

**ADDENDUM A**



**Woodland Park School District RE-2**

**Merit Academy Facility Use Agreement**

(amended, effective as of August 9, 2023)

600 E Kelley's Rd., Woodland Park, CO 80863



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**Woodland Park School District RE-2  
Facility Use Agreement (“FUA” or “Agreement”)**

THIS AGREEMENT is made to be effective as of July 1, 2022 (the “Effective Date”) between Woodland Park School District RE-2, a political subdivision of the State of Colorado (“School District” or “District”) and Merit Academy (“School”, “Charter School”, “Merit Academy”), a Colorado non-profit corporation and public charter school, individually referred to as “Party” or collectively referred to as the “Parties”.

**RECITALS**

A. The District, in its capacity as authorizer of Merit Academy, and the School, are parties to a charter school contract as authorized pursuant to the Colorado Charter Schools Act, C.R.S. 22-30.5-101, et. seq. (“Merit Academy Charter Contract”) dated as of July 1, 2022, for a term currently expiring June 30, 2027, which governs Merit Academy’s operation as a charter school in the District.

B. The District is the owner of the certain real property, including land and improvements thereon, situated in Woodland Park, Colorado, located at 600 E Kelley’s Rd, Woodland Park, CO 80863, (the buildings and structures thereon are referred to as “Facility,” outdoor areas referred to as “Outdoor Areas,” parking areas or driveways referred to as “Parking Lots,” and the entirety referred to collectively as the “Property”).

C. The School and the District desire to enter into this FUA for the School to use a portion of the Facility, as more specifically designated on Exhibit A attached hereto (hereinafter referred to as the “FUA Premises”), and to have access to the Outdoor Areas, Parking Lots, and Property in general (hereinafter referred to as the “FUA Access”), all subject to the terms and conditions of this FUA.

D. The District has determined that the Facility is being underused and that it is in the best interest of the District and the School to enter into this arrangement to share the Facility, and to establish a formal Facility Use Agreement for the School to utilize the FUA Premises and FUA Access to facilitate the School’s purpose as a public charter school, all subject to the terms and condition of this FUA.

E. The District requires all District authorized charter schools operating in District owned facilities to enter into a FUA and identify specifically the responsibilities of the School for the District owned facility.

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein as though set forth in full and for other good and valuable consideration, the Parties agree as follows:

1. ACCESS; TERM

- A. **Premises Access.** School District hereby provides the FUA Premises and FUA Access to Merit Academy for the Term (as hereinafter defined) of this Agreement. Between November 1, 2023 and December 1, 2023, the Parties will meet to discuss how the Parties might collaborate to adjust the FUA Premises, FUA Access and costs paid pursuant to this Agreement, to begin with the 2024-2025 school year. The discussion will cover updating the calculation of actual costs and addressing changes in student enrollment at the Facility, including the topics of possible expansion of the FUA Premises and FUA Access, use of an alternate District facility, or early termination of this Agreement.
- B. **Term.** Subject to earlier termination as provided herein, the initial term of this FUA is for a period of three (3) fiscal years, commencing on July 1, 2022, and ending on June 30, 2025. The Parties may mutually agree to extend the term for any length of time to which both Parties mutually agree. All such terms or mutually agreed extensions are referred to herein as the "Term".

2. SCHOOL AND DISTRICT OBLIGATIONS

- A. **No Base Rent.** Pursuant to C.R.S. § 22-30.5-104(7)(c), the School shall not be required to pay rent for its occupancy of the FUA Premises or use of the FUA Access. The School agrees to pay costs, which shall be computed on a district-average-per-pupil square foot basis for operation and maintenance of all school facilities, including the Facility, and shall include, without limitation, all costs for utilities, wireless/internet access and technology systems, and building maintenance services. **Shared areas shall be counted at one-half (1/2) of floor area.** ~~The total charge to the School for the first year of the Term is estimated to be \$816.83 per pupil per year.~~ The District shall deduct one-twelfth of this cost each month from the monthly payment otherwise due to School under the Charter School Contract. ~~The deduction for July through September shall be based on School's projected enrollment, and such amount shall be adjusted in October and following months such that the payments over 12 months shall equal the per pupil charge times the October count at School. Any revision of the October count due to audit, or otherwise, shall result in an appropriate adjustment of this charge. The per pupil per year charge in the second and third year of the Term will be the same as the first year of the Term.~~ In addition to the costs set forth in the 2.A., School also is responsible for other actual costs as set forth elsewhere in this Agreement. **Classroom and shared space shall be increased annually commensurate with enrollment growth.**
- B. **Acceptance of Present Condition; Initial Occupancy.**
  - a. School accepts the FUA Premises and the FUA Access in their present condition; provided, however, said acceptance does not relieve the School District of responsibility for the maintenance and repair of the FUA Premises consistent with applicable building codes. Possession of the FUA Premises by School shall be conclusive evidence as against School that the FUA Premises were in good and satisfactory condition when possession was delivered to School.
  - b. Notwithstanding the foregoing, School acknowledges that the FUA Premises is currently in need of certain repairs and upgrades to make it suitable for School occupancy (the "School Improvements"). The School shall be solely responsible to perform and bear the costs associated with the School Improvements. The

School and the District agree to collaborate in good faith to make a determination as to what those repairs and upgrades include and the timeline for occupancy, and to reduce those items to writing in a separate letter agreement. If there is disagreement, then the District shall make the final decision. If the School does not agree to a repair or upgrade being on the list then its sole remedy is to terminate this Agreement, and both Parties shall be relieved of their obligations hereunder, except those obligations that survive termination hereof. Any work being performed hereunder shall be completed in accordance with the requirements under Section 3.

