R-544-2015 Contract #: 307-2015

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("Agreement"), made and entered into this day of Sylver 2015, by and between LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT ("LFUCG"), 200 East Main Street, Lexington, Kentucky 40507, and ANDERSON & RAMSEY PARK PLAZA, LLC, a Kentucky limited liability company ("Anderson"), 1720 Sharkey Way, Lexington, Kentucky 40511.

WITNESSETH:

WHEREAS, the people of Lexington-Fayette County would benefit from additional public parking and loading space next to Phoenix Park; and

WHEREAS, Anderson & Ramsey Park Plaza, LLC, which owns real estate adjacent to Phoenix Park, would also benefit from the addition of public parking and loading spaces next to Phoenix Park, and has offered to construct such parking spaces at its own expense;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, LFUCG and Anderson agree as follows:

- 1. PERMISSION TO CONSTRUCT. LFUCG hereby grants Anderson a non-exclusive right to construct five public parking or loading spaces on the portion of Phoenix Park depicted in Exhibit A ("the Premises"), and on only said portion, which Park is located at 100 East Main Street, Lexington, Kentucky 40507. Such construction shall not prevent LFUCG, or any entity acting with LFUCG's authorization, from taking any action on or around the Premises, including action which may alter or remove parking spaces constructed on the Premises by Anderson provided Anderson is first given sixty (60) days' notice prior to such action. All construction which Anderson performs on the Premises shall be completed within six (6) months of the date on which it is commenced. This contract shall automatically terminate if construction is not begun within six (6) months of the date of approval of plans by LFUCG as set forth in Section 2 below.
- 2. <u>APPROVAL</u>. Anderson agrees that it shall not commence construction or alter the Premises in any way without having first shared its proposed construction plan with, and received written approval from, the Lexington & Fayette County Parking Authority ("Parking Authority) and LFUCG. LFUCG shall not be deemed to have given its approval until the proposed construction plans have been approved in writing by both the Commissioner of the Department of Environmental Quality and Public Works and the Commissioner of the Department of Planning, Preservation, and Development. Anderson further agrees that any parking or loading spaces it builds on the Premises shall be built to the satisfaction of the Parking Authority and LFUCG.

- 3. <u>COST</u>. Anderson shall be solely responsible for the full cost of construction of the parking spaces on the Premises.
- 4. COMPLETION AND LIABILITY. Anderson shall indemnify, defend and hold harmless LFUCG and its employees, agents and officers for all claims, liabilities, losses, damages and expenses (including reasonable attorney's fees) arising from faulty construction or out of the negligence, recklessness, wantonness or intentional malfeasance of Anderson or its agents, employees, servants, contractors, officers or members during construction. . Anderson shall notify LFUCG upon completion by letter to the Commissioner of the Department of Planning, Preservation and Development. Within thirty (30) days of the date of said letter, LFUCG shall notify Anderson that (1) the project is completed according to plans and accepted, or (2) that the project has not been completed according to plans and giving a list of items that must be completed by Anderson according to the original plans. Provided, however, that such notice shall not remove or limit Anderson's liability under this section. If Anderson is not so notified within thirty (30) days, the project shall be deemed accepted. If the project is not accepted and Anderson and LFUCG do not agree upon matters that need to be completed, the parties shall submit the disagreement to mediation, with a mediator agreed to by both parties, before initiating any litigation.
- 5. <u>USE</u>. The parties agree that at least two (2) of the parking spaces shall be designated as loading or delivery spaces. The remaining three (3) spaces may be used as loading or delivery spaces or public parking spaces, as determined by LFUCG. Anderson shall pay for signage in accord with this paragraph. All spaces shall be subject to such time limitations as the Lexington and Fayette County Parking Authority may, from time to time, deem appropriate.
- 6. <u>VENUE AND CHOICE OF LAW</u>. Any legal action arising out of or in connection with this agreement shall be brought in Fayette County, Kentucky. This contract shall be governed by the laws of the Commonwealth of Kentucky.
- 7. <u>SEVERABILITY</u>. It any clause, sentence, paragraph or part of the Agreement shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement, but be confined to its operation of the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered, and in all other aspects this Agreement shall continue in full force and effect.
- 8. <u>INTERPRETATION</u>. The Agreement, having been negotiated in good faith between the parties with advice of their respective counsel, shall not be construed against one party or the other. This Agreement contains the entire agreement of the parties with respect to the Premises, and there are no other promises or conditions in any other agreement, either oral or written.

