

LOCAL PARTICIPATION AGREEMENT

This **LOCAL PARTICIPATION AGREEMENT** (the "Agreement") effective as of the ____ day of _____, 2022, by and between (i) **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, a Kentucky consolidated local government ("Louisville") and (ii) **WEST END OPPORTUNITY PARTNERSHIP**, a Kentucky public corporation and a public body corporate and politic (the "Partnership," and collectively with Louisville, the "Parties").

RECITALS:

WHEREAS, pursuant to KRS 65.500 and KRS 65.501(4) ("the Act"), the Commonwealth of Kentucky (the "Commonwealth") has established the Development Area (the "Development Area");

WHEREAS, the Partnership is organized and incorporated by the Commonwealth pursuant to KRS 65.502(1) as a public corporation and a public body corporate and politic, and pursuant to the Act, the Partnership has been designated as the entity responsible for receiving and distributing incremental local tax revenues generated within the Development Area; and

WHEREAS, the actions that the Partnership is authorized to take pursuant to KRS 65.502, which actions will be funded, at least in part, by incremental revenues, as that term is defined in KRS 65.501, from Louisville and the Commonwealth, will be of benefit to the Development Area; and

WHEREAS, pursuant to KRS 65.029(2), the Partnership was not authorized to take any development actions in the Development Area until a minimum investment of \$20 million was received from private sector investors and Louisville; and

WHEREAS, pursuant to KRS 65.029(2)(b), upon verification that the minimum investment of \$20 million was received by the Partnership, the Commonwealth would appropriate an additional \$10 million for use by the Partnership; and

WHEREAS, in the capital budget (Ordinance No. 88, Series 2021) for 2021-22 previously approved by the Legislative Council of the Louisville/Jefferson County Metro Government (the "Council") on June 24, 2021, \$5 million was appropriated for the Partnership, with another \$5 million to be appropriated if \$10 million was raised by private sector investors; and

WHEREAS, the minimum investment has been made by private sector investors and Louisville, which minimum investment has been verified by the Commonwealth; and

WHEREAS, pursuant to KRS 65.504(1), once the \$30 million was received by the Partnership, Louisville pledged 80% of the incremental revenues, as that term is defined in KRS 65.501(6)(a), to the Partnership; and

WHEREAS, the Kentucky Finance and Administration Cabinet, Department of Revenue has informed the Parties that it is willing and able to identify the businesses within the Development Area during the term of this Agreement, which businesses will be provided to OMB through an information-sharing agreement so that OMB will be able to determine the related Account Numbers associated with those businesses to calculate the Old Tax Revenues or New Tax Revenues, as applicable; and that it is willing to document its assumption of those responsibilities through a written agreement with the Partnership; and

WHEREAS, pursuant to KRS 65.504(2) and Ordinance No. _____, Series 2022, Louisville agrees to enter into this Agreement in order to release to the Partnership the incremental revenues for use solely for purposes more particularly described in the Act

NOW THEREFORE, in consideration of the premises and the additional consideration provided herein, Louisville and the Partnership agree as follows:

Section 1. Definitions.

In addition to the terms defined in the above recitals, the following additional terms used in this Agreement shall have the meanings assigned in this Section 1 unless the context clearly indicates that a contrary meaning is intended.

(a) **“Account Numbers”** shall mean the separate Withholding Tax Numbers for businesses located in the Development Area as determined pursuant to Section 3 of this Agreement.

(b) **“Activation Date”** means January 1, 2023, which is the first day of the calendar year following the full receipt of the \$30 million required to be invested, as set forth in KRS 65.504(1).

(c) **“Base Year”** means January 1, 2022 through December 31, 2022, which is the calendar year preceding the calendar year described under KRS 65.504(1).

(d) **“Calendar Year”** means January 1 through and including December 31.

(e) **“CPI”** means the nonseasonally adjusted United States city average of the Consumer Price Index for all urban consumers for all items, as released by the federal Bureau of Labor Statistics.

(f) **“Existing Business”** means any business operating in Louisville and located outside of the Development Area.

(g) **“Local Taxes”** means, collectively, the Real Estate Tax and the Withholding Tax.

(h) **“New Tax Revenue”** means the amount of Local Taxes received by Louisville after the Activation Date has occurred through the term of this Agreement.

(i) **"OMB"** means the Office of Management and Budget within Louisville.

(j) **“Old Tax Revenue”** means the amount of Local Taxes assumed to have been received by Louisville in the Base Year, as calculated in Section 5.1 of this Agreement. “Old Real Estate Tax Revenue” shall be adjusted annually for each year after the Base Year to incorporate the percentage change in the CPI, as required by KRS 65.501(9). If an Existing Business relocates within the Development Area, the “Old Withholding Tax Revenue” shall be increased to the extent of withholding tax from that Existing Business for the preceding calendar year prior to the date of operation within the Development Area.

