financial Officer

Signature: 

Date: 9/24/20

PGCPS Approved for Substantive Content

Barry Stanton
Chief Operating Officer

Signature: 

Date: 9/23/2020

**MEMORANDUM OF UNDERSTANDING
WITH RESPECT TO PRINCE GEORGE’S COUNTY PUBLIC SCHOOLS’
PUBLIC-PRIVATE PARTNERSHIP PROGRAM**

This Memorandum of Understanding (“**MOU**”) dated this 20th day of October, 2020, is entered into to set forth key terms, conditions, and understandings among Prince George’s County and the Board of Education of Prince George’s County (each of which are defined below) with respect to Prince George’s County Public Schools’ Public-Private Partnership Program (“**P3 Program**”, as defined below).

RECITALS

WHEREAS, the mission of PGCPs is to provide a great education that empowers all students and contributes to thriving communities, and one of the key components of PGCPs’ strategic plan is maintaining teaching, learning, and working environments that are inviting, welcoming, technologically equipped, culturally sensitive, healthy, and safe; and

WHEREAS, Section 126 of Division II, Title 4, Subtitle 1 of the Education Article of the Annotated Code of Maryland permits county boards of education, with the approval of the county governing body, to utilize certain “alternative financing methods” in order to “finance or to speed delivery of, transfer risks of, or otherwise enhance the delivery of public school construction”; and

WHEREAS, under subsection (a)(2) of Section 126 of Division II, Title 4, Subtitle 1 of the Education Article of the Annotated Code of Maryland, such “alternative financing methods” include “public-private partnership agreements, in which a county board contracts with a county revenue authority or a private entity for the acquisition, design, construction, improvement, renovation, expansion, equipping, or financing of a public school, and may include provisions for cooperative use of the school or an adjacent property and generation of revenue to offset the cost of construction or use of the school” and “design-construct-operate-maintain-finance arrangements that permit a county board to contract with a county revenue authority or a private entity for the design, construction, operation, and maintenance of a public school under terms agreed to by the parties”; and

WHEREAS, the approved 20-year *Educational Facilities Master Plan* (as amended in FY 2019) establishes the Blueprint for PGCPs to ensure adequate educational facilities are provided to meet the needs of PGCPs’ 134,000 students and nearly 22,000 full- and part-time employees, adopting the use of alternative construction financing to deliver school facilities in the timeliest and most cost-effective manner possible, while guaranteeing life cycle asset performance; and

WHEREAS, to advance consideration of alternative construction financing options, in May 2018, the County Council (as defined below) approved Resolution No. CR-33-2018 establishing a Public-Private-Partnership Alternative Financing School Infrastructure Work Group (“**Work Group**”) for the purpose of supporting, encouraging, and establishing a work group to explore a Public-Private Partnership Alternative Financing School Infrastructure Program for public school construction and replacement projects in the County; and

WHEREAS, the Work Group is comprised of representatives from the County Executive's office, the County Council (as defined below), the Board of Education, and PGCPS; and

WHEREAS, the Work Group engaged external advisors and independent experts to undertake due diligence and evaluate a wide spectrum of potential finance and delivery options, concluding that an initial bundle of 6 schools under a design-build-finance-maintain structure as part of a broader PGCPS P3 Program could potentially accelerate the delivery of critical new infrastructure from 17 years to 3.5 years, while likewise reducing costs and guaranteeing that the schools would meet prescribed performance standards over a designated term; and

WHEREAS, PGCPS, with the support of the Work Group, issued Request for Qualifications No. DCP19-24, Public-Private Partnership for the Design, Construction, Financing and Maintenance of Prince George's County Public Schools Alternative Construction Financing Package 1 on May 30, 2019 (as amended, the "**RFQ**") for an initial bundle of schools as part of the P3 Program; and

WHEREAS, on July 15, 2019, respondents submitted Statements of Qualifications in response to the RFQ; and

WHEREAS, on September 19, 2019, the Board of Education passed a resolution accepting the Chief Executive Officer's recommendation to procure six middle and/or K-8 schools as part of the P3 Program; and

WHEREAS, on November 20, 2019, PGCPS, with the support of the Work Group, issued Request for Proposals No. DCP19-24A, Public-Private Partnerships for the Design, Construction, Financing, and Maintenance of Prince George's County Public Schools Alternative Construction Financing Package 1 Schools (as amended, the "**RFP**") to those respondents that were short-listed from the RFQ; and

WHEREAS, the selected respondent under the RFP (the "**Developer**") will enter into a public-private partnership agreement (a "**P3 Agreement**") under the P3 Program with PGCPS; and

WHEREAS, the County and PGCPS have confirmed the essentiality of the P3 Program to meet their collective public mission of educating children and have estimated that the P3 Program will have the impact of serving in excess 10,000 children in the County; and

WHEREAS, the Parties wish to enter into this MOU to clearly allocate the County's and PGCPS' roles, rights, and responsibilities with respect to funding and oversight for the P3 Program.