- c. The School may, at its discretion, purchase services from the District as described in Exhibit F.
- d. School shall be responsible for any repairs to the FUA Premises, the Facility, or the Property caused by the negligent or intentional actions of School or School's employees, agents, students, invitees, visitors, or contractors. In the event of an emergency, the District and School shall collaborate to repair or mitigate the situation. Emergency work shall be defined as the occurrence of an event that threatens immediate harm to persons or property. Immediately following the emergency work, District and School will mutually agree to fault and payment responsibility in a fair and equitable manner to the parties consistent with this Agreement.

C. **District's Responsibilities.** The District shall provide general maintenance and repairs to, and necessary replacements of, building features, including heating, electrical, and plumbing systems, outside maintenance (including painting) of the Facility, to the extent required by applicable law and regulations of the State of Colorado to maintain the FUA Premises in their current condition, or better. Maintenance shall include grounds maintenance and snow removal from parking lots and access roads. The District shall provide water, heat, and electricity for the FUA Premises and any repairs necessary for the provision of water, heat, and electricity, provided the District shall not be responsible for delay or interruption of service that is due to the failures of a utility provider or other circumstances beyond the District's reasonable control.

### 3. CAPITAL IMPROVEMENTS TO THE FACILITY

- A. **School Work.** Except for the School Improvements, School shall not at any time construct or make any improvements, additions, modifications, repairs, replacements or alterations to the FUA Premises, Facility, or Property (including without limitation signage, playgrounds, sheds, fencing enclosures, etc.) without the prior written consent of the District, which consent may be withheld in District's sole discretion.
- B. **School Improvements.** The School shall submit conceptual plans and specifications for School Improvements and other District-approved improvements, additions, modifications, repairs, replacements or alterations (collectively, "School Work") to the District for approval. In the event District approves the plans and specifications, School shall prepare and submit to District for approval reasonably detailed plans and otherwise comply with the terms of this Agreement.
- C. **Quality of Work.** School Work shall be accomplished in a good and workmanlike manner, by reputable contractors reasonably and mutually agreed upon by the District

and Merit Academy, and with materials of comparable kind and quality, or greater, to those materials already used at the Property.

- D. **Damage from Work.** Merit Academy shall repair any damage resulting from School Work. All alterations, additions, improvements, repairs, renovations, and appurtenances installed or affixed on or to the FUA Premises during the term of this Agreement shall become the sole property of the School District upon the termination of this FUA. However, all removable equipment, facilities, alterations, additions, or improvements installed by School shall be and remain the property of School during the term of this FUA. Upon termination School shall retain removable fixtures provided those are removed from the FUA Premises on or before the termination of this FUA, and (2) the FUA Premises are left in the same or better condition following removal as before the fixture was installed.
- E. **Minor Work.** Notwithstanding the foregoing to the contrary, School may undertake Minor Alterations to the FUA Premises, hereinafter defined, without pre-approval from the District, provided that such Minor Alterations are performed in good and workmanlike fashion and in compliance with all applicable building codes, District Standards and Specifications, permits, laws, and regulations. "Minor Alterations" means alterations, renovations, modifications or other improvements that:
- a. have a total project cost for all related expenditures in the individual project of less than \$10,000,
  - b. are non-structural in nature,
  - c. do not involve the addition of any new structure or enclosure, and
  - d. do not change the operational use of any room or space.
- F. **Temporary Improvements.** In connection with School Work approved by the District, the District shall specify in written form (email or other written form) whether: (i) such School Work is expected to be restored to its prior condition upon termination of this Agreement (referred to as a "Temporary Merit Academy Improvement"), or (ii) such School Work is not required to be restored upon termination and shall be treated in the same manner as all other District facilities and improvements at termination. If the District fails to so specify, it shall be treated as a Temporary Merit Academy Improvement, until such time as the District notifies the School in writing that the School Work is not required to be restored upon termination.
- G. **School's Governmental Approvals.** School shall be responsible for permitting and managing all School Work projects to ensure safe and proper execution of the work. School shall obtain, at School's sole cost and expense, all other approvals, including but not limited to local, state and federal permits and consents necessary for any School Work.
- H. **School's Work Guidelines.** All School Work performed by School pursuant to this Agreement shall be performed by School and at the School's sole cost and expense. All work performed shall be performed only by duly licensed contractors specializing in such work and unless otherwise expressly provided herein shall be coordinated through the District's Executive Director of Technology and Operations or their designee for approval. All work shall be performed in a good and workmanlike manner and shall be completed substantially in accordance with the plans approved by the District, and all applicable governmental laws, regulations, rules, codes and orders. School, its contractors, laborers, suppliers and professionals shall exercise diligent care and caution in the installation, construction, maintenance, and repair of the Property or any appurtenances thereto, in order to avoid damage to the Property and the District's

improvements. In the event of such damage, School shall promptly repair said damage using materials of like kind and quality, restoring it to its condition prior to damage by School, at School's sole cost and expense. Under no circumstances shall the District be obligated to reimburse in part or in full the cost of any work done in the Facility should the School not renew this Agreement or should it otherwise be terminated for any reason. School shall ensure that all persons or entities performing work or providing materials relating to such improvements including, without limitations, all contractors, subcontractors, laborers, suppliers and professionals, are paid in full for such services and materials. Further, School Work shall comply with the following conditions:

- a. Project(s) must be related to the operation of Merit Academy's educational and community programs.
  - b. Projects shall be in accordance with the School District's standards, including without limitation any requirements for purchasing, procurement, or bidding, unless expressly otherwise approved by the District. Merit Academy may submit proposed deviations from standards for review and approval by the District, which approval may be withheld in the District's sole discretion.
  - c. The District shall have the right to inspect all School Work performed by School. The District may require correction of any deficient School Work by giving written notice of such deficiencies to the School. Thereafter, School shall have seven calendar days to correct any deficiencies reasonably determined by the District to create significant safety or property damage concerns, and 30 calendar days to correct all other identified deficiencies.
- I. **No Liens.** School covenants and agrees that nothing contained in this FUA shall be construed as consent by the District to subject the Property or the District to liability for a lien of any type. School covenants not to suffer any mechanics', laborers' or materialmen's liens to be filed against the Property or any portion thereof or any interest therein by reason of any work, labor, services performed at, or materials furnished to, or claimed to have been performed at, or furnished to, the Facility by, or at the direction or sufferance of, Merit Academy. Merit Academy's compliance requires promptly contesting any filed mechanic's or similar lien upon receipt of any notice for the same. Thereafter, Merit Academy will immediately post a bond in an amount sufficient for the removal of the lien while contesting the matter.

#### 4. ACCESS

- A. **Mutual Cooperation.** The School and the District acknowledge that the Property, including the Facility, will be utilized as a shared space between a District-operated school or schools and Merit Academy for the duration of this Agreement. The Parties agree that the use of the Property by each shall not unreasonably interfere with the use of the other. While this Agreement is an attempt to detail the specifics of the allowable use by Merit Academy in a manner that will enable both Parties to operate their respective schools as effectively as possible in the shared-space, it is likely that unexpected issues may arise during the course of this Agreement. The Parties agree that when any such issue arises, to the extent not addressed in this Agreement, the Parties will work together in good faith to find a solution that is acceptable to both Parties. If a mutual resolution to the issue cannot be ascertained, then the decision of the District shall be final in determining the resolution to the issue. Nothing herein shall be construed to limit the

ability of either Party to seek injunctive relief or other remedies at law or equity to which they are entitled.

- B. **Security Procedures.** School shall comply with any reasonable security procedures established by the District, including the District’s keycard system, to prevent unauthorized access to the FUA Premises. School and District shall each designate emergency contact personnel to notify in case of an emergency requiring access to the FUA Premises. The District is not responsible for vandalism or theft at the FUA Premises or of other Merit Academy property located at the Property. Unless otherwise included in the Total Maintenance Costs, the District is not obligated to monitor or respond to security system alerts.
- C. **District Access to the FUA Premises.** Merit Academy shall permit the District or the District’s agents, at reasonable times and with at least 24 hours of notice (unless in case of an emergency, in which case the ability to access shall be immediate), to enter the FUA Premises for any one or more of the following purposes: (i) inspections of the Facility; (ii) performing maintenance or making repairs or replacements or performing other work to the Facility; (iii) in the event the District elects to sell or refinance the Property, showing the Facility to prospective purchasers or lenders; and (iv) any other legitimate reason the District may have in accessing and/or inspecting the FUA Premises.
- D. **Merit Academy’s Access to the Property.** Merit Academy shall enjoy unrestricted access to the FUA Premises and FUA Access, as designated herein, at the following dates and times:

Area	Allowable Use
Classrooms	All times
Hallways	All times
Bathrooms	All times
Auxiliary Gym	All times. However, Merit will coordinate with the District for use outside of regular school hours by the District or a community partner, if not otherwise scheduled for use by Merit and as approved through facilities scheduling system (rSchoolToday)
East Parking Lot/Bus Loop	All times. <del>However, B</del> bus loop will be available for Woodland Park Middle School <del>and Merit</del> student pick up and drop off before and after school.
Multi-Use Field and Track	Regular school hours as coordinated with Merit/WPMS building leaders Otherwise approved through facilities scheduling system (rSchoolToday)
Softball Field	Only as approved through facilities

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	scheduling system (rSchoolToday)
Playground	Regular school hours as coordinated with Merit/WPMS building leaders
Other Areas Not Specified	Only as approved through facilities scheduling system (rSchoolToday)
<b><u>Ensemble Room</u></b>	<b><u>Merit full time use</u></b>
<b><u>Work Shop</u></b>	<b><u>Shared</u></b>
<b><u>Commons</u></b>	<b><u>Shared</u></b>

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The School shall enjoy exclusive access to the classroom spaces of the FUA Premises. For non-classroom areas, outside of the above scheduled hours, the School shall not have access to the Property except that each year of this Agreement the School and the District will work collaboratively and in good faith to create a calendar for when use of the Property will be needed for special events, this calendar will be submitted as a schedule to the District no later than June 1 of each year designating the areas, dates, and times that the School would like to reserve all or portions of the Property during the course of the school year for specific uses and events. The District will reserve those areas, dates and times for the School's use, to the extent not already reserved. If there is a conflict between a District use and the School's use, the District's use will take precedence. After this schedule is submitted the School agrees to utilize the District's centralized reservation system to reserve non-classroom areas of the Property on any particular date and time. The School will not be charged any additional fee for this use.

