

## MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("Agreement") is made this \_\_\_ day of \_\_\_\_\_, 2012, by and between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT ("LFUCG"), and the LEXINGTON-FAYETTE URBAN COUNTY AIRPORT BOARD (the "Board").

### RECITALS

A. The Board owns, controls, and operates the premises (the "Premises") known as Blue Grass Airport (the "Airport"), which is located at 4000 Terminal Drive, Lexington, Fayette County, Kentucky.

B. Pursuant to a lease by and between LFUCG and the Board dated April 8, 1977 (the "Lease"), LFUCG operates a firearms range (the "Range") for use by the Lexington Division of Police on the Premises on a parcel of land located just off Parkers Mill Road, as more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Range Property").

C. The Board and LFUCG desire to terminate the Lease and the Board has agreed to permit LFUCG to maintain the Range on the Range Property pursuant to the terms and conditions of this Agreement.

D. LFUCG has built and desires to maintain obstacle and training courses (the "Obstacle Course") for use by the Lexington Division of Police on parts of an approximately 3.025-acre portion of the Premises, as more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Obstacle Course Property") (collectively, the Range Property and the Obstacle Course Property are referred to herein as the "Property"); and the Board has agreed to permit such use pursuant to the terms and conditions of this Agreement.

### AGREEMENTS

In consideration of the recitals, the mutual agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged LFUCG and the Board agree as follows:

1. License and Right of Entry.

1.1 Right of Entry. The Board hereby grants to LFUCG a right of entry and access to the Property for the purpose of using the Range and Obstacle Course thereon, including reasonable ingress and egress over the access road connecting the Property to Parkers Mill Road (the "Access Road"). The right of entry granted under this Section 1.1 shall apply to the Access Road. Access to any other property owned by the Board required by LFUCG shall require the prior approval of the Board's Executive Director which approval shall not be unreasonably withheld or delayed. LFUCG shall be responsible for, and shall pay when due the cost of any and all utilities consumed in or upon the Property and all other costs and expenses in connection with LFUCG's use thereof.

1.2 Use. The Range and Obstacle Course may be used by LFUCG and its employees, agents and invitees solely as a training facility for LFUCG's police department, and only on the days and at the times set forth on Exhibit B attached hereto and incorporated herein by reference (the "Available Periods"). Notwithstanding the foregoing, the Board shall be entitled to restrict access to the Property during the Available Periods if such restriction is necessary for the operation, security or safety of the Airport.

1.3 Maintenance of Range and Obstacle Course. LFUCG shall at all times maintain the Range, Obstacle Course, the Access Road, and the Property at LFUCG's cost and expense, which shall include keeping the Range and Obstacle Course in good repair and working order, the Access Road navigable, and the grass and any shrubbery on the Property neatly mowed and trimmed.

1.4 Right to Relocate. The Board shall have the right to relocate the Range and Obstacle Course to another location on the Premises, at LFUCG's expense, in the event that the Board in its sole discretion deems that the Property is needed for Airport use.

1.5 Disclaimer; Acknowledgement of Risks.

A. The Board makes no representations or warranties regarding the Range, the Obstacle Course, the Access Road or the Property and LFUCG acknowledges and agrees that it and its employees, agents and invitees enter the Property and use it "AS IS" and "WITH ALL DEFECTS, WHETHER PATENT OR LATENT." Further, LFUCG acknowledges that there are inherent risks involved with the use of the Range, the Obstacle Course, and the Property, that those risks include but are not limited to potential for bodily injury or death and property damage. LFUCG acknowledges and agrees that the Board expressly disclaims any liability for, and is not responsible for, any damages or injuries to persons or property arising out of use of the Property by LFUCG, its employees, agents or invitees. LFUCG and its employees, agents and invitees voluntarily assume all such risks upon entry onto the Property. LFUCG shall ensure that all of its employees, agents and invitees who enter the Property execute the Waiver and Full Release attached hereto as Exhibit C.

