

ORDINANCE NO. _____, SERIES 2020

AN ORDINANCE OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, KENTUCKY, AUTHORIZING THE ISSUANCE OF ITS TAXABLE REVENUE BONDS, SERIES 2020 (LOUISVILLE MEDICAL CENTER STEAM AND CHILLED WATER PLANT PROJECT) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$21,000,000 FOR THE PURPOSES OF (A) PAYING ALL OR A PORTION OF THE COSTS OF CONVERTING THE STEAM AND CHILLER WATER PLANT OF THE CORPORATION TO A WHOLLY-NATURAL GAS POWERED STEAM GENERATING FACILITY, INCLUDING WITHOUT LIMITATION THE ACQUISITION, CONSTRUCTION, INSTALLATION, AND EQUIPPING OF (I) THREE NEW, HIGHER CAPACITY BOILERS DESIGNED TO COMBUST NATURAL GAS AND FUEL OIL IN REPLACEMENT OF THE EXISTING BOILERS IDENTIFIED AS BOILERS B-1, B-2, AND B-3, (II) NEW BOILER CONTROL SYSTEMS, (III) A NEW FUEL OIL STORAGE AND SUPPLY SYSTEM FOR THE STEAM GENERATING FACILITIES OF THE PLANT, AND (IV) OTHER REAL PROPERTY IMPROVEMENTS, MACHINERY, AND EQUIPMENT NECESSARY AND RELATED TO ANY OF THE FOREGOING, AND (B) PAYING COSTS OF ISSUANCE OF THE SERIES 2020 BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND TRUST INDENTURE, LOAN AGREEMENT, AND BOND PURCHASE AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED STEAM AND CHILLED WATER PLANT USER AGREEMENT; AUTHORIZING AND APPROVING CERTAIN OTHER MATTERS, INCLUDING THE EXECUTION OF RELATED DOCUMENTS, IN CONNECTION WITH THE SALE AND ISSUANCE OF THE SERIES 2020 BONDS.

SPONSORED BY: COUNCILMEMBER SEXTON SMITH

WHEREAS, the Louisville/Jefferson County Metro Government (“Metro Government”) is a political subdivision of the Commonwealth of Kentucky (the “Commonwealth”) and is authorized by Sections 103.200 through 103.285 of the Kentucky Revised Statutes, as amended (the “Act”), to issue revenue bonds and to loan the proceeds thereof to third parties in order to finance costs of an “industrial building,” as defined in the Act, utilized in the provision of healthcare and nonprofit educational services; and

WHEREAS, Louisville Medical Center, Inc., a Kentucky nonprofit corporation (the “Corporation”), owns the steam and chilled water plant located at 235 Abraham Flexner Way, Louisville, Kentucky 40202 (the “Plant”), which provides steam and chilled water to certain nonprofit or governmental healthcare and educational institutions in downtown Louisville; and

WHEREAS, Metro Government previously issued its Louisville/Jefferson County Metro Government, Kentucky, Refunding Revenue Bonds, Series 2012A (Louisville Medical Center, Inc. Steam and Chilled Water Plant Project) in the original principal amount of \$7,510,000 (the “Series 2012A Bonds”), and its Louisville/Jefferson County Metro Government, Kentucky, Taxable Refunding Revenue Bonds, Series 2016 (Louisville Medical Center Steam and Chilled Water Plant Project) in the original principal amount of \$7,550,000 (the “Series 2016 Bonds”) to refinance the costs of certain improvements to the Plant; and

WHEREAS, the Series 2012A Bonds, and the Series 2016 Bonds are secured on a parity basis one with another based upon the terms and conditions of the documents governing the bonds and the user contract by and among Metro Government, the Corporation, the Medical Center Commission of Louisville/Jefferson County Metro Government, Kentucky, and the healthcare and education institutions serviced by the Plant, as amended (the “Existing User Contract”); and

