

DEVELOPMENT AND PARKING REPLACEMENT REIMBURSEMENT AGREEMENT

THIS DEVELOPMENT AND PARKING REPLACEMENT REIMBURSEMENT AGREEMENT (“Development Agreement”) dated the ____ 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, the County and KYTC entered into a Pre-Development Parking Replacement Reimbursement Agreement dated March 28, 2023 (the “Pre-Development Agreement”) whereby KYTC 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”); and

WHEREAS, it is the intent of the County and KYTC to enter into a binding development and reimbursement agreement to govern the rights and obligations of KYTC and the County with respect to the completion of the Parking Replacement Project.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, and in consideration of the mutual covenants and undertakings contained in this Development Agreement, the parties hereby agree as follows:

1. Project Work. The County hereby agrees to undertake all work and activities in connection with the Parking Replacement Project, including without limitation, the planning, design, development, implementation, and construction of the Parking Replacement Project, as more particularly described on Exhibit A (the “Project Work”).

2. Reimbursement of Project Costs by KYTC. Upon commencement of the Project Work, KYTC hereby agrees to reimburse the County for actual costs incurred for the Project Work (the “Project Costs”) up to Fifteen Million Dollars (\$15,000,00.00) (the “Project Funds”) in accordance with this Development Agreement and the Development Budget (as defined below). Within five (5) days of remitting payment to a party in connection with the Project Work, the

County shall submit the following: (i) proof of payment by the County; (ii) certification of the work completed in connection with subject payment; (iii) lien waivers; (iv) a release and waiver of claims; (v) and any other documentation reasonably required by KYTC (collectively, the “Reimbursement Request”). Reimbursement Requests shall be submitted no more than monthly and, except for the final Reimbursement Request submitted upon completion of the work pursuant to Section 5. If the Reimbursement Request is approved by KYTC, KYTC shall reimburse the County within thirty (30) days of receipt of the Reimbursement Request. If KYTC does not approve reimbursement, KYTC shall promptly provide the County a detailed written explanation of the reasons for non-approval and a description of necessary additional requirements to approve the submitted Reimbursement Request. KYTC shall have the right to withhold reimbursement until such time as it is satisfied, in its sole discretion, that the requirements set forth in this Section have been satisfied.

3. Development Budget. The County shall prepare and submit to KYTC for approval, a preliminary development budget attached hereto as Exhibit A (“Preliminary Development Budget”). Prior to the commencement of construction, the County shall submit a final development budget (“Development Budget”) for final approval by KYTC. The Development Budget shall include all Project Costs. The County shall make no changes to the Development Budget without the prior approval of KYTC, which approval shall not be unreasonably withheld, conditioned, or delayed.

4. Term. The term of this Development Agreement shall commence on the Effective Date and, unless earlier terminated as provided herein, shall terminate upon completion of the Project Work.

5. Completion of Project Work. The County shall be responsible for providing all necessary documentation that all Project Work has been completed. When both the County and KYTC accept that all Project Work has been completed, KYTC shall submit a final Reimbursement Request.

6. Reimbursement of Pre-Development Costs. KYTC’s obligation, if any, to reimburse the County for actual Pre-Development Costs pursuant to the Pre-Development Agreement existing as of the Effective Date of this Development Agreement are incorporated herein and shall survive any termination of this Development Agreement.

7. Project Schedule. The County shall submit to KYTC a written schedule estimating in reasonable detail the proposed development and construction timetable and estimated timing of expenditures for approval by KYTC (“Project Schedule”). The County shall not make changes to the Project Schedule without the prior approval of KYTC, which approval shall not be unreasonably withheld, conditioned, or delayed.

8. KYTC Access. The County agrees that KYTC shall have access to the following locations by the stated dates and said stated shall be incorporated into the Project Schedule: KYTC

shall have access to parking under Interstate I-75 between Martin Luther King Jr. Boulevard and Pike Street by March 2025.

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

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

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

Unless otherwise specifically provided in this Development 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. KYTC Approvals. In addition to other approval rights of KYTC set forth in this Development Agreement, KYTC may advise and make recommendations to the County regarding the selection of all design professionals and consultants for the Parking Replacement Project, including engineers and architects (the “Design Consultants”). Notwithstanding the foregoing, the County shall be solely responsible for the selection and oversight of the design of the Parking Replacement Project. Notwithstanding anything to the contrary, KYTC hereby reserves the right to approve all aspects of the Project Work. Any approval from KYTC required under this Development Agreement shall not be unreasonably withheld, conditioned, or delayed.

