

OK AS TO FORM
AMH 10-4-2024

TEMPORARY CONSTRUCTION EASEMENT AND AGREEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT AND AGREEMENT (this “Easement”) is made this _____ day of _____ 2024 by and between **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, a Kentucky consolidated local government, whose mailing address is 527 West Jefferson Street, Louisville, Kentucky 40202 (“Grantor”) and **JEFFERSON COUNTY SCHOOL DISTRICT FINANCE CORPORATION**, a Kentucky non-profit corporation, whose mailing address is 3332 Newburg Road, VanHoose Education Center, Louisville, Kentucky 40218 (“Grantee”).

WITNESSETH:

A. Grantor is the owner of the property (“Grantor’s Property”) located at 1114 R Clay Avenue, Louisville, Kentucky, which is commonly known as Okolona Park.

B. Grantee has requested a temporary easement over a portion of Grantor’s Property for the purpose of facilitating certain construction activities contemplated on (i) the adjacent property having an address of 7606 Preston Highway, Louisville, Kentucky with Parcel ID No. 0642-0004-0000, which is currently owned by Grantee and is used as Okolona Elementary School (“Grantee’s Property”) and (ii) the adjacent property having an unknown address or no address with Parcel ID No. 0642-0001-0000, which is currently owned by Grantee’s affiliate, the Board of Education of Jefferson County, Kentucky, and is used as Okolona Elementary School (“Board of Education’s Property”), and together with Grantee’s Property, “JCPS’s Property”).

C. Subject to the terms and conditions set forth herein, Grantor is willing to provide a temporary easement over the portion of Grantor’s Property within the blue rectangular space that is approximately 60 feet wide as shown on **Exhibit A** attached hereto and made a part hereof (the “Easement Area”).

12/27/2018

NOW THEREFORE, for and in consideration of ELEVEN THOUSAND FIFTY and 75/100 Dollars (\$11,050.75), the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Grant of Easement. Grantor hereby grants and conveys a temporary easement to and for the benefit of Grantee, on, over and across the Easement Area for the limited purpose of staging construction and constructing certain improvements on the JCPS's Property. Grantee is not permitted to construct any improvements within the Easement Area.

2. Use and Maintenance of Easement. Grantee agrees that it will construct at Grantee's sole cost and expense, temporary construction fencing to enclose the Easement Area, which shall be removed at the time this Easement expires as further described herein.

Grantee agrees that the use of the Easement Area will not interfere with Grantor's use and operation of the remainder of Grantor's Property. Grantor agrees that Grantee's use of Grantor's Property will not interfere with Grantee's use of the Easement Area.

Grantee agrees that it will conduct its activities on the Easement Area at its own risk and will, in case of any accident, destruction or injury to Grantor's Property arising out of Grantee's use of the Easement Area or personal injury or death arising out of Grantee's use of the Easement Area, promptly notify Grantor of such occurrence. Grantee assumes full responsibility for, and shall, to the extent permitted by law, indemnify, defend, and hold harmless Grantor, its elected and appointed officials, employees, agents, successors in interest, agencies, departments, affiliates and assigns from all claims, damages, losses and expenses, including reasonable attorneys' fees, arising out of Grantee's (or Grantee's contractors', if any) use of the Easement Area or breach of the contract provided that such claim, damage, loss or expense is: (1) attributable to personal injury, bodily injury, sickness, death or to injury to or destruction of property, including the loss of use

resulting therefrom, or breach of contract, and (2) not caused by the negligent act or omission or willful misconduct of Grantor, Grantor's contractors, if any, or Grantor's elected and appointed officials and employees acting within the scope of their employment. This hold harmless and indemnification clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Easement for a period of one (1) year.

Grantee accepts the Easement Area in its "AS-IS," "WHERE-IS" condition subject to all matters of record and applicable law;

Grantee shall be responsible for maintaining the Easement Area in good and clean condition during the Easement Term (as further defined herein), and for restoring the Easement Area to the condition it was in prior to the Easement Term or better, including the removal of the temporary construction fencing, on or before the expiration of the Easement Term. If Grantee fails to perform such maintenance or restoration within thirty (30) days after Grantor's request therefor (provided that such period shall be extended an additional thirty (30) days if Grantee is unable to complete such maintenance and restoration within the initial thirty (30) day period, but has commenced such maintenance and restoration within the initial thirty (30) day period and thereafter pursues such maintenance and restoration in a diligent and commercially reasonable manner), Grantor may perform such repairs and to the extent permitted by Kentucky law, Grantee shall reimburse Grantor for the reasonable cost thereof within sixty (60) days of demand. During the Easement Term, Grantee shall cause the Board of Education of Jefferson County, Kentucky (the "Board of Education") to maintain (subject to its right to self-insure below), commercial general liability insurance, on a per occurrence basis, with limits of at least Two Million Dollars (\$2,000,000.00) for bodily or personal injury or death (or, with respect to any contractor and agent of Grantee such lesser limit as may be reasonably acceptable to Grantor) and (2) property damage insurance in the

amount of at least One Million Dollars (\$1,000,000.00). To the extent permitted by Kentucky law, the insurance policies for such insurance shall name Grantee as additional insured. Notwithstanding the foregoing, the Board of Education shall have the right to maintain the first Five Hundred Thousand Dollars (\$500,000.00) of each such coverage under the Board of Education's self-insurance program. Grantee shall cause each of Grantee's contractors and agents who access the Easement Area to maintain the insurance coverage provided on Exhibit B.