B. LFUCG makes no representations or warranties regarding the Range, the Obstacle Course, the Access Road or the Property and the Board acknowledges and agrees that it and its employees, agents and invitees enter the Property and use it "AS IS" and "WITH ALL DEFECTS, WHETHER PATENT OR LATENT." Further, the Board acknowledges that there are inherent risks involved with the use of the Range, the Obstacle Course, and the Property, that those risks include but are not limited to potential for bodily injury or death and property damage. The Board acknowledges and agrees that LFUCG expressly disclaims any

liability for, and is not responsible for, any damages or injuries to persons or property arising out of use of the Property by the Board, its employees, agents or invitees. The Board and its employees, agents and invitees voluntarily assume all such risks upon entry onto the Property. The Board shall ensure that all of its employees, agents and invitees who enter the Property execute the Waiver and Full Release attached hereto as Exhibit C.

1.6 Termination of License. The license granted hereunder may be terminated at the option of either party, and shall terminate upon receipt by the non-terminating party from the terminating party of written notice thereof.

2. Control of Lead. LFUCG shall provide a copy of its Best Management Practices “(BMP)” Plan for the control of lead at the Range to the Board for its review and approval, which approval shall not unreasonably be withheld. If LFUCG does not have such a BMP Plan, LFUCG will develop and implement a BMP Plan for the control of lead at the Range. The BMP Plan shall incorporate provisions for monitoring and adjusting pH, immobilizing lead, controlling runoff, bullet containment and the periodic removal and recycling of lead from the Range. The BMP Plan shall be based on the recommendations contained in the United States Environmental Protection Agency’s “Best Management Practices for Lead at Outdoor Shooting Ranges,” EPA-902B-01-001, Revised June 2005. LFUCG shall be responsible for conducting any remedial activity relating to lead contamination of the Property as a result of LFUCG’s operations of the Range. Upon termination of the license granted hereunder, LFUCG shall remove all lead from the Range, regardless of whether such removal is required by any governmental authority.

3. Insurance. LFUCG’s self insurance fund will provide general liability insurance coverage throughout the term of this Agreement covering against liabilities for injuries or damages to persons or property arising out of or in any manner connected with LFUCG’s activities at the Property. Any excess policy obtained by LFUCG shall name the Board, its officers, employees and agents as additional insured and LFUCG shall provide proof of such liability insurance to the Board.

4. Ownership; Rights of Board; Use of Airport.

4.1 Ownership. The Property shall at all times remain, and all improvements thereto including the Range, Obstacle Course, and the Access Road shall be the sole property of the Board. Upon termination of the license granted hereunder, LFUCG shall have no right of access to the Property or to remove or disturb any improvements thereon.

4.2 Board Right of Access and Use of Range and Obstacle Course. LFUCG agrees that the employees, agents and invitees of the Blue Grass Airport shall be entitled to access to the Property at all times for the purpose of using the Range and Obstacle Course.

4.3 Other Rights and Interests. Nothing contained herein shall be construed to in any way restrict any easements, servitudes and rights in favor of the Board and the Airport, including without limitation the following:

- A. The right, for the use and benefit of the public and the Airport, as the same is now and may be hereafter constituted, to use the Property for any and all aviation and aviation-related purposes which do not unreasonably interfere with LFUCG's use of the Property;
- B. For the use and benefit of the public, an easement (the "Avigation Easement") and right of way appurtenant to the Airport, for the unobstructed passage of all aircraft in and through the airspace above the Property, together with the continuing rights, without additional consideration: (a) to prevent the erection or growth into the airspace within the Avigation Easement of any natural or artificial object, and to remove from the airspace within the Avigation Easement, or, at the sole option of the Board, as an alternative, to mark and light as an obstruction to air navigation, any such object now or in the future upon the Property within the Avigation Easement, together with the right to trim as the Board sees fit any natural vegetation encroaching within the Avigation Easement; (b) the right of those navigating the airspace contained in the Avigation Easement to cause in and emit from the Avigation Easement such noise, vibrations, fumes, objects, dust, fuel particles and all other effects, whether or not confined to the Avigation Easement as may be incident to the operation of aircraft, now known or hereafter used for air navigation, within the Avigation Easement or flight in the air, using said airspace for landing at or taking off from the Airport, together with such additional rights as are necessary to the enjoyment of such right of flight, and to prevent the interference with such navigational aids as may be necessary to provide safe operation of aircraft; and (c) the right to install and maintain, on or within the Property, such air navigational aids as the Board may deem necessary.
- C. For the use and benefit of the public: (a) the right of flight for the passage of aircraft in the airspace above the Property, together with the right to cause in said airspace above the surface such noise and vibration as may be inherent in the operation of aircraft, now known or hereafter used for air navigation, or flight in the air, using said airspace for landing at, or taking off from, the Airport, together with such additional rights as are necessary to the enjoyment and utilization of such right of flight, and to prevent the interference with such navigational aids as may be necessary to provide safe operation of aircraft; and (b) the right to install and maintain, on or within the Property, such air navigational aids as the Board may deem necessary.

