

Land Development and Transportation Committee Staff Report

October 12, 2017



Case No:	17STREETS1003
Project Name:	Grade Lane
Location:	1100 Grade Lane
Owner(s):	Louisville Metro
Applicant:	Department of Public Works – Jeff Brown
Representative(s):	Department of Public Works – Jeff Brown
Jurisdiction:	Louisville Metro
Council District:	21 – Dan Johnson
Case Manager:	Joel P. Dock, Planner II

REQUEST(S)

- **Street Closure** of portion of Grade Lane

CASE SUMMARY

Grade Lane has been relocated and reconstructed to the East of the portion of right-of-way requested to be closed. The relocated segment now abuts Interstate-65. The proposed road closure is being initiated by the Louisville Metro Department of Public Works as a condition of the relocation agreed upon in July of 2014. The Regional Airport Authority of Louisville owns all abutting property.

STAFF FINDING

Planning and Design Services staff in consultation with legal counsel for the Planning Commission has determined that the requirements of Land Development Code, section 6.3.3.F.4, provided below, are fulfilled by the *Memorandum of Understanding* drafted in July of 2014 and provided as *Attachment 3* herein.

LDC 6.3.3.F.4 states, "The Planning Commission [or designee] may waive the public hearing if all owners of property adjacent to the street or alley, and affected governmental units having geographical jurisdiction, agree to the proposed closure."

All easements required by utility agencies should be provided at the time of recording the closure. Staff will work with the Department of Public Works to ensure that the document to be recorded is executed properly.

TECHNICAL REVIEW

Louisville Fire District – The Louisville Fire Department has no objections to the proposed closure.

E-911/Metro Safe Addressing – E-911 has no objections to the proposed closure..

AT&T – PDS staff has not received any formal comments. Staff last contacted this agency on 10/5/17.

MSD – MSD has no objections to the proposed closure. Easements will be granted for continued access to facilities.

Louisville Metro Health Department – Health and Wellness has no objections to the proposed closure.

Louisville Gas & Electric – PDS staff has not received any formal comments. Staff last contacted this agency on 10/5/17.

Louisville Water Company – LWC has no objections to the proposed closure. Easements will be granted for continued access to facilities.

Louisville Metro Public Works – The proposed road closure is being initiated by the Louisville Metro Department of Public Works as a condition of the relocation of Grade Lane agreed upon in July of 2014.

Historic Preservation – PDS staff hasn't received any formal comments.

TARC – TARC no objections to the proposed closure.

REQUIRED ACTIONS

Based upon the information in the staff report, the testimony and evidence provided at the public meeting, the Land Development and Transportation Committee must decide whether this case is ready to be scheduled for a Planning Commission **PUBLIC HEARING, BUSINESS SESSION, or CONSENT AGENDA.**

