



MUNICIPAL ORDER MO-13-2023

A MUNICIPAL ORDER AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF AGREEMENT WITH THE FORT THOMAS INDEPENDENT SCHOOL DISTRICT (“FTIS”) TO COLLABORATIVELY EXPAND AND IMPROVE THE TOWER PARK ATHLETIC COMPLEX.

IT IS HEREBY ORDERED BY THE MAYOR OF THE CITY OF FORT THOMAS, CAMPBELL COUNTY, KENTUCKY:

SECTION I

The City of Fort Thomas, Campbell County, Kentucky desires to enter into a memorandum of agreement with FTIS to cooperate and collaborate on the expansion and improvement of a project known as the Tower Park Athletic Complex. Said agreement has been reviewed and deemed appropriate.

SECTION II

Whereby, the Mayor of the City of Fort Thomas, Campbell County, Kentucky is authorized to execute the aforementioned memorandum of understanding with FTIS as relates to the Tower Park Athletic Complex project.

Read, passed and adopted this 16th day of October, 2023.

APPROVED:

Eric Haas, Mayor

ATTEST:

Melissa K. Beckett, City Clerk

DRAFT

**MEMORANDUM OF AGREEMENT
BETWEEN CITY OF FORT THOMAS, KENTUCKY AND FORT THOMAS
INDEPENDENT BOARD OF EDUCATION**

This Memorandum of Agreement (“Agreement”) is entered into as of the ____ day of _____, 2023, by and between the City of Fort Thomas, Kentucky (“City”), a municipal corporation existing under the laws of the Commonwealth of Kentucky, and the Fort Thomas Independent Board of Education (“District”), a public school district organized and existing under the laws of the Commonwealth of Kentucky, together herein referred to as “Parties”.

RECITALS

WHEREAS, the District and the City each own certain real estate located within the City of Fort Thomas, Kentucky, which real estate comprises athletic facilities commonly known as the Tower Park Athletic Complex and South Park Field, including appurtenant parking areas, and public rights of way known as Army Reserve Road and Sergeant Avenue (collectively, the “Property”);

WHEREAS, the Property owned by the District (the “District Property”) and the Property owned by the City (the “City Property”) is more particularly described on *Exhibit “A”* attached hereto and incorporated by reference;

WHEREAS, the District and the City desire to make certain improvements to the Property, including, but not limited to, the reconstruction and relocation of the Tower Park soccer field and track, the parking areas, and the adjacent rights of way and utilities (the “Tower Park Improvement Project” or “Project”);

WHEREAS, the Parties have determined that the Tower Park Improvement Project will result in economic, community, and operational benefits to both the City and the District that could not be fully realized if either were acting independently of the other; and

WHEREAS, the Parties desire to set forth their respective rights, duties, obligations, and procedures to facilitate cooperation concerning the planning, bidding, construction, and ownership of the Project.

NOW, THEREFORE in consideration of the mutual promises and agreements herein contained, the Parties agree as follows:

AGREEMENT

1. **Description of the Tower Park Improvement Project.** The Tower Park Improvement Project shall be constructed on the Property generally in accordance with the preliminary site plan attached hereto as *Exhibit “B”* (the “Site Plan”). Upon completion of the final Site Plan and approval thereof by both Parties, the Parties shall execute an Adoption of Site Plan in the form as provided on *Exhibit “C”* which shall thereafter become a part of this

Agreement. After adoption of the final Site Plan, any material revisions thereto shall be approved in writing by both Parties.