9. <u>NO THIRD PARTY BENEFICIARIES</u>. This Agreement is meant to be an agreement between only the parties herein, and it shall not create rights, obligations or liabilities in or to any third party.

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

The foregoing terms and conditions are accepted by the Lexington-Fayette Urban County Government this of day of September, 2015

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT.

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Jim Gray, Mayor

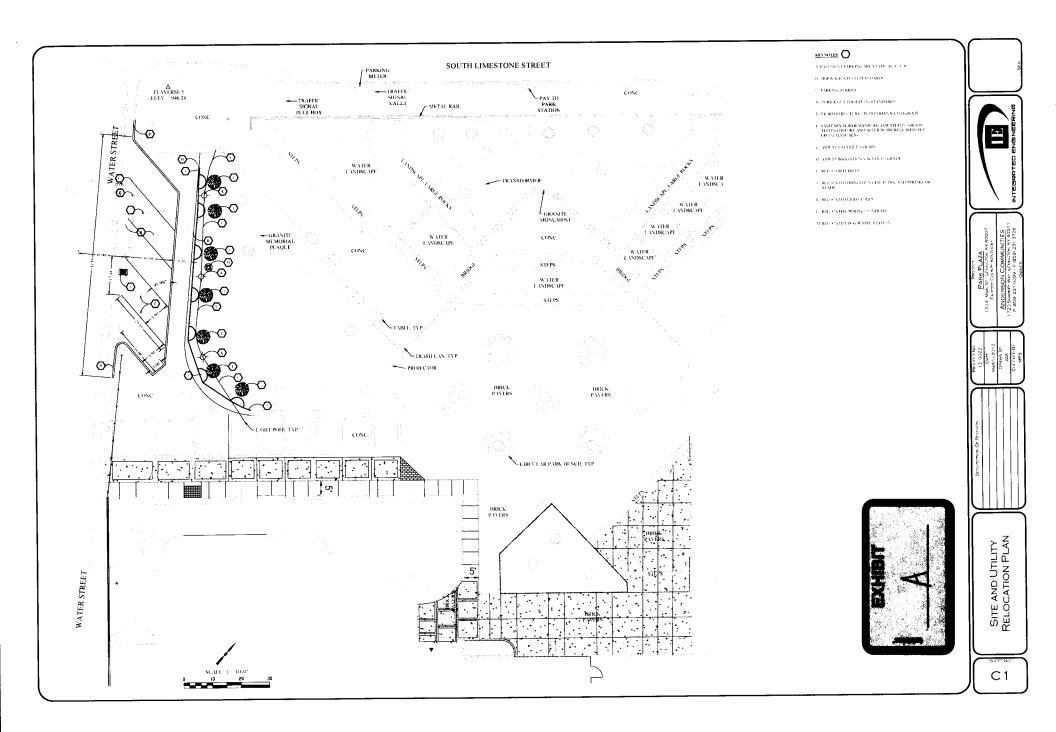
The foregoing terms and conditions are accepted by Anderson & Ramsey Park Plaza, LLC, a Kentucky limited liability company, this 6th day of 4001, 2016.

