

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE NEWARK BOARD OF EDUCATION
AND THE TRUST FOR PUBLIC LAND
FOR LINCOLN ELEMENTARY SCHOOL.**

This MEMORANDUM OF UNDERSTANDING (“MOU”) by and between the Newark Board of Education (“BOE” or “NPS”), having an office at 765 Broad Street, Newark, NJ 07102, and the Trust for Public Land d/b/a TPL-New Jersey, a California Nonprofit Corporation (“TPL”), having an office at 60 Park Place, Suite 203, Newark, NJ 07102 is made this day of 2022.

WHEREAS, subject to the approval of their governing boards, NPS and TPL wish to pursue and support a collaborative effort between them to design and build a playground at the Lincoln Elementary School, located at 87 Richelieu Terrace, Newark, NJ 07106, (the “School”, or the “Property”), as well as any other school location in the district in the future that the parties may both mutually-agree upon in writing to include, in order to better serve the recreational needs of schoolchildren and members of the community,.

WHEREAS, in the context of this collaboration and subject to the availability of funding for the project, TPL will design - with community input - and build a playground at the School (the “Project, or the “Playground”).

NOW THEREFORE, the parties hereto agree as follows:

1. **Access.** TPL and its agents, consultants, engineers, surveyors, appraisers, subcontractors and other representatives shall have the right to enter the Property for the purpose of work on the Project. For purposes of this MOU, TPL’s undertakings pursuant to paragraphs 2, 3, and 5 herein shall be the “Work.”

2. **Design.** TPL will, in collaboration with the School administration, teachers, students, the local community, and other stakeholders, develop and implement a participatory design process at the School. The resulting conceptual design (approved by the Principal of the School) will be converted into working drawings and specifications. TPL shall engage professionals to develop final plans, specifications and construction documents for the Project (together, the "Construction Documents"), and shall submit the same to the designated person at NPS for review and approval, which review and approval shall be completed within ten (10) business days after NPS's receipt of same. In the event that NPS does not respond to TPL's request for review and approval within the time frame set forth above, such approvals shall be deemed given.

3. **Construction.** TPL shall manage and oversee construction on the Playground, including, without limitation, the solicitation of bids, the preparation of contract documents and supervision and approval of construction at the School. TPL shall be responsible for the professional quality and timely completion and coordination of all work to be performed at the School pursuant to the Construction Documents.

TPL shall be available for consultation with NPS at reasonable times and shall make reasonable arrangements for inspection of the Project by NPS.

TPL agrees that, in the performance of this MOU, it will comply with all applicable local, state and federal laws and regulations, including, but not limited to, New Jersey Local Public Contract Law and will complete all construction in a proper and workmanlike manner in accordance with all local building and zoning laws. All work or services covered by this MOU contracted by TPL shall be specified by written contract and subject to all provisions of this MOU. TPL shall keep the property free of any liens resulting from the work of TPL or its contractors and consultants at the site.

NPS shall not undertake or permit any other construction activities in the Playground area, nor shall NPS commit or permit any act that will interfere with the performance of TPL's work at the School. The parties will work cooperatively to obtain or ensure that consultants and contractors obtain, in a timely manner, any and all permits required in connection with construction at the School. The parties understand that as the owner of the property, NPS may, from time to time, need to review and sign permit applications and regulatory filings in connection with the Project.

Subject to NPS review as set forth herein, the project will be deemed complete upon NPS's acceptance and final approval of the Project after TPL's submission to NPS of a notice of substantial completion signed by TPL and its landscape architect, along with a punchlist of any remaining items to be completed, if any. After substantial completion inspection and final acceptance by NPS, the Playground shall be turned over to NPS to be operated by NPS. For the purposes of this paragraph 3, NPS shall notify TPL in writing of its reasonable objections to TPL's notice of substantial completion within fifteen (15) calendar days after receipt, which notification shall include detailed explanation of the basis for such objections. NPS's failure to so notify TPL shall be deemed to be final acceptance by NPS of the completed Project or completed portions of the project, subject only to TPL's responsibility to ensure that the Contractor performs all items identified in the punchlist referenced above.

4. **Term.** The MOU shall commence upon execution by the parties, and, if required, approval of their respective governing boards, and shall terminate no later than December 31, 2025 unless terminated earlier pursuant to paragraph 15 of this MOU.