2. **Construction Management; Authority of District.** After approval by the Parties of the final Site Plan, the District shall be responsible for all aspects of planning, bidding, implementation, and construction of the Project. The District shall engage and coordinate with the architect, engineer, and general contractor to review and discuss the Project and develop a plan as to cost, schedule, phasing, and construction objectives. The District may construct the Project in one or more phases, provided that a construction timeline shall be provided to the City and any material changes to the timeline shall be submitted in advance, and in writing, to the City. No material change to the construction timeline shall occur without written consent by the City, unless such change is permitted under the construction contract(s) for the Project or due to an event that is beyond the reasonable control of the District, including, without limitation, delays caused by shortages of labor or material, labor strikes, adverse weather, acts of God, or other casualty. The City agrees that the District shall be its agent for purposes of constructing any portion of the Project located within the boundaries of the City Property and may execute contracts for the provision of services and materials upon the City Property. In furtherance thereof, the City agrees to cooperate with the District to the fullest extent permitted by law, including the execution of contracts related to the Project, so that the District may commence and complete the Project consistent with the Site Plan and construction timeline. The City agrees to grant such licenses and easements as may be necessary to construct the Project on the City Property, including, but not limited to, easements for installation or relocation of utilities and such licenses or permissions as may be necessary or desirable to permit architects, engineers, surveyors, consultants, contractors, material suppliers and other third-parties to enter upon the City Property for purposes of planning, testing, and constructing the Project.

3. **Transfer of Property.** In the event required by applicable law or regulation, it is agreed by the Parties that the City shall convey and transfer to the District, without further payment or consideration, any portions of the City Property upon which the Project is being constructed so as to permit the District to contract for and complete all necessary activities related to the construction of the Project. Upon completion of the Project, and consistent with the requirements of Paragraph 6 herein, the Parties agree that the District shall transfer and convey such portions of the City Property back to the City, without further payment or consideration.

4. **Contribution by the City.** In consideration of this Agreement, the City shall contribute the sum of \$517,000.00 toward the costs of the Project. This amount is payable to the District upon acceptance of the Project bid by the District. The City's contribution shall be paid in a lump sum if the Project is not phased, or, if phased, proportionate payments shall be made at the start of each construction phase. The District shall be responsible for all other costs and expenses associated with the Project.

5. **Insurance.** Each Party shall maintain general liability insurance to insure against losses resulting from property damage, personal injury or death which may arise from any activities occurring on the City Property and District Property as contemplated in this Agreement. The City and the District shall also procure and maintain casualty insurance policies to cover any loss to the Project located on their respective Property due to fire, wind, storm or other casualty in

an amount not less than the full replacement value of the improvements comprising the Project, including any improvements under construction.

6. **Ownership of Property and Improvements.** Upon completion of the construction of the Project, the parties agree to transfer and convey to one another, without any further consideration, those portions of the Property as depicted on *Exhibit "D"* attached hereto. It is the intent of the Parties that each of them shall hold title to those portions of the Property that each Party will be responsible for maintaining and operating following completion of the Project.

A. **District Property.** From and after the date on which the Project is completed, the District, at its sole cost and expense, shall insure, maintain, and repair the real estate, including all improvements located thereon, identified on *Exhibit "D"* as the "District Property". The District, at its sole cost, may make improvements or alterations to the District Property after completion of the Project.

B. **City Property.** From and after the date on which the Project is completed, the City, at its sole cost and expense, shall insure, maintain, and repair the real estate, including all improvements located thereon, identified on *Exhibit "D"* as the "City Property". The City, at its sole cost, may make improvements or alterations to the City Property after completion of the Project.

7. **Use of the Property and Improvements.** The Parties agree that from and after completion of the Project, the improvements located on the Property shall be used and maintained for the public benefit as follows:

A. **District Property.** The parking lots, driveways, open spaces, and athletic facilities located on the District Property shall be available for use by the City and the general public subject to such reasonable rules for the use thereof as may be adopted by the District, and further provided that any District-sanctioned sporting events or other school-related events may have exclusive use of the District Property and shall take precedence over any other uses.

B. **City Property.** The public rights of way as relocated shall remain public rights of way open for the general use of the public at large. All parking lots, driveways, open spaces, and athletic facilities located on the City Property shall be available for use by the District concurrently with the general public, subject to such reasonable rules for the use thereof as may be adopted by the City.

8. **Compliance with Law.** In contracting for the construction of the Project, the District shall comply with all applicable state and federal laws and regulations related to the bidding and granting of contracts for construction projects by school districts in the Commonwealth of Kentucky.

