

**MEMORANDUM OF UNDERSTANDING BETWEEN THE NORTHERN KENTUCKY
PORT AUTHORITY AND KENTON COUNTY, KENTUCKY
CONCERNING COOPERATIVE FINANCING OF A
GOVERNMENT PROJECT**

WHEREAS, the Northern Kentucky Port Authority (the “Authority”) and the County of Kenton, Kentucky (the “County”) have the authority, pursuant to KRS 65.530 *et seq.* and KRS 67.083 *et seq.*, respectively, to acquire and develop property and to cooperatively finance governmental projects and services consistent with enumerated powers conferred by statute on fiscal courts and riverport authorities; and

WHEREAS, the Authority and the County have determined that cooperatively financing the acquisition and improvements of certain property located in Kenton County, Kentucky having an address of 721 – 731 Madison Avenue, Covington, Kentucky 41011 (PIDN: 054-23-01-009.00) and being more particularly described in Exhibit ‘A’, attached hereto and incorporated herein by reference, together with all improvements thereupon (collectively be referred to as, the “Property”), that will serve as an economic development accelerator for Northern Kentucky, furthers a necessary public purpose; and

WHEREAS, the Authority and the County have also determined that it is in the best interest of the Authority and the County that they enter into this Memorandum of Understanding (“MOU”) of the cooperative financing terms, each acknowledging that payments made and received pursuant to this MOU for this Project are pursuant to a reimbursement grant from the Kentucky Cabinet For Economic Development; and

WHEREAS, the County and Authority have further determined and do hereby confirm that in order to provide for the cooperative financing of the Project as aforesaid, it is necessary that the Authority and the County memorialize their understanding that amounts payable by the County will be limited to the amount sufficient to enable the Authority to make payments toward completion of the Project or toward reimbursement to the County when due; and

WHEREAS, the Authority requests and the County agrees to provide funding to the Authority for eligible expenditures of Grant Funds, specifically pursuant to the terms and conditions specified herein; and

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations contained in this MOU and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and Authority (“the Parties”) agree as follows:

Section 1. Recitals

The foregoing recitals are true and correct and form a material part of this MOU upon which the Parties relied.

Section 2. Term

This MOU is effective upon full execution by the Parties (the Effective Date”) and will end at completion of the Project as more particularly described in Exhibit ‘B’, attached hereto, and incorporated herein by reference.

Section 3. Grant Funds

- a) Loan Proceeds can only be used to cover Project related expenses that are consistent with restrictions in the Grant from the Kentucky Cabinet For Economic Development.
- b) For the purposes this MOU, the County serves as the pass-through entity for the Grant Funds, and enters into it based on the following representations:
 1. The Authority represents that it is fully qualified and eligible to receive these Grant Funds per the funding requirements.
 2. The County received these Grant Funds from the Kentucky Cabinet For Economic Development and the County has the authority to loan the General Funds to the Authority upon the terms and conditions outlined below.
 3. The County has authority to disburse the funds under this MOU.
 4. The County agrees to provide financial assistance to the Authority in an amount not-to-exceed **\$3,000,000** for the period of the Effective Date through the completion of the Project. The Authority must use this financial assistance only for eligible Project expenses and must spend the funds in accordance with requisite procurement codes.
- c) The Authority must comply with the County's ethical standards and rules for conflicts of interest.
- d) The Authority and the County acknowledge that each has read, understands, will be bound by, and agrees to have carried out, shall carry out, or cause to be carried out the terms, conditions, and services as described in the Exhibits and enumerated below:
 1. EXHIBIT B: PROJECT DETAILS – Overview of Project.
 2. EXHIBIT C: REPORTING REQUIREMENTS – Description of the Authority's reporting requirements. Additional reporting requirements may be identified and required after the execution of this MOU.
 3. PAYMENTS:
 - In order to obtain funds, the Authority must first file with the County its request for a loan advance and any other information required to justify and support the payment request.
 - The County shall verify all documentation received prior to expending Grant Funds under this MOU and may request additional documentation, if needed. Advances and reimbursements will only be made for expenditures that the County provisionally determines are eligible and the County retains the right to deny any requests for Funds under this MOU if, in the County's sole discretion, the request is

