

## MEMORANDUM OF AGREEMENT

**THIS MEMORANDUM OF AGREEMENT** ("Agreement") is entered into this 25th day of January 2018 by and between Crocus Learning Center, LLC, doing business as Crocus Academy Fegenbush (the "Provider") and the Jefferson County Board of Education (the "Board").

**WHEREAS**, the Provider and the Board previously entered into an agreement dated January 25, 2017 to establish the terms and conditions of the relationship between the Provider and Board pertaining to the Early Head Start ("EHS") Child Care Partnership grant award during fiscal school year 1 of such grant award; and

**WHEREAS**, the Provider and Board desire to enter into this Agreement to establish the terms and conditions of the relationship between the Provider and the Board pertaining to the EHS Child Care Partnership grant award during fiscal school year 2.

**NOW, THEREFORE**, in consideration of the premises and the mutual agreements set forth herein, the Provider and the Board mutually agree as follows:

1. **Duties of the Board**: The Board hereby agrees as follows:
  - a. The Board will remit contractual funds to the Provider for delivery of full-day (7:30 a.m. until 5:30 p.m.), full-year (50 weeks) services to all EHS - income eligible children that are assigned to Provider by the Board under the Board's approved Eligibility, Recruitment, Selection, Enrollment and Attendance (ERSEA) plan. The remittances described in this section 1(a) will be subject to change by the Board in each fiscal school year during the term of this Agreement (including any extensions of the term as described in Section 3) in accordance with changes in child care costs. In addition, Provider acknowledges and agrees that the payment by the Board of the remittances described in this section 1(a) is subject to the availability of funds awarded to the Board, as indicated in award notifications from the US Department of Health and Human Services. Subject to the foregoing, the contractual funds will be remitted to the Provider by the Board in accordance with the following guidelines:
    - i. **Transition premium** - For each infant or toddler room that the Provider transitions from the State of Kentucky licensing ratio (10 children per room) to the EHS ratio (8 children per room), the Provider will receive from the Board a transition premium in the amount of \$30.00 per-child per-week for these 8 children, not to exceed total transition premium payments \$12,000 in any one fiscal school year during the term of this Agreement (including any extensions of the term as described in Section 3). The transition premiums earned by the Provider, if any, will be included in the per-child reimbursement paid to the Provider as described in section 1(a) (ii) below.
    - ii. **Per-child reimbursement** - For each EHS-enrolled infant and/or toddler that is assigned to the Provider by the Board and that the Provider serves for a minimum of 50 weeks of services, the Provider will receive from the Board a per-child reimbursement of \$100.00 per week (this amount includes any

transition premium amount earned by the Provider as described in section 1(a)(i) above) over and above the amount of any Child Care Provider Assistance (CCAP) subsidy received by the Provider from the State of Kentucky for such children.

- iii. **Subsidy adjustment** - The Provider will assist all income eligible families in registering with the State of Kentucky for a CCAP subsidy. For any/all EHS-enrolled infant or toddler who receives a CCAP subsidy, the per-child CCAP subsidy allotment will be retained by the Provider. The per-child reimbursement amount described in section 1(a)(i) above and the CCAP subsidy amount described in this section 1(a)(iii) will be used to guarantee placement of the EHS income eligible student in the Provider's program throughout the fiscal school year.
- b. The Board provided funds during fiscal year 1, and will provide funds during fiscal year 2, to address the following identified out of compliance issues with the building and classroom(s) to be used by the Provider based on the Head Start Program Performance Standards (HSPPS) or the Infant/Toddler Environment Rating Scale (ITERS):
  - i. The Board provided funds during fiscal year 1 to pay the cost to install a new or to modify the existing classroom sink and commode to meet the required height level for compliance with HSPPS.
  - ii. The Board provided funds during fiscal year 1 to pay the cost to install a new classroom door to meet the compliance requirement for the HSPPS.
  - iii. The Board provided funds during fiscal year 1 to pay the cost for a playground and its installation suitable for EHS infant and toddlers to meet the compliance requirement for the HSPPS.
  - iv. During fiscal year 2, the Board will provide the required gross motor skills equipment to meet the compliance requirement for the HSPPS
  - v. During fiscal year 2, the Board will provide and maintain all classroom furniture and fixture equipment to meet the compliance requirement for the HSPPS.
  - vi. The costs of all modifications, installations and equipment paid by the Board during fiscal year 1 as described in sections 1(b)(i) through 1(b)(iii) above and to be paid by the Board during fiscal year 2 as described in section 1(b)(iv) and 1(b)(v) above will be depreciated on a five-year schedule based on the fiscal school year of payment by the Board. The Provider agrees to reimburse the Board for all such modifications, installations and equipment paid by the Board, except for the costs of any items removed by the Board as provided in this section 1(b)(vi). Upon termination of this Agreement by either party or for any reason at any time, the Provider may elect either to reimburse the Board based on the following cost recovery schedule or allow the Board to remove and return these items back to the Board, in aggregate or by item. Completion of the fiscal school year 1 has reduced the cost reimbursement by 20%, completion of year 2 will reduce the cost reimbursement by 40%, completion of year 3 by 60%, completion of year 4 by 80%, and completion of year 5 by 100%. If this Agreement is terminated during any fiscal school year, the above cost recovery schedule will be prorated during such fiscal school year.
  - vii. After fiscal school year 1, any new modifications, installations or equipment provided and paid for by the Board will receive its own 5-year cost reimbursement cycle during the term of this Agreement, including any extensions of the term as described in section 3.