9. **Hold Harmless.** Except as provided in Paragraph 4, it is agreed that the District shall be responsible for all costs related to construction of the Project. The District shall be solely responsible for the methods and costs of construction and agrees to hold the City harmless from any additional costs related to construction of the Project. Further, to the extent permitted by law,

the District agrees to hold the City harmless for any and all causes of action that might arise from the construction of the Project including, but not limited, to personal injury, during the construction phase and the subsequent use of the District's completed facilities. District and City shall not be liable for any loss, damage, or injury of any kind or character to any person or property caused by or arising from any act or omission of the other party, or any of its agents, employees, licensees, or invitees, except as occasioned by the sole negligence of the District or City respectively or their agents, employees, licensees, or invitees.

10. **Amendments.** This Agreement may be varied, modified, or altered by the mutual consent of the Parties. No alterations, amendments, modifications or variations of the terms of this Agreement shall be valid unless made in writing and signed by duly authorized representatives of the District and City.

11. **Notices.** All notices, statements, demands, requests, consents, approvals, or authorizations hereunder by either Party to the other shall be in writing and shall be sufficiently given and served upon the other Party, if sent by United States certified mail, return receipt requested, or via e-mail, and addressed as follows:

- A. District: Superintendent of Schools, Fort Thomas Independent School District, 28 North Fort Thomas Avenue, Fort Thomas, Ky. 41075
- B. City: City Administrative Officer, City of Fort Thomas, Kentucky, 130 North Fort Thomas Avenue, Fort Thomas, Ky. 41075

12. **Entire Agreement.** This Agreement sets forth the entire agreement between the District and the City.

13. **Waiver.** The failure of either party to insist upon strict performance of any of the terms, conditions, or covenants in this Agreement shall not be deemed a waiver of any right or remedy for a subsequent breach or default of the terms, conditions or covenants herein contained.

14. **Counterpart Originals.** This Agreement may be executed in one or more counterparts each of which is an original, and all of which constitute only one agreement between the parties.

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IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS MEMORANDUM OF AGREEMENT AS OF THE DATES INDICATED BELOW:

CITY OF FORT THOMAS

By: _____

Title: City Administrative Officer

Date: _____

By: _____

Title: Mayor

Date: _____

FORT THOMAS INDEPENDENT PUBLIC SCHOOL DISTRICT

By: _____

Title: Superintendent

Date: _____

By: _____

Title: Board Chair

Date: _____

EXHIBIT A

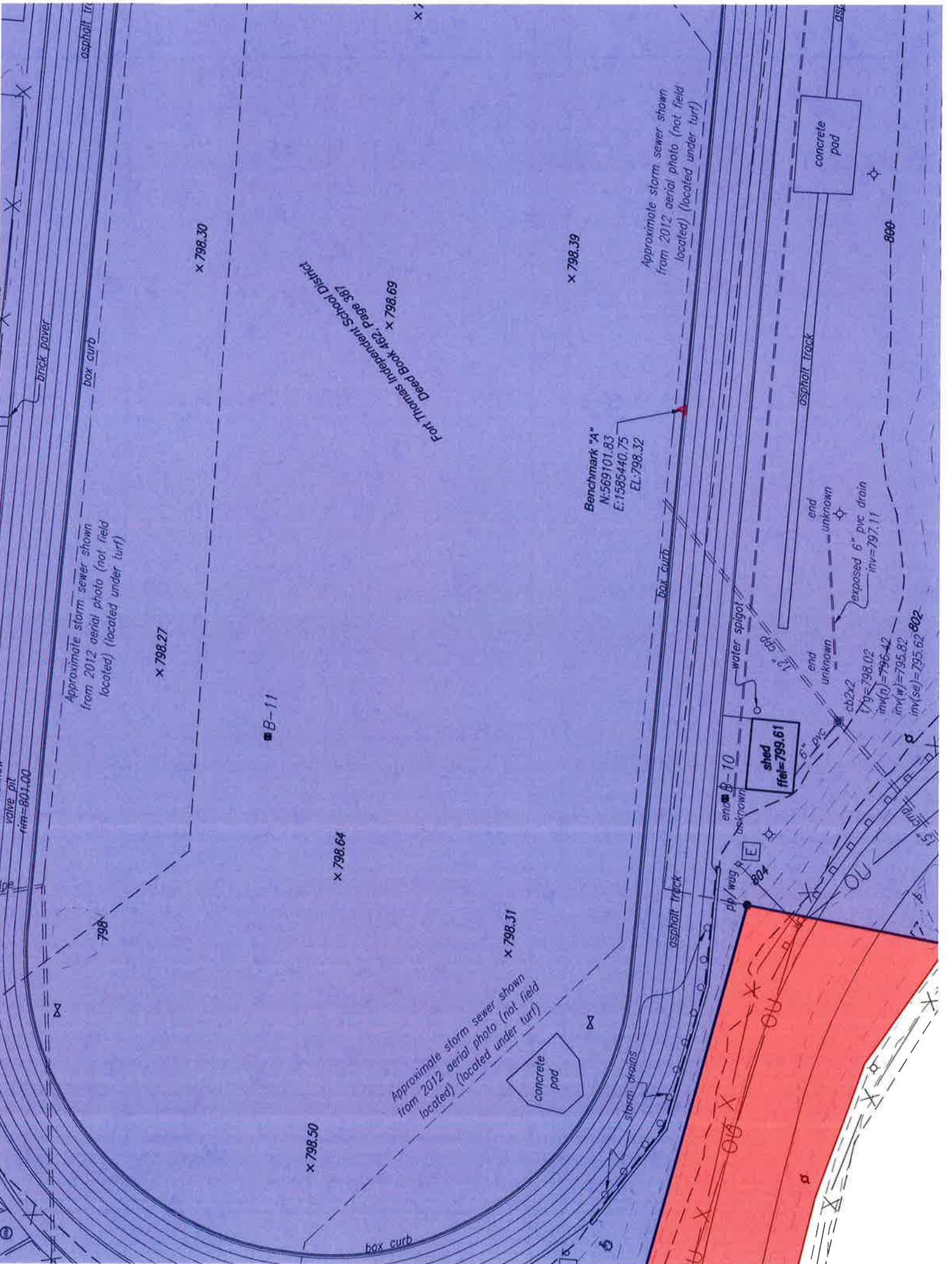
[The Property]

District Property:

PIDN	Street Address (if any)	Deed Reference
999-99-33-534.00	2 Sergeant Ave.	Deed Book 462, page 387

City Property:

PIDN	Street Address (if any)	Deed Reference
999-99-33-617.00	950 Ft. Thomas Ave. S.	Deed Book 463, page 283
999-99-38-366.00	Army Reserve Rd.	Deed Book 376, page 544



798
valve pit
rim=801.00

Approximate storm sewer shown
from 2012 aerial photo (not field
located) (located under turf)

x 798.27

x 798.30

Fort Thomas Independent School District
Dead Book 462 Page 387
x 798.69
x 798.39

B-11

x 798.64

Benchmark "A"
N:569101.83
E:1585440.75
EL:798.32

Approximate storm sewer shown
from 2012 aerial photo (not field
located) (located under turf)

brick paver

box curb

concrete pad

asphalt track

water spigot

shed
ffel=799.61

end
unknown
exposed 6" pvc drain
inv=797.11

end
unknown
cb2x2
Tg=798.02
inv(R)=796.42
inv(W)=795.82
inv(se)=795.62-802

Approximate storm sewer shown
from 2012 aerial photo (not field
located) (located under turf)

x 798.31

x 798.50

concrete pad

asphalt track

end B-10
unknown

ap/wug

box curb

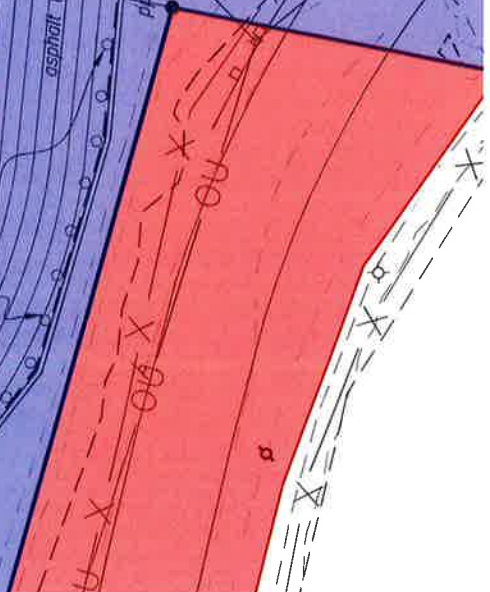


EXHIBIT B

[The Site Plan]