not for and documentation does not substantiate an eligible expenditure. The County will put the Authority's request on Claims List and issue check to Port Authority after the subsequent Fiscal Court meeting. The County's provisional determination that an expenditure is eligible does not relieve the Authority of its duty to repay the County for any expenditures that are later determined by the County to be ineligible. County shall not be liable to any vendor, supplier or subcontractor for any expenses or liabilities incurred in connection with the Project and the Authority shall be solely liable for such expenses and liabilities.

- Port Authority pays Project related expenses and submits a reimbursement request to County, including copies of cancelled check(s). Reimbursement requests must include a certification, signed by an official who is authorized to legally bind the Authority which reads as follows:

By signing this request, I certify to the best of my knowledge and belief that the request is true, complete, and accurate, and the expenditures and disbursements are for the purposes and objectives set forth in the terms and conditions of the MOU. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal and civil liability for fraud, false statements, false claims or otherwise.

- County will put reimbursement request on Claims list and issue check(s) to Authority after the next Fiscal Court meeting.
- Authority repays loaned amount within ten days of receipt of funds to do so.

Section 4. Enforcement

Authority certifies that the information it provides is complete, accurate, and current demonstrating its eligibility to receive the Grant Funds. Authority is liable for recapture of Grant Funds if any representation made in the advancement or reimbursement requests, reporting or supporting documentation is at any time false or misleading in any respect, or if the Authority is found in non-compliance with laws, rules or regulations governing the use of the Funds provided pursuant to this MOU. The provisions of this Section 4 shall survive the termination of this MOU.

Section 5. Recapture of Expenses

- A. Any funds that are not expended as authorized under this MOU must be refunded to the County within ten (10) days of receipt of written notice provided by the County.
- B. Any funds that are not expended within the anticipated timeframe under this MOU are subject to recapture. If requested, a refund to the County must be made within ten (10) days of receipt of written notice for a refund provided by the County.

- C. The County's determination that an expenditure is eligible does not relieve the Authority of its duty to repay the County in full for any expenditures that are later determined by the County to be ineligible expenditures or the discovery of a duplication of benefits.
- D. If requested by the County, all refunds, return of improper payments, or repayments due to the County under this MOU are to be made payable to Kenton County Fiscal Court and mailed directly to the County.
- E. The Authority has responsibility for identifying and recovering Grant Funds that were expended in error, disallowed, or unused. The Authority will also report all suspected fraud to the County.

Section 6. Maintenance and Review of Records

The Authority shall maintain all records and accounts, contractual agreements, memoranda of understanding, subcontracts, proof of insurance, and any other records related to the Project or resulting from the MOU to assure a proper accounting and monitoring of all Grant Funds. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues that arise from it, or the end of the required period, whichever is later.

With respect to all matters covered by this MOU, records will be made available for examination, audit, inspection or copying purposes at any time during normal business hours and as often as the Parties may require. The Authority will permit same to be examined and excerpts or transcriptions made or duplicated from such records, and audits made of all contracts, invoices, materials, records of personnel and of employment and other data relating to all matters covered by this MOU.

Section 7. Monitoring

The Authority agrees to permit persons duly authorized by the County to inspect all records, papers, documents, and/or interview any clients and employees of the Authority to be assured of satisfactory performance of the terms and conditions of this MOU after giving reasonable notice. The monitoring is intended as a limited scope review and does not relieve the Authority of its obligation to manage funds in accordance with applicable rules and sound management practices.

Section 8. Audits

A. The County may perform an audit of the records of the Authority any time during the Term of this MOU and after final disbursements have been made, even if the Project is complete. Audits may be performed at a time mutually agreeable to the Parties. When conducting an audit, the County must use Generally Accepted Government Auditing Standards ("GAGAS").

B. If an audit shows that all or any portion of the Grant Funds disbursed were not spent in accordance with the conditions of and strict compliance with this MOU, the Authority

will be liable for reimbursement to the County of all Grant Funds not spent in accordance with this MOU.

