

Memorandum of Agreement
between
Jefferson County Board of Education
And
Ulliman Schutte Construction, LLC

THIS MEMORANDUM OF AGREEMENT ("Agreement") is entered by and between the Jefferson County Board of Education, a political subdivision of the Commonwealth of Kentucky doing business as the Jefferson County Public Schools (hereinafter "JCPS"), with its principal place of business located at 3332 Newburg Road, Louisville, Kentucky 40218 and Ulliman Schutte Construction, LLC, an Ohio limited liability company whose address is 9111 Springboro Pike, Miamisburg, 45342 Ohio (hereinafter "USC"), (JCPS and USC are hereinafter referred to individually as a "Party" and collectively as the "Parties").

WHEREAS, USC is a leading company in the region wishing to provide support to Jefferson County schools through the Metropolitan Sewer District Community Benefits Program,

WHEREAS, USC has offered to donate to JCPS materials and provide for the construction and installation costs of (1) a new six foot high, black PVC coated chain link fence with two each vehicle gates, one each walk gate, and a section of twelve foot high, black PVC coated chain fence for foul balls that surrounds that playground area East of the school building and (2) a new four foot high, black ornamental steel fence with two walk gates separating the student drop off/pick up area from the playground area (the "Renovation") at Whitney Young Elementary School (hereinafter "Young"); and

WHEREAS, JCPS desires to accept the donation of the materials and the construction and installation (listed in Attachment A, which is incorporated herein by reference).

NOW THEREFORE, the Parties agree that the terms and conditions herein shall control the donation and the use of Confidential Information (defined in Section 8):

1. USC and a contractor or contractors selected by USC ("USC's contractors") will begin no work until the plans and specifications for the renovation have been approved by all state agencies whose approval is necessary under Kentucky law and the members of the Jefferson County Board of Education (hereinafter the "Board") have authorized the project to begin after USC has demonstrated to the Board that USC has adequate resources (both monetary and donated materials) to accomplish the renovation without financial liability to the Board.

2. USC and USC's contractors will complete the renovation in conformance with the plans and specifications as approved by state agencies and the Board. USC and USC's contractors shall at all times during the term of this Agreement comply with all applicable federal, state and local statutes, regulations, ordinances, rules and policies, and shall obtain and keep in force all licenses, permits and certificates necessary for the performance of the renovation work.
3. The installation of the fence will be completed no later than July 30, 2021.
4. USC and USC's contractors will maintain an all-risk property and casualty insurance policy with respect to the fence installation at the Young facilities and a policy of commercial general liability in amounts no less than \$1,000,000/\$3,000,000 per policy and provide JCPS with a certificate of insurance upon request naming the Board of Education as additional insured.
5. Upon completion of the renovation as contemplated herein, USC and USC's contractors will release all claims of ownership, and title to the fence (including gates) will vest in the Board. The Board shall thereafter have complete control of the fence and gates and be responsible for all maintenance and repair.
6. To the extent permitted by Kentucky law, JCPS waives, releases and discharges USC and USC's contractors from any and all claims for liability, including but not limited to, liability arising from the alleged negligence or fault of USC for failure or defect of the donated renovation, in whole or part, as well as any claims arising therefrom for death, disability, personal injury, property damage, or actions of any kind which may hereafter occur due to the use of the donated renovation by JCPS, its personnel, students, agents, contractors, other users or other parties and/or any of their representatives.
7. To the extent permitted by Kentucky law, JCPS shall indemnify, defend and hold USC and USC's contractors harmless from any and all damages, costs, expenses, suits, liabilities or claims made by JCPS, its personnel, students, agents, contractors, representatives, other users or other parties arising in any manner related to the use of the donated fence whether brought in tort, contract, law or equity.
8. Each Party may, as part of this donation, share certain information that is proprietary to that Party and/or maintained by that Party as confidential (hereinafter "Confidential Information") with the other Party. Each Party shall protect Confidential Information using the same degree of care, but no less than a reasonable degree of care, to prevent unauthorized use, dissemination or publication thereof as it uses to protect its own proprietary and confidential information. Neither Party shall use the Confidential Information except to further the purposes of this Agreement or as otherwise specifically authorized in writing by the Disclosing Party. Each Party may disclose the Confidential Information of the other Party only to those of its employees and employees of its affiliates who (a) need to know such information to perform its obligations, exercise its rights hereunder, or make necessary disclosures in its financial filings and (b) are bound by the obligations of confidentiality set forth herein (collectively, "Representatives"). An affiliate is an