WHEREAS, the Corporation has requested Metro Government to issue its “Louisville/Jefferson County Metro Government, Kentucky, Taxable Revenue Bonds, Series 2020 (Louisville Medical Center Steam and Chilled Water Plant Project)” in a maximum aggregate principal amount of \$21,000,000 (the “Series 2020 Bonds”) and to

loan the proceeds of the Series 2020 Bonds to the Corporation pursuant to one or more loan agreements to (a) pay all or a portion of the costs of converting the Plant to a wholly-natural gas powered steam generating facility, including without limitation the acquisition, construction, installation, and equipping of (i) three new, higher capacity boilers designed to combust natural gas and fuel oil in replacement of the existing boilers identified as Boilers B-1, B-2, and B-3, (ii) new boiler control systems, (iii) a new fuel oil storage and supply system for the steam generating facilities of the Plant, and (iv) other real property improvements, machinery, and equipment necessary and related to any of the foregoing (the “Project”); and (b) pay costs of issuance of the Series 2020 Bonds; and

WHEREAS, Metro Government, the Corporation, and the other parties to the Existing User Contract desire to adopt the Amended And Restated Steam and Chilled Water Plant User Agreement (the “Amended and Restated User Agreement”) to amend and restate the Existing User Contract to, among other things, modernize the provisions contained therein governing the Corporation’s incurrence of debt and to reflect the transfer of ownership of the PMOB facility located in downtown Louisville; and

WHEREAS, the Series 2020 Bonds are intended to be issued and secured on a parity with the Series 2012A Bonds and the Series 2016 Bonds in accordance with the terms and conditions of the Amended and Restated User Agreement and the other legal documents governing the payment and security of the Series 2012A Bonds, the Series 2016 Bonds, and the Series 2020 Bonds; and

WHEREAS, all of the conditions precedent to the issuance of parity bonds under the Amended and Restated User Agreement and the bond indentures governing the

issuance and administration of the Series 2012A Bonds and the Series 2016 Bonds will be satisfied on the date of the issuance of the Series 2020 Bonds; and

WHEREAS, the Corporation has requested the sale of the Series 2020 Bonds be made on a negotiated basis to Robert W. Baird & Co., Incorporated (the “Underwriter”); 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 issuance of the Series 2020 Bonds for purposes set out above; (ii) authorize the execution and delivery of the Bond Trust Indenture, the Loan Agreement, the Bond Purchase Agreement hereinafter identified and the Amended and Restated User Agreement; and (iii) take other action in connection therewith;

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

SECTION I. Incorporation of Preamble. 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. Declaration of Purpose. Metro Government hereby finds and declares that the issuance of the Series 2020 Bonds for the purposes of (a) financing all or a portion of the costs of the Project; and (b) paying costs of issuance of the Series 2020 Bonds will further the public purposes of the Act by financing costs incurred with respect to an “industrial building” utilized in the provision of healthcare and nonprofit educational services.

SECTION III: Authorization of the Series 2020 Bonds. For the purposes set forth in the preamble hereto, there is hereby authorized and directed:

(a) the issuance, execution, sale, and delivery of the “Louisville/Jefferson County Metro Government, Kentucky, Taxable Revenue Bonds, Series 2020 (Louisville Medical Center Steam and Chilled Water Plant Project)” (the “Series 2020 Bonds”), as provided in the Bond Trust Indenture and the Bond Purchase Agreement hereinafter identified, subject to the following limitations (collectively, the “Limitations”): (i) the aggregate principal amount of the Series 2020 Bonds shall not exceed \$21,000,000; (ii) the final maturity of all Series 2020 Bonds shall not exceed thirty years from the dated date thereof; (iii) the Series 2020 Bonds shall bear a fixed interest rate which shall not exceed 7.0% per annum; (iv) the purchase price of any Series 2020 Bond (excluding any original issue discount) set forth in the Bond Purchase Agreement shall equal at least 98% of the aggregate principal amount thereof; and (v) the Series 2020 Bonds will be issuable in such denominations, shall be dated such dates, and shall be subject to redemption on such dates and in such amounts, and the principal and interest thereon shall be payable on such dates and in such amounts, as shall be approved by an officer of Metro Government and specified in the Bond Trust Indenture;

(b) the loan of the proceeds of the Series 2020 Bonds to the Corporation to (i) finance all or a portion of the costs of the Project; and (ii) pay costs of issuance of the Series 2020 Bonds, as provided in the Loan Agreement hereinafter identified;

(c) the execution and delivery on behalf of Metro Government of the Series 2020 Bond Documents hereinafter identified; and

(d) the execution and delivery on behalf of Metro Government of all customary papers, letters, documents, certificates, forms, or other instruments that may be required for the carrying out and effectuation of the authority conferred by this Ordinance and the Series 2020 Bond Documents or to evidence said authority, including closing certificates, financing statements, and other security documents.

