

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "Memorandum") is made and entered into as of the \_\_\_ day of March 2023 by and between (i) the Lexington-Fayette Urban County Government, a governmental unit pursuant to the laws of the Commonwealth of Kentucky ("LFUCG"); (ii) Town Branch Park, Inc., a Kentucky non-profit corporation ("TBP"), LFUCG and TBP sometimes referred to below as the "Construction Parties"; and (iii) Lexington Center Corporation, a Kentucky non-profit corporation ("LCC").

Whereas, LFUCG, pursuant to its governmental authority, agrees (i) to make certain improvements (the "LFUCG Improvements") to LFUCG property (the "LFUCG Property") and limited portions of LCC property as described below (the "LCC Property"), and, (ii) to pay the cost of the LFUCG Improvements on the LFUCG Property and on the LCC Property as such costs are described below; and,

Whereas, TBP has agrees (i) at its cost to design, develop, construct and manage a park for public use (the "Park") on the Park property as defined below; (ii) to pay the costs of design and construction documents for the LFUCG Improvements as such costs are described below; (iii) to make certain improvements (the "TBP Improvements") to the LFUCG Property and the LCC Property described below; and, (iii) to pay the cost of the design and construction documents and the construction cost of the TBP Improvements on the LFUCG Property and on the LCC Property as such costs are described below; and,

Whereas, LCC has joined in this Memorandum to evidence its consent to the LFUCG Improvements and the TBP Improvements to be made on the LCC Property and on the LFUCG Property at no cost to LCC; and,

Whereas, the LFUCG Improvements and the TBP Improvements will serve the citizens of LFUCG and the general public and also benefit the citizens of LFUCG and the general public who will visit Town Branch Park, a park open to the public, to be developed, constructed and managed by TBP adjacent to the LFUCG Improvements (the "Park Improvements");

Now, Therefore, the Parties, for good and valuable consideration, including the promises and agreements described herein, the sufficiency and adequacy of which the Parties hereby acknowledge, hereby, promise and agree as follows:

1. Boundaries of the LFUCG Improvements, the Park Improvements and the LCC Property:

The boundaries of the LFUCG Improvements, the Park Improvements and the LCC Property are described as shown on Exhibit A attached hereto and incorporated herein.

2. Design Development, Construction and Bidding Documents for the LFUCG Improvements:

TBP, at its cost, by contract with Sasaki Associates, Inc., which in turn by sub-contract with Strand Associates, Inc. ("Strand") shall cause such firms to prepare and submit to LFUCG for approval Design Development, Construction and Bidding Documents (collectively the "Documents") for the LFUCG Improvements in accordance with customary LFUCG standards and requirements for such Documents. LFUCG agrees to the preparation of such Documents at no cost to LFUCG by Sasaki Associates, Inc., its sub-contractor Strand Associates, Inc., and such other companies as may be engaged by either of such named corporations. If either of the Construction Parties recommends change orders to any of the Documents, any such change orders shall be minor and not increase the LFUCG Cost as defined in Section 6 below, the

Construction Parties shall negotiate in good faith and such change orders, or any revisions thereto, shall become valid and effective upon their approval by the Construction Parties, such approvals not to be unreasonably withheld, delayed or conditioned, with the understanding that it is not the expectation of the Construction Parties that such change orders or revisions will require any amendment to this MOU.

**3. Scope of LFUCG Improvements:**

The scope of the LFUCG Improvements shall be as currently described in the partially complete "Town Branch Park Public Access Improvements" construction documents dated January 6, 2023 prepared by Strand and as to be further described in the final complete set of construction and bidding documents being prepared by Strand for submittal to LFUCG (the "Final LFUCG Documents"). The Final LFUCG Documents must be approved by LFUCG, LCC and TBP prior to bidding, such approvals not to be unreasonably withheld, delayed or conditioned. The Final LFUCG Documents will generally include, but not necessarily be limited to, the following:

- a. Right-of way improvements on Manchester Street from Oliver Lewis Way to West High Street, and on West High Street as generally shown on Exhibit A; and,
  - b. The pedestrian tunnel under Manchester Street, the pedestrian bridge over the LCC Garage Access Drive, and the pedestrian paths on LFUCG and LCC properties as generally shown on Exhibit A and related improvements.
4. Construction administration and Inspections will be performed in-house by LFUCG at its cost with any necessary testing to be included as part of the LFUCG construction contract(s).

