

RESOLUTION NO.24, SERIES 2023

A RESOLUTION AUTHORIZING A LEASE AGREEMENT FOR LICENSING TWO (2) PARCELS OF REAL PROPERTY TO THE BAIRD ST COMMUNITY GARDEN, INC. FOR A COMMUNITY GARDEN.

WHEREAS, The Louisville and Jefferson County Landbank Authority, Inc. (the “Authority”) owns the vacant parcels of real property located at 1853 Baird Street (Tax Parcel ID: 02-015G-0128-0000) and 1846 Portland Avenue (Tax Parcel ID: 02-015G-0110-0000), (the “Properties”); and

WHEREAS, the Authority desires to issue a lease for the Properties to the Baird St Community Garden, Inc., a Kentucky non-profit corporation, as the Lessee (“Lessee”) for use solely as a community garden for the benefit of the public and the citizens living in the surrounding neighborhood; and

WHEREAS, the lease will run for a minimum term of three (3) years, beginning November 13, 2023 and ending November 13, 2026, pursuant to the provisions of the Authority’s disposition program known as “Grow In Your Neighborhood”;

WHEREAS, the Authority has no objection to the proposed use of the Properties, provided that any agreement with the Lessee regarding the Properties recognizes that the Properties may become part of some Authority project in the future which may require the agreement to be terminated; and

WHEREAS, the Authority wishes to authorize its Chairperson to enter into such an agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD MEMBERS OF THE
LOUISVILLE AND JEFFERSON COUNTY LANDBANK AUTHORITY, INC.,**

SECTION 1. That the Board Members of the Louisville and Jefferson County Landbank Authority, Inc., hereby authorize the lease of the following described real property (the “Properties”):

BLOCK	LOT	SUBLOT	STREET ADDRESS	LEASE FEE
015G	0128	0000	1853 Baird Street	\$1.00
015G	0110	0000	1846 Portland Avenue	\$1.00

SECTION 2. That the Chairperson of the Louisville and Jefferson County Landbank Authority, Inc., or her designee, hereby authorizes the issuance of a Lease Agreement to Lessee for the licensing of the Properties, substantially in form and substance as the draft Lease Agreement attached hereto as “Attachment A”.

SECTION 3. That this Resolution shall become effective upon its passage and approval.

APPROVED BY: _____ **DATE APPROVED:** _____

**Jamesetta Ferguson
Chairperson and President
Louisville and Jefferson County
Landbank Authority, Inc.**

APPROVED AS TO FORM:

**Travis J. Fiechter
Counsel for Louisville and Jefferson County Landbank Authority, Inc.
First Trust Centre
200 South Fifth Street, Suite 300N
Louisville, KY 40202
(502) 574-1037**

ATTACHMENT A

LEASE AGREEMENT

This Agreement made and entered into this ____ day of _____, 2023, by and between the **LOUISVILLE AND JEFFERSON COUNTY LANDBANK AUTHORITY, INC.**, a public body corporate and politic, hereafter referred to as “**Landbank**”, whose address is 444 South Fifth Street, Suite 500, Louisville, Kentucky 40202, and **BAIRD ST COMMUNITY GARDEN, INC.**, A Kentucky non-profit corporation, hereafter referred to as “**Lessee**”, whose address is 1004 Clarks Lane, Louisville, Kentucky 40217.

RECITALS

WHEREAS, Landbank holds fee simple title to the properties located at 1853 Baird Street and 1846 Portland Avenue, Louisville, Kentucky 40203 (Tax Parcel ID: 015G-0128-0000 and Tax Parcel ID: 015G-0110-0000), which properties are hereafter referred to as the “Premises” and are more particularly described on Exhibit A attached hereto and made a part hereof; and

WHEREAS, Lessee desires to develop, operate and use the Premises for calendar years 2023, 2024, 2025, and 2026 as a community garden for the benefit of the public and the citizens living in the surrounding neighborhood; and

WHEREAS, Landbank is willing to grant Lessee a lease for calendar years 2023, 2024, 2025, and 2026 to have the exclusive use and possession of the Premises for developing and operating a community garden upon the terms and conditions in this Agreement;

Now, therefore, in consideration of the Recitals and the mutual promises contained in this Agreement, the parties hereto agree as follows:

1. **RECITALS.** The Recitals are hereby made a part of this Agreement.
2. **TERM.** The initial term of this Agreement shall be for the balance of calendar year 2023 beginning on November 13, 2023, and terminating on December 31, 2023, and shall continue thereafter for successive terms of one (1) year each, up to a maximum of three (3) years unless sooner terminated pursuant to the terms of this Agreement. Each annual successive term shall be automatically extended for another year subject to either party’s right at any time to elect to terminate this Agreement for any reason whatsoever, with or without cause, by giving the other party thirty days (30) days written notice in accordance with Paragraph 20 of this Agreement.
3. **FEE.** Lessee shall pay Two Dollars (\$2.00) per year as a lease fee for the use of the Premises pending the annual renewal of this Agreement.