SECTION IV: Authorization of Series 2020 Bond Documents. The Mayor and the Metro Council Clerk are hereby authorized and directed to execute and deliver on behalf of Metro Government the following documents (collectively, the “Series 2020 Bond Documents”), substantially in the respective forms previously submitted, reference to which is hereby made, with such changes therein as the officer(s) executing such documents on behalf of Metro Government shall approve and as shall be consistent with the Limitations, such approval to be conclusively evidenced by their execution and delivery thereof:

(a) A Bond Purchase Agreement (the “Bond Purchase Agreement”), by and among Metro Government, the Underwriter, and the Corporation substantially in the form previously provided to Metro Government in connection with this Ordinance as Exhibit A;

(b) A Bond Trust Indenture (the “Bond Trust Indenture”), by and between Metro Government and U.S. Bank National Association, as bond trustee, substantially in the form previously provided to Metro Government in connection with this Ordinance as Exhibit B;

(c) A Loan Agreement (the “Loan Agreement”), by and between Metro Government and the Corporation, substantially in the form previously provided to Metro Government in connection with this Ordinance as Exhibit C; and

(d) The Amended and Restated User Agreement, by and among Metro Government, the Corporation, and the other parties thereto, substantially in the form previously provided to Metro Government in connection with this Ordinance as Exhibit D.

Section 5. Authorization of Official Statement. The Preliminary Official Statement substantially in the form previously presented to Metro Government, reference to which is hereby made, is hereby approved. The use and distribution of one or more official statements, in preliminary and final form (as applicable), by the Underwriter and the Corporation, with such changes therein as are not inconsistent herewith (including the Limitations), are hereby expressly approved, subject to final approval and release by counsel to Metro Government, at which time the Preliminary Official Statement shall be deemed “final” in accordance with Rule 15c2-12 of the Securities Exchange Act of 1934, as amended (“SEC Rule 15c2-12”). The Mayor or his designee are hereby authorized to execute and deliver in the name and on behalf of Metro Government one or more final official statements (the “Official Statements”), which final Official Statements shall be in substantially the form of the draft Preliminary Official Statement previously presented to Metro Government, reference to which is hereby made, with such changes therein as are not inconsistent herewith (including the Limitations), the delivery thereof to constitute conclusive evidence of the approval by Metro Government of such changes. Metro Government will provide final Official Statements, at the Corporation’s expense, relating

to the offering of the Series 2020 Bonds to the Underwriter within seven days of the date of the related Bond Purchase Agreement in accordance with SEC Rule 15c2-12.

Section 6. No Recourse on Obligations. No recourse under or upon any obligation, covenant, acceptance, or agreement contained in the Series 2020 Bond Documents, in the Series 2020 Bonds, under this Ordinance or under any judgment obtained against Metro Government, or by the enforcement of any assessment, or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be had against any elected official, member, officer, employee, or agent, as such, past, present, or future, of Metro Government, the Commonwealth or any agency or political subdivision thereof, whether directly or through Metro Government, or otherwise, for the payment for or to Metro Government or any receiver thereof, or for or to any holder of any Series 2020 Bond, or otherwise, of any sum that may be due and unpaid by Metro Government on the Series 2020 Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or constitution, or otherwise, of any such elected official, member, officer, employee, or agent, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to Metro Government or any receiver thereof, or for or to the owner or any holder of any Series 2020 Bond, or otherwise, of any sum that may remain due and unpaid on the Series 2020 Bonds, shall be deemed to be and is hereby expressly waived and released as a condition of and consideration for the execution and delivery of the Series 2020 Bond Documents, this Ordinance and the issuance of the Series 2020 Bonds.