(k) **“Real Estate Tax”** means the local ad valorem real property taxes received annually by Louisville from real property located within the Development Area, excluding (i) any taxes not assessed while a property is participating in an assessment or reassessment moratorium program under KRS 99.600, and (ii) any tax revenues that have been pledged to support a tax increment financing program established under KRS 65.490 to 65.499, 65.680 to 65.699, or 65.7041 to 65.7083 or an economic development project within the Development Area.

(l) **"Released Amount"** means the amount payable in each Calendar Year from Louisville to the Partnership pursuant to Section 4.5 of this Agreement.

(m) **“Revenue Commission”** means the Louisville Metro Revenue Commission.

(n) **“Tax Increment”** means the incremental amount of Local Taxes collected in each Calendar Year following the Activation Date, during the term hereof, determined by subtracting the amount of Old Tax Revenue from the amount of New Tax Revenue.

(o) **"Termination Date"** means the date ending twenty (20) years from the Activation Date, unless terminated earlier pursuant to Section 4.1 of this Agreement.

(p) **“Withholding Tax”** means the taxes levied on employees by Louisville pursuant to Louisville Metro Codified Ordinances Chapter 110 from or attributable to the Development Area, excluding any tax revenues that have been pledged to support a tax increment financing program established under KRS 65.490 to 65.499, 65.680 to 65.699, or 65.7041 to 65.7083 or an economic development project within the Development Area

Section 2. Representations and Warranties.

2.1 Representations and Warranties of the Partnership. The Partnership represents and warrants to Louisville as follows:

(a) Existence. The Partnership is a duly organized and validly existing public corporation and a public body corporate and politic created under and in conformity with the laws of the Commonwealth of Kentucky.

(b) Authority to Act. The Partnership has the requisite power, capacity and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby, and to observe and to perform this Agreement, in accordance with its terms and conditions. The officers and officials executing and delivering this Agreement on behalf of the Partnership have been or are otherwise duly authorized to enter into this Agreement on behalf of the Partnership.

(c) Validity of Agreement; Compliance with Law. This Agreement is the legal, valid, and binding obligation of the Partnership enforceable in accordance with its terms and conditions. The execution and delivery of this Agreement, and the performance or observance by the Partnership of the terms and conditions thereof do not and will not materially violate any laws applicable to the Partnership.

(d) Litigation. No litigation or proceeding involving the Partnership is pending or, to the best of the knowledge of the Partnership, is threatened in any court or administrative agency which, if determined adversely to the Partnership could have a materially adverse impact on the ability of the Partnership to perform any of its obligations under this Agreement.

(e) Conflicting Transactions. The culmination of the transactions contemplated hereby and the performance of the obligations of the Partnership under and by virtue of this Agreement shall not result in any material breach of, or constitute a default under, any contract, agreement, lease, indenture, bond, note, loan or credit agreement to which it is a party or by which it is bound.

2.2 Representations and Warranties of Louisville. Louisville represents and warrants to the Partnership as follows:

(a) Authority to Act. Louisville has the requisite power, capacity and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby, and to observe and to perform this Agreement in accordance with its terms and conditions. Each of the officials executing and delivering this Agreement on behalf of Louisville has been and is duly authorized to enter into this Agreement on behalf of Louisville.

(b) Validity of Agreement; Compliance with Law. This Agreement is the legal, valid and binding obligation of Louisville enforceable in accordance with its terms and conditions. The execution and delivery of this Agreement,

and the performance or observance by Louisville of the terms and conditions thereof, do not and will not violate any provisions of any laws applicable to Louisville.

Section 3. Account Numbers.

The Parties will work together in good faith with the Kentucky Finance and Administration Cabinet, Department of Revenue to identify all businesses located within the Development Area and to obtain adequate information concerning those businesses so that if required by Louisville, Louisville can assign separate Account Numbers for each business situs and each employer in the Development Area. The Account Numbers shall be used exclusively to report Withholding Taxes within or attributable to the Development Area. If separate Account numbers are required by Louisville, the Parties agree to work together in good faith to obtain account numbers, to the extent feasible and necessary.

Section 4. Released Amount.

4.1 Term. Louisville agrees to pay to the Partnership, and the Partnership does accept from Louisville, the Released Amount for each calendar year beginning in the year including the Activation Date, with payment to be made beginning in the year following the Activation Date, and for successive calendar years continuing automatically thereafter until the earlier of the following: (i) that date nineteen (19) years following the initial payment to the Partnership; or (ii) Louisville's election to terminate this Agreement pursuant to Kentucky Constitution sections 157(b), 162, and 179, and KRS Chapters 67C and 91A at the end of any current calendar year following written notice to the Partnership delivered at least sixty (60) days prior to such calendar year end.