5. **Environmental Assessment and Site Due Diligence.** Prior to the commencement of construction, TPL shall commission a Preliminary Assessment and - if needed - surveys, geophysical investigations, of the Project area, and the cost of such investigations shall be part of the cost estimate for the project. NPS and TPL, in consultation with the State of New Jersey Department of Environmental Protection or other agencies with jurisdiction, shall jointly determine the necessity of further assessment and abatement and shall cooperatively evaluate the feasibility of proceeding. Nothing in this MOU shall require either party to proceed with the Project if such investigations render the project infeasible due to cost or other considerations.

NPS shall provide TPL with any existing environmental assessments, engineering reports, surveys, and other site information of TPL's conduct of such studies.

6. **Funding for the Project.** TPL shall provide NPS with a preliminary project budget. The parties agree to use good faith efforts to secure all funding for the design and construction of the Playground through both non-NPS public and private funding sources. It is the intention of the parties that NPS and TPL will agree on a joint plan, with potential sources, amounts, and responsibilities, to secure those funds. TPL shall have no obligation to perform the Work or portions of the Work which are not funded through these efforts. Funding for the Project will not come from NPS public funds but rather, will come from fundraising activities and other third party sources to the extent that adequate funding for the Project can be raised. It is expressly understood by the parties that no payment of NPS public monies will be required from the District for any TPL services rendered or received. Nothing in this MOU obligates NPS to pay monies to TPL.

7. **NPS Liaison.** NPS shall designate an employee to serve as the liaison with TPL for this Project.

8. **Signage.** During and post construction, TPL may erect signage at the Playground, indicating that it is a joint project among NPS, TPL, and public and philanthropic donors.

9. **Project Promotion.** NPS agrees that its staff will actively participate in the project in ways that will promote its success, which may include attending press conferences and other publicity events associated with the project, communicating with the Mayor and other government officials regarding the project, and working to achieve the success of the project.

10. **Publicity.** In any statement, report, press release or other public communication regarding the project, the parties agree to refer to the program as a joint project between NPS and TPL. The parties shall cooperate to form a joint communication strategy in order to publicize the project. Any press release or other public statement regarding the project must be approved by the parties prior to its release, provided that the consent of the respective parties shall not be unreasonably withheld or delayed.

11. **Liability.** Prior to the entry of TPL on to the School, TPL shall furnish to NPS evidence that TPL and/or its contractors procure and maintain during the entire term of the MOU:

a. Commercial General Liability Insurance in limits of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate, for bodily injury, death, personal injury and property damage, including but not limited to coverage for Broad Form Property Damage. Such coverage shall not contain any exclusion for property damage

arising out of explosion, collapse or underground property damage hazards and no exclusion for waterfront activities. For environmental assessment and/or abatement work, such coverage shall include pollution liability coverage.

b. The policies described above shall be endorsed (1) to include NPS as a named additional insured and (2) to provide that notice of an occurrence to the insurance company from any insured shall serve as notice from all insured.

c. Comprehensive Automobile Liability Insurance in limits of not less than Five Hundred Thousand Dollars (\$500,000) combined single limits per occurrence for bodily injury, death and property damage covering all owned, non-owned and hired vehicles in connection with the work to be performed in connection with this MOU.

d. Certificates of Insurance evidencing the issuance of all insurance required hereby, and guaranteeing, to the extent commercially customary, prior notice to the recipient of cancellation or non-renewal, shall be delivered to NPS prior to the entry of contractors upon the School.

e. TPL and/or its contractor shall provide Worker's Compensation and employer's liability insurance of at least no less than the State of New Jersey statutory limits for all employees, in connection with the work and, if any work is subcontracted, TPL shall require each contractor or subcontractor to provide Worker's Compensation and employer's liability insurance for the latter's employees, unless such employees are covered by the protection afforded by TPL. Employer's liability insurance shall have limits of not less than \$1,000,000 per occurrence, such coverage to be certified by certificate to NPS.

f. Professional consultants engaged by TPL for the Project shall maintain professional liability/errors and omissions claims-made coverage in the amount of \$1,000,000.

12. **Indemnification.**

a. In addition to any liability or obligation to NPS that may exist under any other provision of this MOU or by statute or otherwise, TPL agrees to indemnify, defend, save and hold NPS harmless from and against any and all claims, losses, liabilities demands, costs, expenses (including attorney fees and litigation costs) and judgments arising out of or alleged to have been caused by the acts or omissions of TPL, its officers, employees, agents, consultants, partners or subcontractors in the performance of the Work including any claims sustained by NPS arising out of any negligent act or omission or design defect of TPL, its officers, employees, agents, consultants, partners or subcontractors, in the performance of work related to the Project pursuant to the terms of this MOU.

b. Upon the completion and final acceptance by NPS of the project, NPS shall be solely responsible for the use and maintenance of the Playground.