- E. **Keys.** Merit Academy shall be entitled to key cards for each authorized employee for entry to the Facility. Merit Academy will be provided with any additional keys needed to access the Property for its intended purposes. At the termination of this Agreement all key cards and keys must be returned. If Merit Academy fails to do so it will bear the cost to re-key the Property.
- F. **Dropoff/Pickup.** School and District agree that morning drop-off and afternoon pick-up for the School will follow the schedule and diagram outlined in Exhibit B ("Dropoff/Pickup Plan"). School will be responsible, with permission from the District, for the costs and arrangements of any parking lot striping, signage, orange cones, or other accessories needed to direct traffic flow in the proper pattern. If the agreed upon Plan attached as Exhibit B is not working well for either Party, the Parties agree to work together in good faith to revise the plan in a manner that meets the needs of both Parties. If mutual agreement cannot be reached to modify Exhibit B, then the existing Plan will remain in effect.
- G. **Parking.** School will be permitted to utilize the areas of the Parking Lots designated in Exhibit C for use by its employees, agents, ~~and visitors, and students~~ on the same schedule as its use of the FUA Premises. School agrees that if any automobile or other

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vehicles owned by School or any of its employees, ~~of visitors, or students~~ is at any time parked in any part of the Property other than the specified areas designated in Exhibit C, School will cooperate with the District in ensuring that the employee, agent, ~~of visitor,~~ ~~student~~ is properly warned and corrected. If School ever requires additional parking for special events or activities it will request permission from the District.

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- H. **Technology.** The School may utilize existing technology systems owned by the District as delineated and so long as such use is in accordance with the District's Department of Technology Services Guidelines and Regulations included as Exhibit E.
- I. **Custodial Services.** The School shall provide and pay for all custodial and trash removal services for the FUA Premises. The School shall keep the FUA Premises in a clean and sanitary condition and provide custodial services at all times and at least up to the same standards of care as other buildings within the District.

## 5. PROPERTY

- A. **No Representations or Warranties.** The District makes no representations or warranties of any nature whatsoever as to the use of the Property by Merit Academy for its intended purposes or for the condition of the Property. By entering into this Agreement Merit Academy represents that it has adequate opportunity to inspect the Property and by entering into this Agreement Merit Academy agrees to accept the FUA Premises "as-is." Except as expressly provided in this Agreement, no promise of the School District to alter, remodel, decorate, clean or improve the Property or any portion thereof and no representation respecting the condition of the Property or any portion thereof have been made by School District to Merit Academy.

## 6. CHARTER SCHOOL'S COVENANTS

- A. **Tax exempt status.** Merit Academy agrees to maintain its tax exempt status and that if the Property loses its property tax exempt status as a result of Merit Academy's actions, inactions, or use of the Property that it shall be a breach of this Agreement and, without limitation to other remedies, Merit Academy shall bear any costs associated therewith.
- B. **Merit Academy's Use.** Merit Academy covenants at all times during the Term and any further time as Merit Academy may occupy the FUA Premises and have the FUA Access to use the Property in compliance with the following:
  - a. Use shall be only for Merit Academy and related educational programs and for no other purposes;
  - b. School agrees not to do or permit anything to be done in or about the FUA Premises or Property nor bring or keep anything therein that is not within the permitted uses of the FUA Premises or Property. School agrees not to do or permit anything to be done in or about the FUA Premises or Property that is improper, immoral, or unlawful; nor will School cause, maintain, or permit any nuisance in, on or about the FUA Premises or Property. School agrees not to commit or allow to be committed any waste in or upon the FUA Premises or Property.
  - c. Neither School, nor any of School's agents, contractors, employees, or invitees shall at any time handle, use, manufacture, store or dispose of in or about the FUA

Premises or Property, any flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, or other similar substances, petroleum products or derivatives or any substance (collectively "Hazardous Materials") subject to regulation by or under any federal, state and local laws and ordinances relating to the protection of the environment or the keeping, use or disposition of environmentally hazardous materials, substances, or wastes, presently in effect or hereafter adopted, all amendments to any of them, and all rules and regulations issued pursuant to any of such laws or ordinances (collectively "Environmental Laws"). School shall protect, defend, indemnify and hold District harmless from and against any and all loss, claims, liability or costs (including court costs and attorney's fees) incurred by reason of any actual or asserted failure of School to fully comply with all applicable Environmental Laws, or the presence, handling, use or disposition in or from the Premises of any Hazardous Materials, or by reason of any actual or asserted failure of School to keep, observe, or perform any provision of this subsection (c).

- d. To promptly comply with the following that are not the responsibility of School District (i) all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state, municipal and local governmental departments, commissions, boards and officers with respect to the Facility; (ii) all orders, rules and regulations of the National Board of Fire Underwriters, Colorado Inspections, all City and County Inspections, appropriate Rating Bureau(s), the local Board of Fire Underwriters, or any other body or bodies exercising similar functions, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Facility; (iii) all insurance policies and the recommendations of all insurance inspections and insurance carriers with respect thereto at any time in force with respect to the Facility or any part thereof; and (iv) all present or future rules and regulations for the use and occupancy of the Facility as School District, in its reasonable discretion, from time to time promulgates; and
- e. Not permanently affix, maintain or locate any signs, advertising placards, names, insignia, trademarks, descriptive material or any other such like item or items on the Facility without prior approval from the District.