4.2 The Partnership Annual Reporting. The Partnership has agreed, at its sole expense, to submit a report to OMB on or before July 1 of each year during the term of this Agreement including but not limited to:

(a) A notarized certification by the Partnership accounting for the use and expenditure of the Released Amount by the Partnership in the preceding Calendar Year, including any Released Amount carried forward from earlier Calendar Years;

(b) An analysis and review of all development activities within the Development Area during the prior Calendar Year;

(c) A proposed spending plan for the Released Amount for the current Calendar Year; and

(d) The Partnership shall submit the Request for the Released Amount each year following Activation for the term of this Agreement to OMB on or after July 1, but no later than December 31 following the calendar year for which the Released Amount is requested. No more than one request shall be submitted in any calendar year.

4.3 The Partnership Biennial Reporting. The Partnership shall provide a copy of the biennial report required to be provided to the Interim Joint

Committee on Appropriations and Revenues (the "Committee") pursuant to KRS 65.505(6) to OMB within ten (10) days of providing the report to the Committee.

4.4 Louisville Monitoring, Tracking and Reporting. OMB shall oversee the payment of the Released Amount to the Partnership. OMB shall review all reports received from the Partnership pursuant to Sections 4.2, 4.3 or otherwise and shall annually submit to Council a report concerning the Development Area including but not limited to:

(a) An accounting of all payments made to the Partnership pursuant to this Agreement in the prior fiscal year;

(b) An analysis and review of development activity within the Development Area as reported to Louisville by the Partnership; and

(c) The progress made by the Partnership toward the stated goals of the Development Area as reported to Louisville by the Partnership.

4.5 Time of Payment. By no sooner than (i) December 31st of each Calendar Year beginning in the year after the year of the Activation Date or (ii) thirty (30) days after the submission by the Partnership of a request for the Released Amount under this Agreement, Louisville agrees to pay to the Partnership the Released Amount. In no event shall Louisville agree to pay to the Partnership the Released Amount if a submitted request is not received by December 31 of the calendar year after the applicable tax year, unless mutually agreed to by both Louisville and the Partnership. No more than one request shall be submitted in any one calendar year.

4.6 Use of Released Amount. Consistent with the Act, the Partnership covenants and agrees that the Released Amount will be deposited in a special fund and it will use the Released Amount solely for the benefit of the Development Area, pursuant to the requirements of the Act and this Agreement.

4.7 Property Tax Moratorium. The Parties acknowledge that, pursuant to KRS 65.504(6), residential property located within the Development Area is eligible for participation in a program granting property assessment or reassessment moratoriums pursuant to KRS 99.600 when the incremental revenues related to that residential property have not been pledged to support a tax increment financing project established under KRS 65.490 to 65.499, 65.680 to 65.699, or 65.7041 to 65.7083 or an economic development project within the Development Area.

Section 5. Determination of Released Amount.

5.1 Calculation of Old Tax Revenue. The Parties shall work together in good faith with the Kentucky Finance and Administration Cabinet, Department of Revenue to determine with reasonable accuracy the amount of Old Tax Revenue, and in doing so, the Parties may make such assumptions as may reasonably be required. Upon mutual agreement on the determination of the Old Tax Revenue, the Parties shall stipulate the amount of Old Tax Revenue by written addendum to this Agreement. The

amount of Old Tax Revenue so stipulated shall be binding upon the Parties for the term of this Agreement, unless amended by mutual agreement of the Parties.

5.2 New Tax Revenue. OMB shall calculate the amount of New Tax Revenue each year after the Activation Date, prior to the Time of Payment pursuant to Section 4.5 of this Agreement. It is expected that OMB will work with the Kentucky Finance and Administration Cabinet, Department of Revenue to determine the businesses in the Development Area that would be subject to Withholding Tax. OMB shall calculate the New Tax Revenue by aggregating the Local Taxes received from within the Development Area.

5.3 Calculation of the Tax Increment. OMB in each year following the Activation Date, prior to the Time of Payment pursuant to Section 4.5 of this Agreement, shall calculate the Tax Increment, which shall be an amount equal to the New Tax Revenue calculated pursuant to Section 5.2 of this Agreement minus the Old Tax Revenue calculated pursuant to Section 5.1 of this Agreement.

5.4 Calculation of Released Amount. OMB in each year following the Activation Date, prior to the Time of Payment pursuant to Section 4.5 of this Agreement, shall calculate the Released Amount, which shall be a sum equal to eighty percent (80%) of the Tax Increment.