The provisions of this paragraph 12 shall survive the performance or termination of this MOU.

13. **Notices.** All notices pertaining to this MOU shall be in writing delivered to the parties by hand, by commercial express courier service or by United States Express Mail, addressed to the parties at the addresses set forth below or such other addresses as the parties may designate by notice. All notices shall be deemed given when received (except any notice which is properly addressed and delivered but refused shall be deemed given on the date of refusal).

If to NPS: Carlos Edmundo
Facilities Management
Newark Public Schools
765 Broad Street
Newark, NJ 07102

With a copy to: Valerie Wilson
School Business Administrator
Newark Public Schools
765 Broad Street
Newark, NJ 07102

If to TPL: Jane Kim, Senior Counsel
The Trust for Public Land

60 Park Place, Suite 901
Newark, NJ 07102

With a copy to: Scott Dvorak, State Director
The Trust for Public Land

60 Park Place, Suite 901
Newark, NJ 07102

14. **Construction of MOU; Modification; Waiver.** This MOU shall be construed without regard to any presumption or other rule requiring construction against drafter. Provisions of this MOU may only be supplemented, modified, waived or amended in writing and signed by the parties duly authorized to execute this MOU. No waiver of any of the provisions of this MOU shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. This MOU may be executed in one or more counterparts and by the manual or facsimile signature of the parties hereto. Each of such counterparts, when so executed, shall be deemed an original and when taken together shall constitute a single instrument.

15. **Termination.** Either party may terminate this MOU on thirty (30) days written notice to the other in the event that the other party fails to fulfill its material obligations under this MOU, materially violates any of the material covenants, agreements or stipulations of this MOU or fails to complete performance in a materially timely manner, after it has been given notice of such default, violation or failure and a reasonable opportunity to cure the same. Also, either party may terminate this MOU without penalty for any reason upon providing thirty (30) days written notice to the other party.

16. **Governing Law.** This MOU shall be governed by and construed in accordance with the laws of the State of New Jersey.

17. **Background Checks.** TPL shall ensure that each worker, subcontractor, agent, volunteer or representative that may be assigned to a project involving contact with children or that may be assigned to a contract school location has had a criminal history background check, and that said background check indicates that no criminal history record information exists on file in either the Identification Division of the Federal Bureau of Investigation or the State Bureau of Investigation which would disqualify said employee from employment pursuant to N.J.S.A. 18A:6-7.1 et seq. TPL must ensure that said proof exist no later than thirty (30) days after execution of this agreement. The services under this agreement shall not begin or proceed until TPL complies with the requirements of this section. Failure to ensure criminal history background check(s) have been completed within said time limitation shall be deemed a material breach of this agreement by TPL, and as such, serves as a basis for NPS to immediately terminate the MOU.

18. **Separate Parties.** None of the provisions of this MOU is intended to create nor shall be deemed or construed to create any relationship between the parties hereto other than that of independent entities contracting with each other solely for the purposes of effecting the provisions of this MOU. Neither of the parties, hereto, nor any of their respective officers, directors or employees, shall be construed to be the agent, employee or the representative of the other.

19. **Compliance with Board Policies and Procedures.** Partner shall ensure that each worker(s), contractors(s), agent(s) and representative(s) assigned to a school location or to a project involving contact with children will comply with the Board's Conduct policy as well as all local, state and federal laws and regulations, including those related to public health. Partner also agrees to abide by any safety regulations, executive orders and/or state mandates that may be issued by any state or federal agency governing and/or relating to maintaining the public health and safety including, but not limited to, the use of temperature checks, masks, gloves, vaccinations, testing and social distancing. Should any of Partner's worker(s), contractors(s), agent(s) and/or representative(s) violate any Board policy or public health and safety policy, the Board retains the right to request and have Partner remove said worker(s), contractors(s), agent(s) and representative(s) from the school location and/or the program altogether.

This MOU may only be modified in a writing signed by both parties. This Access MOU may be executed in counterparts and on facsimile transmission and shall be governed by the laws of the State of New Jersey.

Agreed to and accepted:

THE NEWARK PUBLIC SCHOOLS

By: _____
Dawn Haynes
Board President

Date: _____

THE TRUST FOR PUBLIC LAND
d/b/a TPL-New Jersey

By: _____
Scott Dvorak
State Director

Date: _____