

MEMORANDUM OF AGREEMENT (MOA)

Among

**The COMMONWEALTH OF KENTUCKY,
FINANCE AND ADMINISTRATION CABINET**

And

The CITY OF FRANKFORT, KENTUCKY

and the

COUNTY OF FRANKLIN COUNTY, KENTUCKY

REGARDING,

**THE CAPITAL PLAZA AREA REDEVELOPMENT –
DOWNTOWN CORE PHASE**

WHERE THE PARTIES TO THIS AGREEMENT ARE PROPOSING TO EXCHANGE RESOURCES AND/ OR RESPONSIBILITIES TO CARRY OUT A GOVERNMENT FUNCTION,

For the purpose of the redevelopment of approximately 6.408 acres of property, bounded by St. Clair Street, Mero Street, Clinton Street, and the Capital Plaza Hotel lease boundary, formerly known as a portion of the Capital Plaza Complex, Frankfort, KY.

WHEREAS, the Finance and Administration Cabinet (the "Cabinet") has an important project underway requiring the razing of inefficient, outdated, and structurally unsound buildings including the Capital Plaza Tower, the Frankfort Civic Center, the Fountain Place Shops, and other plaza amenities; and

WHEREAS, the Cabinet's current project involves the construction of a new, much-needed state office building and parking structure to accommodate approximately 1,500 state personnel in downtown Frankfort—an economically beneficial outcome; and

WHEREAS, the Cabinet's current project will result in vacating approximately 6.408 acres of land (referred to in this agreement as "Parcel B" and identified on the attached Exhibit A) currently owned by the Commonwealth of Kentucky, for which the Commonwealth of Kentucky has no identified need to retain; and

WHEREAS, Parcel B is within the central business district of the City of Frankfort, and its future development offers the City of Frankfort and the County of Franklin (together, "Local Governments") an unprecedented opportunity to engage the community in designing a new future for Frankfort and Franklin County, should such Parcel B be made available for a future development that would enhance the character and economy of the community; and

WHEREAS, the Cabinet is committed to transferring Parcel B into a privately owned, taxable property, which will be advantageous to the State, Local Governments, Frankfort Independent Schools, and the citizens of Franklin County in accordance with the applicable statutes and regulations, provided the local entities have a viable and achievable development plan to utilize this parcel to accomplish the goals and objectives outlined in this agreement; and

WHEREAS, the Commonwealth, by statute, cannot convey state-owned land to a private concern without the benefit of a public solicitation process; and

WHEREAS, in an August 17, 2017 letter, addressed to the "Citizens of Frankfort and Franklin County," the parties to this agreement stated that, as partners, the state and local officials "believe that an open and transparent engagement process for this critical project can serve as a model approach to state government partnerships for other communities across Kentucky." (see Exhibit B); and

WHEREAS, the Cabinet has ongoing written legal commitments to the owners of the Capital Plaza Hotel located on land contiguous to Parcel B, which is leased from the Commonwealth to the owners of the Capital Plaza Hotel until the year 2081 and is affected by the potential development discussed herein; and

WHEREAS, the Local Governments have expressed commitment to developing a community engagement process that not only involves Parcel B, but one that also includes remaining portions of the Capital Plaza campus and historic downtown and vibrant waterfront of the community; and

WHEREAS, the success of the project will require a vision and integration plan involving the entire Parcel B, including integration into the related special areas of the community; and

WHEREAS, it is key to any successful community plan to have a shared vision and understanding of the role that each partner plays in the planning and development process; and

WHEREAS, the Cabinet is committed to working with the community in such a way that allows the people of Franklin County to control their destiny related to the development of this area while providing its assistance whenever and however appropriate in navigating through the nuances of any conceived delivery method of development based on the community's vision and plan; and

WHEREAS, the Local Governments jointly created a Community Engagement Advisory Committee for Redevelopment of the Capital Plaza ("Community Engagement Advisory Committee") charged with evaluating and recommending a consultant to assist and facilitate public engagement and to create a systematic plan for redevelopment; and

WHEREAS, the governing bodies of the Local Governments approved the recommendation of the Community Engagement Advisory Committee to engage the consultant, and the governing bodies entered into an inter-local agreement for joint financing of the consultant's services; and

WHEREAS, the Cabinet and Local Governments now wish to memorialize their commitments, responsibilities, and shared goals for the finalization of the development plan, choice of solicitation process, and eventual award of a developer(s) ("Development Partner") for Parcel B.

