

EXTERNAL PARTNER AGREEMENT

The Agreement (the “Agreement”), effective as of the latest signature date set forth below (“Effective Date”), is entered into by and between the Erlanger-Elsmere Board of Education, located at 500 Graves Avenue, Erlanger, Kentucky 41018 (the “Board”) and Learning Grove, a non-profit corporation located at 333 Madison Avenue, Covington, Kentucky 41011 (“LG”). The Board and LG are sometimes referred to herein as “parties” and each individually as “party”.

RECITALS

WHEREAS, the Board desires to have more Erlanger-Elsmere students arrive at Kindergarten screened ready to succeed by spending more time in a high quality preschool session and expanding the number of Erlanger-Elsmere families who might choose to attend their preschool program and

WHEREAS, the Board desires to provide high quality below market rate services for one year old, two year olds, and preschool children for staff, for teen moms, for both residents and non-residents at a very affordable rate and

WHEREAS, the Board desires to allow LG to develop, operate, manage, fund and be responsible for an early learning and child care center in the District:

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Board and LG agree as follows:

1. LG’s Obligations

1.1 LG shall develop, operate, manage, fund and provide a full-day, full-year program and child care services (the “Program”) to children ages birth to 5 years who are not age-eligible for kindergarten. The Program shall be provided in space provided by the District at Lloyd Memorial High School. Program services will be offered from 7 am to 5:30 pm Monday through Friday all year (excepting LG’s staff Professional Development days of President’s Day, Good Friday and Veterans Day—the center shall be closed to students on these days).

1.2 LG and the Board understand that for LG to offer the high quality Program at below market rate, LG may enroll students from outside of the District at approximately 20% more than it charges for District employees and residents.

1.3 LG shall manage and operate the Program in accordance with all regulations and requirements of the Kentucky Department of Education (“KDE”), the Cabinet for

Health and Family Services (“Cabinet”), and any other federal, state or local authority, and in accordance with guidelines set forth by Kentucky’s KIDS NOW (Kentucky Invests in Developing Success NOW!) voluntary quality initiative administered by the Cabinet for Health and Family Services.

1.4 LG shall be responsible for all aspects of their Program, including but not limited to, funding the Program and designing and implementing the Program curriculum. The Board shall collaborate with LG on student-specific issues related to special needs services (early identification; speech language services; special education consultation services).

1.5 Should a need arise and space be available to expand the number of PreK classrooms LG can operate, LG shall be responsible for all construction costs for additional classrooms and the expansion of the outdoor playground. LG shall be responsible for construction of facilities for the Program in a manner that is acceptable to KDE, the Board, the Cabinet, and any other federal, state or local authority. LG shall hire suitable contractors for the construction and shall in all ways comply with all requirements of KDE, the Cabinet, and any other federal, state or local authority in constructing facilities for the Program, including but not limited to:

- (i) Ensuring that an architect licensed in Kentucky observes construction to ensure that the facilities are being constructed within general compliance to the plans and specifications approved by KDE;
- (ii) Securing all construction permits before construction begins;
- (iii) Ensuring that all construction work is performed and supervised by licensed tradespersons;
- (iv) Ensuring all construction workers are properly insured;
- (v) Ensuring compliance with the following rules for working in an occupied school building;
 - (a) Providing to the Board the locations and times any construction workers will be working in Lloyd Memorial High School to construct facilities for the Program with as much notice as possible, but no less than 24 hours notice;
 - (b) Providing noise abatement during school hours, meaning no radios, no power-actuated or pneumatic tools, sawing, hammering and the like;
 - (c) Maintaining means of ingress and egress clean and free of obstructions at times the building is occupied;
 - (d) Providing code of conduct to construction workers to include shirts worn at all times and prohibiting consumption and/or possession of alcohol, smoking, drugs, firearms, foul language, or fraternizing with students and staff;

- (e) Ensuring that, consistent with the intent of KRS 160.380, employment of workers convicted of felony sex crimes is prohibited; and
- (f) Ensuring daily cleanup and dust control.