## 7. SURRENDER OF FACILITY UPON TERMINATION

- A. **Duty to Vacate the Premises.** Upon termination of this Agreement, by lapse of time or otherwise, School shall vacate and surrender the FUA Premises. Except as otherwise provided herein, termination of this agreement shall not affect School's obligations under this Agreement arising prior to or at such termination.
- B. **Condition upon Delivery.** Merit Academy shall deliver the FUA Premises, upon termination or expiration, in as good a state or condition as when possession was first taken, except for reasonable use and wear/tear thereof. Merit Academy shall remove from the Facility any and all of its educational supplies, personal property, and other equipment or items owned by Merit Academy. Merit Academy shall have the right to itemize and remove personal property and equipment and items owned by Merit Academy. Unless otherwise expressly agreed by the District (either at the time of original approval, at the time of termination or otherwise), within thirty (30) days after expiration or termination of this Agreement, Merit Academy shall restore any improvements or

alterations designated as Temporary Merit Academy Improvements that Merit Academy made to the Facility to the condition existing prior to such improvements or alterations. If there is any uncertainty, at the request of Merit Academy, the District shall identify those alterations, including improvements, additions and modifications that need to be removed, restored or repaired by the School. Advance written approval of all such removals, restorations or repairs must be provided by the District. If Merit Academy fails to restore said improvements or alterations, School District may restore the improvements and alterations and Merit Academy will be responsible for all costs (including a reasonable charge for the time of District employees) in restoring the improvements and alterations. Upon expiration or earlier termination of this Agreement, School covenants that it will not seek payment or reimbursement from the District for any costs and expenses incurred as a result of early termination of this Agreement pursuant to the terms of this Agreement, including but not limited to moving costs.

## 8. INSURANCE

- A. **Insurance Requirements.** Refer to Exhibit D attached for additional insurance requirements. The School District will maintain property insurance for the Facility, in accordance with School District's policies and procedures, for the full replacement value of the Facility. The District shall have the right to provide such property insurance under a statewide school district self-insurance pool program, a School District self-insurance program, or, at any time during the Term of this Agreement, to provide such insurance through an insurance company at School District's option. The amount and type of insurance, including the deductibles, for the School District's insurance shall be determined by School District in its discretion.
- B. **Damage not Covered.** In the event that damage to the Facility is attributable to any negligence or intentional acts of Merit Academy, its employees, agents, students, or invitees, including, but not limited to, a situation whereby the School District determines that a maintenance expense is caused by vandalism, Merit Academy shall be responsible for all costs and expenses relating to such damage.
- C. **School's Insurance.** Unless otherwise expressly agreed by the District, Merit Academy shall obtain reasonably available insurance to cover damage to School's personal property and School-owned fixtures, betterments and improvements not covered by the School District's insurance coverage. Merit Academy shall name the School District, its Board of Education and employees as Additional Insureds by endorsement to the liability policies. The School shall also maintain all insurance coverages per the terms of the Parties' Charter School Contract.

## 9. LIABILITY AND COMPLIANCE

- A. **Liability and Insurance.** Merit Academy and District hereby agree that, in the event of loss due to any of the perils for which they have agreed to provide insurance, each party shall look first to its insurance for recovery.
- B. **No waiver of CGIA.** No term or condition of this Agreement shall be construed or interpreted as a waiver of any provision of the Colorado Governmental Immunity Act, §24-10-101 et seq., C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the respective parties, their departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of §24-10-101, et seq.,

C.R.S., as now or hereafter amended. Any provision of this Agreement, whether or not incorporated herein by reference, shall be controlled, limited and otherwise modified so as to limit any liability of the School District or Merit Academy in accordance with such governmental immunity.

- C. **District's Right to Self-Perform.** If Merit Academy fails to perform any of its obligations under this Agreement, the School District may (but shall have no obligation to) perform the work at the expense of Merit Academy after giving written notice fifteen (15) business days in advance to Merit Academy, or without notice if in School District's reasonable opinion there is an imminent threat to the health, safety or welfare of students or staff or of substantial damage to the Facility. Merit Academy shall pay to School District any actual and reasonable costs, fees and expenses incurred by the District in performing Merit Academy's obligations hereunder.
- D. **Notice of Claims.** Merit Academy will promptly report to the School District any and all pending or threatened claims or charges, and promptly provide the School District's risk manager with all notices of claims, cooperate fully with the School District in the defense of any claims asserted against the School District, its board members, agents or employees arising from or related to the operation of Merit Academy, and comply with the defense and reimbursement provisions of the Colorado Governmental Immunity Act and the School District's and Charter School's applicable insurance policies.
- E. **Not Authorized to Bind.** Merit Academy has no authority to bind the School District on any contractual matters that obligate the School District. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the School District and Merit Academy, and nothing contained in this Agreement shall give or allow right of action by a third party based on this Agreement.
- F. **Hold Harmless.** To the extent permitted by law, Merit Academy agrees to defend, indemnify, and hold the School District harmless from and against any and all claims, actions, lawsuits, damages, liability, and expense (including, without limitation, attorneys' fees) arising from: (a) an act, neglect, fault, or omission causing the loss by Merit Academy, its agents, officers, employees, volunteers, contractors, students, visitors, or invitees; (b) the conduct or management of any work or thing whatsoever done by Merit Academy in or about the FUA Premises or Property; (c) Merit Academy's failure to comply with any and all governmental laws, ordinances and regulations applicable to the use of the Property and its occupancy; or (d) any breach or default on the part of Merit Academy in the performance of any covenant or agreement to be performed pursuant to this Agreement. To the extent permitted by applicable law, the provisions of this Article shall survive the termination of this Agreement.