C. If the COUNTY elects to have the Authority perform an audit, the Authority must have all audits completed by an independent auditor as defined by Kentucky Statute. The audits must be received by the County no later than six (6) months from the end of the Authority's fiscal year.

Section 9. Indemnification

The Authority shall indemnify, hold harmless, and defend County from and against any and all liabilities, losses, claims, damages, demands, expenses or actions, either at law or in equity, including court costs and attorneys' fees (at the trial and all appellate levels), that may hereafter at any time be made or brought by anyone on account of personal injury, property damage, loss of monies, or other loss, allegedly caused or incurred, in whole or in part, as a result of any negligent, wrongful, or intentional act or omission, or based on any act of fraud or defalcation or breach of any provision or covenant of this MOU or applicable law by the Authority, its agents, subcontractors, assigns, heirs, and employees resulting from or arising under this MOU.

The provisions of this Section shall survive the termination of this MOU.

Section 10. Termination

This MOU may be terminated by the Parties at any time, with Cause or without Cause, upon not less than thirty (30) days prior written notice delivered to other Party as provided for in this Agreement or, at the option of County, immediately in the event that Authority fails to fulfill any of the terms, understandings, or covenants of this MOU.

Section 11. Remedies

The County may exercise any other rights or remedies, which may be available under law. If the County waives any right or remedy in this MOU or fails to insist on strict performance by the Authority, it will not affect, extend or waive any other right or remedy of the County, or affect the later exercise of the same right or remedy by the County.

Section 12. Equal Opportunity; Non-Discrimination

The Authority shall comply with the requirements of all applicable federal, state and local laws, rules, regulations, ordinances and executive orders prohibiting and/or relating to discrimination, as amended and supplemented. All of the aforementioned laws, rules, regulations, and executive orders are incorporated herein by reference.

Section 13. Governing Laws; Venue

This Agreement and terms and conditions shall be governed by the laws, rules, and regulations of the State of Kentucky, and venue shall be in Kenton County, Kentucky.

Section 14. Public Records Law

This Agreement, including attachments, is subject to disclosure under Kentucky's public records law subject to limited applicable exemptions. The Authority acknowledges, understands, and agrees that, except as noted below, all information in its application and attachments will be disclosed, without any notice, if a public records request is made for such information, and the County will not be liable to the Authority for such disclosure.

Section 15. Independent Contractor

In no event shall any provision of this MOU make County liable to any person or entity that contracts with or provides goods or services to the Authority in connection with this MOU. There is no contractual relationship, either express or implied, between County or any political subdivision of the State of Kentucky and any person or entity supplying any work, labor, services, goods or materials to the Authority as a result of this MOU.

Section 16. Compliance with Applicable Laws

The Authority shall comply with the requirements of all applicable federal, state and local laws and the rules and regulations promulgated thereunder.

Section 17. Notice

Any notice delivered with respect to this MOU must be in writing and will be deemed to be delivered (whether or not actually received) when (1) hand delivered to the persons designated below, or (2) when deposited in the United States Mail, postage prepaid, certified mail, return-receipt requested, addressed to the person at the address for the party as set forth below, or such other or to such other person as the Party may have specified by written notice to the other Party delivered according to this Section:

As to the County:
Joe Shriver
1840 Simon Kenton Way, Suite 5200
Covington, Kentucky 41011

As to the Authority:

Section 18. Risk Management

A. Hold Harmless and Indemnity Clause:

○ To the fullest extent permitted by applicable law, the Authority shall protect, defend, indemnify, save and hold the County, its agents, officials, and employees harmless from

and against any and all claims, demands, fines, loss or destruction of property, liabilities, damages, for claims based on the negligence, misconduct, or omissions of the Authority resulting from the its work as further described in this MOU and its attachments, which may arise in favor of any person or persons resulting from the Authority's performance or non-performance of its obligations under this MOU except any damages arising out of personal injury or property claims from third parties caused solely by the negligence, omission(s) or willful misconduct of the County, its officials, commissioners, employees or agents. Further, the Authority hereby agrees to indemnify the County for all reasonable expenses and attorney's fees incurred by or imposed upon the County in connection therewith for any loss, damage, injury, liability, or other casualty. The Authority additionally agrees that the County may employ an attorney of the County's own selection to appear and defend any such action, on behalf of the County, at the expense of the Authority. The Authority further agrees to pay all reasonable expenses and attorney's fees incurred by the County in establishing the right to indemnity.