**5. Scope of TBP Improvements:**

The scope of the TBP Improvements (the "TBP Improvements") shall include improvements to the LCC Property and the LFUCG Property, to be described in the TBP construction and bidding documents (the "TBP Documents"). The TBP Improvements shall be designed, bid and constructed by and at the cost of TBP. The TBP Documents must be approved by LFUCG, LCC and TBP prior to bidding, such approvals not to be unreasonably withheld, delayed or conditioned.

**6. Payment of LFUCG Improvements Costs:**

LFUCG has budgeted and agreed to pay an amount not to exceed \$7,420,300 (the "LFUCG Cost") which represents the current estimated cost of the LFUCG Improvements (including traffic calming improvements on West High Street) and the entirety of the funding that LFUCG has obligated to the LFUCG Improvements. TBP and LCC understand and agree that LFUCG is under no legal obligation, requirement, or duty to provide any additional funding or to accept any construction bid(s), change orders, or revisions that exceed singularly or in total the LFUCG Cost. Any accepted change orders or revisions will be reflected in the construction documents.

If the LFUCG construction bid(s) exceed the LFUCG Cost, then, upon agreement of the Construction Parties, (i) TBP shall be responsible for any overages, or, (ii) the LFUCG Improvements and the TBP Improvements shall be rebid with any changes to the bid documents and the scheduling of any rebid as shall be agreed upon by LFUCG, LCC and TBP.

Any LFUCG post-bid change orders must be approved by the Construction Parties.

If the actual cost of the LFUCG Improvements as represented by a construction bid that LFUCG is prepared to accept is less than \$7,420,300, then the "Add Alternates" described in the bid documents shall be utilized to increase the cost to the LFUCG Cost.

**7. Schedule, Cooperation and Coordination:**

The Construction Parties and LCC acknowledge that construction of the LFUCG Improvements and the Park Improvements shall occur simultaneously. Further, the Construction Parties agree that the construction schedule shall, to the greatest extent possible, provide that the LFUCG Improvements and the TBP Improvements shall be completed and shall be open for public use not later than the opening of the Park for use by the public. Further, the Construction Parties acknowledge and agree to cause their respective contractors for the LFUCG Improvements and the Park Improvements to cooperate with each other, and to coordinate their respective construction work and schedules with each other, to attain a simultaneous opening.

Further the Construction Parties and LCC acknowledge and agree that it is critical that none of the work related to the LFUCG Improvements or the Park Improvements as described herein shall substantially interfere with LCC's operations at the Central Bank Center. Therefore, excepting only as otherwise provided below, the Construction Parties agree that vehicular access to the LCC Garage via the LCC Access road and vehicular access to the roof of the LCC garage shall be maintained at all times during the construction of the LFUCG Improvements and the Park Improvements via Manchester Street and/or West High Street. Such conditions, as outlined in this Section 7, shall be incorporated in the construction bid documents for the LFUCG Improvements and the Park Improvements. Notwithstanding the above

provisions of this Section 7, the Parties hereto acknowledge and agree that for the LFUCG Improvements, the TBP Improvements and the Park Improvements to be safely and properly constructed in accordance with the respective bid documents, reasonable limitations on such access for certain limited times may be required. Accordingly, the respective construction bid documents shall require written notice to LCC by LFUCG or its contractor, or by TBP or its construction contractor, as may be applicable, as much in advance of such work as reasonably possible, of the specific date(s) and time(s) requested for such access limitations. LCC agrees that it shall respond in writing promptly to such requests, and, if such times and days are not acceptable to LCC because its operations at the Central Bank Center would be adversely affected, LCC will propose different time(s) or dates that are acceptable to LCC and the respective construction contractors. Upon agreement as to the acceptable times for such access limitations, LCC shall allow the work to proceed in accordance with the construction documents with the minimally acceptable limitations as shall be approved by LCC, such approval not to be unreasonably withheld, conditioned or delayed, but with the caveat that LCC's operations at the Central Bank Center shall not be interfered with.