NOW, THEREFORE, in consideration of the mutual promises contained in this MOU, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties do covenant and agree as follows:

Article I
Purpose; Term; Definitions

A. Purpose. The purpose of this MOU is to specify the County's and PGCPs' roles, rights, and responsibilities with respect to funding and oversight for the P3 Program.

B. Term. The term of this MOU ("**Term**") shall begin upon the date of execution of this MOU and remain in effect until June 30, 2058.

C. Definitions. For the purposes of this MOU, the following terms have the following meanings:

"**Approval Event**" has the meaning set forth in Section III.B.

"**Availability Payment**" has the meaning set forth in a P3 Agreement.

"**Board of Education**" means the Board of Education of Prince George's County, Maryland.

"**Chief Executive Officer**" means the Chief Executive Officer of Prince George's County Public Schools.

"**County Council**" means the Council of Prince George's County, Maryland.

"**County Executive**" means the Executive of Prince George's County, Maryland.

"**County Funding Cap**" has the meaning set forth in Section II.A.

"**Delay Payment**" has the meaning set forth in a P3 Agreement.

"**Developer**" means any entity identified, or otherwise established, as the successful proposer following a P3 Program procurement that enters into a P3 Agreement with PGCPs.

"**Effective Date**" has the meaning set forth in a P3 Agreement.

"**Escrow Account**" has the meaning set forth in Section II.D.

"**Escrow Agent**" has the meaning set forth in Section II.D.

"**Escrow Agreement**" has the meaning set forth in Section II.D.

"**Milestone Payment**" has the meaning set forth in a P3 Agreement.

"**MOU**" means this Memorandum of Understanding entered into by and between the County and the Board of Education, as may be amended.

"**P3 Agreement**" means a Project Agreement, as may be amended, for the alternative construction financing of schools that will be entered into by and between PGCPs and a Developer as part of the P3 Program.

“**Parties**” means the County and the Board of Education.

“**PGCPS**” means Prince George’s County Public Schools.

“**Prince George’s County**” or “**County**” means Prince George’s County, Maryland, a body corporate and politic.

“**Progress Payment**” has the meaning set forth in a P3 Agreement.

“**Project**” has the meaning set forth in a P3 Agreement as part of the P3 Program.

“**Project Funds**” has the meaning set forth in Section II.D.

“**Project Management Unit**” means the multi-disciplinary unit established by PGCPS for the purpose of administering any P3 Agreements and overseeing any Developer’s performance under a P3 Agreement.

“**Public-Private Partnership Program**” or “**P3 Program**” means the PGCPS program that develops, procures, manages and promotes projects with private-sector partners and alternative financing mechanism to efficiently deliver cost-effective projects for PGCPS as permitted under Section 126 of Division II, Title 4, Subtitle 1 of the Education Article of the Annotated Code of Maryland.

“**Relief Payment**” has the meaning set forth in a P3 Agreement.

“**RFP**” has the meaning set forth in the Recitals.

“**RFQ**” has the meaning set forth in the Recitals.

“**Steering Committee**” has the meaning set forth in Section III.A.

“**Term**” has the meaning set forth in Section I.B.

“**Termination Compensation**” has the meaning set forth in a P3 Agreement.

“**Work Group**” has the meaning set forth in the Recitals.

Article II

Payments and Contributions to PGCPS’ P3 Program

A. Maximum Amount of Contributions. Unless otherwise agreed to by the County in writing, including in accordance with Section II.F and Section II.G, the Parties acknowledge and agree that the County will contribute to PGCPS’ operating budget Fifteen Million Dollars (\$15,000,000.00) per year towards the P3 Program pursuant to this MOU (the “**County Funding Cap**”) made available at the beginning of fiscal year 2022. Additional funding for the P3 Program and Projects supported by the P3 Program shall be the responsibility of PGCPS.