SYNT
ZERO (C
UNDER

PROPOSED
FIELDHOUSE
FFE=802.93

PROPOSED
MULTI-PURPOSE
ROOM
FFE=802.93

PARKING - FIRE LANE

NO PARKING - FIRE LANE

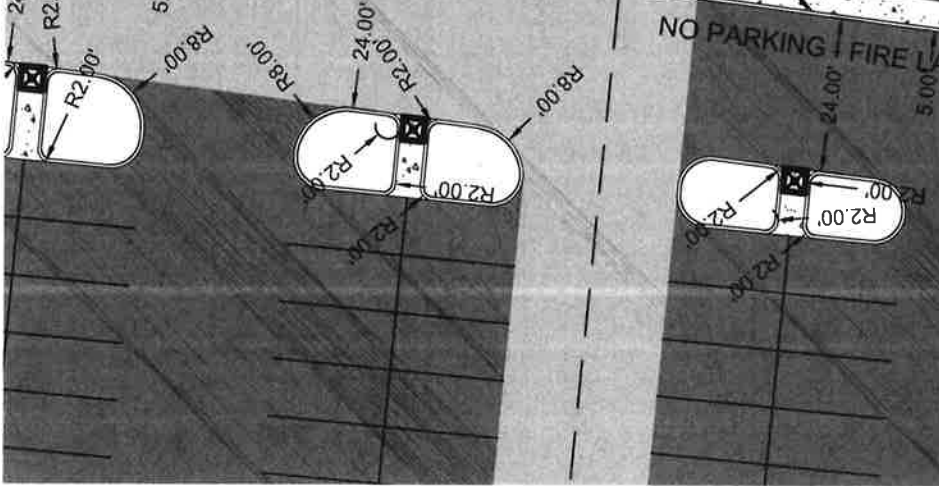


EXHIBIT C

[Adoption of Site Plan]

AGREEMENT ON ADOPTION OF FINAL SITE PLAN

THIS AGREEMENT ON ADOPTION OF FINAL SITE PLAN is dated as of the ____ day of _____, 20____ by and between the City of Fort Thomas, Kentucky (“City”), a municipal corporation existing under the laws of the Commonwealth of Kentucky, and the Fort Thomas Independent Board of Education (“District”), a public school district organized and existing under the laws of the Commonwealth of Kentucky.

1. On _____, 2023, the District and the City entered into a Memorandum of Agreement (the “MOA”) concerning the construction of certain improvements upon real property owned by the City and the District.

2. In accordance with Paragraph 1 of the MOA, the parties have reviewed and approved the Site Plan attached hereto as *Exhibit “A”* as the final site plan for the design and construction of the Tower Park Improvement Project as described in the MOA.

3. All terms and conditions of the MOA are hereby ratified and acknowledged and shall remain in full force and effect. The City and the District hereby agree that this Agreement shall be made a part of the MOA.

IN TESTIMONY WHEREOF, the Parties have executed this Agreement as of the day set forth above.

CITY OF FORT THOMAS

By: _____

Title: City Administrative Officer

Date: _____

By: _____

Title: Mayor

Date: _____

FORT THOMAS INDEPENDENT PUBLIC SCHOOL DISTRICT

By: _____

Title: Superintendent

Date: _____

By: _____

Title: Board Chair

Date: _____

EXHIBIT D

[Property Transfers]

SYNT
ZERO (C
UNDER

PROPOSED
FIELDHOUSE
FFE=802.93

PROPOSED
MULTI-PURPOSE
ROOM
FFE=802.93

PARKING - FIRE LANE

NO PARKING - FIRE LANE

