

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter referred to as "Lease") made and entered into this 25th day of January, 1992, by and between the WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY (hereinafter referred to as "WMATA") and MONTGOMERY COUNTY, MARYLAND (hereinafter referred to as "County").

WITNESSETH:

WHEREAS, WMATA was directed by Congress to study the feasibility of locating child care centers at WMATA facilities; and

WHEREAS, the WMATA staff has completed a preliminary feasibility study on locating child care facilities at Metrorail stations; and

WHEREAS, the results of this study have indicated that benefits may accrue to the public and WMATA as a result of locating child care facilities at Metrorail stations; and

WHEREAS, the WMATA Board of Directors, by Resolution # 91-06 dated January 31, 1991, approved the concept of providing child care facilities at Metrorail stations and authorized WMATA staff, in cooperation with representatives of local governments, to develop a single demonstration program in each of the eight jurisdictions that comprise WMATA; and

WHEREAS, the demonstration program will be located on existing WMATA-owned land; and

WHEREAS, the County is willing to lease WMATA-owned property west of

the Shady Grove Metrorail Station from WMATA for the construction and operation of a County-owned child care facility; and

WHEREAS, WMATA is willing to lease the land described in Exhibit A to the County; and

WHEREAS, the design, construction, operation and maintenance of the child care facility will be under the auspices of a local public agency and WMATA shall be relieved of any and all financial involvement, including any and all liability unless due to WMATA's breach of its obligations under this Agreement, in the demonstration program.

In consideration of the sum of TEN and 00/100 (\$10.00) DOLLARS, and for the mutual promises contained herein, WMATA hereby leases to the County the real property which is hereinafter identified generally on Exhibit A to this Agreement, subject to the following terms and conditions.

1. Description of the Land. The tract of land which is the subject of this Lease Agreement is the approximately 2.0 acres of WMATA property* located adjacent to the access road serving the west side parking lot of the Shady Grove station, which land is hereinafter referred to as the Leased Premises. The plat is attached hereto and incorporated in this Lease Agreement as Exhibit A.

2. Term of Lease. This Lease commences upon execution and delivery, for a term of four years and eleven months unless terminated for cause as herein provided before the expiration of such term.

3. Renewal Option. Subject to the limitations contained herein and

* As shown on WMATA Ownership Map No. RA-83 and identified as Parcel 1d.

upon mutual agreement, the term of this Lease may be renewed for five (5) additional five-year terms or option periods. Notice as to the extension of the original lease shall be provided by the County to WMATA in writing at least six (6) months before the end of the previous term, or any extension thereof.

4. Early Termination. In the event that (A) the child care facility is not opened for business within three years of the effective date of this lease or (B) the facility is not used for its intended purpose or (C) the event set forth in Section 12(A) occurs during the term of this Lease or (D) the County Council fails to appropriate funds for the maintenance of the child care facility, this Agreement shall terminate and the parties shall be relieved of all future obligations under this Agreement, except as provided under Section 15 of this Agreement.

5. Purpose for Which Land May Be Used. The Leased Premises shall be used as a site for the construction and operation of a child care facility. The intended purpose of the facility is to demonstrate that convenient child care can promote the use of public transportation.

6. County's Improvements on Leased Premises:

(A) Initial Improvements. WMATA hereby grants the County the right to construct a child care facility on the Leased Premises.

(B) Future Improvements. The County may from time to time during the lease term and any extension thereof make such alterations, changes and improvements to the facility located on the Leased Premises as the County may deem desirable for the operation of a child care facility. Any structural alteration, change or addition to the facility shall require the prior written approval of WMATA pursuant to Section 7(A).

7. Design and Construction.

(A) The County shall be responsible for all costs of whatever nature necessary for the design and construction of the child care facility, parking lot and all ancillary services necessary to bring the child care facility into operation.

(B) Review and Approval. WMATA shall have, at specified phases of design and construction, described below, the right to review and approve the following:

(1) Structural and aesthetic design of the child care facility which must be compatible with the existing design of the station and its environ;

(2) Required revisions to existing vehicular access and internal circulation system as a result of the County's construction of the child care facility, including, but not limited to: access roads, parking, directional signing and other graphics, and green space requirements;

(3) Design and construction documents developed during and prior to the preparation of the construction documents that reflect stages of design completion. WMATA's comments or approval are to be submitted to the County within 15 working days after WMATA has received such documents.