NOW, THEREFORE, the following stipulations and milestones have been established and agreed upon by the undersigned parties to ensure that this cooperative agreement between the Local Governments and the Commonwealth is maintained for the intended benefit of all parties and citizens

of this community, until the successful conclusion of a project meeting the stated goals and objectives of this joint endeavor.

OUTCOMES AND GOALS OF THIS AGREEMENT

To develop a plan and solicitation process for Parcel B, in a transparent, efficient, and timely manner, that will implement the community's vision for its future economic development, growth, social, and cultural benefit and public use, such that the Cabinet can confidently transfer Parcel B for the benefit of the community of Frankfort and Franklin County.

PROJECT TEAMING

State Advisory Team: The Secretary of the Cabinet and/or his designees and successors will remain engaged in the planning process until the completion of all related tasks outlined in the MOA. This is based upon: 1) the Commonwealth's knowledge and background information of the area being developed; 2) its procurement and construction expertise with similar projects; and 3) its guidance to ensure the intent and vision of this agreement is achieved.

Local Government Community Engagement Advisory Committee: This Committee, consistent with the duties assigned when it was created by Joint Resolution (City Resolution #29, attached as Exhibit C), will be engaged in the planning process outlined herein throughout the completion of the community engagement process, including a redevelopment plan for Parcel B. The Local Governments' systematic redevelopment plan will include a plan for Parcel B that reflects the vision of the community, captured through the engagement process and fully corresponds with the shared outcomes and goals for this agreement.

The goal of the Community Engagement Advisory Committee is:

- o design the community engagement process;
- o implement the community engagement process;
- o develop a plan for Parcel B that builds upon the best ideas of plans from the recent past and providing the best path forward for the community's future in the specific area of downtown which includes Parcel B; and
- o create and implement a conceived method of development for Parcel B, which will comply with KRS 65.025, KRS 65.028, 200 KAR 5:355, KRS 45A, KRS 56, and/or other applicable statutes.

Local Government Development Advisory Committee: Upon completion of the existing duties of the Community Engagement Advisory Committee, the Local Governments will dissolve and reform the committee as the Development Advisory Committee for Solicitation Process Recommendation ("Development Advisory Committee"). The Development Advisory Committee will remain engaged until completing the redevelopment plan for Parcel B and taking all steps necessary to recommend a solicitation process to select a Development Partner(s) best suited to achieve the agreed goals, and it will provide necessary leadership and coordination to meet the various milestones established to ensure timely completion of the project.

The Development Advisory Committee will be responsible for:

- Providing bi-monthly reports to the Cabinet, beginning in the month this Agreement is executed, regarding the the work of the Community Engagement Advisory Committee and the Development Advisory Committee, including the community engagement process and Systematic Redevelopment Plan. The Local Governments' plan will include a plan for Parcel B that reflects the community's vision, fully corresponding to the shared outcomes and goals of this Agreement and the stipulations and milestones described herein.
- Considering all available methods of redevelopment for the Cabinet's legal conveyance of the property back to the property tax rolls under provisions of the Kentucky Revised Statutes (including, but not necessarily limited to public-private-partnership methods of development), as deemed appropriate to accomplish redevelopment of Parcel B, including utilizing methods complying with KRS 65.025, KRS 65.028, 200 KAR 5:355, KRS 45A, KRS 56, and/or other applicable statutes.
 - Prior to finalizing a recommended solicitation process, the Development Advisory Committee will submit conceived method(s) of development to the Cabinet for review and comment.
 - The Cabinet is committed to accept a conceived method of development or combination of conceived methods that fully accomplish all stipulations and milestones, outcomes, and goals of this Agreement.
- The Development Advisory Committee shall carry out the other duties and assignments required by this Agreement under the "Project Coordination" section of this Agreement.