1.6 If any damage to District property occurs as a result of construction of facilities for the Program, LG shall be responsible for repairing such damage at its sole expense and in a manner acceptable to the Board.

1.7 LG shall provide all equipment, furniture, materials, and supplies for the three additional classrooms and the outdoor playground at its own expense.

1.8 LG shall provide an additional discount for the children of the employees of the District at a rate of \$10.00 less per week than the full tuition rates for an LG student.

1.9 LG will assist families of children enrolled in the Program with setting up an account with the District's food service personnel so that children enrolled in the Program can access the District's food program to the extent allowed by law.

1.10 LG shall provide, at its sole expense, teachers and staff for the three additional classrooms as needed to maintain staff/child ratios set forth by the Cabinet except for the District's preschool teacher. LG shall be solely responsible for recruiting, hiring, firing, training, supervising, evaluating and paying teachers, staff and other personnel for the Program. LG and the teachers, staff and other personnel that LG shall hire to provide services under the Program shall:

- (i) Be qualified to provide the services;
- (ii) Meet the licensure requirement(s) of their occupations and any additional requirements set forth by the Cabinet or any other federal, state or local licensing authority;
- (iii) Be knowledgeable of applicable federal and state regulations and applicable standards of practice; and
- (iv) Have criminal background checks at LG's expense, and LG agrees that, consistent with KRS 160.080, no one convicted of a felony sex crime will be hired to provide Program services.

1.11 All teachers, staff and other personnel who provide LG Program services under the terms of this Agreement are employees of LG and shall not be considered employees of the Board. LG shall report and pay the employer's share of applicable state and local taxes, federal taxes, worker's compensation, FICA, federal unemployment insurance, and all similar taxes or assessments with respect to all

compensation received by LG and its employees and subcontractors. LG shall keep in force Worker's Compensation Insurance coverage. Upon request, LG shall furnish to the Board documents evidencing that LG is complying with this Section 1.10 of the Agreement.

1.12 LG shall be responsible for providing substitutes for absent LG employees for the Program.

1.13 LG shall be responsible for evaluating LG employees to determine suitability for ongoing employment with the Program.

1.14 Tuition to the Program will be funded through state child-care subsidies to qualifying parents, and parent tuition. LG shall be responsible for billing the appropriate state agencies, and parents. For avoidance of doubt, the Board is not responsible in any way for billing for or ensuring payment of tuition.

2. Board's Obligations

2.1 The Board shall supply, rent-free, space at Lloyd Memorial High School deemed appropriate by the Cabinet for the location of an early learning and child care center, an outdoor play area, and access to an indoor play area. The Board is responsible for maintaining the space at Lloyd Memorial High School provided to the Program, including the outdoor playground area, and for providing utilities and custodial service.

2.2 The Board understands that it is in the interest of the District to have at least 12 preschool children whose parents are working in each of the preschool classrooms so that the District can recoup its costs and that LG can afford to provide 10.5 hours of education and care all year long. Therefore, it will encourage its families who are working and meet the District's income guidelines to attend.

2.3 The Board shall allow children enrolled in the Program to set up an account with the District's food program, to the extent allowed by law.

2.4 The Board will assist and collaborate with LG in making referrals of eligible children to the Program, but the Board is not responsible for recruiting children eligible for Program services.

2.5 The Board is not responsible for paying any costs associated with the Program, including but not limited to construction, operation, personnel, or maintenance costs.

3. Term, Termination and Modification

3.1 Both parties understand that KDE must review and approve this Agreement before the Program may begin, including construction of any facilities for the Program. Assuming that the KDE approves this Agreement, the term of this Agreement shall be for one (1) year from its Effective Date, unless terminated in accordance with the provisions of the Agreement.

