



DEPARTMENT OF FACILITIES

**TONY ROTH, DIRECTOR**  
GEORGE BROCK, MAINTENANCE SUPERVISOR  
THOMAS STOKES, CUSTODIAL SUPERVISOR  
ANDREA ROCK, ENERGY MANAGER

**MEMO**

TO: Dr. Jesse Bacon, Superintendent *JB*

FROM: Tony Roth, Director of Buildings and Grounds *Tony*

Date: June 28, 2023

RE: Request to Approve Use of Property

The request is to approve the agreement between the BCBOE, Toadvine Enterprises and 3144 Associates LLC, for the use of the property adjacent to the Bullitt East Football field, as outlined in the attachment. This agreement will allow the setup of a crane for grandstand and press box installation at the field.

I recommend approval of this request.

OUR MISSION IS TO INSPIRE AND EQUIP OUR STUDENTS TO SUCCEED IN LIFE

BULLITT COUNTY PUBLIC SCHOOLS IS AN EQUAL EDUCATION AND EMPLOYMENT INSTITUTION

*Muel*

## MEMORANDUM OF EASTBROOKE PROPERTY USE AGREEMENT

This Memorandum of Eastbrooke Property Use Agreement (defined, collectively, as the "Agreement") is made between the **3144 Associates LLC**, a Kentucky limited liability company (hereafter "3144 Associates"), and the **Bullitt County Board of Education** (hereafter "BCBOE"), (BCBOE and 3144 Associates defined, collectively, as the "Parties").

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### RECITALS

A. 3144 Associates' mailing address and principal place of business for this Agreement is located at **337 N. Bardstown Road, Mt. Washington, KY 40047**;

B. BCBOE's mailing address and principal place of business for this Agreement is located at **1044 Highway 44 E, Shepherdsville, KY 40165**;

C. BCBOE seeks to use certain property owned by 3144 Associates under the terms and conditions as set out herein.

Now, therefore, for and in consideration of the following promises, covenants and conditions, the Parties mutually agree to the following terms and conditions:

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### TERMS & CONDITIONS

1. **USE OF EASTBROOKE PROPERTY.** 3144 Associates hereby permits BCBOE to use Lot 18 and Lot 20 of Eastbrooke Pointe (the "Eastbrooke Lots") also attached as Exhibit A to outline which portion of the property is available to BCBOE. BCBOE shall use the Eastbrooke Lots during the Bullitt East High School grandstand construction phase. BCBOE acknowledges that no binding or enforceable agreement use of the Eastbrooke Lots shall exist until and unless this Agreement has been signed by BCBOE and received by 3144 Associates.

2. **TERM OF AGREEMENT.** This Agreement begins July 1, 2023 and ends September 1, 2023. This Agreement can be extended by either party giving written notice to the other at least thirty (30) days prior to the expiration of any term. 3144 Associates understands that the grandstand construction phase is part of a larger construction schedule for all of Bullitt County Schools' Football Fields and may be subject to delays, which could require an extension of this Agreement. 3144 Associates will not unreasonably withhold extension of this Agreement to BCBOE in order for BCBOE to complete the Bullitt East High School Football Field.

3. **BCBOE'S OBLIGATIONS.**

3.1. BCBOE shall not make any unnecessary alterations to the Eastbrooke Lots. The Eastbrooke Lots shall be returned to 3144 Associates in as good a condition as the same was at the time BCBOE took possession hereunder. If 3144 Associates believes the Eastbrooke Lots are not in the same condition at the time BCBOE took possession, 3144 Associates shall notify BCBOE of any necessary repairs. BCBOE will be given ten (10) days to make repairs; should there be a delay of more than ten (10) days in making repairs, due to difficult of scheduling work or for any other reason beyond BCBOE's control, BCBOE agrees to keep 3144 Associates informed about the progress of work.