The Authority further agrees that it is responsible for any and all claims arising from the hiring of individuals relating to activities provided under the MOU. All individuals hired are employees of the Authority and not of the County.

B. Insurance Requirements

The Authority agrees to secure and maintain the insurance coverage outlined below during the term of this MOU. The Authority agrees that this insurance requirement shall not relieve or limit its liability and that the County does not in any way represent that the insurance required is sufficient or adequate to protect the Authority's interests or liabilities but are merely minimums. It is the responsibility of the Authority to ensure that all subcontractors comply with all insurance requirements.

1. Workers' Compensation statutory benefits encompassing all operations contemplated by this MOU to apply to all owners, officers, and employees.
2. Commercial General Liability – Coverage shall apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability, and broad form property damage exposures with minimum limits of:
\$500,000 bodily injury per person (B.I.)
\$1,000,000 bodily injury per occurrence (B.I.)
\$500,000 property damage (PD) or
\$1,000,000 combined single limit (C.S.L.) of B.I. and P.D.

The General Liability Policy Certificate shall name "Kenton County, a political subdivision of the State of Kentucky, its agents, employees, and public officials" as "Additional Insured". The Authority agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess.

3. Directors & Officers Liability – Entity coverage to cover claims against the organization directly for wrongful acts with limits not less than \$100,000.
4. Fidelity Bonding – Covering all employees who handle the Authority's funds. The bond

amount must be equivalent to the highest daily cash balance or a minimum amount of \$50,000.

Section 19. Disclaimer of Third Party Beneficiaries

This MOU is made for the sole benefit of the Parties and their respective successors and assigns and is not intended to, and will not, benefit any third party. No third party will have any rights under this MOU or any right to enforce any provisions of it.

Section 20. Dispute Resolution

In the event of a dispute related to any performance or payment obligation arising under this MOU, the Parties may by agreement attempt dispute resolution procedures prior to filing a lawsuit or otherwise pursuing legal remedies.

Section 21. Assignment

This MOU may not be assigned nor subcontracted in whole or in part without the prior written consent of the County.

Section 22. Headings

Article headings have been included in the Agreement solely for the purpose of convenience and shall not affect the interpretation of any of the terms of this Agreement.

Section 23. Survivability

Any term, condition, covenant or obligation which requires performance by either Party subsequent to termination of this MOU shall remain enforceable against such Party subsequent to such termination.

Section 24. Modifications

This writing embodies the entire MOU and understanding between the Parties hereto and there are no other agreements and/or understandings, oral or written, with respect to the subject matter hereof, that are not merged herein and superseded hereby. This MOU may only be amended or extended by a written instrument executed by the County and the Authority expressly for that purpose.

Section 25. Entire Agreement

It is understood and agreed that the entire agreement of the Parties is contained in this MOU, which supersedes all oral agreements, negotiations, and previous agreements between the Parties relating to the subject matter of this MOU.

IN WITNESS WHEREOF, the AUTHORITY and the COUNTY respectively, have caused this MOU to be executed by their duly authorized representatives.

[signatures]

EXHIBIT A

Legal Description

PIDN: 054-23-01-009.00
ADDRESS: 721-731 Madison Avenue, Covington, KY 41011
GROUP #: 631

Lying, situated and being in Covington, Kenton County, Kentucky, commencing at the northwest corner of Madison Avenue and Eighth Street; thence running northwardly with said Madison Avenue fifty (50) feet; and extending back westwardly between parallel lines one hundred and thirteen (113) feet, more or less, to a ten (10) foot alley, being Lot Number Sixty-four (64), as laid down on Kennedy's map of Foote's addition to Covington.

