

**TEMPORARY REMOTE LEARNING FACILITY
PARTNERSHIP AGREEMENT**

THIS AGREEMENT (“Agreement”) is dated September ___, 2020 by and between the Transylvania County Schools (“School System”), having an address of 225 Rosenwald Lane, Brevard, NC 28712, and BOYS AND GIRLS CLUB OF BREVARD/TRANSYLVANIA COUNTY, INC., a North Carolina Nonprofit corporation (the “Nonprofit”), having an address of 11 Gallimore Road, Brevard, NC 28712.

In response to the COVID-19 pandemic, School System has elected to begin the 2020-2021 school year in “Plan B,” which severely limits the capacity of school facilities for students; it is possible that the pandemic or conditions such as outbreaks and/or staff shortages caused by it may require School System to move into “Plan C,” which is exclusively remote instruction. In response to these limitations, School System desires to engage certain community partners to provide alternative day care and learning programs to school-age children. The goal of these programs is to ensure that all teachers, students and families in the School System have access to safe, affordable childcare that promotes extended learning and includes support for remote learning. School System now desires to contract with the Nonprofit to provide offsite child care and the other programs herein described and the Nonprofit desires to agree to the terms under which Nonprofit will become a community participant in, and provide programs meeting the goals of, School System.

NOW, THEREFORE, for and in consideration of the mutual promises herein contained, the sufficiency of which is acknowledged, the parties agree as follows:

1. Participation with School System. At School System’s request, Nonprofit agrees to develop and operate one or more programs that are designed to do some or all of the following: (i) provide a Remote Learning Facility, as defined in 10A NCAC 09.3101 and 10A NCAC 09.3102, for school-aged children of School System employees and other students enrolled in the School System; and (ii) to secure if possible, funding to ensure that all families who choose to return to school will have access to affordable or free childcare during their child’s remote learning days (and/or weeks, as required).

2. Nonprofit Responsibilities. Nonprofit will work towards establishing one or more programs that: (i) offer full-day Remote Learning Facility for school-aged children open to School System staff and students/families and community students/families enrolled in the School System during out of school remote learning time/weeks for a fee or fees determined by the Nonprofit; and (ii) utilize a program design that includes some or all of the following components: (a) quality academic environments (quiet room, socially distanced student work spaces, internet access, adult to monitor etc.), (b) recreation and physical activities, and (c) extended learning activities (social emotional learning, STEM, Art, Leadership Development, Character Development, etc.).

Nonprofit shall conduct appropriate criminal background and sex offender checks on all employees or volunteers that will be working with students. Nonprofit shall not allow any employee that has been convicted of a felony, drug related crime, violent crime, sex crime, or other crime against children to work at the Remote Learning Facility. Nonprofit shall provide employee background checks and sex offender registry checks to School System upon request. The parties may agree in a separate writing that School System shall bear the responsibility for performing the background checks required by this section.

During the term of this Agreement, the Nonprofit will ensure that all Remote Learning Facilities adhere and comply with the COVID-19 guidance and protocols set forth in the most recent “Strong Schools NC Public Health Toolkit (K-12)” established by the North Carolina Department of Health and Human Services and any other protocols established by the School System.

3. School System Responsibilities: In consideration of the benefits it will receive from the Nonprofit’s assistance, School system will: (i) provide funding if possible to the Nonprofit’s programs in an amount to be determined by School System, and (ii) encourage any of its education partners to actively participate in and support fundraising efforts to support the Nonprofit programs. The School System may require the Nonprofit to sign a Facility Use Agreement for use of the School System’s property, if applicable.

4. Liability Insurance: It is understood and agreed between the parties that each person performing services under the Agreement on behalf of the Nonprofit shall be covered by Nonprofit for all actions, omissions, injuries or other liabilities occurring during the performance of the services. Nonprofit shall provide to the School System a certificate of insurance for general liability and property damage coverage of at least one million dollars (\$1,000,000) for each claim made. The Nonprofit shall notify the School System if the required insurance policy is cancelled. The School System reserves the right to require higher or lower insurance limits where warranted. The School System shall maintain its usual and customary insurance coverage and/or coverage agreement.