entity that controls, is controlled by, or is under common control with a Party. Under no circumstances, except as expressly set forth below, shall either Party reproduce, distribute or otherwise provide, directly or indirectly, any Confidential Information to any person or entity who is not a Representative, or make necessary disclosures in its financial filings without the consent of the Disclosing Party, provided:

a. JCPS can disclose Confidential Information to the extent that such disclosure is required under the Kentucky Open Records Law; and

b. No obligation is imposed with respect to information of the Disclosing Party which: (i) was rightly in the non-Disclosing Party's unrestricted possession prior to disclosure by the Disclosing Party; (ii) is or becomes a matter of public knowledge through no fault of the non-Disclosing Party; (iii) is rightly received by the non-Disclosing Party from a third party that has no duty of confidentiality to the Disclosing Party; or (iv) is independently developed by the non-Disclosing party without relying on the Confidential Information of the Disclosing Party; and

c. Each Party's duty under this Agreement to protect any Confidential Information of the other Party shall survive after the end of the term of this Agreement.

9. All employees, volunteers and contractors (including employees of contractors) of USC performing services on JCPS school premises during JCPS school hours under this Agreement are required to submit per KRS 160.380 to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a letter, provided by the individual, from the Cabinet for Health and Family Services stating no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.

10. JCPS shall not sell, transfer and/or assign the donated renovation to any other party or otherwise place the same into the stream of commerce. Upon the end-of-use of the donated renovation, in whole or in part, JCPS shall disassemble and decommission the non-used donated renovation or return the same to USC.

11. This Agreement shall be in effect for the period beginning November 11, 2020 and ending July 30, 2021.

12. This Agreement may be terminated by either Party with or without cause upon no less than thirty (30) days written notice to either Party. This Agreement may be terminated immediately by JCPS upon ten (10) business days written notice to USC for its failure to cure a material breach of this Agreement.

13. No waiver, alteration or modification of the provisions of this Agreement shall be binding unless in writing and mutually agreed upon by both JCPS and USC.

14. During the performance of this Agreement, USC shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Kentucky Equal Employment Act of 1978, KRS 45.550-45.640, and the American Disabilities Act, and shall not discriminate against any JCPS employee, student or beneficiary of the project on the basis of race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, genetic information, disability, or limitations related to pregnancy, childbirth, or related medical conditions.

15. In the performance of the duties and obligations imposed on each Party by this Agreement, it is mutually understood and agreed that USC and USC's contractors are at all times acting as an independent contractor with respect to JCPS, and neither Party shall be construed to be an agent or representative of the other Party. Except as provided herein, JCPS shall not have any control or direction over the manner, methods or means by which USC and USC's contractors perform their work and functions.

16. This Agreement contains the entire agreement between JCPS and USC and supersedes any and all prior agreements, representations and negotiations, either oral or written, between the Parties before the execution of this Agreement, but any other agreement executed contemporaneously with the execution of the Agreement and incorporated herein by reference shall remain in full force and effect.

17. If any part of this Agreement is held to be void, against public policy or illegal, the balance of this Agreement shall continue to be valid and binding. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky. Any action or claim arising from, under or pursuant to this Agreement shall be brought in the Jefferson County, Kentucky, Circuit Court, and the Parties expressly waive the right to bring any legal action or claims in any other courts.

THE UNDERSIGNED ARE AUTHORIZED AGENTS OF THE PARTIES WITH
AUTHORITY TO BIND THE SAME AND EACH OF THEM HEREBY CERTIFIES TO
HAVE READ THIS AGREEMENT AND FULLY UNDERSTANDS AND AGREES TO ITS
CONTENTS.

JEFFERSON COUNTY BOARD OF EDUCATION:

Dr. Martin A. Pollio

Superintendent

Date

Ulliman Schutte Construction, LLC



Name Eric Meister

Title Vice President

10/24/2020

Date