

PRE-DEVELOPMENT PARKING REPLACEMENT REIMBURSEMENT AGREEMENT

THIS PRE-DEVELOPMENT PARKING REPLACEMENT REIMBURSEMENT AGREEMENT (“Agreement”) is made and entered into on this ____ day of _____, 2023 (“**Effective Date**”), by and between **KENTON COUNTY FISCAL COURT (“County”)** and **COMMONWEALTH OF KENTUCKY, TRANSPORTATION CABINET (“KYTC”)**.

RECITALS

WHEREAS, in connection with the Brent Spence Corridor Project, the County will lose employee parking under Interstate 75 between Martin Luther King Jr. Boulevard and Pike Street, as well as, parking along Simon Kenton Way frontage, which serves the Kenton County Government Center located at 1840 Simon Kenton Way, Covington, KY 41011;

WHEREAS, on or about February 16, 2023 the County and KYTC entered into a non-binding Letter of Intent (“LOI”) whereby KYTC and the County agreed to work together to establish a development plan and reimbursement agreement to memorialize KYTC’s reimbursement of the County for expenses related to a proposed parking replacement project replacing lost parking in connection with the Brent Spence Corridor Project (“Parking Replacement Project”);

WHEREAS, as set forth in the LOI, KYTC has agreed to reimburse the County for certain pre-development costs to explore the feasibility of the Parking Replacement Project as further defined herein (“Pre-Development Costs”) up to One Hundred Thousand Dollars (\$100,000.00) (the “Pre-Development Funds”);

WHEREAS, it is the intent of the County and KYTC to enter into a binding development and reimbursement agreement (“Development and Parking Replacement Reimbursement Agreement”); and

WHEREAS, in order to facilitate pre-development efforts to evaluate the feasibility of the Parking Replacement Project, County and KYTC desire to enter into this Agreement to establish their respective rights and responsibilities regarding the disbursement and use of the Pre-Development Funds as contemplated by the LOI.

NOW THEREFORE, in consideration of the foregoing recitals, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and KYTC, hereby agree as follows:

1. Pre-Development Work. The County hereby agrees to undertake certain pre-development work associated with evaluating the feasibility of the Parking Replacement Project (the “Pre-Development Work”). The Pre-Development Work shall include, but not be limited to, the following: engineering, geotechnical, architectural, design, and location reports, and any other expenses incurred by the County as a preliminary construction and feasibility costs and as further described in the Request for Qualification issued by the County dated March 8, 2023.

2. Reimbursement of Approved Pre-Development Costs by KYTC. Subject to the terms of this Agreement, KYTC hereby agrees to reimburse the County for actual costs incurred for the Pre-Development Work (the “Pre-Development Costs”) in an amount up to One Hundred Thousand Dollars (\$100,000.00) (the “Pre-Development Funds”).

- a. KYTC’s obligation to contribute to the County for Pre-Development Costs for the Pre-Development Work is subject to the following:
 - i. The County shall not incur any costs or expenses to be reimbursed by KYTC pursuant to this Agreement, unless such costs are provided for in the Pre-Development Budget attached hereto as Exhibit A or otherwise approved by KYTC in writing, in KYTC’s sole discretion;
 - ii. The County shall submit a request for reimbursement to KYTC in writing with a detailed description of the Pre-Development Costs incurred in sufficient detail to enable KYTC to determine the appropriateness of the County’s request for reimbursement;
 - iii. The County shall have provided to KYTC progress reports on the Pre-Development Work if requested by KYTC; and
 - iv. The County is not in default under this Agreement and has otherwise complied with all provisions of this Agreement.
- b. Notwithstanding the foregoing, in no event shall Pre-Development Costs include real estate broker fees or legal fees.

3. Term. The Term of this Agreement shall commence on the Effective Date and unless earlier terminated as provided herein, shall terminate upon on the earlier of (1) completion of the Pre-Development Work or (2) upon execution of a binding Development and Parking Replacement Reimbursement Agreement.

4. Development and Reimbursement Agreement. The County and KYTC hereby agree to cooperate and negotiate in good faith to execute a binding Development and Parking Replacement Reimbursement Agreement to govern the rights and obligations of the KYTC and County with respect to completion of the Parking Replacement Project.

5. KYTC Approvals. In addition to other approval rights of KYTC set forth in this Agreement, KYTC may advise and make recommendations to the County regarding the Pre-Development Work. Notwithstanding anything in this Agreement to the contrary, KYTC hereby reserves the right to approve all aspects of the Pre-Development Work, said approval shall not be unreasonably withheld.