3.2 This Agreement may be terminated at any time by either party with or without cause by giving thirty (30) days advance written notice to the other party. Such termination shall not be deemed to be a breach of this Agreement. This Agreement shall be terminated if any of the following occur:

- (i) A breach of this Agreement by either party, if such breach is not corrected within 30 days after the non-breaching party provides written notice to the breaching party describing such breach;
- (ii) If KDE does not approve this Agreement;
- (iii) If LG ceases to do business;
- (iv) If LG does not obtain or maintain approval from the Cabinet for the Program or does not construct facilities for the Program in a manner that is acceptable to KDE, the Cabinet, or any other federal, state or local authority; or
- (v) If the District cannot provide adequate space for the Program.

4. Title to Property

4.1 All physical facilities constructed for the Program, including but not limited to bathrooms, walls, ceilings, floors and the like, and fixtures appended to such walls, ceilings, floors and the like, and outdoor fences, shall become the Board's property.

4.2 All equipment, materials and supplies owned by LG shall remain the property of LG and shall be returned to LG upon termination of this Agreement.

4.3 All equipment, materials and supplies owned by the Board or the District shall remain the property of the Board or the District and shall be returned to the Board and the District upon termination of this Agreement.

5. Insurance LG agrees that it will maintain during the term of this Agreement General and Professional Liability Insurance covering itself and its employees and subcontractors, if applicable, in an amount not less than one million dollars (\$1,000,000) with umbrella coverage of an additional ten million dollars (10,000,000). The Board and District shall

be names as additional insureds on the property. Upon request, LG shall furnish to the Board a Certificate of Insurance evidencing compliance with the foregoing requirement.

6. Written Notice Written notices regarding this Agreement required to be provided herein shall be sent by first-class mail to the following representatives:

To: Erlanger-Elsmere Board of Education
Chad Molley, Superintendent
500 Graves Avenue
Erlanger, KY 41018

To: Learning Grove
Shannon Starkey-Taylor
333 Madison Avenue
Covington, KY 41011

7. Indemnification: LG agrees to indemnify and hold harmless the Board and the Board's affiliates, successors, and directors against all claims, liabilities, losses, damages, costs or expenses of any kind, including but not limited to attorney's fees, arising out of or in connection with the negligence, intentional misconduct, act or omission of LG or its agents, employees, subcontractors or representatives in the performance of this Agreement. Such indemnity shall survive the termination of this Agreement.
8. Non-Discrimination: The parties agree that in the performance of this Agreement they will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, sex, age, religion, national origin, or disability in any manner prohibited by the laws of the United States or Kentucky.
9. Compliance with Family Educational Rights and Privacy Act, 20 U.S.C. 12232g and 34 CFR Part 99 ("FERPA"): LG agrees that it shall not disclose to any third party any personally identifiable information from an education record as defined by FERPA that LG creates or receives in the course of providing the Program under this Agreement with regard to any student without the prior consent of the student's parent or legal guardian. LG agrees that it may use personally identifiable information from education records only for the purposes of providing Program Services under this Agreement. LG agrees to return all student education records to the District Superintendent at the termination of this Agreement and to abide by all other Board policies with regard to student education records.
10. Severability of Terms: If any provision of this Agreement shall be deemed to be invalid or unenforceable by a court of appropriate jurisdiction, then such unenforceable or

invalid provision shall be deemed to be deleted from this Agreement. All remaining provisions of this Agreement shall be deemed to be in full force and effect.

11. Entire Agreement: This Agreement embodies the entire understanding of the parties hereto and supersedes any prior communications or agreements regarding this subject matter.
12. Counterparts: This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same document. Facsimile signatures shall be treated as original signatures.
13. Governing Law: This Agreement shall be construed in accordance with the laws of the State of Kentucky. If either party brings an action to enforce the terms of this Agreement, such action shall be brought in an appropriate court of competent jurisdiction (state or federal) in Kenton County, Kentucky.

IN WITNESS WHEREOF and intending to be legally bound, the parties hereto have caused this Agreement to be signed by their duly authorized officers and/or representatives on the date(s) set forth below.

Erlanger-Elsmere Board of Education

Learning Grove

By: _____

By: _____

Print Name: Jeffrey Miller

Print Name: _____

Title: Board Chairperson

Title: _____

Date: _____

Date: _____