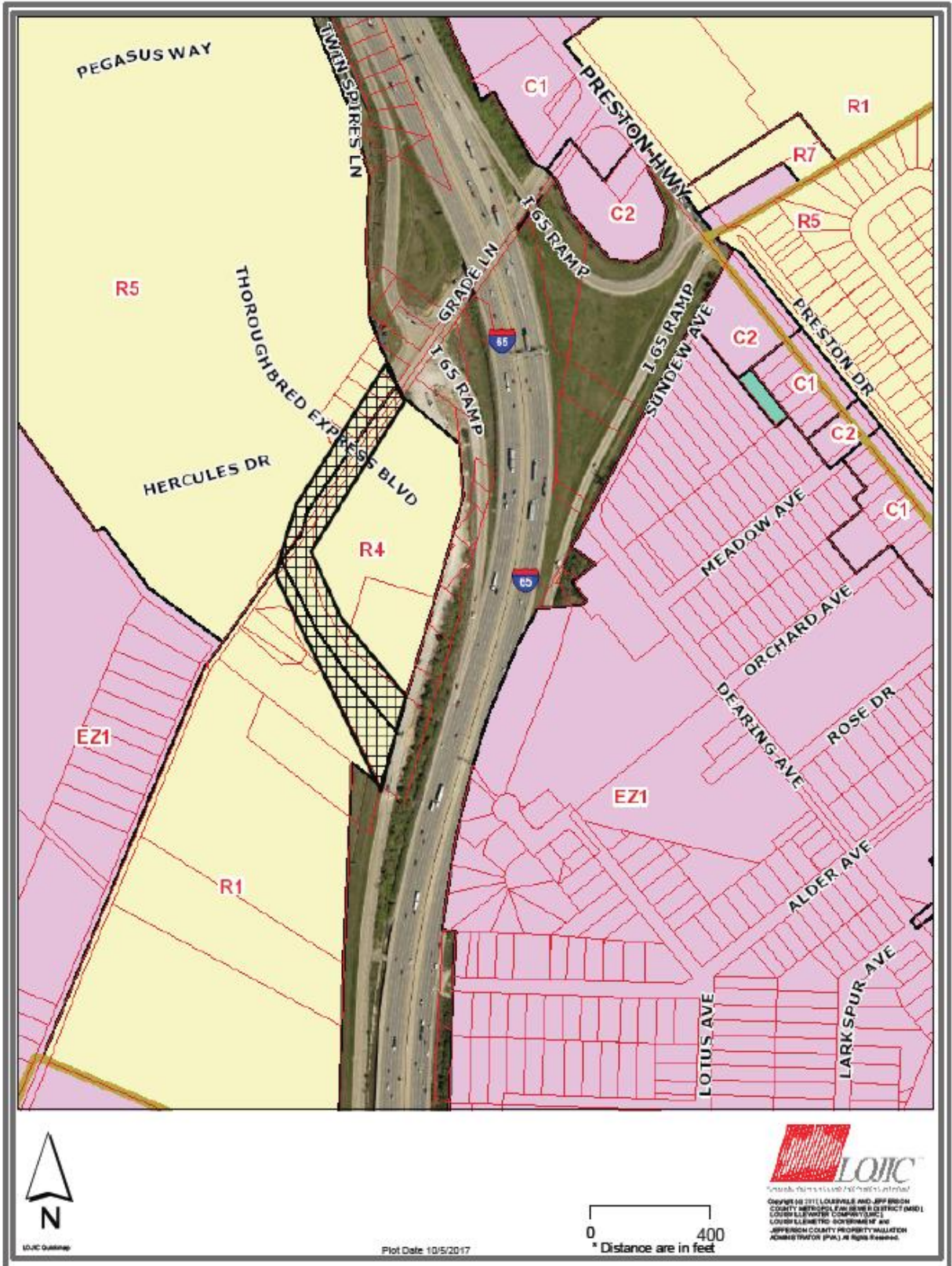
NOTIFICATION

Date	Purpose of Notice	Recipients
Not provided	Meeting before LD&T	Adjoining property owners, applicant, representative, case manager, and neighborhood groups