4. **AS IS.** Lessee shall be solely responsible for all site preparation necessary to make the Premises usable for the purposes permitted by this Agreement. Lessee accepts the Premises AS IS WITH ALL FAULTS.

5. **USE.** Lessee shall use the Premises solely for the purpose of developing and operating a community garden for the benefit of the public per the program requirements of the Grow In Your Neighborhood program of the Landbank, which can be found in Exhibit B below and are hereby incorporated herein.

6. **MAINTENANCE.** Lessee, at its sole expense, shall maintain the Premises in good order and condition and state of repair and shall keep the Premises as described in Exhibit A and surrounding property, including public streets and sidewalks which provide ingress and egress to the Premises, free of debris and litter at all times during the term of this Agreement. Lessee agrees that any maintenance work it does on the subject property under this Agreement shall be done in such a manner as to promote and preserve public safety and welfare and with a minimum of disruption and interference with the free flow of vehicular and/or pedestrian traffic over public rights of ways adjacent to the Premises.

7. **SAFE CONDUCT.** At all times during the term of this Agreement, Lessee shall conduct operations on the Premises in a safe, prudent, orderly, lawful, and business-like manner in full compliance with all laws, ordinances and regulations which may be applicable to the Premises or Lessee's use thereof. Further, Lessee shall not commit or suffer waste upon the Premises or allow any part thereof to become a nuisance.

8. **UTILITIES.** Lessee shall provide at its sole expense, any utility service hookups and their installation by the appropriate licensed contractors.

9. **PERMITS.** Lessee shall obtain and be solely responsible for obtaining all required permits and licenses necessary for its operation of the community garden at the Premises from the appropriate governmental authorities.

10. **RETURN TO ORIGINAL CONDITION.** Lessee, prior to the end of the term of the Agreement, shall return the Premises to its original condition, to the satisfaction of the Landbank.

11. **RESPONSIBILITY FOR EMPLOYEES/SUBCONTRACTORS.** Lessee shall at all times be responsible for the actions of its employees, contractors, subcontractors, sub-Lessees or other persons using any portion of the Premises with the approval or authority of Lessee and Lessee shall insure that all such persons adhere to the requirements of this Agreement.

12. **ALTERATIONS AND IMPROVEMENTS.** Lessee shall, at its expense, keep in good order, condition, and state of repair the above-mentioned Premises during the period of this Agreement. Lessee shall make no alterations to, nor make any improvements on, the Premises without the prior written approval of the Landbank. The parties agree that the Landbank may waive the performance of any items, conditions, and covenants herein, provided that such waiver

shall not be construed or deemed a continuing waiver of the same or any subsequent conduct which may constitute a default of any provision. Any amendments or modifications to this Agreement must be in writing and signed by both parties.

13. **SEVERABILITY.** If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect.

14. **SUCCESSORS AND ASSIGNS.** The covenants, conditions, warranties, and agreements made and entered into by the parties hereto are declared binding on and shall inure to the benefits of their respective successors and assigns.

15. **INSURANCE AND INDEMNIFICATION.** Lessee shall provide the Landbank and/or Louisville/Jefferson County Metro Government with Insurance coverage in accordance with Exhibit C attached hereto and made a part hereof.

16. **BREACH.** If, through any cause, Lessee shall fail to fulfill its obligations under this Agreement, or, if it shall violate any of the covenants, terms or conditions herein, and if such failure or violations should continue for a period of thirty (30) days after written notice of such is given by the Landbank to Lessee, the Landbank shall thereupon have the right to terminate this Agreement and specify the effective date thereof. Upon such termination, Lessee shall not be entitled to any compensation from Landbank, including but not limited to, replacement value or fair market value of any improvements placed on the Premises.