6. Events of Default of County. Each of the following events or occurrences shall constitute an “Event of Default” of the County:

- a. If KYTC, in its reasonable discretion, determines that the County has failed to make satisfactory progress on the Pre-Development Work; or
- b. If the County shall fail to keep, observe, or perform any of the obligations, terms, covenants, representations, or warranties set forth in this Agreement or is unable or unwilling to meet its obligations thereunder.

7. Remedies of KYTC upon Events of Default by County. Notwithstanding anything to the contrary set forth herein, upon the occurrence of an Event of Default by the County, KYTC, in its reasonable discretion and upon notice to the County, may at any time during the term of this Agreement exercise any one or more of the following rights and remedies: (a) terminate this Agreement, after which KYTC shall be under no obligation to advance any undisbursed monies from the Pre-Development Funds to the County; and (b) exercise any other rights or remedies that may be available to the KYTC pursuant to this Agreement, or under applicable laws.

8. Return of Disbursed Proceeds to KYTC Should KYTC determine that the County has failed to use any Pre-Development Funds in accordance with the terms and conditions of this Agreement, KYTC may make written demand upon the County directing how any disbursed Pre-Development Funds shall be returned to KYTC and the County shall return or cause such disbursed Pre-Development Funds to be returned to KYTC. For the avoidance of doubt, the County’s obligations under this Section shall survive the expiration of this Agreement and shall remain in effect until Project Completion as defined in the Development and Parking Replacement Reimbursement Agreement.

9. Notices. All notices, requests, demands, waivers, and other communications given as provided in this Agreement shall be in writing, and shall be addressed as follows:

If to KYTC: 421 Buttermilk Pike
Ft. Mitchell, KY 41017
Attn: Stacey Hans, Project Coordinator
Email: stacey.hans@ky.gov

If to County: [ADDRESS]
Attn: [NAME]

Email: [EMAIL]

Unless otherwise specifically provided in this Agreement, notice hereunder shall be deemed to have been given upon its being deposited in the U.S. Mail or commercial courier, postage or delivery charge prepaid or sent via electronic mail and addressed as provided above. The parties may change their respective address and contact person as provided above by giving notice of the change to the other parties hereto as provided in this paragraph.

10. Miscellaneous.

- a. **Further Assurances.** The County shall, at any time upon request by KYTC make, execute, and deliver or cause to be made, executed, and delivered to KYTC any and all other further instruments, certificates, and other documents as may, in the reasonable opinion of KYTC be necessary or desirable in order to effect, complete, perfect, or otherwise to continue and preserve the obligations of the County under this Agreement.
- b. **Incorporation by Reference.** All exhibits, schedules, annexes, or other attachments to this Agreement are hereby incorporated into and made a part of this Agreement.
- c. **Multiple Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all taken together shall constitute a single contract. Facsimile or electronically scanned signatures are deemed to be originals.
- d. **Headings.** The section headings set forth in this Agreement are for convenience of reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.
- e. **Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each of the remaining provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable law.
- f. **Rights of Third Persons.** In no event shall this Agreement be construed to make KYTC or any agent of KYTC liable to any general contractors, subcontractors, laborers, materialmen, craftsmen, or other persons for labor, materials, or services delivered to the Pre-Development Work or goods specially fabricated for incorporation therein, or for debts or claims accruing or arising to any such persons against the County. The County expressly agrees that there is no relation of any type whatsoever, contractual or

otherwise, either express or implied, between KYTC and any general contractor, materialman, subcontractor, craftsman, laborer, or any other person or entity supplying any labor, materials, or services to the Pre-Development Work or specially fabricating goods to be incorporated therein. No persons are intended to be third-party beneficiaries of the Agreement or to have any claim or claims in or to any undisbursed Pre-Development Funds by reason of this Agreement.

- g. **Modification**. This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof, supersedes all existing agreements among them concerning the subject matter hereof, and may be modified only by a written instrument duly executed by each of the parties hereto.
- h. **Time of Essence**. Time is of the essence in the performance of each of the terms and conditions of this Agreement.
- i. **No Assignment**. Neither party shall assign its rights under this Agreement to any person or entity without the prior express written consent of the other party. This section shall not be deemed to prohibit an assignment by operation of law.
- j. **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and date first above written.

COMMONWEALTH OF KENTUCKY,
TRANSPORTATION CABINET

By: _____

Name: _____

Title: _____

KENTON COUNTY FISCAL COURT

By: _____
Kris Knochelmann, Judge/Executive

EXHIBIT A

Pre-Development Budget