B. Priority of Contributions from the County. PGCPS shall prioritize contributions to the P3 Program from the County to support Projects based on P3 Agreement(s) Effective Date(s).

County Funding will therefore be applied first to the initial P3 Agreement that is executed as part of the P3 Program. County funds can be used for Milestone Payments, Relief Payments, Delay Payments, Availability Payments, Termination Compensation and administrative costs.

C. Payments to the Developer. Under the P3 Program, a P3 Agreement may require PGCPs to make the following types of payments to the Developer: (1) an Availability Payment, (2) a Progress Payment, (3) a Milestone Payment, (4) a Relief Payment, (5) a Delay Payment; and/or (6) Termination Compensation.

D. Project Funds. The amounts due to be paid from PGCPs to a Developer under a P3 Agreement, including any associated interest earned thereon, shall be referred to as the “**Project Funds**.” The Project Funds shall be deposited into an escrow account (“**Escrow Account**”) by PGCPs and managed by a third-party qualified bank (“**Escrow Agent**”) identified in an agreement that is duly executed by the Developer, PGCPs, and the Escrow Agent (the “**Escrow Agreement**”) on or before the date that the P3 Agreement achieves its Effective Date. A form of Escrow Agreement shall be attached to and incorporated into a P3 Agreement. The Project Funds shall be disbursed in accordance with a P3 Agreement and the Escrow Agreement.

E. Source of Payments.

1. The County’s source of funding for the P3 Program is, subject to applicable law, funds appropriated from the County’s operating budget for the purposes set forth in this MOU or any other source of funding the County deems acceptable to meet its funding obligations set forth in this MOU.
2. PGCPs’ source of funding for all Project Funds will be based on the funding appropriation (1) for the fiscal year in which the payment is made and deducted from the Capital Programs budget pursuant to the amount set forth in a P3 Agreement, (2) shall include all funds disbursed by the County to PGCPs’ operating budget for purposes of the P3 Program pursuant to this Article II, and (3) shall include any additional funds from PGCPs’s operational budget that is assigned to the P3 Program.

F. Termination Payments. In the event of an early termination of a P3 Agreement, PGCPs shall be responsible for disbursing to the Escrow Agent any termination payments due to the Developer under a P3 Agreement. The Steering Committee shall determine the method of paying Termination Compensation (recurring or lump sum payment) and the amount to be contributed by the respective Parties. Notwithstanding the foregoing, the County shall have no obligation to contribute any funds towards the Termination Compensation in excess of the County Funding Cap unless the County determines otherwise.

G. MOU Amendments related to P3 Program Expansion. In the event the State of Maryland requires the County to make additional contributions to PGCPs’ operating budget to support the expansion of the P3 Program, the Parties agree that this MOU will be amended in writing to reflect the terms and conditions of such additional contributions.

Article III Steering Committee

A. Steering Committee. Any P3 Agreement will be procured by PGCPs and will be executed by PGCPs and the Developer. However, given the cost contributions by both PGCPs and the County, the Parties hereby establish a three-member steering committee comprised of the County Executive or designee, the Chair of the County Council or designee, and the Chair of the Board of Education of Prince George's County or designee (the "**Steering Committee**"). The Steering Committee shall remain in place for the Term. Subject to Section III.F below, the purpose of the Steering Committee shall be to oversee the governance of this MOU on behalf of the County and PGCPs as cost sharing partners and ensure that the Project meets its stated objectives.

B. Steering Committee Approval Required. The review and approval of the Steering Committee is required prior to: (1) appointing the person responsible for overseeing the Project Management Unit on behalf of PGCPs; (2) executing an amendment to a P3 Agreement or this MOU; or (3) PGCPs electing to exercise a termination right under a P3 Agreement (each, an "**Approval Event**").

C. Steering Committee Operations and Reporting. Operating protocols for the Steering Committee will be developed by the Project Management Unit once created by PGCPs. PGCPs shall submit quarterly status reports to the Steering Committee, beginning with the first quarter after the execution of this MOU. The reports shall include a summary and update of significant activities related to the Project from the prior quarter, any areas of concern with respect to the Project, and any other information reasonably requested by the Steering Committee. PGCPs shall make available to the Steering Committee any status reports provided to PGCPs from the Developer or the Developer's lender's representatives.