17. **NOTICE.** All notices provided for in this Agreement shall be sent to the following addresses:

IF TO THE LANDBANK:

LOUISVILLE AND JEFFERSON COUNTY LANDBANK AUTHORITY, INC.
444 South Fifth Street, 5th Floor
Louisville, Kentucky 40202
Attention Real Estate Program Supervisor
Email Address: tia.bowman@louisvilleky.gov

IF TO LESSEE:

BAIRD ST COMMUNITY GARDEN, INC.
1004 Clarks Lane
Louisville, Kentucky 40217
Attention: Jessi Dietrich, Director
Email Address: jjdiet02@gmail.com

18. **TIME OF THE ESSENCE.** Time shall be of the essence with respect to the duties and obligations imposed on the parties hereto. With respect to any duty or obligation imposed upon a party to this Agreement, unless a time limit is specified for the performance of such duty or obligation, it shall be the duty or obligation of such party to commence and perform the same in a diligent manner and to complete the performance of such duty or obligation as soon as reasonably practicable after commencement of performance thereof.

19. **NON-ASSIGNMENT.** This Agreement does not convey a permanent interest in the Premises or lands and does not run with the land. Accordingly, Lessee shall not transfer or assign any right or interest in the Agreement. Any attempt to assign or transfer the Agreement shall be considered a substantial breach and shall render the Agreement a nullity.

20. **NO EMPLOYER RELATIONSHIP.** It is expressly understood that no employer/employee relationship is created by this Agreement, nor does it cause Lessee to be an agent, partner, joint-venturer, officer or official of the Landbank. By executing this Agreement, the parties hereto certify that its performance will not constitute or establish a violation of any statutory or common law principle pertaining to conflict of interest, nor will it cause unlawful benefit or gain to be derived by either party.

21. **COMPLIANCE WITH APPLICABLE LAW.** Lessee agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, *29 U.S.C. 650 et. seq.*, as amended, and KRS Chapter 338. Lessee also agrees to notify the Landbank in writing immediately upon detection of any unsafe and/or unhealthful working conditions detected at any Landbank-owned Premises where Lessee performs work under this Agreement.

22. **PREMISES FREE FROM LIENS.** Lessee shall keep the Premises free from any liens or claims of lien arising out of work performed, materials furnished, or obligations incurred by, for or at the instance of Lessee. In the event that any liens are filed arising out of work performed, materials furnished or obligations incurred by, for or at the insistence of Lessee and Lessee fails to bond, pay or otherwise extinguish such liens within thirty (30) days after the Landbank notifies Lessee of the existence thereof, Landbank may, without waiver of any other rights or remedies, bond, pay or otherwise extinguish such liens and any expenses incurred by the Landbank in connection therewith and shall be reimbursed by Lessee upon demand as additional rent hereunder.

23. **AUTHORITY TO CONTRACT.** Each of the parties hereto covenant and warrant to the other that their respective entities have the full right, power, and authority to enter into this Agreement and that the person executing this Agreement on its behalf has been duly authorized by the party to sign and execute this Agreement on its behalf and the Agreement is a valid and binding obligation on the party and enforceable in accordance with its terms.

24. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky. In the event of any proceedings regarding this Agreement, the parties agree that the venue shall be the state courts of Kentucky or the U.S. District Court for the Western District of Kentucky, Louisville Division. All parties

expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

25. **ENTIRE AGREEMENT.** This Agreement represents the entire understanding and agreement between the parties relating to the subject matter hereof and supersedes all prior negotiations and agreements relative thereto. The language in all parts of this Agreement shall in all cases be construed, as a whole, according to its fair meaning and not strictly for or against either the Landbank or Lessee.

WITNESS the agreement of the parties hereto by their signatures affixed hereon.

**LOUISVILLE AND JEFFERSON COUNTY
LANDBANK AUTHORITY, INC.**

By: _____
Jamesetta Ferguson
Chairperson and President

Date: _____

LESSEE

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY

By: _____
Travis J. Fiechter
Counsel for Louisville and Jefferson County Landbank Authority, Inc.
First Trust Centre
200 South Fifth Street, Suite 300N
Louisville, KY 40202
(502) 574-1037

Date: _____

EXHIBIT A

Tax Parcel ID: 015G-0128-0000

BEGINNING on the Northeast corner of Baird and 19th lot; running thence Eastwardly with the North line of Board Street 30 feet, and extending back Northwardly of that width throughout, the West line being coincidental with the East line of 19th Street, 71-3/4 feet more or less.