THE SERIES 2020 BONDS WILL NOT CONSTITUTE A GENERAL OBLIGATION, DEBT, OR BONDED INDEBTEDNESS OR LIABILITY OF METRO GOVERNMENT, THE COMMONWEALTH, OR ANY AGENCY OR POLITICAL SUBDIVISION THEREOF UNDER THE CONSTITUTION OF THE COMMONWEALTH OR GIVE RISE TO A GENERAL OBLIGATION OR LIABILITY OF, OR A CHARGE AGAINST, THE GENERAL CREDIT OR TAXING POWERS OF METRO GOVERNMENT, THE COMMONWEALTH, OR ANY AGENCY OR POLITICAL SUBDIVISION THEREOF, AND THE HOLDERS OR OWNERS THEREOF WILL NOT HAVE THE RIGHT TO HAVE TAXES OR EXCISES LEVIED BY METRO GOVERNMENT, THE COMMONWEALTH, OR ANY AGENCY OR POLITICAL SUBDIVISION THEREOF FOR THE PAYMENT OF PRINCIPAL OF AND ANY PREMIUM AND INTEREST ON THE SERIES 2020 BONDS. METRO GOVERNMENT AND THE COMMONWEALTH SHALL NEVER BE REQUIRED TO PAY FROM THEIR OWN FUNDS ANY OBLIGATIONS DERIVING FROM THE ISSUANCE OF THE SERIES 2020 BONDS, OR ANY OTHER BONDS ISSUED FOR THE BENEFIT OF THE CORPORATION, AND THE SERIES 2020 BONDS ARE DECLARED TO BE SPECIAL AND LIMITED OBLIGATIONS PAYABLE SOLELY AND ONLY FROM THE RECEIPTS DERIVED UNDER THE LOAN AGREEMENT AND THE TRUST ESTATE CREATED UNDER THE BOND TRUST INDENTURE AS PROVIDED IN THE DOCUMENTS HEREIN APPROVED.

SECTION VII. Modification. It is acknowledged by Metro Government that at the time of sale of the Series 2020 Bonds pursuant to the Bond Purchase Agreement as set out in Section IV hereof, the Corporation may desire to proceed with issuance of less than all of the Series 2020 Bonds contemplated by this Ordinance and as described in the

Bond Trust Indenture and consequently may request Metro Government, acting through its Mayor and Metro Council Clerk, to execute the Bond Purchase Agreement and other documents herein referred to for the sale and issuance of Series 2020 Bonds for less than the amount anticipated by this Ordinance. Accordingly, the execution by the Mayor or Metro Council Clerk on behalf of Metro Government of the Bond Purchase Agreement and other documents herein referred to with regard to the sale of Series 2020 Bonds for any such lesser amount is specifically authorized and approved without further action by Metro Government, and to such extent this Ordinance shall be deemed to have been modified.

SECTION VIII. Severability. The provisions of this Ordinance are severable and, if any section, phrase, or provision 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. Supplements. The provisions of this Ordinance may be supplemented from time to time by ordinance or resolution of the Metro Council.

SECTION X. Prior Conflicting Actions Superseded. To the extent that any ordinance, resolution, municipal order or part thereof is in conflict with the provisions of this Ordinance, the provisions of this Ordinance shall prevail and be given effect.

SECTION XI. Effective Date. This Ordinance shall be in full force and effect from and after its adoption and publication as provided by law.

INTRODUCED, SECONDED, AND GIVEN FIRST READING at a duly convened regular meeting of the Metro Council of the Louisville/Jefferson County Metro Government, Kentucky, held on June ____, 2020.

GIVEN SECOND READING AND ENACTED at a duly convened regular meeting of the Metro Council of the Louisville/Jefferson County Metro Government held on _____, 2020, signed by the Mayor as evidence of his approval, filed, and indexed as provided by law.

Sonya Harward
Metro Council Clerk

David James
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: _____
Assistant Jefferson County Attorney

O-250-20-Louisville Medical Center Bond Ordinance (If)