Section 6. Pledge of Incremental Revenues Superior to Ordinances and Statutes.

As provided in the Act, any pledge of the Released Amount in this Agreement shall be superior to any other pledge of revenues for any other purpose and shall, from the Activation Date to the Termination Date, supersede any statute or ordinance regarding the application or use of incremental revenues.

Section 7. Notices.

All notices or other communications hereunder from any party shall be sufficiently given, and shall be deemed given, when delivered or mailed by first class mail or overnight delivery to the other parties at their respective addresses as follows:

If to Louisville: Louisville/Jefferson County Metro Government
 c/o Louisville Forward
 444 S. 5th St., Ste. 600
 Louisville, Kentucky 40202
 Attn: _____

If to Partnership: West End Opportunity Partnership
 1701 West Muhammad Ali Boulevard
 Louisville, Kentucky 40203
 Attn: Laura Douglas, CEO

Section 8. Default.

8.1 Default by the Partnership. If the Partnership materially breaches or defaults on its obligations under this Agreement or any of the documents incorporated herein, Louisville may give written notice that remedial action must be taken within thirty (30) calendar days. The Partnership shall correct such breach or default within thirty (30) days after receipt of such notice. However, if the default is not reasonably curable within thirty (30) days, then the Partnership may continue to cure the default or breach so long as Louisville is reasonably satisfied that sufficient progress is being made toward a cure. If such corrective action is not taken within the thirty (30) day cure period, and Louisville does not consent to a longer cure period, Louisville may terminate the Agreement by giving written notice to the Partnership at least ten (10) days prior to the effective date of termination and shall and be entitled to any remedy and damages available to it at law or in equity, including specific performance.

8.2 Default by Louisville. If Louisville materially breaches or defaults on its obligations under this Agreement or any of the documents incorporated herein, the Partnership may give written notice to Louisville that remedial action must be taken within thirty (30) days after Louisville's receipt of such written notice. However, if the default is not reasonably curable within thirty (30) days, Louisville may continue to cure the default or breach so long as the Partnership is satisfied that sufficient progress is being made toward a cure. If such corrective action is not taken within the thirty (30) day cure period, and the Partnership does not consent to a longer cure period, the Partnership shall be entitled to enforce the provisions of this Agreement.

8.3 Exception. In the event of any default or termination by either party, the non-defaulting party shall be relieved of any executory obligations hereunder. Provided however, that in the event the Partnership has issued bonds for the benefit of the Development Area which are secured by a pledge of the Released Amount, Louisville shall not terminate the payment of the Released Amount for the period said bonds remain outstanding and the Partnership shall continue to comply with all applicable provisions of this Agreement necessary to make the bond payments with all applicable Released Amounts. Neither the Partnership nor Louisville will terminate or otherwise negatively impact any such pledge, and both Parties shall fully cooperate to use the Released Amount to service such bonds.

Section 9. Miscellaneous Provisions.

9.1 Binding Effect. This Agreement shall be binding upon the Parties hereto and upon their respective successors and assigns.

9.2 Severability. If any clause, provision, or section of this Agreement be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision, or section shall not affect any of the remaining clauses, provisions or sections hereof.

9.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky and enforceable in courts of competent jurisdiction.

9.4 Entire Agreement; Modifications. This Agreement constitutes the entire agreement of the Parties hereto with respect to the subject matter of this Agreement. This Agreement shall not be modified, amended, cancelled or terminated except by an agreement in writing signed by the Parties hereto.

9.5 Counterparts. This Agreement may be executed in any number of counterparts by some or all of the Parties hereto, each of which shall be an original and all of which shall together constitute one and the same instrument.

9.6 Relationship of the Parties. Except as expressly stated and provided for herein, neither anything contained in this Agreement nor any acts of the Parties hereto shall be deemed or construed by the Parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of association among any of the Parties of this Agreement.

9.7 Further Assurances. Each of the Parties hereto shall use reasonable efforts and cooperate fully with each other in order to promptly and fully carry out the terms and provisions of this Agreement. Each Party hereto shall from time to time execute and deliver such other agreements, documents or instruments and take such other actions as may be reasonably necessary or desirable to effectuate the terms of this Agreement.

9.8 Mutual Termination. In addition to any other provisions relating to termination of this Agreement contained herein, this Agreement shall terminate upon the written agreement of all the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their officers and officials thereunto duly authorized as of the date first written above.

**LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT**

By: _____
Greg Fischer, Mayor

Approved as to Form and Legality:

Michael J. O'Connell
Jefferson County Attorney

By: _____

**WEST END OPPORTUNITY
PARTNERSHIP**

By: _____

Title: _____