5. Non-Assignability. The rights granted LFUCG hereunder are personal to LFUCG; do not run with the land; and shall not be conveyed, transferred, sublet or assigned without the prior written consent of the Board.

6. LFUCG Representations, Warranties and Covenants.

6.1 Authority. LFUCG hereby represents and warrants to the Board that LFUCG has full corporate power and authority to execute this Agreement and to perform its obligations hereunder, and all consents, approvals, authorizations or orders required of it for the due authorization, execution and delivery of, and for the consummation of the transactions contemplated by, this Agreement have been obtained.

6.2 Safety and Security. Portions of the Property are or may be located within a current or future restricted area of the Airport. Safety and security of airport operations are a prime and overriding concern of the Board. Therefore, LFUCG, and its contractors, subcontractors and suppliers, and the employees, agents and representatives of such entities, shall be bound and shall abide by all airport access, security or safety rules, procedures, regulations, security plans and laws of all governmental bodies having governing authority over the Airport, including but not limited to the regulations, rules, security plans and procedures of the Board, as the same may be promulgated from time to time, all of which, as they may exist from time to time are incorporated herein by reference.

6.3 Right of Flight. LFUCG covenants not to erect or to permit (to the extent it has authority) the erection, or growth of, or permit to remain upon the Property, any building, structure, tree or other object extending one hundred (100) feet into the airspace above the existing ground elevation of the Property. LFUCG covenants not to use or to permit (to the extent it has authority) the use within the Property of any equipment or instruments which will or might in any manner create interference with communications between the Airport and aircraft, or between aircraft and any navigational controls, whether or not located at the Airport. Said interference shall include, but is not limited to, electromagnetic interference, above-ground high-voltage lines, radio transmission and ARC-welding operations. LFUCG covenants not to erect or install or to permit (to the extent it has authority) the erection or installation within the Property of, any lights which may make it difficult for fliers to distinguish between Airport lights and others or which might impair visibility, or otherwise endanger the landing, taking off, or maneuvering of aircraft. Without prejudice to its rights to enforce any of the provisions of this Agreement on any occasion, the Board reserves the right from time to time, upon such terms as the Board may determine appropriate in its lawful and efficient operation of the Airport, temporarily to waive in writing enforcement of any part of this subsection 5.3 upon the written request of LFUCG to do so for good cause shown.

6.4 Compliance with Laws. LFUCG covenants to the Board that LFUCG shall comply with all Federal, state and local statutes, laws, ordinances, codes, rules, regulations and decrees applicable to the Property and for the use or operation thereof, including but not limited to all applicable present or future federal, state or local law, statute, rule, regulation or ordinance relating to the regulation, pollution, preservation or protection of human health, safety, the environment, or natural resources or to emissions, discharges, releases or threatened releases of pollutants, contaminants, hazardous materials or wastes into the environment (including

ambient air, soil surface water, ground water, wetlands, land or subsurface strata) (“Environmental Laws”). LFUCG further agrees not to release or dispose or permit the release or disposal on or from the Property of any substance in violation of any Environmental Law. To the extent that any federal, state or local governmental authority with jurisdiction requires any remedial action to be performed or fine or penalty to be paid under any Environmental Law or other valid authority arising from LFUCG’s use of the Property, such remedial actions or payments shall be the sole responsibility of LFUCG.

6.5 Non-interference. LFUCG agrees that in the exercise of the rights granted to it in this Agreement, it shall not interfere with the safe and efficient operation of the Airport as a public airport, or obstruct, interfere with, or damage facilities located in recorded or unrecorded rights and easements in favor of the Board or of the Federal Aviation Administration to use, repair, maintain and have access to underground electrical, navigational aid cables extending under the Airport, or obstruct or interfere with the drainage system through the Airport.