If 3144 Associates decides to itself make the repairs and restorations to the Eastbrooke Lots, after notifying BCBOE of the repairs needed, the costs for same shall be borne solely by BCBOE. BCBOE shall reimburse 3144 Associates, for repairs necessary to repair damages to the Eastbrooke Lots caused by the BCBOE or no later than ten (10) business days after 3144 Associates presents BCBOE with a written statement or invoice reflecting the nature and costs of the repairs. Toadvine Enterprises, Inc., a contracted affiliate for the grandstand construction phase of the Bullitt East High School Football Field, shall be responsible for any invoices submitted by BCBOE or 3144 Associates for damage caused by construction or storage of equipment.

3.2 BCBOE and Toadvine Enterprises, Inc. shall exercise care in the use of the Eastbrooke Lots and shall comply with guidelines to reduce excessive wear or damage. BCBOE Toadvine Enterprises, Inc. agree to keep the Eastbrooke Lots and adjacent areas in a clean and orderly condition and to remove all construction equipment and cranes at the conclusion of the Bullitt East High School grandstand construction phase.

4. **ACCESS TO PROPERTY.** BCBOE and contracted affiliates shall have full access the Eastbrooke Lots during the term of this Agreement.

5. **INSURANCE.** BCBOE shall assume all liability for injury to persons or property by reason of its use of the Eastbrooke Lots and shall indemnify and save harmless 3144 Associates from any loss, damage, or injury to persons or property resulting from the negligence or misconduct of BCBOE. BCBOE shall maintain liability, property and casualty insurance upon the Eastbrooke Lots in amounts approved by 3144 Associates. 3144 Associates shall be named as a Loss Payee and an Additional Insured on applicable insurance coverage(s) and certificates of insurance coverage(s) shall be delivered upon execution hereof to 3144 Associates. Any insurance provided by the BCBOE shall apply on a primary basis and shall not require contribution from any insurance maintained by 3144 Associates. Any insurance or self-insurance maintained by 3144 Associates shall be in excess of, and shall not contribute with the insurance provided by BCBOE.

Toadvine Enterprises, Inc. shall indemnify BCBOE and 3144 Associates from liability for injury to persons or property by reason of its use of the Eastbrooke Lots to install and construct the improvements and shall indemnify and save harmless BCBOE and 3144 Associates from any loss or damage, or injury to persons or property during the term of this Agreement, including all costs and attorney fees incurred by BCBOE or 3144 Associates.

6. **NON-WAIVER.** Parties agree no waiver of any provisions or the breach of any provision of this Agreement constitutes a waiver of any subsequent breach of a provision described in this Agreement nor justifying or authorizing the nonobservance of any other provisions described in this Agreement, except as amended, modified, or agreed in writing between the Parties.

7. **APPLICABLE LAW & REMEDIES.** Parties agree (i) this Agreement is construed and enforced according to the laws of the state of Kentucky, and (ii) all claim(s), counterclaim(s), dispute(s), breach(es), action(s), and other matter(s) in dispute between the Parties arising or relating to this Agreement will be decided in a court of competent jurisdiction within the state of Kentucky, county of Bullitt.

8. **SEVERABILITY.** Parties agree the remaining provisions of this Agreement will be unaffected and remain valid and enforceable to the full extent permitted by law in the event and for any reason any provision of this Agreement is held invalid or unenforceable under applicable law.

[Signatures on the Next Page.]

**MEMORANDUM OF AGREEMENT**

The representatives on behalf of the Parties below each personally represent and warrant possessing legal capacity and authority to acknowledge this Agreement on behalf of the Parties, and each do voluntarily acknowledge this Agreement on the effective dates below.

**BULLITT COUNTY BOARD OF EDUCATION**

By: \_\_\_\_\_  
Jesse Bacon, Ed.D., Superintendent, as Authorized by vote of the Board

Date: \_\_\_\_\_

**TOADVINE ENTERPRISES, INC.**

By: \_\_\_\_\_  
Michael Toadvine, President

Date: \_\_\_\_\_

**3144 ASSOCIATES LLC, a Kentucky limited liability company**

By: \_\_\_\_\_  
Kenneth Stout, Managing Member

Exhibit A