5. Indemnification: Nonprofit shall indemnify and hold School System harmless from all damages and/or claims arising out of or related to any damage to any Nonprofit students, staff or volunteers or to Nonprofit’s property, occurring in, on, or about the Remote Learning Facility(ies), including but not limited to the roads and parking areas surrounding the Remote Learning Facility(ies). This provision shall be binding upon the parties and their respective successors and assigns. Notwithstanding any of the foregoing, this provision shall not apply where any damages and/or claims herein are the direct result of gross negligence or willful misconduct.

6. Termination: The Agreement may be terminated by either party hereto upon thirty (30) days written notice to the other. In the event the Agreement is terminated pursuant to the provisions of this paragraph, the School System shall have no obligation to compensate Nonprofit for services which have not been performed.

7. Family Education Rights and Privacy Act: Nonprofit acknowledges the School System is subject to the Family Education Rights and Privacy Act (FERPA) (20 U.S.C. § 1232G; 34 C.F.R. 99). To the extent Nonprofit generates or maintains education records that are subject to FERPA, Nonprofit will comply with applicable FERPA requirements. Nonprofit will not access or make any disclosures of student education records to third parties without prior notice to and consent from the School System or as otherwise provided by the law or the Agreement. For purposes of the Agreement, the School System designates Nonprofit as a school official with a legitimate educational interest in the education records of participating students to the extent access to the School System’s records is required by Nonprofit to carry out its services.

If, the School System provides Nonprofit with personal identifiers as listed in N.C.G.S. §132-1.10 and in N.C.G.S. §14-113.20(b) or any other legally confidential information including "personally identifiable information" from student education records as defined by the Family Educational Rights and

Privacy Act, 20 U.S.C. § 1232g, and the implementing regulations in Title 34, Part 99 of the Code of Federal Regulations ("FERPA"), Nonprofit hereby certifies that collection of this information is necessary for the performance of its duties and responsibilities under the Agreement. Nonprofit further certifies that it will maintain the confidential and exempt status of any Social Security number information, as required by N.C.G.S. §132-1.10(c)(1), and that it will not re-disclose personally identifiable information pursuant to FERPA or by any other State or Federal laws.

8. Choice of Law: The Parties agree that the Agreement was entered into in the State of North Carolina and that the laws of North Carolina shall govern the Agreement, as to interpretation and performance. It is further agreed that the place of the Agreement, its situs and forum, will be in the county in North Carolina where the School System's Central Office is located.

9. Force Majeure: Neither party shall be responsible to the other for any losses resulting from the failure to perform any terms or provisions of the Agreement if the party's failure to perform is attributable to war, riot or other disorder, strike or other work stoppage; fire; flood; storm; illness; pandemic, communicable disease, or any other act not within the control of the party whose performance is interfered with, and which, by reasonable diligence, such party is unable to prevent. However, the School System will be entitled to a refund for fees paid on account of services not rendered by Nonprofit including any and all deposits.

10. Integration & Amendment: The Agreement is fully integrated and represents the entire understanding between the Parties. The Agreement may be modified or amended only by written instruments signed by both Parties. Unless explicitly stated in the Agreement, nothing contained in the Agreement is intended to benefit any third party. The Agreement shall be deemed to have been drafted by both Parties and any ambiguities in the construction of the Agreement shall not be construed solely against the School System.

11. Severability: The Agreement is severable and if any provisions of the Agreement are deemed invalid or illegal by a court of competent jurisdiction, the other remaining provisions of the Agreement shall remain valid and enforceable.

12. Execution: The Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.

13. Authority: Both Parties executing the Agreement acknowledge that they have authority to bind their respective party to the terms and conditions set forth in the Agreement.

14. Sovereign Immunity: Notwithstanding any other term or provision in the Agreement, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign or governmental immunity or other State or federal constitutional or statutory provision or principle that otherwise would be available to the School System under applicable law.

15. Miscellaneous. Both School System and the Nonprofit agree that the duties and responsibilities of each party contained in this Agreement are dependent upon such party having the necessary approvals and funding that can be allocated to such duties and responsibilities. As such, either

party may terminate this Agreement or any program(s) established under this Agreement at any time and for any reason, including a lack of funding, upon notice to the other sent to the address first set forth above.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the day and year first above written.

TRANSYLVANIA COUNTY BOARD OF EDUCATION

By: _____
Superintendent

BOYS AND GIRLS CLUB OF BREVARD/TRANSYLVANIA
COUNTY, INC.

By: _____

Name: _____

Title: _____