

Resolution No. R-16-2023
Adopted: October 11, 2023

A Resolution of the Mayor and Council of the Town of Kensington
Authorizing an MOU for non-exclusive use of Reinhardt Park with the
Brookewood School, Inc.

WHEREAS, Article VI, "Powers of the Council", Section 602, "Specific Powers", Subsection (34), "Parks and Recreation", of the Town Charter states that the Council shall have the power to establish and maintain public parks and playgrounds to promote the health, welfare, and enjoyment of the inhabitants of the Town; and

WHEREAS, Chapter VII, "Public Health, Safety, and Conduct", Section 7-105, "Regulation of Parks", of the Town Code, allows for the permitting and regulation of Town Parks; and

WHEREAS, such regulations may include provisions for limiting the use of any such recreational facility for reasons of health, safety, comfort or morals and for the protection of Town property, and for requiring a permit and permit fee for use of such facility; and

WHEREAS, the Brookewood School has requested use of the playground facility at Reinhardt Park for non-exclusive use during certain hours of the school week; and

WHEREAS, the Mayor and Town Council have determined that it is in the public interest to establish a Memorandum of Understanding (MOU) between the Brookewood School and the Town for non-exclusive use of Reinhardt Park.


NOW, THEREFORE, BE IT RESOLVED that the Town of Kensington and the Brookewood School enter into the following agreement, as outlined within EXHIBIT A, for the non-exclusive use of Reinhardt Park during certain hours of the school week.

ADOPTED by the Town Council of Kensington, Maryland, at the regular public meeting assembled on the 11th day of October, 2023.

EFFECTIVE the 11th day of October, 2023.

ATTEST: TOWN OF KENSINGTON, MARYLAND

By: 
Susan C. Engels, Clerk – Treasurer


Tracey C. Furman, Mayor

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made this 11th day of October, 2023, by and between the Brookwood School, Inc. (the "School"), part of the Avalon Education Group, Inc., a Maryland corporation (collectively "AEG"), and the Town of Kensington, Maryland, a Maryland municipal corporation ("Town").

WHEREAS, AEG is a tenant of the property located at 10401 Armory Avenue, Kensington, MD (the "Property") and operates the School, a private educational institution, on the Property; and

WHEREAS, in connection with its occupation of the Property and its operation of a private educational institution, AEG desires to use certain public park space and facilities at Reinhardt Park, which is owned and maintained by the Town (the "Park"); and

WHEREAS, the Mayor and Council have the authority to regulate, and permit the use of, all land and recreations facilities of the Town in accordance with Chapter VII, "Public Health, Safety, and Conduct", Section 7-104, "Regulations for and Permitting of Town Property", of the Town Code; and

WHEREAS, the Mayor and Council have adopted regulations for the use of the Town parks under Section 7-105, "Regulation of Parks" of the Town Code; and

WHEREAS, the School has requested scheduled non-exclusive use of Reinhardt Park ("Use") as part of an educational or other activity that is being offered for a tuition or fee, wherein the use of the Park is a part of the program being offered or is included in the routine activities of the program; and

WHEREAS, the proposed Use requires a permit, which must be issued in conjunction with a Memorandum of Understanding with the Town with respect to the Use under Section 7-105; and

WHEREAS, this MOU establishes requirements and a schedule for Use of Reinhardt Park by the School and shall be effective for so long as the Use is permitted by the Town, unless amended by the parties hereto; and

WHEREAS, the Mayor and Council have determined that it is in the public interest to approve a non-exclusive permit for the proposed Use, in conjunction with this MOU.

NOW, THEREFORE, The School and the Town (hereinafter at times referred to collectively as the "Parties" or individually as a "Party") agree as follows:

1. Recitals. The Recitals set forth above are hereby incorporated into this MOU as if the same were set forth in the body of this MOU.

2. Use of the Park.

(a) In connection with its non-exclusive Use of the Park, the School shall:

(i) Contribute the sum of **\$1,000.00** per year, beginning on the date of the issuance of the permit, to the upkeep and maintenance of the Park, which amount shall be reviewed on an annual basis and may be amended from time to time by resolution of the Mayor and Town Council at their sole discretion; and

(ii) Remove all debris and trash from the Park that results from the School's use and enjoyment of the Park, and in any event by 4:30 p.m. on each day on which the School utilizes all or any part of the Park; provided, however that the School shall have no obligation to remove debris or trash deposited in the Park by the Town or third parties other than the School, its employees and invitees.

(b) The School may use the Park Monday through Friday between the following hours:

- 10:00 am – 10:45 am for no more than 25 children, ages twelve (12) and under; and
- 12:00 pm – 1:20 pm for no more than 25 children, ages twelve (12) and under

The School agrees that it shall only use the Park for periods of no more than the morning and afternoon allotted time-frames. Provided, however, that in the event that inclement weather or other event outside of its control (e.g., such as a repair crew in the Park or mulching of the Park) the School may use the Park for 30 minutes earlier or later than the allotted time-frames, subject to other scheduled uses. In addition, the School shall have the right to use the Park in connection with discrete events (“Special Use”) (e.g., collection of leaves for art projects, setting out and collecting pumpkins for Halloween celebration) outside of the time-frames set forth above but no more than one time per month, and provided that such use shall not last more than 30 minutes. The Special Use of the Park shall be approved by the Town Manager or designee of the Town. Children using the Park by virtue of this MOU and the related permit will be appropriately supervised at all times by the School staff and parent volunteers in accordance with all applicable rules and regulations; and be provided uniquely identified safety vests or uniforms so not to be confused with any other licensed school.