Grantor shall not be responsible for safeguarding in any manner the property of Grantee or Grantee's contractors and agents placed in the Easement Area.

In the event that there is damage to any other portion of Grantor's Property arising out of Grantee's use of the Easement Area, to the extent permitted by Kentucky law, Grantee, at Grantee's sole cost and expense, shall promptly repair and restore such damaged portion of Grantor's Property to a condition that is as good as or better than its condition prior to such damage.

3. Term of Easement. The term of this Easement shall commence on April 1, 2025 and shall terminate on August 31, 2027 (the "Easement Term"). This Easement shall terminate on expiration of the Easement Term without further action of the parties; provided, however, that Grantee agrees to execute such documentation as Grantor, its successor or assigns may reasonably request confirming termination of this Easement.

4. Compliance with other Laws. Grantor and Grantee shall at all times during the Easement Term comply with all applicable federal, state and local laws, statutes, ordinances and regulations and Grantee shall obtain and keep in force all licenses, permits and certificates (if any) necessary for Grantee's use of the Easement Area.

5. Governing Law. This Easement has been executed and made in accordance with and shall be governed by the laws of the Commonwealth of Kentucky. The parties hereto agree that any

dispute arising out of this Easement shall be litigated only in the courts of the Commonwealth of Kentucky.

6. Counterparts. This Easement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. The parties hereto may rely on signature by facsimile, emailed PDF or other electronic signature to the same extent as if they were original signatures.

7. Severability. The unenforceability of any provision of this Easement shall not affect any other provision hereof.

8. Headings. The headings used in this Easement shall have no effect on the construction of this Easement.

9. Waiver. The failure of either party hereto to insist in any one or more cases upon the strict performance of any of the promises, covenants, conditions, restrictions or agreements in this Easement shall not be construed as a waiver or relinquishment for the future breach of the provisions of this Easement.

10. Authority to Sign. Each party to this Easement represents and warrants to the other party that (a) the person executing this Easement has the actual authority and power to sign, and to bind such party to the provisions of this Easement; and (b) all action necessary for the making of this Easement has been duly taken.

CONSIDERATION CERTIFICATE

Pursuant to KRS 382.135(1)(c), Grantor and Grantee hereby swear and affirm, under penalty of perjury, that the Consideration recited in this instrument is the full, actual consideration paid or to be paid for the property transferred hereby.

IN TESTIMONY WHEREOF, witness the signature of the parties hereto:

GRANTOR:

**LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT**

By: _____
Jason Canuel
Assistant Director
Louisville Parks and Recreation

GRANTEE:

**JEFFERSON COUNTY
SCHOOL DISTRICT FINANCE
CORPORATION**

By: _____
Name: _____
Title: _____

Approved as to form and legality:

Assistant County Attorney

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OF KENTUCKY)
) ss
COUNTY OF JEFFERSON)

I, the undersigned, certify that this instrument and the foregoing consideration certificate were produced before me in my said County and State and duly acknowledged and sworn to by Jason Canuel, Assistant Director of Metro Parks, Louisville/Jefferson County Metro Government, a Kentucky consolidated local government, Grantor, on behalf of said local government, being duly authorized.

NOTARY PUBLIC, STATE AT LARGE

Date

My Commission Expires

Notary ID#

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OF KENTUCKY)
) ss
COUNTY OF JEFFERSON)

I, the undersigned certify that the foregoing this instrument and the foregoing consideration certificate were produced before me in my said County and State and duly acknowledged and sworn to by Dr. Martin A. Pollio as President of Jefferson County School District Finance Corporation, a Kentucky non-profit corporation, Grantee, on behalf of said non-profit corporation, being duly authorized.

NOTARY PUBLIC, STATE AT LARGE

Date

My Commission Expires

Notary ID#

Prepared by:

**MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY**

By: _____

**Assistant County Attorney
First Trust Centre
200 S. Fifth Street, Suite 300-N
Louisville, Kentucky 40202
(502) 574-6333**

Attachment:

Exhibit A - Easement Area

Exhibit B – Insurance requirements for Grantee's contractors

EXHIBIT A

Easement Area

[See drawing attached hereto]

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If one of the LOJIC Interactive Maps is not working properly, view these suggestions.