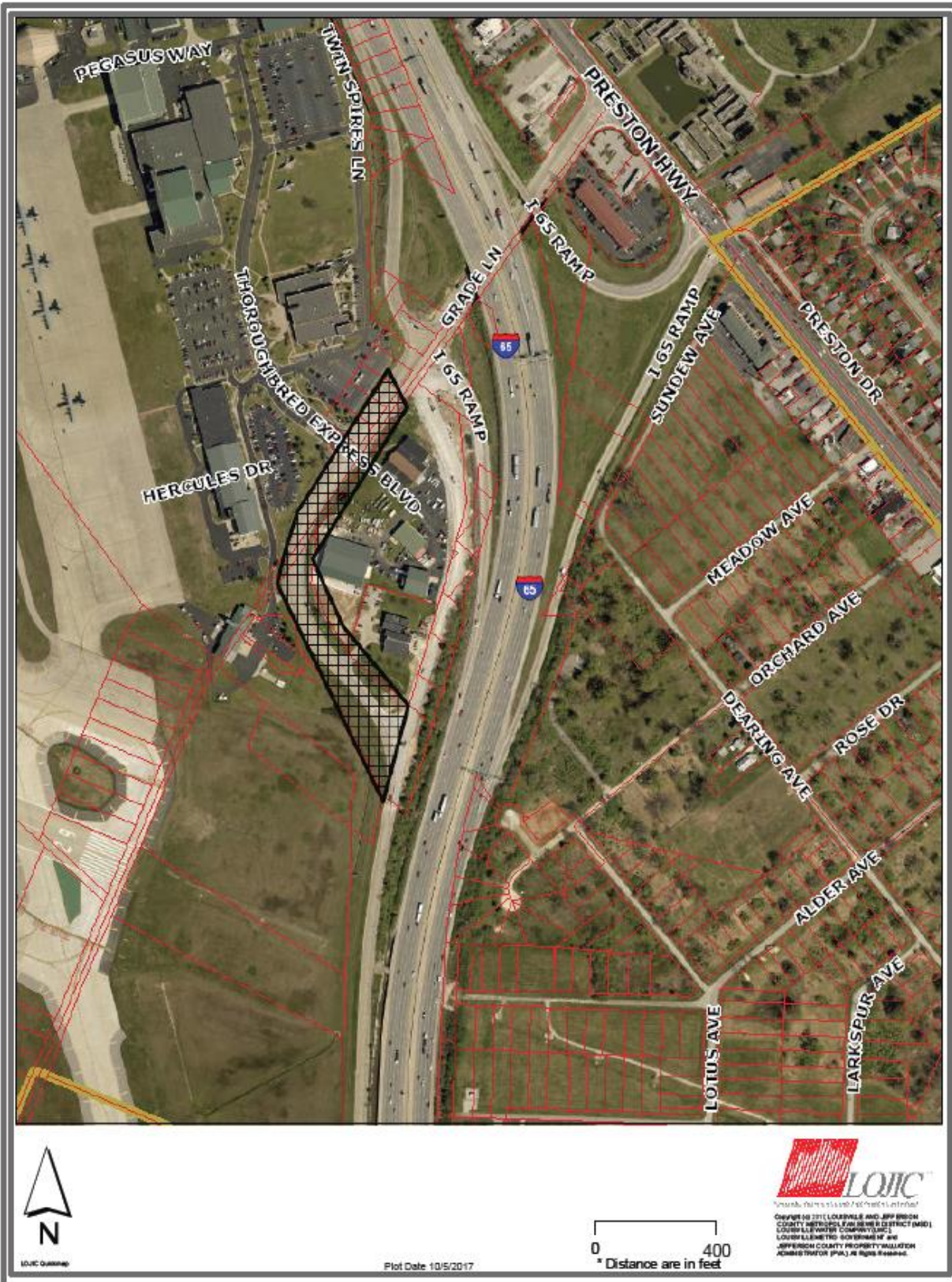
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Memorandum of Understanding

1. Zoning Map



2. Aerial Photograph



3. **Memorandum of Understanding**

Unders

Final Draft July 11, 2014

GRADE LANE RELOCATION

MEMORANDUM OF UNDERSTANDING

This **MEMORANDUM OF UNDERSTANDING** (hereinafter this "Agreement") is entered into on this the ____ day of _____, 2014, by and among the Commonwealth of Kentucky, Transportation Cabinet, Department of Highways (KYTC), 200 Mero Street, Frankfort, Kentucky, 40622; Louisville/Jefferson County Metro Government ("Metro"), 527 W. Jefferson Street, Louisville, Kentucky 40202; Louisville Regional Airport Authority ("Airport"), 700 Administration Drive, Louisville, Kentucky 40209; and Kentucky Air National Guard ("Guard"), 1101 Grade Lane, Louisville Kentucky 40213:

WITNESSETH:

WHEREAS, Metro owns and maintains for public use, Grade Lane, a city street in Jefferson County, Kentucky, near the intersection of Interstate 65 and Grade Lane, and with a portion of Grade Lane designated on the attached Exhibit A as site "D" (site D is hereafter referred to as the "Metro Property");

WHEREAS, the Guard desires that the portion of Grade Lane currently on the Metro Property be discontinued and said portion of Grade Lane be relocated and constructed at another location;

WHEREAS, KYTC has determined that relocating the portion of Grade Lane currently on the Metro Property will result in a more favorable street for the traveling public and improve security for the Guard;

WHEREAS, the Airport owns, and has leased to the Guard, as part of the Master Lease, DA-15-029-ENG-3642 dated March 17, 1956, and as amended by 11 Supplemental Agreements (hereafter referred to as the "Master Lease"), the property designated on Exhibit A as site "C1", and the Airport owns and has leased to Metro the property designated on Exhibit A as site "E1" (sites C1 and E1 are hereafter referred to collectively as the "Airport Property");

WHEREAS, KYTC has submitted a proposal where the Guard would terminate its leasehold interest in C1 and Metro would terminate its leasehold interest in E1, and then the Airport would convey the Airport Property to KYTC and, contingent upon proper funding authorization, KYTC would relocate and construct on said property a portion of Grade Lane currently on the Metro Property;

IT IS NOW THEREFORE, contracted and agreed by and between the parties as follows:

1. **Conditions Precedent.** The Airport's obligations under this Agreement are and shall be subject to the satisfaction of the following conditions precedent:
 - a. **Definitive Documentation.** The parties shall have negotiated definitive documentation to evidence their various undertakings, agreements and transactions, which documentation shall have been approved by counsel to the Airport as to legality of form and content.
 - b. **Appraisal.** All Parties shall have received all such appraisals as may be required by applicable federal law and/or it may deem appropriate to demonstrate compliance with the requirement that no Airport real property be transferred for less than fair market value and to comply with Section 709 of that certain Airport System Revenue Bond Resolution adopted March 16, 1983, as amended.
 - c. **Survey.** KYTC shall have received a current survey of the Metro Property, prepared by a professional surveyor or engineer, locating all easements, rights of way, encroachments, conflicts and protrusions affecting the Metro Property, containing a metes and bounds description of the Metro Property, setting forth the outside perimeter of the Metro Property, setting for the gross acreage of the Metro Property, and locating and showing the size of any portion of the Metro Property presently located in any flood plain or other flood hazard area, certified by such surveyor or professional engineer so that the survey exception in the title commitment will be deleted.
 - e. **Road Closure.** The portion of Grade Lane currently occupying the Metro Property shall have been legally closed.
 - f. **Avigation Easements and Airport Servitudes.** There shall have been imposed upon the Airport Property avigation easements and, to the extent required by the Federal Aviation Administration (FAA), additional restrictions relating to the reservation of the right of flight and the passage of aircraft over the Airport Property
 - g. **Board Approval.** The Airport's Board shall have authorized and approved these transactions.
 - h. **FAA Approvals.**
 - (i) To the extent that any of the Airport Property may be subject to such restrictions, the Airport's obtaining all appropriate instruments of release from the United States of America from the surplus property disposal restrictions contained in War Assets Administration Instruments of Transfer, and compliance with any other requirements of the Surplus Property Act of 1944, as amended.
 - (ii) The Airport's obtaining all necessary or appropriate FAA releases from grant assurances and consents to the transfer of the Airport Property and to the Airport's

application of the proceeds of sale in a manner acceptable to the Airport, including without limitation all approvals of changes to the Airport Layout Plan required prior to the transfer of the Airport Property and any necessary environmental assessments and/or other approvals of the FAA.