- viii. All classroom instructional material and supplies required by Provider for each fiscal school year will be provided by the Board, up to but not to exceed \$500.00 per fiscal school year. In addition, no curricular resources, materials or activities will incorporate religious symbols, literature, language or references of any type.
- ix. The Provider will maintain the building, and a self-contained, autonomous classroom(s) and playground facilities daily to satisfy the compliance requirements for the HSPPS. The classroom itself will operate as a separate entity, within the childcare provided site and will not adhere to any religious policies or procedures that guide the operation of the facility as a whole. Failure to do so will result in the immediate notice of termination of this Agreement by the Board.
- c. The Board will provide regular professional development training opportunities and support materials to the Provider's staff, including
  - i. HSPPS for owners, directors, and teaching staff;
  - ii. All Curriculum and Assessments and the Ounce Scale for directors and teaching staff;
  - iii. Infant Toddler Environmental Rating Scale (ITERS)-identified areas of need for directors and teaching staff;
  - iv. Locally-delivered opportunities for obtaining the Child Development Associate Credential;
  - v. Use of an early childhood screener (e.g., BRIGANCE);
  - vi. Cardiopulmonary resuscitation (CPR) and use of defibrillators; and
  - vii. In-classroom modelling of strategies.
- d. The Board will monitor and support the Provider in meeting the HSPPS and achieving a high-quality rating on the STARS system, as follows:
  - i. Conduct weekly monitoring visits during the fiscal school year months and monthly monitoring visits during the non-fiscal school year months, beginning with the date on which this Agreement has been signed by both parties. Visitation may or may not occur without advance notice.
  - ii. Conduct regular support visits that focus on education, disabilities, health, and other EHS services in collaboration with the Board's designated comprehensive services provider. The Board will place EHS income eligible students based on ERSEA Plan assigned priority points. The Board will maintain the required wait list to fill any spots that become vacant due to withdrawals from the program or for students transitioning upon turning 3 years of age to the Board's Head Start Program or to another Provider's classroom.
- e. Coordinate with service-providers for the delivery of comprehensive services, including dental, health, and mental health services.
- 2. **Duties of the Provider:** The Provider hereby agrees to:
  - a. Accept all EHS students assigned to Provider by the Board with no tuition charged to families.
  - b. Comply with the HSPPS in all infant and toddler classrooms and areas of common access (e.g., playground, kitchen, bathrooms).
  - c. Use Board provided curriculum as the Provider's developmental appropriate curriculum, and use the Ounce Scale to assess and monitor children's learning.
  - d. Provide the Board's authorized staff access to the building and classrooms for the following purposes:
    - i. Monitoring visits, as described; and

- ii. Ongoing support visits.
- e. Conduct home visits as required by the HSPPS.
- f. Participate in the STARS for KIDS NOW program (or any future iterations of the program) and submit documentation from STARS for KIDS NOW participation, including the Rating Summary, Observation Feedback and Written Improvement Plan (or any future iterations of these documents).
- g. Participate in the US Department of Agriculture's Child and Family Food Program or provide meals of comparable nutritional quality (e.g., Partnership for a Healthier America).
- h. Require all infant/toddler teaching staff must hold a Child Development Associate Credential by the date this Agreement has been signed by both parties unless a waiver has been approved by the Office of Head Start.
- i. Assist in efforts to recruit children for EHS enrollment in the following ways:
  - i. Distributing information to parents and guardians of current center enrollees;
  - ii. Maintaining contact information of interested families for the enrollment waitlist; and
  - iii. Actively recruiting to fill unenrolled slots with 30 days of vacancy.
- j. Provide information to parents on opportunities for involvement in the program.
- k. Provider agrees that there shall be no religious symbols in the classroom in which the teaching session is conducted.