7. Board Authority. The Board hereby represents and warrants to LFUCG that the Board has full corporate power and authority to execute this Agreement and to perform its obligations hereunder, and all consents, approvals, authorizations or orders required of it for the due authorization, execution and delivery of, and for the consummation of the transactions contemplated by, this Agreement have been obtained.

8. Nondiscrimination.

8.1 LFUCG for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Property for a purpose for which a U. S. Department of Transportation (“DOT”) program or activity is extended or for another purpose involving the provision of similar services or benefits, LFUCG shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation (“Part 21”), and as said Part 21 may be amended.

8.2 LFUCG for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that LFUCG shall use the Property in compliance with all other requirements imposed by or pursuant to Part 21, and as said Part 21 may be amended.

8.3 During the performance of this Agreement, LFUCG, for itself, its assignees and successors in interest, agree as follows:

- A. Compliance With Regulations. LFUCG shall comply with the regulations relative to nondiscrimination in federally assisted

programs of the DOT Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

- B. Nondiscrimination. LFUCG, with regard to the work performed by it during this Agreement, shall not discriminate on the grounds of race, color, national origin, sex or creed in the selection and retention of subcontractors, including procurements of materials and leases of equipment. LFUCG shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
- C. Solicitations for Subcontractors, including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by LFUCG for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor supplier shall be notified by LFUCG of LFUCG's obligations under this Agreement and the regulations relative to nondiscrimination on the grounds of race, color, national origin, sex or creed.
- D. Information and Reports. LFUCG shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Board or the Federal Aviation Administration (the "FAA") to be the pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of LFUCG is in the exclusive possession of another who fails or refuses to furnish this information, LFUCG shall so certify to the Board or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance. In the event of LFUCG's noncompliance with the nondiscrimination provisions of this Agreement, the Board shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
  - (a) Withholding of payments to LFUCG under the Agreement until LFUCG complies, and /or
  - (b) Cancellation, termination, or suspension of the Agreement, in whole or in part.

- F. Incorporation of Provisions. LFUCG shall include the provisions of paragraphs A through E in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. LFUCG shall take such action with respect to any subcontract or procurement as the Board or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event LFUCG becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, LFUCG may request the Board to enter into such litigation to protect the interests of the Board and, in addition, LFUCG may request the United States to enter into such litigation to protect the interests of the United States.

8.4 LFUCG assures that it will comply with the pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates LFUCG or its transferee for the period during which Federal assistance is extended to the Airport program except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, this provision obligates LFUCG or any transferee for the longer of the following periods: (a) the period during which the Premises is used by the Board or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Board or any transferee retains ownership or possession of the Premises. As applicable, this provision binds LFUCG from the proposal solicitation period through the completion of this Agreement.

9. Mechanic's Liens, Etc. LFUCG shall pay, when due and before any mechanic's or other lien claim is assertable therefor, all costs and expense of any services, labor or materials used or consumed in connection with any improvement to the Property.

10. Exceptions to Rights. The rights herein granted are subject to all matters of record with respect to the Property, any facts or circumstances which a full inspection or survey would reveal, and governmental laws and regulations affecting the use of or operation on the Property.

11. Miscellaneous. The parties hereby each further agree as follows:

11.1 Time. Time is of the essence of this Agreement.

11.2 Notice. All notices required or desired to be delivered hereunder shall be in writing and shall be deemed to be properly given (i) when personally delivered, (ii) one (1) business day after sending if sent by overnight express courier for next business day delivery, or (iii) within three (3) business days after such notices are deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, to the persons and addresses



shown below, until notification of a change of such addresses in accordance with the provisions of this paragraph:

To the Board: Lexington-Fayette Urban County Airport Board  
4000 Terminal Drive, Suite 206  
Lexington, Kentucky 40510  
Attention: Executive Director

To LFUCG: Lexington-Fayette Urban County Government  
Department of Public Safety  
Division of Police  
150 East Main St.  
Lexington, KY 40507  
Attention: Chief of Police

11.3 Survival. The terms, conditions, agreements, representations and warranties contained herein shall survive the expiration or termination of the term hereof for a period of one (1) year, except that Section 2 shall survive indefinitely.