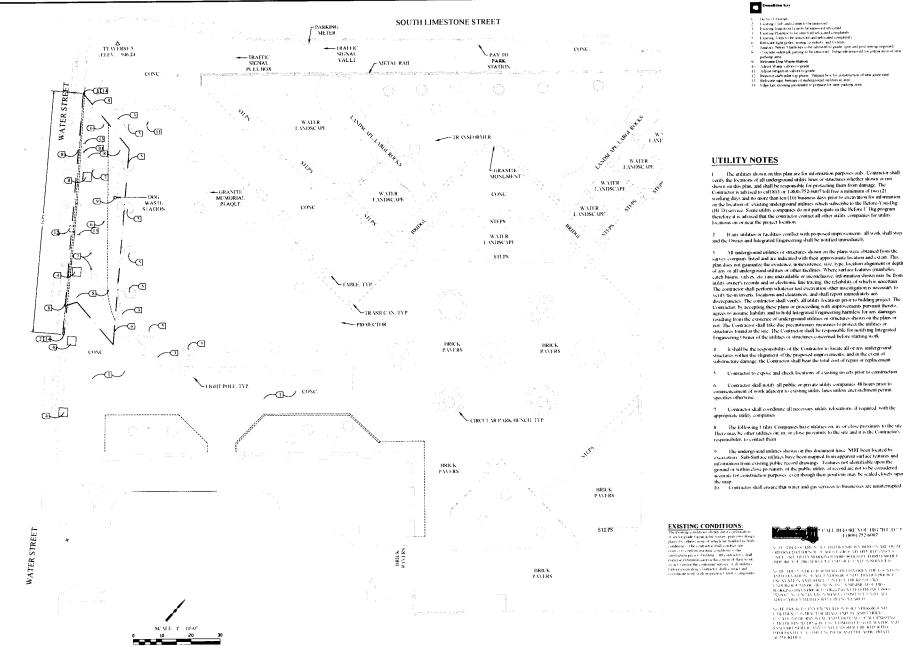
ANDERSON & RAMSEY PARK PLAZA, LLC, a Kentucky limited liability company

By:

Dennis R. Anderson, Manager

Memorandum of Agreement 1-19-16.docx





- 1. The utilities shown on this plan are for information purposes only. Contractor shall verify the locations of all underground utility times or structures whether shown or not shown on this plan, and shall be responsible for practicing them from damage. The Contractor is advised to call &11 or 1-300-752-6007 toll free a minimum of two (2). Contractor is advised to call 8d For 15000 (2.2600) but tree a minimum of two (2.4000) working days and no more than ten (10) business sky prior to excavation for information on the location of existing undergound utilities which subscribe to the Before Vou-Dig (8f 1) service formed till to companies do not participate in the Fefore Vou-Dig (8f 1) service formed that the contractor contact all other utility companies for utility.
- 2 If any milities or facilities conflict with proposed improvements, all work shall stop, and the Owner and Integrated Engineering shall be notified unmediately.
- All underground utilities or structures shown on the plans were obtained from the 3. All undergooned utilities or structures shown on in paran were connaise room in survey companies lated and are under ade with their approximate focusion and event. Thus plan does not guarantee the existence, order resolventive, size, Eyg., location alignment of depth of any or all undergooned utilities of other facilities. Where variace features (multiples, each basins, valves, etc.) are unavailable or inconclusive, information shown may be from utility owner's records and or electronic line tracing, the reliability of which is uncertain. units owner's records and or electronic inc tracing, the reliability of which is uncertain the contractor bealing profitor whicher to the event and the investigation is necessary to verify their inverte, locations and clearance, and shall report numeritare but of the entractor ball control all intits (sections port to bidding project. He contractor by accepting these plans or proceedings with improvements purposed to some control and the entractor by accepting these plans or proceedings with improvements purposed to the entractor by the entractor beautiful and to their control and the entractor beautiful that the entractor of the entractors of the entr
- 4 It shall be the responsibility of the Contractor to locate all or any underground structures within the alignment of the proposed improvements, and in the event of substructure damage, the Contractor shall bear the total cost of repair or replacement
- 5 Contractor to expose and check locations of existing inverts prior to construction
- Contractor shall notify all public or private utility companies 48 hours prior to commencement of work adjacent to existing utility lines unless encroachment permit
- Contractor shall coordinate all necessary utility relocations, if required, with the
- The following Utility Companies have utilities on, in, or close proximity to the site There may be other utilities on, in, or close proximity to the site and it is the Contractor's responsibility to contact them
- The underground utilities shown on this document have. NOT been located by The unsergound utilities shown on this document have AOF been located by accountion. Side-Strake utilities have been impaped inon apparent unstace features and information from existing public record drawings. Features not dorittable upon the ground or within loss proximate to the public utility of record are not be considered accounted for construction purposes, even though their positions may be scaled closely upon more continuous processing.



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