City Planning Consultant: The Local Governments have procured the professional services of a city planning consultant to assist in fulfilling this Agreement.

Local Governments will bear the cost of these professional services.

PROJECT COORDINATION

The following timeline and activities will guide the project coordination until all commitments in this Agreement have been fulfilled:

PRE-PLANNING/ PUBLIC INPUT FORUMS:

- A. Procure Services of City Planning Consultant: Prior to the execution of this Agreement, the Local Governments have procured the professional services of a city planning consultant with the expertise and experience required to accomplish the work required to fulfill the requirements of this Agreement.
- B. Communication Plan: Prior to execution of this Agreement, the Local Governments, through the Community Engagement Advisory Committee, have developed a communication plan for public input that will ensure community involvement so that citizens' concerns are voiced and citizens' ideas, visions, dreams, and expectations will influence development plans for Parcel B.
- C. Public Input Forums: From prior to the execution of this Agreement and through September 30, 2018, the Community Engagement Advisory Committee, with the assistance of its city planning consultant, has and will continue to hold a series of open, public forums and meetings where concerned and interested citizens can be kept

informed of progress related to this planned development; have their ideas heard for the planned development; and be kept apprised of the timeliness in implementing this Agreement's stipulations and milestones.

- a. At the conclusion of these public forums, the Community Engagement Advisory Committee, will prepare a report summarizing the proceedings of the Public Input Forums that categorizes, outlines, and prioritizes the various ideas, visions, dreams and expectations obtained from the local community.
 - i. The Local Governments will provide a copy of this report to the Secretary of the Cabinet for advice of validity of proposed plans.
 - ii. The Local Governments will provide a copy of this report the Frankfort/Franklin County Planning and Zoning Commission for advice of zoning and conformance to the community's Comprehensive Plan.
- b. During the course of the public forums, the Community Engagement Advisory Committee shall provide bi-monthly reports to the Cabinet, beginning in the month this Agreement is executed, regarding the progress of the Committee's work, including the community engagement process and creation of a Systematic Redevelopment Plan for Parcel B.

RECOMMENDATIONS:

- D. Conceived Methods for Development: the Development Advisory Committee shall consider all forms of development for Parcel B, as found appropriate for allowing the Cabinet's legal conveyance of the property back to the property tax rolls, as deemed appropriate to accomplish redevelopment of Parcel B, including utilizing methods complying with KRS 65.025, KRS 65.028, 200 KAR 5:355, KRS 45A, KRS 56, and/or any other applicable statutes.
 - a. Prior to finalization, on or before June 30, 2018, of a recommended solicitation process, the Development Advisory Committee will submit that conceived method(s) of development to the Cabinet for review and comment.
 - b. The Cabinet is committed to accept a conceived method of development or combination of conceived methods that fully accomplish this Agreement's stipulations, milestones, outcomes, and goals.
 - i. On or before July 31, 2018, the Secretary of the Cabinet will offer comment, advice, acceptance or rejection of the conceived method(s) of development proposed by the Local Governments.
 - ii. If the Secretary of the Cabinet finds reason for rejecting the conceived method(s) of development proposed by the Local Governments, the Cabinet will negotiate with the Local Governments to make adjustments in the conceived method(s) of development to allow for method(s) that fully accomplish this Agreement and comply with Kentucky Revised Statutes for the Cabinet's conveyance of land.
- E. Executive Summary/ Presentation: On or about October 31, 2018, taking into account public comments and input, the Development Advisory Committee will develop recommendations for the systematic redevelopment of Parcel B and present these recommendations to the Local Governments for consideration in formulating a proposed plan for development of Parcel B.