11.4 Entire Agreement, Waiver. This instrument constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior agreements, and there are not agreements or undertakings, whether oral or written, between the parties hereto except as set forth herein. This Agreement shall not be modified or amended except by an agreement in writing executed by the parties hereto. Failure of any party at any time or times to require performance of any provision(s) hereof shall not be considered to be a waiver of any succeeding or continuing breach of such provision(s) or of any other provision by any party.

11.5 Successors; Transfer. This Agreement shall inure to the benefit of and bind the respective successors in interest, transferees and assigns of the parties hereto. LFUCG agrees that during the continuance of this Agreement, LFUCG shall not convey, transfer, or assign the Property or any interest or rights therein or any part thereof, or any of its rights under this Agreement without the prior written consent of the Board.

11.6 Governing Law; Headings. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky, regardless of the principles of conflicts of laws applied by Kentucky or any other jurisdiction. Headings are for convenience only and shall not be deemed to constitute a part hereof.

11.7 Severability. If any part, term or provision of this Agreement is unenforceable or prohibited by any applicable law, the rights and obligations of the parties shall be construed and enforced with that part, term or provision limits so as to make it enforceable to the greatest extent allowed by law, or if it is totally unenforceable, as if this Agreement did not contain that particular part, term or provision.

11.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which is an original but all of which together shall constitute one and the

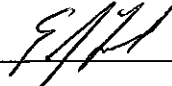
same instrument. However, in making proof hereof it will be necessary to produce only one copy hereof signed by the party to be charged. Facsimile or electronic (PDF) signatures on this Agreement shall have the same validity as an original hand signed instrument.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth in the caption.

"BOARD"

LEXINGTON-FAYETTE URBAN COUNTY  
AIRPORT BOARD

BY: 

NAME: Eric J. Frankel, A.A.E.

TITLE: Executive Director

"LFUCG"

LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

The foregoing Agreement is approved for the Board as to legality of form and content by:



Stites & Harbison, PLLC  
250 West Main Street, Suite 2300  
Lexington, Kentucky 40507

**EXHIBIT A**

**PROPERTY DESCRIPTION**

See attached maps.