#### 10. CASUALTY AND CONDEMNATION.

- A. **Facility Damage/Destruction.** If damage or destruction to the Property due to fire or other casualty renders some or all of the FUA Premises unusable to the School, then the District may, in its sole discretion, elect not to restore or repair the Property but to terminate this Agreement. If this Agreement is terminated by the District, Merit Academy shall have no further obligation to continue any payments hereunder after the date of casualty, except those properly due prior thereto. If the District elects not to terminate this Agreement, the District shall make reasonable efforts to timely restore the damage and restore the Property to its condition existing prior to the casualty for Merit Academy to

resume use of the FUA Premises. During the interim period, the School District and Merit Academy may elect to coordinate reasonable efforts to locate another School District facility for Merit Academy to continue operations, if available. The parties agree to apply any insurance proceeds received for the damage to any restoration of the damaged portion of the FUA Premises and to diligently pursue the completion of said restoration to its condition prior to said casualty.

- B. **Eminent Domain.** In the event of an eminent domain proceeding against the Property that renders the FUA Premises unsuitable for Merit Academy's purposes, either School District or Merit Academy may elect to terminate this Agreement as of the date of the actual taking by eminent domain, by notice to the other party delivered as soon as reasonably possible after a party receives notice or otherwise becomes aware of such proceedings. If there is any award or payment by the condemning governmental entity to the District, Merit Academy shall not be entitled to any portion thereof but may seek a separate award from the condemning authority for costs associated with the termination of its operations. School District agrees to promptly notify Merit Academy if it receives any notice of proposed taking by a governmental entity pursuant to eminent domain.

## 11. DEFAULT

- A. **Default by School.** The occurrence of any one or more of the following shall constitute an "Event of Default" by School under this FUA. (i) School's failure to pay any sum due or appropriate or fund any financial obligation hereunder within ten (10) days after written demand for said payment, appropriation, or funding; (ii) School's failure to perform or observe any other term, covenant, or condition of this Agreement, and such failure continues for a period of more than fifteen (15) days after the date School receives written notice from the District notifying School of the specific failure; provided, however, School shall have such extended period as may be required beyond the fifteen (15) days if the nature of the cure is such that it reasonably requires more than fifteen (15) days and School commences the cure within the fifteen (15) day period and thereafter continuously and diligently pursues the cure to completion, not to exceed sixty (60) days after such notice; (iii) School's interests hereunder being taken by execution, attachment or process of law or being subjected to any bankruptcy proceeding; (iv) if the School is no longer a charter school authorized by the District; or (v) Merit Academy's vacation or abandonment of the FUA Premises, which abandonment is defined to include, but is not limited to, failure to conduct its business at the FUA Premises during any twenty (20) business day period, other than abandonment due to casualty damage, repairs or alterations (holiday or summer breaks or any period where the school is closed due to public health concerns shall be excluded from such abandonment).
- B. **Default by the District.** An Event of Default by District under this FUA shall be deemed to have occurred if, and only if, the District fails to perform or observe any other term, covenant, or condition of this Agreement and such failure continues for a period of more than fifteen (15) days after the date District receives written notice from the School notifying District of the specific failure; provided, however, the District shall have such extended period as may be required beyond the fifteen (15) days if the nature of the cure is such that it reasonably requires more than fifteen (15) days and District commences the cure within the fifteen (15) day period and thereafter continuously and diligently pursues the same to completion. The School's sole remedy for an Event of Default by the District shall be to terminate this Agreement.

- C. **Remedies For School Default.** Upon the occurrence of a School Event of Default, the District shall have such remedies for the default, including without limitation termination of this Agreement and taking immediate possession of the FUA Premises and revoking the FUA Access, as may be specified herein, or as may be available at law or in equity. If a School Event of Default occurs then the District, with or without terminating this Agreement, may elect to enter the FUA Premises and take possession pursuant to legal proceedings or pursuant to any notice provided for by law. If the District terminates this Agreement then School's right to possession of the FUA Premises will cease and the School shall immediately vacate the FUA Premises, in accordance with the terms and conditions of this Agreement. The District will be entitled to recover from School all damages incurred by the District by reason of School's default.
- D. **Days.** Any reference to days in this Agreement shall mean calendar days.