D. Steering Committee Meetings. The Steering Committee shall meet at a minimum quarterly (or as frequently as otherwise agreed by the Steering Committee) to discuss the P3 Program and approve or reject any pending Approval Events. The location of the Steering Committee meetings shall rotate among the offices of the Steering Committee members.

E. Open Meetings Act. In furtherance of the goals of transparency and accountability, the meetings of the Steering Committee will be conducted in compliance with the terms and provisions of the Open Meetings Act, codified as Title 3, Subtitle 3 of the General Provisions Article of the Maryland Annotated Code. The members of the Steering Committee will monitor compliance of this section.

F. Reservation of PGCPs Authority. Notwithstanding anything to the contrary stated herein, PGCPs shall be the Party to execute a P3 Agreement and any related agreements with the Developer; provided, however, that the other members of the Steering Committee shall have the opportunity to participate in the development and negotiation of a P3 Agreement and any related agreements. PGCPs shall retain direct responsibility for a Project's oversight.

Article IV
Miscellaneous

A. Dispute Resolution. In the event of a dispute among any member(s) of the Steering Committee, the disputing member(s) shall make good faith efforts to resolve the dispute informally.

B. Subject to Appropriation. All terms and conditions of this MOU are subject to the availability of funding by County appropriation. Nothing herein shall be construed to require the County or PGCPS to obligate or expend funds for the performance of any work pursuant to this MOU or a P3 Agreement in violation of County, federal, or state anti-deficiency laws, or shall give rise to a claim for compensation by or against the County or PGCPS for services performed to further the provisions of this MOU or the Project, except as provided herein.

C. Assignability. This MOU shall inure to and be binding upon the Parties hereto, their respective agents, successors, and assigns; however, neither Party to this MOU may assign its interests in this MOU without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

D. Indemnification.

1. The Board of Education agrees that it shall, up to the amount of its statutory limit, indemnify and hold harmless Prince George's County and its officers, officials, agents, employees and/or servants from and against all third-party claims, liabilities, losses, damages, and expenses, including legal fees and disbursements of counsel, arising out of any personal injury, property damage, and other claims caused as a result of the gross negligence and/or intentional tortuous acts or conduct, or omissions to act, of employees, agents, and/or servants of the Board of Education in performing responsibilities required under this MOU. The legal liability for the Board of Education is subject to the limits set forth in the Maryland Annotated Code, Educ. Art., Section 4-105 through Section 4-106.

2. Prince George's County, Maryland agrees that it shall, up to the amount of its statutory limit, indemnify and hold harmless the Board of Education, its agents, employees and/or servants from and against all third-party claims, liabilities, losses, damages and expenses, including legal fees and disbursements of counsel, arising out of any personal injury, property damage and other claims caused as a result of the gross negligence and/or intentional tortuous acts or conduct, or omission to act, of employees, agents and/or servants of the County in performing its responsibilities required under this MOU. The indemnification by County is subject to the types of liability, limits, and notice provisions set forth in the Local Government Tort Claim Act at Section 5-301 et seq. of the Courts and Judicial Proceedings Article of the Maryland Annotated Code.

E. Changes in Law. This MOU is subject to such modifications as may be required by changes in state or federal law or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this MOU on the effective date of such change as if fully set forth herein.

F. Amendments. No covenant, agreement, term, or condition set forth in this MOU shall be changed, modified, altered, waived, or terminated except by a written instrument of change, modification, waiver, or termination executed by the Parties hereto.

G. Governing Law, Conflicts of Laws, and Venue. This MOU and the rights and liabilities of the Parties hereto shall be governed in accordance with the laws of the State of Maryland, without regard to conflict of law principles, and, subject to the Dispute Resolution provision herein, any permitted action or proceeding arising hereunder shall be brought in a Maryland court of competent jurisdiction located in Prince George's County.

H. Headings. The headings to articles, sections, and exhibits (if any) of this MOU are for ease of reference only and shall not in any way affect its construction or interpretation.

[Signatures on the Following Page]

IN WITNESS THEREOF, the Parties hereto have caused this MOU to be executed at the place and on the day herein above written.

PRINCE GEORGE'S COUNTY, MARYLAND

By: Angela Alsobrooks
Angela D. Alsobrooks
County Executive

By: Todd M. Turner Date: 10/27/2020
Todd M. Turner
Council Chair

PRINCE GEORGE'S COUNTY BOARD OF EDUCATION

By: Alvin Thornton
Dr. Alvin Thornton
Chair