11. 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 Project 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 Development Agreement or is unable or unwilling to meet its obligations hereunder.

12. 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

Development Agreement exercise any one or more of the following rights and remedies: (a) terminate this Development Agreement, after which KYTC shall be under no obligation to advance any undisbursed monies from the 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.

13. Return of Disbursed Proceeds to KYTC Should KYTC determine that the County has failed to use any Project Funds in accordance with the terms and conditions of this Development Agreement, KYTC may make written demand upon the County directing how any disbursed Project Funds shall be returned to KYTC and the County shall return or cause such disbursed Project Funds to be returned to KYTC. For the avoidance of doubt, the County's obligations under this Section shall survive the expiration of this Development Agreement and shall remain in effect until project completion as determined pursuant to Section 5.

14. Termination. Either party may cancel this Development Agreement at any time by giving thirty (30) days written notice.

15. Indemnification. To the extent permitted by law, the County shall indemnify and hold KYTC harmless from and against any liabilities, claims, damages, judgments, losses, demands or legal proceedings (including the costs, expenses and reasonable attorneys' fees and expenses incurred in connection with the defense of any such matter) that may be made or brought against KYTC arising out of the Parking Replacement Project. The indemnification set forth in herein and all references to KYTC in this Section are intended to and shall include all officials, directors, officers, employees, agents, and representatives of KYTC. The provisions of this Section shall survive the completion of County's obligations hereunder or any termination of this Development Agreement as to events occurring and accruing prior to the date of such completion or termination, whichever is applicable.

16. Funding Out Provision. KYTC may terminate this Development Agreement if funds are not appropriated to the KYTC or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. KYTC shall provide the County thirty (30) calendar days' written notice of termination of this Development Agreement due to lack of available funding.

17. 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 Development Agreement.

- b. **Incorporation by Reference.** All exhibits, schedules, annexes, or other attachments to this Development Agreement are hereby incorporated into and made a part of this Development Agreement.
- c. **Multiple Counterparts.** This Development 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 Development 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 Development Agreement.
- e. **Partial Invalidity.** If any term or provision of this Development 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 Development Agreement shall not be affected thereby, and each of the remaining provisions of this Development Agreement shall be valid and enforceable to the fullest extent permitted by applicable law.
- f. **Rights of Third Persons.** In no event shall this Development 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 Project 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 Project Work or specially fabricating goods to be incorporated therein. No persons are intended to be third-party beneficiaries of the Development Agreement or to have any claim or claims in or to any undisbursed Project Funds by reason of this Development Agreement.
- g. **Modification.** This Development Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof, and unless expressly agreed to, 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 Development Agreement.

- i. **No Assignment.** Neither party shall assign its rights under this Development 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 & Open Records.** This Development Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky and the venue for any disputes shall be Franklin Circuit Court, Franklin County, Kentucky. The parties acknowledge that this Development Agreement is subject to the Kentucky Open Records Act.

[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: _____
Jim Gray, Secretary of the Kentucky
Transportation Cabinet

Approved as to form and legality:

By: _____
Office of Legal Services

KENTON COUNTY FISCAL COURT

By: _____
Kris Knochelmann, Judge/Executive

EXHIBIT A

Preliminary Development Budget & Project Work

Cost Analysis

Task	Total	
Component 1 - West Parking Lot	\$360,952	
Storm Drainage Upgrades	\$64,814	
Paving	\$121,138	
Monument Sign and Lighting Improvements	\$175,000	
Component 2 - North Connector	\$232,526	
Pavement and Landscaping	\$232,526	
Component 3 - Parking Structure	\$13,721,883	
Natural Gas	\$46,954	
Fire Protection	\$131,977	
Domestic Water	\$100,740	
Storm Drain Relocation	\$72,626	
Residential Building Demolition #1	\$123,542	
Residential Building Demolition #2	\$76,117	
Residential Building Demolition #3	\$167,666	
Building Excavation	\$2,994,535	
Concrete Structure	\$6,739,719	
Dock Extension Area	\$110,543	
Fire Protection	\$887,545	
Plumbing	\$268,716	
Mechanical	\$275,369	
Equipment & Furnishings	\$620,000	
Electrical	\$1,105,835	
Construction Subtotal	\$14,315,362	
Design Cost	6%	\$858,922
Construction Engineering and Inspection	4%	\$572,614
Property Acquisition		\$500,000
Subtotal		\$16,246,898
Contingency	20%	\$3,249,380
Total		\$19,496,278