## 12. ASSIGNMENT AND SUBLETTING

- A. **No Assignment or Subletting.** School may not assign, transfer, hypothecate, mortgage, pledge, collaterally assign, permit any lien or charge to exist, or otherwise encumber this FUA or any interest in this FUA or the Property, in whole or in part, nor sublet or rent all or any portion of the Property, nor grant any easements or enter into any management agreements affecting the Property, without prior written consent of the District, which may be granted or withheld at the District's sole and absolute discretion. This provision shall be construed to include a prohibition against any assignment, mortgage, pledge, encumbrance, or sublicense, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

## 13. DISTRICT FURNITURE, FIXTURES AND EQUIPMENT

- A. **District Owned Furniture, Fixtures and Equipment.** For no additional cost, Merit Academy may use any District furniture, fixtures and equipment ("District FFE") located in the FUA Premises designated by the District as permissible for Merit Academy's use. All District FFE shall be inventoried and marked or tracked in a manner that it can reasonably be separated from any Merit Academy owned personal property at any time. Merit Academy agrees and understands that:
  - a. The District may terminate such District FFE usage rights at any time with 90 days advance written notice to Merit Academy;
  - b. Merit Academy's permission to use the District FFE shall terminate automatically upon termination of this Agreement;
  - c. Any District FFE must be reasonably maintained and repaired by Merit, and returned in the same condition as it was received, normal wear and tear excepted;
  - d. Upon demand by the District, Merit Academy will pay for any and all damage to District FFE that exceeds normal wear and tear;
  - e. If any of the District's FFE is removed by Merit Academy without the District's written permission or is damaged beyond repair, then, upon written demand by the District or at the time this Agreement expires or terminates, Merit Academy will promptly pay for any and all costs and expenses incurred by the District to replace said District FFE.

## 14. RESERVED

## 15. NON-APPROPRIATION OF FUNDS

- A. **TABOR.** The Parties agree that the funding obligations pursuant to this Agreement shall constitute a current expenditure of the District or Merit Academy. Any funding obligations under this Contract will be from year-to-year only and shall not constitute a multiple fiscal year direct or indirect debt or other financial obligation of the District or Merit Academy. The District's or Merit Academy's obligations pursuant to this Agreement shall terminate upon non-appropriation of funds for that purpose by either of the respective governing boards for any fiscal year, any provision of this Contract to the contrary notwithstanding. Upon such termination, unless otherwise agreed by the parties, this Agreement shall terminate.

## 16. MISCELLANEOUS

- A. **Waiver.** The waiver by either party of any term, covenant or condition herein contained will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.
- B. **Captions.** Captions or headings contained in this Agreement will not be construed to be a part of the Agreement, but are included for the purposes of convenient reference only.
- C. **Prior Agreements.** This Agreement contains all of the agreements of the parties hereto with respect to the matters covered by this Agreement, and no prior agreements or understandings, whether written or oral, pertaining to any such matter will be effective for any purpose.
- D. **Amendment.** No provisions of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement will not be effective or binding on any party until fully executed by both parties hereto or their respective successors in interest.
- E. **Severability.** Any provision of this Agreement which proves to be invalid, void or illegal will in no way affect, impair or invalidate any other provision or provisions hereof, and such other provisions will remain in full force and effect.
- F. **Cumulative Remedies.** No remedy or election of either Party hereunder will be deemed exclusive but will, whenever possible, be cumulative with all other remedies at law or in equity.
- G. **Law Governing.** This Agreement shall be governed by the laws of the State of Colorado and exclusive venue of any action arising hereunder shall be in Teller County, Colorado.
- H. **Attorneys' Fees.** In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party will be entitled to recover the fees of its attorneys in such action or proceeding, including costs of appeal, if any, in such amount as the court may adjudge reasonable as attorneys' fees.
- I. **Counterparts.** This Agreement may be executed electronically and in counterparts, and each executed counterpart will have the force and effect of the original Agreement.
- J. **Relationship of Parties.** Nothing herein contained will be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties, it being understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties, will be deemed to create any relationship between the parties hereto other than the relationship of District and School.
- K. **Exhibits.** The following Exhibits attached to this Agreement are incorporated herein and

made a part hereof by this reference:

**Exhibit A: Designated Portions of the Property Merit Academy is Allowed to Use**

**Exhibit B: Dropoff/Pickup Plan**

**Exhibit C: Parking**

**Exhibit D: Insurance Requirements**

**Exhibit E: Department of Technology Services Guidelines and Regulations**

**Exhibit F: Available Purchased Services Pertaining to Facility Use**

- L. **Immunities.** Nothing in this lease, including, without limitation, any indemnification provisions, shall be construed to forfeit the ability of either party to assert any legally valid immunities, including, without limitation, governmental immunity.
- M. **Authority.** The individual officers, agents and employees of the Parties hereto who execute this Agreement do hereby individually represent and warrant that they have full power and lawful authority to execute this Agreement and perform the transactions contemplated hereunder, on behalf of and in the name of their respective principals and/or employers.
- N. **Notices.** All notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed properly served and effective:
  - a. as of the day of delivery if delivered in person, by messenger, overnight delivery service or a party's attorney or agent, or
  - A. on the third (3rd) day after deposit in the U.S. mail as registered or certified mail, return receipt requested, postage prepaid, or
  - B. on the next business day if sent prepaid overnight courier service for next business day delivery

All notices shall be addressed as follows (or to the address or e-mail address of record provided by one Party to the other as a method of contact):

Charter School: Merit Academy  
Attn: \_\_\_\_\_: Headmaster  
\_\_\_\_\_500 E Kelleys Rd.  
Woodland Park, CO 80863  
Email: \_\_\_\_\_gpekron@merit.academy

School District: Woodland Park School District  
Superintendent  
155 Panther Way  
Woodland Park, CO 80863  
Email: mnealkwitt@wpsdk12.org

With a copy to: Woodland Park School District  
Executive Director of Technology and OperationsChief Operations  
Officer  
155 Panther Way



Woodland Park, CO 80863  
Email: ~~mtuttleasalt~~@wpsdk12.org

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With a copy to: Woodland Park School District  
~~Executive Director of Business Services~~ Chief Financial Officer  
155 Panther Way  
Woodland Park, CO 80863  
Email: ~~bgustafson~~aryan@wpsdk12.org

Either party may, from time to time, change the names or addresses furnished for notice hereunder by giving written notice of said change to the other party in accordance with the notice provisions set forth above.

