

ORDINANCE NO. _____, SERIES 2023

AN ORDINANCE OF THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AUTHORIZING AND PROVIDING FOR THE EXECUTION AND DELIVERY ON BEHALF OF METRO GOVERNMENT OF THE FIRST AMENDMENT TO LOAN AGREEMENT BY AND AMONG METRO GOVERNMENT, ROMAN CATHOLIC BISHOP OF LOUISVILLE, D/B/A ST. MARY ACADEMY, AND FIFTH THIRD BANK, NATIONAL ASSOCIATION PROVIDING FOR THE CHANGES AS SET FORTH THEREIN AND RELATED TO THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT INDUSTRIAL BUILDING REFUNDING REVENUE BONDS, SERIES 2013 (ST. MARY ACADEMY PROJECT); AND TAKING OTHER RELATED ACTION.

SPONSORED BY: COUNCIL MEMBER MCCRANEY

WHEREAS, Louisville/Jefferson County Metro Government (“Metro Government”) is a consolidated local government and political subdivision of the Commonwealth of Kentucky (the “Commonwealth”) and as such is authorized by the Industrial Buildings and Pollution Control Facilities for Cities and Counties Act, as amended, Sections 103.200 to 103.285 of the Kentucky Revised Statutes (the “Act”), to issue industrial building revenue bonds and to loan the proceeds thereof to any person to finance the cost of any “industrial building” (as defined in the Act), including specifically land, buildings, improvements, equipment, machinery, and other facilities suitable for any nonprofit educational institution in any manner related to or in furtherance of the educational purposes of such institution, including but not limited to classroom, laboratory, housing, administrative, physical educational and medical research and treatment facilities, in order to accomplish the public purposes of promoting the economic development of the Commonwealth, relieving conditions of unemployment, and encouraging the increase of industry therein; and

WHEREAS, On March 19, 2013, Metro Government, at the request of the Roman Catholic Bishop of Louisville, a Kentucky nonprofit corporation doing business as St. Mary

Academy (the “Borrower”), and pursuant to Ordinance No. 020, Series 2013, (i) issued under the Act industrial building refunding revenue bonds in the principal amount of \$10,000,000 (the “Bonds”), (ii) sold the Bonds on a private negotiated basis to Fifth Third Bank, National Association (formerly known as Fifth Third Bank) (the “Bondholder”), and (iii) pursuant to the Loan Agreement (the “Loan Agreement”) dated March 19, 2013, by and among Metro Government, the Borrower and the Bondholder, loaned the proceeds of the Bonds to the Borrower to refund all of the Louisville/Jefferson County Metro Government Industrial Building Refunding Revenue Bonds, Series 2009 (St. Mary Academy Project) issued under the Act and then outstanding in the principal amount of \$10,000,000; and

WHEREAS, Due to the anticipated change in the calculation of the interest rate on the Bonds which will result in the replacement of the London Interbank Offered Rate (known as LIBOR) at the appropriate time, among other things, the Borrower has requested, and Metro Government and the Bondholder have agreed, to amend the Loan Agreement by entering into the First Amendment to Loan Agreement (the “Amendment”) to (i) cover the anticipated change from LIBOR to the Secured Overnight Financing Rate (known as SOFR) to be reflected in the Amended and Restated Bond (the “Amended and Restated Bond”), attached as Exhibit A to the Amendment, and (ii) account for an increase or decrease in the corporate tax rate, as specified by the Internal Revenue Code of 1986, as amended (the “Code”), or any other change in the Code, to be reflected in the Amended and Restated Bond; and

WHEREAS, In order to accomplish the public purposes of promoting the economic development of the Commonwealth, relieving conditions of unemployment, and

encouraging the increase of industry therein, Metro Government considers it necessary and proper to (i) authorize the execution and delivery, on behalf of Metro Government, of the Amendment and (ii) take other related action.

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE “COUNCIL”) AS FOLLOWS:

SECTION I: The facts and recitations set out in the preamble of this Ordinance are adopted and incorporated as a part hereof, and the terms defined in the preamble shall have the same meanings when used herein.