i. **Guard Lease.** The Guard shall have executed and delivered to the Airport an instrument, acceptable to the Airport as to form and content and consideration, pursuant to which it agrees to amend the Master Lease to terminate its lease of the Airport Property.

j. **Metro Release.** Metro shall have executed and delivered to the Airport an instrument, acceptable to the Airport as to form and content and consideration, pursuant to which it releases its interest in and to the area designated as site "E1" on Exhibit A.

k. **Fees and Expenses.** KYTC shall have reimbursed the Airport for all costs fees and expenses incurred in connection with the negotiation and performance of its obligations contemplated in this Agreement, including without limitation reasonable legal fees and expenses.

2. Prior to Airport's conveyance of C1 and E1 to KYTC, the Guard's leasehold of site "C1" as previously depicted will be released through a modification to the Guard's current leasehold, by amendment to the Master Lease, and Metro's leasehold of site "E1" will be released through a modification to Metro's current leasehold, all without payment by the Airport.
3. After meeting the conditions as set forth in sections 1 and 2 above, the Airport will convey fee simple title to the Airport Property to KYTC by special warranty deed upon payment to the Authority of the appraised fair market value of the Airport Property.
4. Prior to the commencement of construction, the Airport, Metro and Guard will grant a temporary easement to KYTC for construction on the areas designated as sites "C1" and "E1" and "T1" on Exhibit A by a document in form and substance reasonably acceptable to all parties.
5. The road design for the relocated Grade Lane, as set forth in the attached exhibits, shall be subject to the reasonable review and approval by KYTC and Metro prior to construction of said road. This review includes but is not limited to preliminary and final design, roadway drainage, geo-technical review and pavement design. Approval of the road alignment and other particulars by the Guard are covered under a separate agreement.
6. Airport, Metro and Guard agree to grant KYTC temporary easements on those properties adjoining Grade Lane right of way as deemed necessary by KYTC in order that KYTC and/or its designated partners and contractors may construct access points which serve those properties owned or under the option of Metro, and the Guard.

7. All parties agree that the existing Grade Lane shall remain open, or an alternate route for maintenance of traffic shall be open, to the public until such time that the relocated Grade Lane is available to open for public use. Upon completion of the alternate route and Metro approval, the existing Grade Lane shall be closed for public use and KYTC, Guard and Airport may perform grading and other construction activities on the Metro Property. Upon completing the relocated Grade Lane, Metro shall cause the existing Grade lane to be permanently closed for public use and vacated.
8. Upon completion of construction of the relocated Grade Lane, and after the road is open for public use, and upon inspection and acceptance by Metro, KYTC will convey fee simple title to the relocated Grade Lane to Metro by special warranty deed.
9. Upon completion of construction of the relocated Grade Lane and upon inspection and acceptance by Metro, Metro agrees to convey the Metro Property to KYTC. Following the transfer of the Metro Property to KYTC, and in meeting all federal, state and local laws and regulations, and subject to the conditions created by this Agreement, KYTC in good faith and in a timely fashion will lease the Metro Property with any encumbrances et al "as is" to the United States of America for nominal cost to ensure a contiguous Guard campus.
10. This Agreement shall be construed and otherwise governed in all respects by the laws of Commonwealth of Kentucky.
11. All notices, requests, applications, approvals or other communications required under this Agreement shall be deemed to have been fully given when made in writing and (a) hand-delivered; or (b) deposited in U.S. mail, postage prepaid, by registered or certified mail, return receipt requested, and addressed as follows:

If to **KYTC**:

Commonwealth of Kentucky
Transportation Cabinet
200 Mero Street
Frankfort, KY 40622
Attn: Secretary

If to **METRO**:

Metro Hall
4th Floor
527 W. Jefferson Street
Louisville, KY 40202
Attn: Mayor

If to the **AIRPORT**:

Louisville Regional Airport Authority
700 Administration Drive
Louisville, KY 40209
Attn: Exec. Director

With a copy to:

Stites & Harbison, PLLC
400 West Market Street, Ste. 1800
Louisville, Kentucky 40202
Attn: Tom Halbleib

If to the **GUARD**:

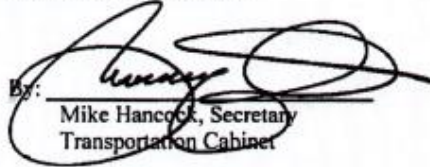
Kentucky Air National Guard
1101 Grade Lane
Louisville, KY 40213
Attn: Lt Col Howard

1. This Agreement may be signed in counterpart originals, each of which, when taken together, shall be deemed to be one and the same.
2. This may be amended only by separate writing.

[Signature page follows]

**WITNESS THE HANDS OF THE PARTIES ON THE DATE ABOVE HEREIN
WRITTEN**

COMMONWEALTH OF KENTUCKY
Transportation Cabinet
Department of Highways

By: 
Mike Hancock, Secretary
Transportation Cabinet

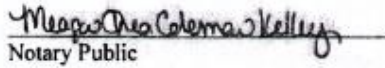
APPROVED AS TO FORM AND LEGALITY:

By: 
Deputy Executive Director
Office of Legal Services

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF KENTUCKY)
) SS
COUNTY OF Franklin)

The foregoing Memorandum of Understanding was acknowledged before me this 21st day of July, 2014, by Mike Hancock, Secretary, Kentucky Transportation Cabinet, and was sworn to by him to be his free act and deed.


Notary Public

Oct. 11, 2016
My Commission Expires

LOUISVILLE REGIONAL AIRPORT AUTHORITY

Louisville Regional Airport Authority

By: *C.T. Miller*

Title: *Executive Director*

Approved for the Airport as to legality of form and content:

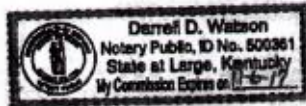
By: *[Signature]*
Stites & Harrison, PLLC

CERTIFICATE OF ACKNOWLEDGMENT


STATE OF KENTUCKY)
) SS
COUNTY OF JEFFERSON

The foregoing Memorandum of Understanding was acknowledged before me this 24th day of July, 2014, by C.T. Miller Executive Director, Louisville Regional Airport Authority, and was sworn to by him to be his free act and deed.

Samuel D. Watson
Notary Public
November 6, 2017
My Commission Expires

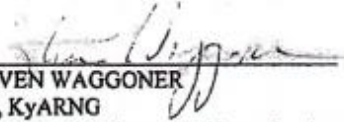


KENTUCKY ARMY NATIONAL GUARD

BY: 
Michael A. Sutton, Colonel, NGB
United States Fiscal and Property Office For Kentucky

At the Boone National Guard Center)
) SS
With the United States Armed Forces in Franklin County, Kentucky)

I, Steven Waggoner, the undersigned official, do hereby certify that on this 25th day of July, 2014, before me, personally appeared Michael A. Sutton, and who is known to me to be a United States Armed Forces member on active duty, and to be the identical person who described herein, whose name is subscribed to an who signed and executed the foregoing instrument and having first made known to him the contents thereof, he personally acknowledged to me that he signed the same, on the date it bears, as his true, free, and voluntary act and deed or uses, purposes, and considerations therein set forth. I do further certify that I am at the date of this certificate, a noncommissioned officer in the United States Army in the rank or grade stated required on this certificate, that by statute no seal is required, and same is executed by me in that capacity.


STEVEN WAGGONER
SFC, KyARNG
Joint Forces Headquarters, Kentucky Army National Guard

My Commission is Indefinite

Authority: Title 10, United States Code, sections 936 and 1044a, and Army Regulation 27-55.

LO010:LOPRO 9565-44.1:LOUISVILLE