(4) WMATA's approval is not to be unreasonably withheld, delayed or conditioned.

(5) WMATA accepts no liability and waives none of its rights under this Lease by reason of its approval of any drawings or specifications nor shall its approval be construed to be a warranty of the sufficiency or adequacy thereof.

(C) Plans and other documentation requiring WMATA approval shall be submitted to the Assistant General Manager, Department of Design and Construction, WMATA, 600 Fifth Street, N.W. Washington, D. C. 20001. WMATA approvals or requests for modifications will be provided to the Director of the Department of Family Resources or his designee, 401 Fleet Street, Rockville, Maryland 20850 as soon as possible after the plans have been submitted to WMATA, but in any event, within the time and conditions specified in Section 7(B)(3) and (4).

(D) Following completion of construction, the County shall furnish to WMATA one set of clear full-size mylar reproducibles of the as-built plans, one copy of the as-built specifications and one set of clear mylar reproducibles of the shop drawings, signed and sealed by a responsible professional engineer licensed to practice in the State of Maryland.

(E) The County shall provide 30 days advance notice to WMATA of its intent to proceed with construction. The County shall not begin construction of the facility until the construction plans, drawings and specifications have been approved by the Assistant General Manager of the Department of Design and Construction.

8. Indemnification. The County shall, and shall also require its contractors, sublessees and/or their contractors, to indemnify and save harmless WMATA, its Directors, Officers, employees and agents from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees), of whatsoever kind and nature for injury, including personal injury or death of any person or persons, and for loss or damage to any property, occurring in connection

with or in any way arising out of the service, operation, construction or performance of work associated with the child care facility resulting in whole or in part from the acts, errors or omissions of the indemnitor be it the County, its sublessees, contractor, subcontractor, or any employee, agent or representative of the sublessee, contractor or subcontractor.

The County and its contractor, its sublessees and their contractors shall be responsible for and must make good at their expense all damage to WMATA property caused by his acts, or those of his employees, subcontractors, or subcontractor's employees in carrying out the activities required by this Agreement.

9. Insurance:

The County shall provide, or require its contractors, subcontractors or sublessees to provide during the entire period of performance under this Agreement, the following types of insurance:

(A) Construction Period

(1) Worker's Compensation: A policy complying with the requirements of the statutes of the jurisdiction(s) in which the contract work will be performed. The policy limits shall have not less than the following limits:

WORKER'S COMPENSATION: STATUTORY.

EMPLOYERS' LIABILITY: \$250,000.

(2) Contractors' Commercial General Liability Insurance: A standard (1/86 Ed.) Commercial General Liability Insurance Policy or its equivalent or better issued to and covering the liability of the Contractor for all work and operations under or in connection with the contract and all obligations assumed by the

Contractor under this contract. Product/Completed Operations and Contractual Liability coverages are to be included.

The coverage under such an insurance policy, or policies, shall not have less than the following limits:

PERSONAL INJURY AND PROPERTY DAMAGE LIABILITY \$5,000,000

Combined Single Limit Each Occurrence.

(3) Payment Bond. The County shall require its contractors to provide a payment bond in the following amount:

(a) When the contract price is \$1,000,000 or less, the penal amount shall be 50 percent of the contract price;

(b) When the contract price is more than \$1,000,000 but not more than \$5,000,000, the penal amount shall be 40 percent of the contract price.

(4) Automobile Liability Insurance: An insurance policy covering the use of all owned, non-owned, hired, rented or leased vehicle bearing, or under the circumstances in which they are being used, required by the Motor Vehicle Laws of the District of Columbia Maryland, or Virginia, to bear license plates and covered under the Contractor's Comprehensive General Liability Insurance aforementioned. The coverage under such policy or policies, shall not be less than a Combined Single Limit for Bodily Injury Liability and Property Damage Liability of \$1,000,000 each occurrence.

(5) Builder's Risk Insurance: An insurance policy covering all risks of physical loss or damage to property consisting of material, parts and equipment to be used in, incidental to, or during the construction, fabrication, installation or completion

of this contract, the value of which is included in the cost of the work. WMATA shall be named as Loss Payee to the extent of its interest, if any, in the property insured. The coverage under such policy shall have limits of liability in accordance with the value of the property insured.

(B) Operational Period

(1) Worker's Compensation: A policy complying with the requirements of the statutes of the jurisdiction(s) in which the contract work will be performed. The policy limits shall not have less than the following limits:

WORKER'S COMPENSATION: STATUTORY.