A GIS Partnership to Meet the Growing Needs of Louisville, KY

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Layers Tools

Measure Tool



Length units: Feet

Measurement Res
Length: 1362.32 ft



Exhibit B

INSURANCE REQUIREMENTS

I. At the time of execution of the Easement, Grantee's Contractor shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the Commonwealth of Kentucky. Insurance written by non-admitted carriers will also be considered acceptable, in accordance with Kentucky Insurance Law (KRS 304.10-040). Workers' Compensation written through qualified group self-insurance programs in accordance with Kentucky Revised Statutes (KRS 342.350) will also be acceptable. The Contractor shall not commence work until all insurance required hereunder has been obtained and until copies of policies or certificates thereof are delivered to the Louisville/Jefferson County Metro Government's Risk Management Division. The Contractor shall not allow any subcontractor to commence work until the insurance required of such subcontractor has been obtained and copies of Certificates of Insurance retained by Contractor evidencing proof of coverages.

Without limiting Grantee's or Contractor's indemnification requirements, it is agreed that the Contractor shall maintain in force at all times during the performance of this agreement the following policy or policies of insurance covering its operations, and require subcontractors, if subcontracting is authorized, to procure and maintain these same policies until termination of the Easement. Metro may require Contractor to supply proof of subcontractor's insurance via Certificates of Insurance, or at Metro's option, actual copies of policies.

A. The following clause shall be added to the Contractor's (and subcontractors) Commercial General Liability Policies:

"The Louisville/Jefferson County Metro Government, along with its elected and appointed officials, employees, agents, successors, agencies, departments, affiliates, and assigns are included as and deemed an "Additional Insured" with respect to the operations of the Named Insured performed under this contract."

B. The insurance to be procured and maintained and minimum Limits of Liability shall be as follows, unless different limits are specified by addendum to the contract (and such minimum limits shall not limit access to the full amount of insurance available (whether through primary, excess or umbrella policies) on the contractors or subcontractors policy(ies), if that/those policy(ies) provide for Limits above the minimum):

1. COMMERCIAL GENERAL LIABILITY: via the Occurrence Form, primary and non-contributory, with a \$1,000,000 Combined Single Limit for any one Occurrence and \$2,000,000 aggregate for Bodily Injury, Personal Injury and Property Damage and Products/Completed Operations, including:
 - a. Premises - Operations Coverage
 - b. Products and Completed Operations

- c. Contractual Liability
- d. Broad Form Property Damage
- e. Independent Contractors Protective Liability
- f. Personal Injury

2. WORKERS' COMPENSATION (if applicable): insuring the employers' obligations under Kentucky Revised Statutes Chapter 342 at Statutory Limits, and EMPLOYERS' LIABILITY - \$100,000 Each Accident/\$500,000 Disease - Policy Limit/\$100,000 Disease - Each Employee.

III. ACCEPTABILITY OF INSURERS: Insurance is to be placed with Insurance Companies with an A. M. Best Rating of no less than "A- VI", unless proper financial information relating to the Company is submitted to and approved by Metro Government's Risk Management Division.

IV. MISCELLANEOUS

A. Grantee's Contractor shall procure and maintain insurance policies and shall furnish Certificates of Insurance upon the execution of the Easement. The Certificates shall include the name and address of the person executing the Certificate of Insurance as well as the person's signature. If policies expire before the expiration of the Easement, renewal Certificates of Insurance shall be furnished to Metro Government at least fifteen (15) days prior to the expiration of any policy(s).

B. Upon execution of Easement, Certificates of Insurance as required above shall be furnished to:

Louisville/Jefferson County Metro Government
Louisville Parks and Recreation
PO Box 37280
Louisville, Kentucky 40233

C. Upon Renewal of insurance coverage (s), Certificates of Insurance evidencing renewal shall be furnished to:

Louisville/Jefferson County Metro Government
Office of Management and Budget
Risk Management Division
611 West Jefferson Street
Louisville, Kentucky 40202

D. CANCELLATION OR MATERIAL CHANGE OF COVERAGE: Grantee's Contractor shall notify Metro Government's Risk Management Division of any policy cancellation within two business days of its receipt of same. Upon any material change (changes that reduce/restrict limit or terms and conditions to your insurance coverage) in coverage as required above, the Contractor or the Grantee shall notify Metro Government's Risk Management Division within two business days. If the Contractor or the Grantee fails to notify Metro Government as required by this

Agreement, Grantee agrees that such failure shall be a breach of the Temporary Construction Easement and Agreement. Metro Government reserves the right to require the insurance policy(s) required above to be specifically endorsed to provide notice of cancellation and/or material change of coverage in accordance with policy provisions. When requested by the Metro Government, a copy of the policy endorsement shall be provided to Metro Government's Risk Management Division.

E. Approval of the insurance by Metro Government shall not in any way relieve or decrease the liability of Grantee or the Contractor hereunder. It is expressly understood that Metro Government does not in any way represent that the specified Limits of Liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of Grantee or the Contractor.