3. Term. This MOU shall continue in effect for so long as an associated permit is issued by the Town for the Use. This MOU shall automatically terminate without further action if and when the associated permit ends or is revoked by the Town for whatever reason. The School may terminate this MOU upon cessation of the Use and prior written notice to the Town.

4. Insurance. The School will purchase and maintain during the entire term of this MOU, comprehensive general liability insurance and workers’ compensation insurance with limits of not less than those set forth below. Insurance companies providing coverage herein shall have an AM Best rating of A-VII or better. On each policy, the School will name the Town of Kensington, its’ officers, officials, agents and employees as an additional insured and shall provide an additional insured endorsement, with the exception of the workers’ compensation insurance.

A. Comprehensive General Liability Insurance

- (1) Personal injury liability insurance with a limit of \$2,000,000 each occurrence/aggregate;
- (2) Property damage liability insurance with limits of \$500,000.00 each occurrence/aggregate.

All insurance shall include completed operations and contractual liability coverage.

B. Workers’ Compensation Insurance. The School shall comply with the requirements and benefits established by the State of Maryland for the provision of Workers’ Compensation insurance. All Corporations are required to provide Workers’ Compensation Certificates of Insurance.

The School covenants to maintain insurance, in these amounts, which will insure all activities undertaken by the School pursuant to this MOU and its associated permit. Copies of the certificates of insurance and additional insured endorsements for all required coverage shall be furnished to the Town prior to any Use.

Provision of any insurance required herein does not relieve the School of any of its responsibilities or obligations, or for which it may be liable by law or otherwise. Provision of such insurance is not intended in any way to waive the Town’s immunities or any damage limits applicable to municipal government as provided by law.

5. Release and Hold Harmless. Use of the Park by the School and its children shall be at the sole risk of the School, and the School hereby releases and holds the Town and its officers, officials, agents and employees harmless for any injury or liability, including death, that may be suffered in connection with the Use of the Park by the School, its’ employees, agents, children, volunteers, or invitees, except to the extent caused by the gross negligence or willful misconduct of the Town, its agents, officers, officials, or employees.

6. Not a Real Property Interest. This MOU sets forth a certain rights which shall not be deemed or construed to create any real property interest in the Park.

7. Future Regulation. The Parties acknowledge and agree that the Town has the authority to regulate Town property, including the Park. The School agrees that nothing in this MOU may be construed to prospectively limit the ability of the Town to exercise this authority and that this MOU will be governed by any such regulation.

8. Indemnification. Neither the Town nor its officers, officials, employees or agents will be liable for any damage to or theft of or loss of the School's property in the Park whether it is by the act or omission of the Town, its officers, officials, employees, residents, agents or invitees. The School hereby releases the Town therefrom, unless such damage to or theft or loss of the School's property results directly from the gross negligence or willful misconduct of the Town, its officers, officials, employees or agents. The School shall reimburse and shall indemnify, defend upon request and hold the Town, its officers, officials, employees, and agents harmless for, from and against, all costs, damages, claims, liabilities, expenses (including attorneys' fees, disbursements and actual costs), losses and court costs suffered by the Town, its officers, officials, employees, or agents, based on or arising out of, in whole or in part, (a) the Use and occupancy of the Park by the School or any of its employees, agents, volunteers, or invitees or (b) any breach of the School's obligations under this MOU.

9. Notices. All notices or other communications hereunder shall be in writing and shall be deemed duly given if delivered by hand (with receipt therefor) or by a recognized overnight delivery service or by certified mail, return receipt requested, first-class postage prepaid, (i) if to the School, at 10401 Armory Avenue, Kensington, MD 20895, and (ii) if to the Town, 3710 Mitchell Street, Kensington, MD 20895, unless notice of a change of address is given pursuant to the provisions of this paragraph. Any notice sent in compliance with this Section 9 shall be deemed given on the date of delivery in the case of hand-delivery, on the earlier of the date of receipt or three (3) days after mailing in the case of mailing, or on the next business day in the case of a recognized overnight delivery service. A change of address by either of the parties shall be delivered to the other party in accordance with the terms of this Section 9.

10. Recordation. The School agrees not to record this MOU.

11. Risk of Loss. All property belonging to the School, its agents or any other person, that is placed in the Park shall be and remain at the sole risk of the School or such agents or other person.

12. Governing Law. This MOU shall be interpreted in accordance with the laws of the State of Maryland (exclusive of its conflict of laws provisions).

13. Successors and Assigns. The terms of this MOU shall be binding on any successor or assign of the School. Nothing in this Paragraph 13 shall diminish the Town's rights set forth in Section 9 regarding future regulation of the Park. In any event, the School shall not assign any right or obligation under this MOU, whether by operation of law or otherwise, without the Town's express written consent, which may be withheld in the Town's sole discretion. In the event of insolvency of either party, this MOU shall terminate immediately at the election of the other party.

This MOU and its associated permit constitutes the entire agreement between the Town and the School with respect to the subject matter hereof and may only be amended in a writing executed by both parties.

The School will be responsible for obtaining any and all licenses and permits pertaining to its child care operations. All services and materials provided by the School during the Use shall conform to all applicable laws and regulations.

IN WITNESS WHEREOF, the Parties have executed this MOU on the date set forth above.

Brookewood School, Inc.

By: _____

Name: R.J. Hawley
Title: Executive Director

TOWN OF KENSINGTON

By: _____

Name: Tracey C. Furman

Title: Mayor