Also, all that lot of land in the City of Covington, County of Kenton, State of Kentucky, commencing on the west side of Madison Avenue forty-nine (49) feet six (6) inches, north of Eighth Street and running thence northwardly with Madison Avenue forty-nine (49) feet, six (6) inches and extending back westwardly at right angles the same width one hundred and thirteen (113) feet, more or less, to an alley, being Lot Number Sixty-six (66) as laid down on Kennedy's Map of Foote's Addition to the City of Covington, Kentucky.

Also, situated in the City of Covington, County of Kenton and State of Kentucky, and being Lot Number Sixty-eight (68), as laid down on Kennedy's map of Foote's addition to the City of Covington, Kentucky, situated on the west side of Madison Avenue, and fronting on said Madison Avenue forty-nine (49) feet, six (6) inches, and running back at right angles the same width, one hundred thirteen (113) feet, more or less, to an alley.

Also, all that lot of land situated in the City of Covington, County of Kenton and State of Kentucky, and beginning at a point in the west line of Madison Avenue, one hundred forty-eight and 50/100 (148.50) feet, north of the north line of Eighth Street; thence extending westwardly one hundred thirteen and 65/100 (113.65) feet along the north line of a tract of land heretofore conveyed by James R. Thompson to the party of the first part to an alley; thence northwardly along the west line of said alley seventy-five hundredths (75/100) of a foot; thence extending eastwardly parallel to the line first mentioned herein twelve and 40/100 (12.40) feet; thence extending northwardly parallel to Madison Avenue three-tenths (3/10) of a foot; thence extending eastwardly parallel to the line first mentioned herein one hundred one and 25/100 (101.25) feet to the west line of Madison Avenue; thence extending southwardly along the west line of Madison Avenue one and 5/100 (1.05) feet to the place of beginning.

Being the same property conveyed to Eighth and Madison, LLC, a Kentucky limited liability company, by Fiduciary Deed dated January 8, 2015 and January 16, 2015 and recorded January 22, 2015 in Official Record Book 5574, Page 66, office of the clerk of Kenton County, Kentucky

EXHIBIT B: PROJECT DETAILS

Overview

The Sims Building located at 727 Madison Avenue in Covington, KY is a historically and architecturally significant building and a key property in Covington's historic downtown business district. The development plan includes purchase of the building and fully renovating the historic exterior of the building and converting this former furniture store into office space that can offer flexible lease terms to accommodate rapid growth companies.

County Project Costs up to \$3,000,000 include:

Land & Building Acquisition - \$2,300,000

Construction costs - \$5,070,000

EXHIBIT C: REPORTING REQUIREMENTS

1. **Financial and Other Reports.** The Authority shall submit to County such reports as may be requested, including such reports which enable County to submit its own reports to government agencies, in accordance with the following schedule, which may be amended from time to time:

<u>REPORT</u>	<u>DEADLINE</u>
Funding Request	As needed, by the Wednesday before regularly scheduled Fiscal Court meeting.
Reimbursement Report	No later than the 10 th of each month
Quarterly Summary Report	No later than the 15 th of the month following the quarter end.

This provision shall survive the expiration or termination of this MOU with respect to any reports which the Authority is required to submit to County following the expiration or termination of this MOU.

Funding Request

- Provide to the County the information needed to determine that requested expenses meet grant guidelines.
 - Date of request
 - Amount requested
 - Description of use of funds
 - Bids, purchase orders, or vendor estimates for costs.
 - Date funds needed

Monthly Reimbursement Report

- Provide to the County the information needed to reimburse the Authority for costs incurred during the period. Information includes, but not limited to:
 - Period date range
 - Period expenses
 - Ledger including vendor paid and descriptions of costs
 - Total Project expenses to date
 - Previous reimbursements
 - Total request for reimbursement
 - Copies of cancelled Port Authority checks

Quarterly Summary Report

- Period date range
- Period expenses
- Total Project expenses to date

- Previous reimbursements