

Memorandum of Agreement
between
Jefferson County Board of Education
and
Louisville-Jefferson County Metro Government

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 **LOUISVILLE-JEFFERSON COUNTY METRO GOVERNMENT**, Department of Develop Louisville, Office of Community Development (hereinafter "METRO"), with its principal place of business located at 601 West Jefferson Street, Louisville, Kentucky 40202 (JCPS and METRO are hereinafter referred to individually as a "Party" and collectively as the "Parties").

WHEREAS, METRO has offered to donate to JCPS costs for creating an outdoor classroom space, stage, and garden on Western Middle School for the Arts property as outlined in ATTACHMENT A.

WHEREAS, JCPS desires to accept the donation valued at \$50,000 for Western Middle School for the Arts (hereinafter "WMSFA").

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. METRO contractors will begin no work until the plans and specifications for the construction 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 METRO has demonstrated to the Board that METRO has adequate resources (both monetary and donated materials) to accomplish the construction without financial liability to the Board.
2. METRO and METRO contractors, while utilizing Board-owned property, shall operate within Board-approved policies for securing materials and labor, to the extent permitted under the Kentucky law.
3. METRO contractors will complete the outdoor classroom space, stage, and garden in conformance with the plans and specifications as approved by state agencies and the Board. METRO 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 work.
4. The outdoor classroom space, stage, and garden at WMSFA shall be completed no later than June 30, 2021.
5. METRO contractors will maintain an all-risk property and casualty insurance policy with respect to the work and the WESTERN MIDDLE SCHOOL FOR THE ARTS 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 with the signed Agreement. The Board of Education, Jefferson County, must be added as an "Additional Insured" and must be in the description of operations section of the Certificate of Insurance.

The complete policy number and inception and expiration dates must also be included.

6. Upon completion of the work as contemplated herein, METRO contractors will release all claims of ownership and title to an outdoor classroom space, stage, and garden and will vest in the Board. The Board shall thereafter have complete control of an outdoor classroom space, stage, and garden at WMSFA.

7. 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 by METRO 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.

8. Require the following, pursuant to KRS 160.380, for all METRO contractors, employees and volunteers under this agreement.

- a. A state criminal records check;
- b. A state and national criminal (fingerprint) history background check;
- c. A letter, provided by the individual, from the Cabinet for Health and Family Services stating that there are no findings of substantiated child abuse or neglect on record. No contractor, employee, or volunteer shall be utilized to supervise students, or deemed to have the authority to supervise students, unless the volunteer has been designated to supervise students and

approved by the Superintendent/designee, and volunteer has undergone the required records check.

9. JCPS shall not sell, transfer and/or assign the donated costs to any other party or otherwise place the same into the stream of commerce.

10. This Agreement shall be in effect from the date of its execution until the completion of the work as contemplated herein, expected by the parties to be June 30, 2021.

11. 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 METRO for its failure to cure a material breach of this Agreement.

12. 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 METRO.

13. During the performance of this Agreement, METRO 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 or student because of age, color, creed, disability, genetic information, marital or parental status, national origin, race, sex, sexual orientation, gender identity, gender expression, veteran status, religion, or political affiliation or beliefs.

14. In the performance of the duties and obligations imposed on each Party by this Agreement, it is mutually understood and agreed that METRO 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 METRO contractors perform their work and functions.

15. This Agreement contains the entire agreement between JCPS and METRO 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.

16. 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:

By: Dr. Martin A. Pollio
Superintendent

Date

LOUISVILLE-JEFFERSON COUNTY METRO GOVERNMENT:

By: Jeff O'Brien
Director, Develop Louisville

Date

**APPROVED AS TO FORM:
JEFFERSON COUNTY ATTORNEY**

Print name

Title

Signature

Date