EMPLOYERS' LIABILITY: \$250,000.

(2) Property Insurance: An insurance policy covering all risks of physical loss or damage to property consisting of real and personal property to be used in, incidental to, or during the operation of the facility and the duration of the contract, the value of which is included in the cost of the work. WMATA shall be named as Loss Payee to the extent of its interest, if any, in the property insured. The coverage under such policy shall have limits of liability in accordance with the value of the property insured.

(3) Commercial General Liability Insurance: A standard Commercial General Liability Insurance Policy or its equivalent or better issued to and covering the liability for all operations under or in connection with this Agreement and all obligations assumed under this Agreement. The policy shall include coverages relating to all insurable child care exposures. The coverage

under such an insurance policy, or policies shall not have less than the following limits:

PERSONAL INJURY AND PROPERTY DAMAGE LIABILITY \$3,000,000.

Combined Single Limit Each Occurrence.

(C) WMATA shall be named as an additional insured under the coverage for Contractor's Commercial General Liability Insurance with respect to all work performed under this Agreement for the construction and operation periods. A certificate of insurance shall be provided to WMATA prior to the construction and operation of the child care facility.

10. Operation and Maintenance of Leased Premises:

(A) The County shall maintain the child care facility, the grounds related to such facility and all improvements therein as contained within the plat shown on Exhibit "A" in a safe and good operating condition and repair throughout the term of this Lease and any extension thereof.

(B) The County may sublease the Leased Premises for the operation of the child care facility. The County shall, and shall require its sublessee to conduct all of its operations hereunder in a professional, workmanlike, efficient, safe and careful manner and in accordance with pertinent rules and regulations governing the operation of child care facilities; shall observe such safety precautions and rules in its operations as WMATA from time to time may reasonably require; shall not interfere with WMATA's activities and operations; and shall be solely responsible for providing adequate security for the Leased Premises and the facility.

(C) The County shall, and shall require its sublessee, to be responsible for all operating and maintenance expenses relating to the use and occupancy of the Leased Premises, and the facility constructed thereon to include all maintenance and repair of building and equipment, fixtures, roof, windows, electric systems, utilities, janitorial services, refuse removal, snow and ice removal or treatment, telephones, security to person and property, maintenance and repair of heating and air conditioning systems, plumbing systems, pest control and any other expenses incurred by virtue of the use or operation of the leased premises.

11. Right of Access. WMATA shall have access to the Leased Premises during reasonable hours and after reasonable notice to the County.

12. Destruction of Facility on Leased Premises:

(A) In the event that the facility on the Leased Premises is destroyed or damaged from whatever cause so as to render all or a substantial portion of the facility unfit for the purposes for which the facility is used and the repair of said destruction or damage cannot be accomplished by the County within a reasonable period of time in accordance with the circumstances of the destruction, WMATA and the County shall each be entitled to terminate this Lease by written notice to the other within thirty (30) days after the irreparable destruction or damage occurred.

(B) In the event that the facility on the Leased Premises is destroyed or damaged from whatever cause but all or a substantial portion of the facility is still fit for the purposes for which the facility is used and the County is able to undertake the

repair of the facility, the County shall complete said repairs within ninety (90) days or a time period mutually agreeable to the parties from the date of destruction and this Lease shall not be affected.

13. Disputes. Any dispute between the parties hereto arising under this Agreement may be disposed of by written agreement between the parties. If a dispute cannot be resolved by the parties, the party seeking a resolution of such dispute shall provide written notice of the nature of the dispute to the other party. The dispute shall be considered by a committee comprised of the WMATA Contracting Officer and the County's Chief Administrative Officer or their designated representatives and a third neutral party they select, who shall provide a joint written decision concerning the dispute. In the event that any party is not satisfied with the decision, the matter may then be referred to a court of competent jurisdiction.

14. Assignment and Sub-lease. The County shall not assign this Lease or sublet the Leased Premises without the prior written consent of WMATA. The above notwithstanding, WMATA hereby approves the subleasing of the Leased Premises to a child care provider to be selected by the County for the sole purpose of operating a child care program.