IN WITNESS HEREOF, the Parties have executed this Agreement as of the date written below.

**WOODLAND PARK SCHOOL DISTRICT RE-2**

\_\_\_\_\_  
David Rusterholtz  
Board of Education President

Date: \_\_\_\_\_

\_\_\_\_\_  
~~Dr. Mathew Neal~~Mr. Ken Witt  
Superintendent

Date: \_\_\_\_\_

**MERIT ACADEMY**

\_\_\_\_\_  
Nicole Waggoner  
Merit Board President

Date: \_\_\_\_\_

\_\_\_\_\_  
~~Dr. Mathew Neal~~Dr. Gwynne Pekron  
Headmaster

Date: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have executed this Facility Use Agreement as amended as of the date written below.

**DISTRICT:**

WOODLAND PARK SCHOOL DISTRICT RE-2

\_\_\_\_\_  
Date: \_\_\_\_\_  
David Rusterholtz, President  
Board of Education

**ATTEST:**

\_\_\_\_\_  
Secretary, Board of Education

**SCHOOL:**

MERIT ACADEMY

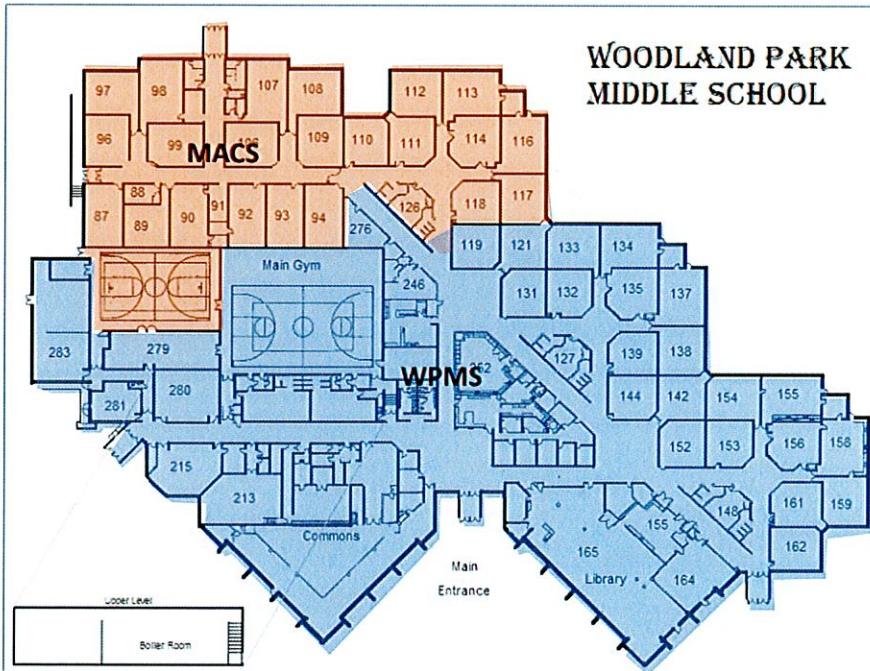
By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name:  
Board President

**ATTEST:**

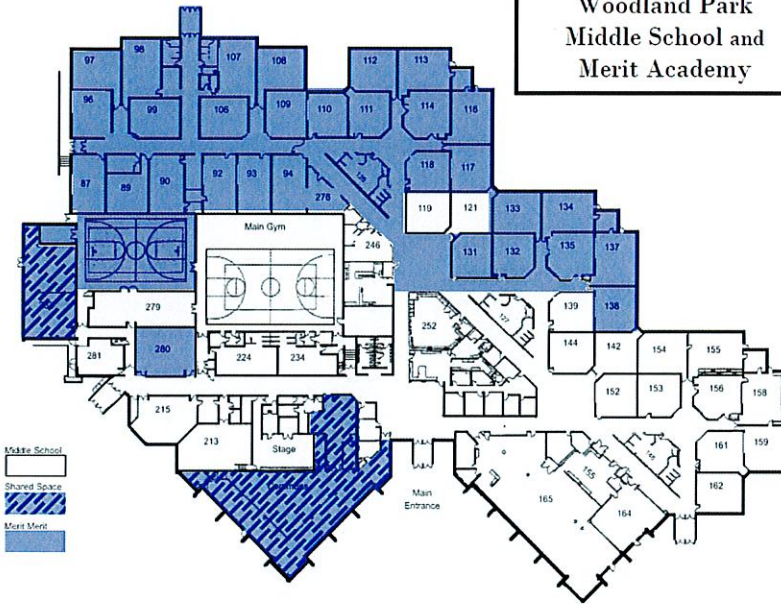
\_\_\_\_\_  
Secretary, Board of Directors

Exhibit A: Designated Portions of the Property Merit Academy is Allowed to Use

OLD MAP – NEW MAP ON NEXT PAGE



Woodland Park  
Middle School and  
Merit Academy



**Exhibit B: Dropoff/Pickup Plan**

The Parties will collaborate **annually** on a Dropoff/Pickup Schedule, which will be attached hereto ~~prior to August 1, 2022 before the first day of student attendance.~~

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