3. **Term:** This Agreement shall be effective for a term of one (1) year commencing on the project start date stipulated to the Board by the US Department of Health and Human Services. This Agreement may be extended annually by the mutual written agreement of the Board and the Provider.

4. **Termination:** Either party may terminate this Agreement with thirty (30) days prior written notice to the other party. In addition, the Board may terminate this Agreement for negligence in fulfilling the duties of this Agreement on part of the Provider. Upon notice of termination, both parties will develop a transition plan for EHS-enrolled children. Upon the termination of this Agreement for any reason, including the expiration of the term of this Agreement without an extension, supplies (defined by the US Department of Health and Human Services as tangible personal property with a per-unit cost of less than \$5,000) will be removed by the Board from the Provider's facilities.

5. **Indemnification:** The Provider agrees to hold harmless, indemnify, and defend the Board and its members, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation, including the Provider itself, in connection with the performance of this Agreement. This section 5 will survive the termination of this Contract.

6. **Insurance:** Unless waived in writing by the Director of the Board's Early Childhood Program, the Provider shall maintain during the term of this Agreement policies of primary insurance covering the following risks and in at least the following amounts: commercial general liability, including bodily injury, property damage, personal injury, products and completed operations, and contractual, \$1,000,000; and automobile liability, \$1,000,000. Additionally, the Provider shall maintain workers compensation coverage with limits required by law. The Provider shall furnish to the Board certificates of insurance evidencing this coverage and naming the Board as an additional insured.

7. **Equal Opportunity:** During the performance of this Agreement, the Provider



agrees that the Provider shall not discriminate against any employee or any child enrolled in the program because of age, color, creed, disability, marital or parental status, national origin, race, sex, veteran status, religion, or political opinion or affiliation.

8. **FERPA**: The Provider acknowledges that the education records of children in the Board's educational programs are protected by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. sec. 1232g ("FERPA"). The Provider agrees to comply with the requirements of FERPA and to protect the privacy of education records concerning the children assigned by the Board to the Provider under this Agreement.

9. **Amendment**: This Agreement may be modified or amended only by a written agreement signed by the Board and the Provider.

10. **Independent Parties**: The Board and the Provider shall be considered to be independent parties and neither shall be construed to be an agent or representative of the other party, and therefore have no liability for the acts or omissions of the other party. The Provider shall be responsible for the payment of all federal, state and local payroll taxes and providing unemployment insurance and workers compensation coverage to the Provider's employees.

11. **Captions**: Section titles or captions contained in this Agreement are inserted only as a matter of convenience and reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof.

12. **Entire Agreement**: This Agreement contains the entire agreement between the Board and the Provider and supersedes any and all prior agreements, either written or oral; provided, however, that any written agreements executed contemporaneously with the execution of this Agreement and incorporated herein by reference shall remain in full force and effect.

13. **Severability**: If any court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect any other provision of this Agreement.

14. **Counterparts**: This Agreement may be executed in counterparts, in which case each executed counterpart shall be deemed an original and all executed counterparts shall constitute one and the same instrument.

15. **Applicable Law**: This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

16. **Notices**: Notices permitted or required to be given under this Agreement shall be in writing and shall either be hand delivered, sent by certified mail, return receipt requested, or delivered by overnight courier to the address of the parties as set forth below, or to other such person or to other such address as the parties hereto may specify by written notice to the other:

**The Board**

**Jefferson County Board of Education**

**3332 Newburg Road**

**Louisville, KY 40218**

**Attention: Early Childhood Program**

**The Provider:**

**Crocus Learning Center LLC, doing business as  
Academy Fegenbush**

**4314 Norfolk Drive**

**Louisville, Kentucky 40218**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

**Jefferson County Board of Education**

**Provider**

**By:** \_\_\_\_\_

Dr. Marty Pollio, Acting Superintendent

**By:** \_\_\_\_\_

*Brenda Hagan*

Brenda Hagan, Owner Operator

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

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

*1/10/18*