15. Surrender of Possession. The County, at the expiration or other termination of this Lease, agrees, at WMATA's sole option, to remove the child care facility and all goods and fixtures installed on the Leased Premises at its expense within ninety (90) days of said expiration or other termination. The Leased Premises shall be restored to its original order and condition in all respects, reasonable wear and tear caused by use thereof excepted. In the event that the County does not remove the

facility within ninety (90) days, WMATA may demolish the facility at its option and the County shall be responsible for such demolition costs. In the event that WMATA determines that the child care facility should remain on the Leased Premises, the County shall convey the facility and the legal title in fee to the building to WMATA.

16. Parking. The County shall require its sublessee to provide adequate parking to accommodate the facility for its employees and for drop-off and pick-up for its users.

17. Compliance with all Laws, Rules and Regulations. The parties hereto represent that each will comply with all applicable laws, rules and regulations, whether Federal, State or County, relating to this Agreement including the terms and conditions set forth in the letter dated August 29, 1991 from the Urban Mass Transit Administration attached hereto as Exhibit B. Each party shall be responsible for its own costs necessary to ensure compliance.

18. Governing Law. The laws of the State of Maryland govern the validity, interpretation, construction and performance of this Agreement. The parties acknowledge that WMATA is bound by the WMATA Compact.

19. Amendments. No amendments or alterations of any of the terms of this Agreement shall be binding upon WMATA or the County unless the same shall be in writing and duly executed by the parties hereto.

20. Notices. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally or sent by telegraph or certified or registered mail, first class, postage paid, return receipt requested or by facsimile, to any party hereunto as follows:

If to the County:

Department of Facilities and Services
Real Estate Management
110 N. Washington Street Room 318
Rockville, Maryland 20850

If to WMATA:

Director of Real Estate
Washington Metropolitan Area Transit
Authority
600 Fifth Street, N.W
Washington, D.C. 20001

21. Quiet Enjoyment. Contingent on the performance of all covenants, conditions and agreements herein contained to be performed on the County's part, the County shall at all times during the term of this Lease have the peaceable and quiet enjoyment and possession of the Leased Premises for the purposes herein cited.

22. Utility Access. In the event access to utility service lines owned by WMATA outside of the Leased Premises are necessary to extend services to the Leased Premises, WMATA shall provide access to the County for utility hook-up. The cost to extend the utility to the Leased Premises, including the cost of any increased utility for expanded service to the facility and any restoration, shall be at the County's sole expense.

23. Holdover. In the event that the County shall continue to occupy said leased premises or any part thereof after the conclusion of the term of this Lease, or any extension thereof, the tenancy thus created shall be deemed to be upon a month-to-month basis and may be terminated by either party giving the other not less than thirty (30) days' written notice, to expire on the day of the month from which the tenancy commenced. During any month-to-month tenancy, both parties shall continue to observe all agreements and covenants contained in this Lease.

24. Default. WMATA or the County shall be deemed to be in default of this Lease when said party shall wrongfully fail to perform any of the provisions, covenants, conditions, or agreements of this Lease within sixty (60) days, as either is reasonably required to so perform, after written notice is sent from WMATA or the County, one to the other, stating in detail wherein either party has failed to so perform. The defaulting party shall be liable for any and all loss or damage to the other party resulting from any such default.

25. Officials Not To Benefit. No member of or delegate to Congress shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom and no member, officer, or employee of the Public Body or of a local public body during his tenure or one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

26. Covenant Against Contingent Fees. The parties warrants that no person or selling agency has been employed or retained to solicit or secure this lease agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the parties for the purpose of securing business or an attorney rendering professional legal service consistent with applicable canons of ethics.

27. Public Employment. WMATA understands that unless authorized under Section 11(B)-46 or 11(B)-54 of the Montgomery County Code 1984, as amended, it is unlawful for any person transacting business with the County to employ a public employee for employment contemporaneous with his or her public employment.

28. Further Assurances. WMATA must execute and deliver any instrument and perform any acts necessary and reasonably requested by the County in furtherance of the purpose of this Lease.

IN WITNESS WHEREOF, This Agreement has been executed by the parties on the date first written above.

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY

Melissa Spencer
WITNESS

Joseph J. Muldoon
BY: Joseph J. Muldoon
Director of Real Estate

MONTGOMERY COUNTY, MARYLAND

Kathy Barber
WITNESS

Robert W. [Signature]
BY:

Approved this _____ day of _____
Montgomery County, Maryland, at _____ Office
By: [Signature]

Recommended by:

Gloria W. Kratz
Gloria W. Kratz, Chief
Office of Real Estate Management

Washington Metropolitan Area Transit Authority

ITY DESCRIPTION