- a. **Review of Executive Summary/Presentation by Local Governments:** During November 2018, the city commission and fiscal court will review the report and accept or reject the preliminary Systematic Plan for Redevelopment. Upon acceptance of the provided report, the Local Governments, through their Development Advisory Committee, will accomplish the reviews indicated in subparagraphs E.b.i and E.b.ii.
- b. **Review of Executive Summary/Presentation:** Secretary of the Cabinet and the Frankfort/Franklin County Planning and Zoning Commission review the report and provide advice to the Local Governments.
 - i. ***On or before December 15, 2018, the Secretary of the Cabinet and/or his designees will review the executive summary/presentation and offer feedback based upon the Commonwealth's procurement and construction expertise regarding the area being developed to ensure the intent and vision of this agreement is achieved.***
 - ii. ***On or before January 1, 2019, the Local Governments will provide the executive summary/presentation to the joint Frankfort/Franklin County Planning and Zoning Commission for review and feedback based on the Commission's knowledge and expertise of the area being developed. The commission will focus on the impact of the proposal on the Community's Comprehensive Zoning Plan. The Planning Commission is charged with determining the proper zoning designation for Parcel B to accomplish the proposed project.***

FORMALIZING FINAL PLAN:

- F. **Executive Summary/Presentation:** On or about January 31, 2019, – taking into account all public input, Cabinet feedback, and Frankfort/Franklin County Planning and Zoning Commission feedback, the Development Advisory Committee will develop recommendations for the systematic redevelopment of Parcel B. The committee will present these recommendations to the Local Government for consideration in formulating the systematic redevelopment of the Parcel B.
- G. **Request for Information (RFI):** On or before April 1, 2019, the Development Advisory Committee, will issue and complete a Request for Information (RFI) process soliciting information from potential developers related to the proposed plan for development of Parcel B. *Note: This step should be conducted as soon as practical after the effective date of this Agreement so Local Governments will have information vital to their planning processes.*
 - a. During the RFI process confidential interviews shall be conducted with each potential developer individually to gather information. Developers' proprietary information or trade secrets will remain undisclosed.
 - b. After the Interviews, the Development Advisory Committee may make public an executive summary of the significant discoveries gained through the RFI process.

- H. Final Recommendations of the Proposed Plan: On or before April 15, 2019, the Development Advisory Committee will submit to the Secretary of the Cabinet, the City Commissioners, and the County Magistrates recommendations for the proposed of Parcel B. This includes the plan for submitting all required documentation and analysis necessary for the conceived method(s) for development complying with one or more of the following: KRS 65.025, KRS 65.028, 200 KAR 5:355, KRS 45A, KRS 56, and/or other applicable statutes.
- I. Development Advisory Committee Presentation to Local Governments: On or before May 15, 2019, the Development Advisory Committee will make recommendations to the city commissioners and the county magistrates for consideration and action as to the characteristics of the proposed development on Parcel B.
 - i. The City Commissioners review, consider, and vote to adopt the Final Recommendations of the Proposed Plan.
 - ii. The County Magistrates review, consider, and vote to adopt the Final Recommendations of the Proposed Plan.

IMPLEMENTATION OF DEVELOPMENT PLAN

- J. Submission of Preliminary Required Documents to the Kentucky Local Government Public-Private Partnership Board [If the conceived method of development or a portion thereof]: On or before June 15, 2019, the Local Governments shall submit, if required, to the Secretary of the Cabinet all documents and analysis necessary to establish a public-private-partnership project for Parcel B, under KRS 65.025, KRS 65.028, and 200 KAR 5:355.
- K. Final Plan Notification to Finance and Administration Cabinet Secretary: On or before August 1, 2019, the Local Governments will advise the Secretary of the Cabinet of their final plan for development of Parcel B, in its entirety, as a single project.