SECTION II: The Council hereby finds and declares that the execution and delivery of the Amendment, as herein provided, will further the public purposes of the Act by promoting the economic development of the Commonwealth, relieving conditions of unemployment, and encouraging the increase of industry therein.

SECTION III: For the purposes set forth in the preamble hereto, the execution and delivery, on behalf of Metro Government, of the Amendment and the Amended and Restated Bond is hereby authorized and directed. The Mayor or Deputy Mayor, and the Metro Council Clerk are hereby authorized and directed to execute and deliver, on behalf of Metro Government, (a) the Amendment, substantially in the form attached hereto as Exhibit A, and (b) the Amended and Restated Bond (the form of which is attached as Exhibit A to the Amendment), with such changes therein as the officers executing such documents on behalf of Metro Government shall approve, as shall be conclusively evidenced by their execution and delivery thereof.

SECTION IV: The Mayor, the Deputy Mayor, the Metro Council Clerk, the County Attorney, and other appropriate officers and employees of Metro Government are hereby

authorized and directed to execute, acknowledge, and deliver, on behalf of Metro Government, any and all papers, instruments, certificates, affidavits, and other documents and to do and cause to be done any and all acts and things necessary or proper for entering into, delivering, and performing this Ordinance, the Amendment, and the Amended and Restated Bond, provided that neither Metro Government nor any of its elected officials, officers, employees, or agents incur any general liability thereby.

SECTION V: As provided in the Loan Agreement, none of the proceeds of the Bonds, including the Amended and Restated Bond, shall be used, directly or indirectly, to pay for, to reimburse the Borrower for the payment of, or to refund indebtedness the proceeds of which were used to pay for, the acquisition, construction, renovation, remodeling or equipping or any of the expenses of any institution, place or building, or any portion thereof, used or to be used for sectarian instruction or study or as a place for devotional activities or religious worship or in connection with any part of the program of a school or department of divinity for any religious denomination or the training of ministers, priests, rabbis or similar persons in the field of religion.

SECTION VI: No recourse shall be had for the payment of the principal of or premium, if any, or interest on any of the Bonds, including the Amended and Restated Bond, or for any claim based thereon or upon any obligation, covenant or agreement therein contained against any past, present or future elected official, officer, employee, or agent of Metro Government, as such, either directly or through Metro Government, under any rule of law or equity, statute or constitution, or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such elected officials, officers, employees, or agents, as such, shall be expressly waived and released as a condition of

and as consideration for the enactment of this ordinance and the issuance of the Bonds, including the Amended and Restated Bond.

SECTION VII: THE BONDS (INCLUDING THE AMENDED AND RESTATED BOND) SHALL NOT BE A GENERAL OBLIGATION OR INDEBTEDNESS OF METRO GOVERNMENT, THE COMMONWEALTH, OR ANY AGENCY OR POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF THE CONSTITUTION AND THE LAWS OF THE COMMONWEALTH, BUT SHALL BE PAYABLE SOLELY FROM THE LOAN REPAYMENTS TO BE MADE BY THE BORROWER PURSUANT TO THE LOAN AGREEMENT AND ANY SECURITY PLEDGED THEREFOR.

SECTION VIII: The provisions of this Ordinance are severable, and if any section, phrase, or provision (other than Section V hereof) shall for any reason be declared invalid or unenforceable, such declaration shall not affect the validity of the remainder of this Ordinance.

SECTION IX: To the extent that any prior ordinance or resolution of Metro Government is in conflict with the provisions of this Ordinance, the provisions of this Ordinance shall prevail and be given effect.

SECTION X: This Ordinance shall take effect upon its passage and approval or as otherwise becoming law.

This Ordinance was given a first reading at a duly convened meeting of the Council held on the _____ day of _____, 2023, and given second reading and approval at a duly convened meeting of the Council held on the _____ day of _____, 2023.

Sonya Harward
Metro Council Clerk

Markus Winkler
President of the Council

Craig Greenberg
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: _____