Being Tract 1 of the property conveyed to the Louisville and Jefferson County Landbank Authority, Inc. by General Warranty Deed dated July 5, 2022 and recorded in Deed Book 12401, Page 567 in the Office of the County Clerk of Jefferson County, Kentucky.

Tax Parcel ID: 015G-0110-0000

BEGINNING on the South side of Portland Avenue at a point 88 feet East of and distant from the Southeast corner of intersection of Portland Avenue and 19th Street, thence East along and having front on South side of Portland Avenue of 25 feet, and extending back South same width, between lines parallel with direction of 19th Street, 210 feet, more or less, to Baird.

Being the same property conveyed to the Louisville and Jefferson County Landbank Authority, Inc. by Master Commissioner's Deed, certified by the Jefferson County Circuit Court Clerk on August 16, 2022, of recorded in Deed Book 12444, Page 297 in the Office of the County Clerk of Jefferson County, Kentucky.

EXHIBIT B



D. Grow in Your Neighborhood (Note: Agricultural Programs are under review in partnership with the Jefferson County Extension Service. Recommendations for program changes are expected in the future.)

Program Name	Grow In Your Neighborhood
Program Goal	Provide opportunities for vacant land re-use as urban agriculture.
Intended Uses	Community garden, market garden, other agricultural uses
Eligible Parcels	Vacant lots up to 7,000 square feet with no existing structures
Eligible Applicants	Individuals and organizations with the capacity to complete and maintain the proposed garden project for a minimum of 3 years.
Application Process	All applications must be reviewed by the UK Extension Office representative prior to being reviewed by the Landbank staff. Applications will be reviewed in the order they are received.
Cost	Lot may be leased for \$1.00 per year pending annual renewal.
Type of Transaction	Lease
Restrictions	Use for vacant lot is limited to the proposed garden project submitted by the applicant.
Other Program-Specific Information	Applicant must provide a project plan, budget, timeline, and proof of funds. Budget and proof of funds must include 3-year operating costs. Soil testing, liability insurance, staked survey completed by a licensed surveyor, and water for purposes of maintaining the garden shall be available on site.
Monitoring	Projects will be regularly monitored from the date of lease throughout the completion of the proposed project. The lease will be reviewed annually for renewal. Monitoring will include on-site inspections and desk reviews.

EXHIBIT C

HOLD HARMLESS AND INDEMNIFICATION CLAUSE AND INSURANCE REQUIREMENTS

I. HOLD HARMLESS AND INDEMNIFICATION CLAUSE

The Contractor shall indemnify, hold harmless, and defend the Landbank and Louisville/Jefferson County Metro Government, their elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from the Contractor's (or Contractor's Subcontractors, if any) performance 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 of the Louisville/Jefferson County Metro Government or its 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 Contract.

II. INSURANCE REQUIREMENTS

Prior to award of contract and commencing work, 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 under this Contract until all insurance required under the Contract Document has been obtained and until copies of policies or certificates thereof are submitted to Louisville/Jefferson County Metro Government's Purchasing Division and approved by 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 Contractor's indemnification requirements, it is agreed that 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 final acceptance of the work by the Louisville/Jefferson County Metro Government (Metro). 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 Lessee's (and approved subcontractors) Commercial General Liability Policies:

1. **"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 Premises Damage
- e. Independent Contractors Protective Liability
- f. Personal Injury

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. The Lessee shall procure and maintain insurance policies as described herein and for which the Landbank shall be furnished Certificates of Insurance upon the execution of the Agreement. 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 completion of the Agreement, renewal Certificates of Insurance shall be furnished to the Landbank at least fifteen (15) days prior to the expiration of any policy(ies).

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

Louisville/Jefferson County Metro Government
Department - Louisville Metro Police Department
Procurement Department
611 West Jefferson Street
Louisville, Kentucky 40202

AND

- 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: Lessee shall notify Metro Government's Risk Management Division of any policy cancellation within two (2) 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, Contractor shall notify Metro Government's Risk Management Division within two business days. If Contractor fails to notify Metro Government as required by this Agreement, Contractor agrees that such failure shall be a breach of this Agreement. Metro Government reserves the right to require the insurance policy(ies) 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 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 the Contractor.

All insurance requirements including performance and payment bonds shall be furnished the day a contract issued pursuant to this Agreement is awarded.