The final plan shall include provisions that support and continue the Commonwealth's written legal commitments to the Capital Plaza Hotel located on land contiguous to Parcel B. The land lease to the hotel expires in 2081 and is affected by the potential development of Parcel B. These commitments include:

- i. A non-compete agreement that prohibits land owned by the Commonwealth within one mile of the Capital Plaza Hotel from being developed for a purpose that is in direct competition with the Capital Plaza Hotel for a specified period of the long term lease (extended until December 31, 2030); and
 - ii. A provision to provide 150 covered parking spaces contiguous to the Capital Plaza Hotel for the use of its patrons for the entire long-term lease. This covered parking is to be given priority in the Systematic Development Plan and be accomplished, as soon as possible, but no later than within 12 months of the conveyance of Parcel B to the Development Partner(s).
- L. Land Conveyance Commitment Decision by Finance and Administration Cabinet Secretary: On or before September 1, 2019, the Secretary of the Cabinet will consider the final plan for development of Parcel B and will either:

1. affirm in writing the Commonwealth's preliminary commitment to transfer Parcel B in its entirety to the selected Development Partner(s) on or about the date the contract for the project is awarded to the selected Development Partner(s);
2. provide feedback regarding the final plan for consideration by the Local Governments, which can then choose whether to revise the final plan and resubmit it to the Secretary of the Cabinet for consideration; or
3. withdraw the Commonwealth's offer to transfer Parcel B, should the Local Government's plan be found inconsistent with the intent of this Agreement.

REQUEST FOR PROPOSALS:

- M. Draft Request for Proposals submitted to Secretary of the Cabinet : On or before September 30, 2019, the Local Governments will provide the Secretary of the Cabinet a draft Request for Proposals for a redevelopment project for Parcel B that is consistent with this Agreement's goals, objectives, stipulations and details.
- N. Comment on Draft Request for Proposals by Finance and Administration Cabinet Secretary: On or about October 31, 2019, the Secretary of the Cabinet and/or his designees will review the draft Request for Proposals for a redevelopment project and offer the Commonwealth's procurement and construction expertise. The Cabinet Secretary and/or his designees will provide comment and input concerning the draft Request for Proposals to the Local Governments.
- O. Issuance of Request for Proposals by Local Governments: Around or about November 30, 2019, the Local Governments, with the advice and technical assistance of the Cabinet, will issue a Request for Proposals for the development of Parcel B.
1. The Request for Proposals will follow the processes and procedures of procurement required by the appropriate provisions of KRS 65.025, KRS 65.028, 200 KAR 5:355, KRS 45A, KRS 56, and/or all other statutes applicable to the development method being utilized.
 2. The Request for Proposals will reference this MOA, including the Commonwealth's commitment to convey Parcel B that is necessary for the proposed development directly to the selected and contracted project Development Partner(s). This conveyance will place Parcel B on the local property tax rolls. Moreover, neither the Request for Proposals nor the resulting contract will in any way modify the requirement that the Development Partner(s) make property tax payments to the Local Governments.
 - i. The RFP shall inform potential bidders of the Local Governments' intent to honor the Commonwealth's written legal non-compete agreement commitment to the Capital Plaza Hotel until December 31, 2030; and
 - ii. The RFP shall inform potential bidders of the Local Governments' intent to honor the Commonwealth's written legal commitment to provide 150 covered parking spaces contiguous to the Capital Plaza Hotel lease term, as a priority to the development and no later than 12 months following conveyance of the land.

3. The Request for Proposals will be for Parcel B in its entirety, as a single project with the characteristics determined during the planning phases of this Agreement.
- P. Execution of the Redevelopment project: On or about March 1, 2020, or at such other time as Parcel B becomes available for conveyance, but at no time prior to when a Development Partner(s) for the project is selected by the Local Governments and contracted to accomplish the development project contemplated by this Agreement, the Commonwealth of Kentucky will convey Parcel B to the project developer .

OTHER COMMITMENTS AND ACKNOWLEDGEMENTS

Applicable Laws:

Except to the extent otherwise expressly stated in this Agreement, all remedies specified herein are in addition to, and not in lieu of, other remedies available to the Parties both at law and in equity. If a provision of this Agreement or the application thereof to any person or circumstance shall be declared invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and shall be enforced fully permitted by law.