Further, the LCC agrees to provide LFUCG with any temporary or permanent easements, including, but not limited to, construction easements (or, alternatively, lesser interests that allow for construction related to the LFUCG Improvements), stormwater easements, and public access easements deemed reasonably necessary by the LFUCG for construction of LFUCG Improvements or to comply with relevant federal grant requirements. For clarity, the property interests required under this paragraph shall include those illustrated in Exhibit B. The Parties understand that additional easements or other encroachment agreements not illustrated in Exhibit B may be necessary in the future, and approval of these

property interests shall not be unreasonably withheld by LCC. TBP understands and agrees that it will be responsible for any and all maintenance of any property interests obtained by the LFUCG pursuant to this Memorandum.

8. Miscellaneous.

- A. Waiver. One or more waivers of a breach of any covenant, term, or condition of this Memorandum shall not be construed as a waiver of a different or subsequent breach of the same covenant, term or condition.
- B. Contractual Relationship. The sole relationship of the parties hereto shall be that of independent contractors.
- C. Choice of Law. The laws of the Commonwealth of Kentucky shall govern the validity, performance and enforcement of this Memorandum. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in the Fayette Circuit Court, Fayette County, Kentucky.
- D. Interpretation. This Memorandum shall not be construed either for or against any one or more of the Parties, but this Memorandum shall be interpreted in accordance with the general tenor of the language in an effort to reach an equitable result.
- E. Successors and Assigns. Except as otherwise expressly provided herein, the terms and agreements as contained in this Lease shall apply to, run in favor of, and shall be binding upon and inure to the benefit of the parties hereto, and also their respective assigns and successors in interest.
- F. Entire Agreement. It is understood that there are no oral agreements or representations between the parties hereto affecting this Memorandum, and this Memorandum supersedes and cancels any

and all previous negotiations, arrangements, agreements or representations and understandings, if any, between the Parties hereto with respect to the subject matter thereof. There are no other representations or warranties between the Parties and all reliance with respect to representations is solely upon the representations and agreements contained in this Memorandum.

- G. Headings. The paragraph titles herein are for convenience only and do not in any way define, limit or construe the contents of such paragraphs.
- H. Severability. It is agreed that if any provision of this Memorandum shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provisions of this Memorandum and all such other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of this Memorandum is capable of two constructions, one of which would render the provision valid, then the provision shall have the meaning which renders it valid.
- I. Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental, public safety or health ordinances, statutes or regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire, floods, earthquakes, tornadoes, extraordinary weather events or other casualty, and other similar causes beyond the reasonable control of any one or more of the Parties shall excuse the performance by such Party or Parties for a period equal to any such prevention, delay or stoppage.
- J. Waiver of Jury Trial. The Parties hereto waive trial by jury in the event of any action, claim, proceeding or counterclaim, whether judicial, civil, administrative or otherwise, brought by any Party against any other Party or Parties in connection with or arising out of this Memorandum.



K. Captions. All captions, headings, titles, numerical references and computer highlighting are for convenience only and shall have no effect on the interpretation of this Memorandum.

L. Amendment. This Memorandum may be amended only by an instrument executed and delivered by each Party hereto.

M. Counterparts. The Memorandum may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on the Parties, notwithstanding that the Parties are not signatories to the same counterpart. Each copy of the Memorandum so executed shall constitute an original. The exchange of signed copies of the Memorandum by electronic mail in Portable Document Format, or its equivalent, shall constitute effective execution and delivery of the Memorandum. Signatures on the pages sent through electronic mail shall be deemed to be their original signatures for all purposes.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the date indicated above.

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

BY: \_\_\_\_\_

NAME: Linda Gorton

Title: Mayor

**TOWN BRANCH PARK, INC.**

**By:** \_\_\_\_\_

**Name:** Allison Lankford \_\_\_\_\_

**Title:** Executive Director \_\_\_\_\_

**LEXINGTON CENTER CORPORATION**

**By:** \_\_\_\_\_

**Name (print):** \_\_\_\_\_

**Title:** \_\_\_\_\_

EXHIBIT A TO MEMORANDUM OF UNDERSTANDING

# Design Updates

## High Street Scope

### LFUCG Scope

- Manchester Street Improvements
- High Street raised crosswalk improvement
- Cox Street
- Lower and upper roundabout
- Electrical/ street lighting/ related utilities
- Pedestrian bridge and retaining walls

### Park Scope

- Fine grading, soils, planting
- Site furnishings and pedestrian lighting