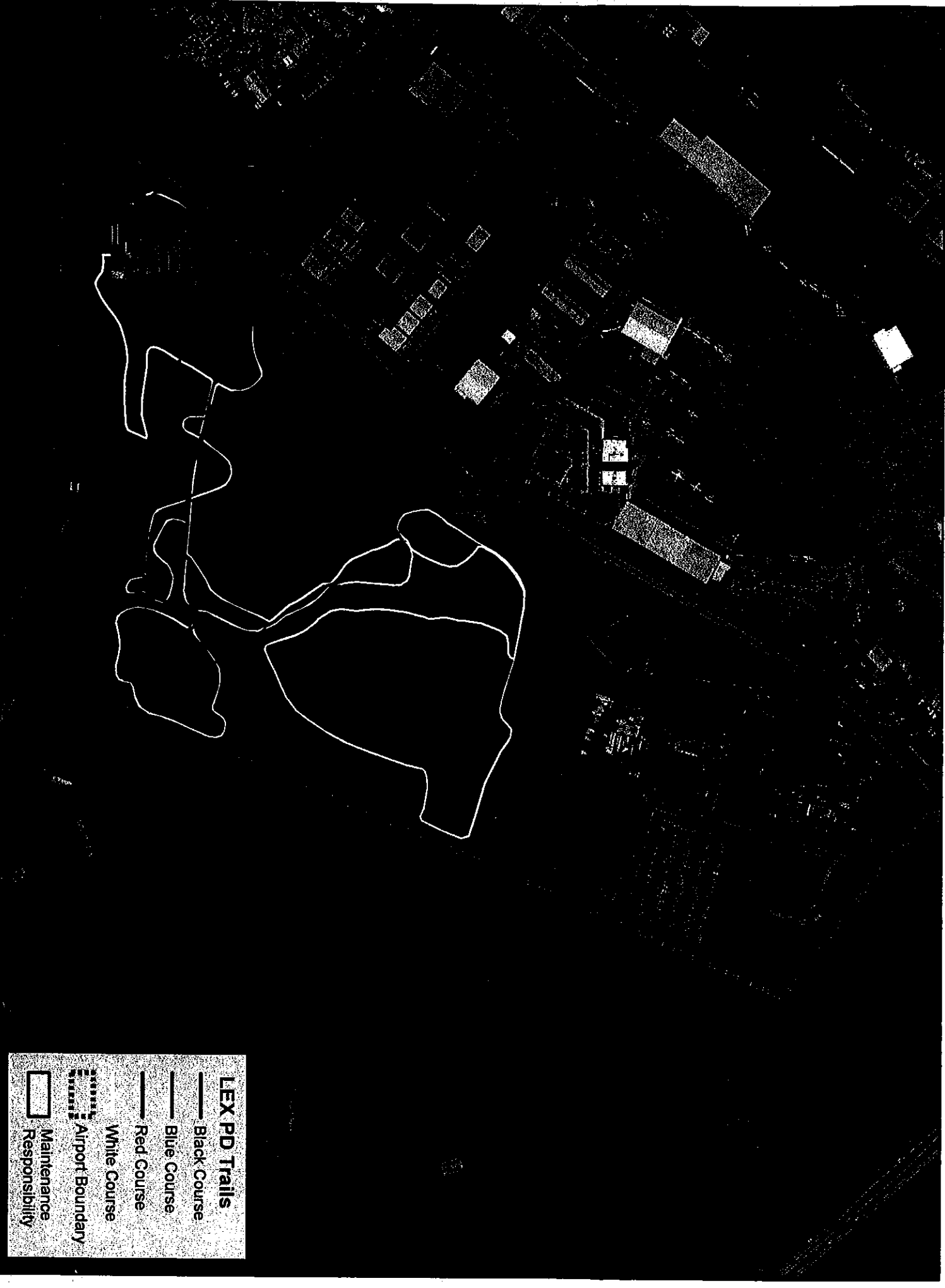


1922

EXP

EXP

EXP  
EXP  
EXP



**LEX PD Trails**

— Black Course

— Blue Course

— Red Course

— White Course

⊞ Airport Boundary

□ Maintenance Responsibility

**EXHIBIT B**

AVAILABLE PERIODS

8:00 AM to 6:00 PM, Monday through Friday. Any other times or days to require approval of the Airport Board's Executive Director.

**EXHIBIT C**

WAIVER AND FULL RELEASE



**BLUEGRASS AIRPORT  
POLICE OBSTACLE/CHALLENGE/FITNESS COURSE WAIVER**

In consideration of the permission granted to me by the Lexington Fayette Urban County Airport Board ("Board") to use the Lexington Division of Police Obstacle/Challenge/Fitness Course ("Course"), located on Board owned property, I hereby on my behalf and on behalf of my heirs, executors, administrators, insurers, representatives and assigns (collectively referred to as "Releasers") hereby release, discharge and hold harmless the Board, its predecessors, current and former subsidiaries, parent or affiliates and all of its current and former officers, directors, shareholders, agents, representatives, employees and its successors and assigns (collectively referred to as "Releasees") from any and all claims, demands or liabilities whatsoever which Releasers may have against Releasees arising from my voluntary and knowing use of the Course. This Waiver and Full Release covers claims pursuant to any federal, state or local laws, regulations, executive orders, common law, contract or any other source, excluding any claims under the Kentucky Worker's Compensation Act. I understand that the Board recommends that it is in my best interest to consult with my personal physician prior to commencing any use of the Course.

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
DIVISION OF POLICE OBSTACLE COURSE WAIVER**

In consideration of being allowed to use the Lexington Division of Police Obstacle Course located at 4300 Airport Road, I (we) hereby release, absolve, indemnify, hold harmless and waive all claims against the Lexington-Fayette Urban County Government in the event of injury. We further state that all persons using the obstacle course will understand that the Urban County Government will not provide any form of medical insurance and that any expenses incurred as a result of any injury sustained will not be the responsibility of the Urban County Government or the Bluegrass Airport or any of its agents or employees.

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Agency Name

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Individual Supervising Training

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Signature

Date

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Phone Number