The Parties agree that any suit, action, or proceeding with respect to this Agreement may only be brought in the courts of the Commonwealth of Kentucky situated in Franklin County, Kentucky.

Effective Date:

No Memorandum of Agreement is effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been submitted to the government contract review committee. However, Memoranda of Agreements \$50,000 or less are exempt from review by the committee and need only be filed with the committee within 30 days of their effective date for informational purposes only as provided under KRS 45A.700.

KRS 45A.695(7): Payments on personal service contracts and memoranda of agreements shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the secretary.

This MOA shall be in effective through June 30, 2020. This MOA may be renewed for additional periods, not to exceed twelve months, contingent upon the prior written approval of both parties.

Benefits of Agreement:

The parties hereto, the Cabinet and the Local Governments, see the benefits of this project, have a desire to pursue the project and have determined that, jointly, they can achieve what could not be achieved without this Agreement.

Amendment/ Terminations of Agreement:

This Agreement may be amended and/or terminated at any time by mutual agreement of the parties. Additionally, this Agreement may be terminated:

- By any party if another party fails to fulfill its responsibilities within the prescribed time, unless otherwise agreed upon or waived in writing by all parties.
- Without cause, by either party, upon thirty (30) days written notice to the other party; or
- Automatically upon completion of all responsibilities as stated herein, unless otherwise amended.

Costs related to this Agreement:

- Each party shall each bear its own costs associated with this Agreement, without reimbursement from the other party, whether the Agreement is carried out to its fulfillment or amended/terminated for any cause indicated above.
- The Cabinet offers the services, experience, and expertise of its staff at no cost to the Local Governments, when requested by the Local Governments, to fulfill the outcomes and goals of this Agreement. Areas where the Cabinet staff may be of value to the Local Governments include but are not limited to:
 - Initial, periodic, and final reviews of the information gathered during the Community Engagement process and the formulation of the final recommendations;
 - Determination of the conceived methods of development that will accomplish the outcomes and goals of this Agreement;
 - Conducting the Request for Information (RFI) process: 1) compiling the provisions of the RFI documents; 2) participating in the RFI process; and 3) analysis of the information derived from the RFI process;
 - Conducting the Request for Proposals (RFP) process: 1) compiling the provisions of the RFP documents; 2) participating in the RFP process; and 3) participation in the Selection Committee for the RFP; and/or
 - Review and negotiation of the final Contract or Lease with the Development Partner(s).

Contact Information:

All notices, requests, demands, waivers, and other communications given as provided in this Agreement shall be in writing, deemed effective upon mailing.

Local Governments

William I. May, Jr.
Mayor
OFFICE OF THE MAYOR
315 W. 2nd Street
Frankfort, Kentucky 40601

Huston Wells
County Judge Executive
OFFICE OF THE COUNTY JUDGE EXECUTIVE
321 West Main Street
Frankfort, Kentucky 40601

Finance and Administration Cabinet

William M. Landrum, III
Secretary
OFFICE OF THE SECRETARY
Room 383, New Capital Annex
702 Capital Avenue
Frankfort, Kentucky 40601-6785

This Memorandum of Agreement shall be effective on July 1, 2018. The parties indicate their agreement with the terms of this Memorandum of Agreement and their authority to bind the entities, which they represent to those terms by signing below.

CITY OF FRANKFORT, KENTUCKY

William May 6/19/18
William May, Mayor Date

REVIEWED:

Laura Ross 6/19/2018
Laura Ross, City Attorney Date

COUNTY OF FRANKLIN, KENTUCKY

Huston Wells June 15, 2018
Huston Wells, County Judge Executive Date

REVIEWED:

Rick Sparks June 15, 2018
Rick Sparks, County Attorney Date

FINANCE AND ADMINISTRATION CABINET

William M. Landrum, III 7 May 2018
William M. Landrum, III, Secretary Date

REVIEWED:

Brett R. Nolan 5.7.18
Brett R. Nolan, Attorney Date
General Counsel