

ORDINANCE NO. ____, SERIES 2019

AN ORDINANCE OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AUTHORIZING THE CHIEF FINANCIAL OFFICER TO ENTER INTO A LINE OF CREDIT NOT TO EXCEED \$50,000,000 TO PROVIDE INTERIM FINANCING FOR CAPITAL PROJECTS APPROVED IN THE CAPITAL BUDGET AND PROVIDING FOR THE PAYMENT AND SECURITY OF SAID LINE OF CREDIT.

SPONSORED BY: COUNCIL MEMBER HOLLANDER

WHEREAS, the Legislative Council of the Louisville/Jefferson County Metro Government (the “Council”) enacted Ordinance No. 109, Series 2018, which approved the funding of various capital projects to be undertaken by the Louisville/Jefferson County Metro Government (“Metro Government” or the “Issuer”) throughout its jurisdiction;

WHEREAS, the Council plans on enacting future capital projects budgets to fund capital improvements and additions throughout Metro Government;

WHEREAS, to fund these capital projects, Metro Government has determined that it is necessary, desirable and in the public interest to finance the costs of these public projects, including costs of the acquisition, construction and equipping of various public projects described in 2018-19 Capital Project Budget set forth in Ordinance No. 109, Series 2018, through the incurrence of indebtedness by the sale and issuance of the general obligation bonds and notes, the payment of the principal thereof and interest thereon is secured by the full faith, credit and resources of Metro Government;

WHEREAS, to take advantage of financial market timing and matrices, including interest rate fluctuations, yet not delay the commencement of construction or installations of projects, Metro Government has determined that it is necessary, desirable and in the public interest to enter into agreement with a financial institution for a line of credit to fund capital improvements on a short-term, interim basis;

WHEREAS, Chapter 280 of the Acts of the General Assembly of the Commonwealth, 1996 Regular Session, enacted legislation which is codified in Sections 66.011 through 66.191 of the Kentucky Revised Statutes ("KRS"), "General Provisions on Bonded Indebtedness of Local Governments" (collectively, the "Act"), providing for the issuance of bonds, notes, commercial paper and other instruments for one or more of the following purposes, with a maximum bond maturity of not exceeding forty (40) years: (i) paying all or any portion of the costs of the acquisition, improvement or construction of public projects (provided bonds for such purpose shall have a maximum maturity not exceeding the good faith estimated life or period of usefulness of the public project, or if the issue includes more than one public project, a maximum maturity not exceeding the good faith estimated weighted average number of years of life or period of usefulness of the public projects), (ii) funding floating indebtedness (provided bonds for such purpose shall have a maximum maturity of five (5) years), (iii) funding the cost of providing a public service if the governing body of the issuer determines that an emergency exists and the public health or safety so requires, (iv) to fund unfunded liabilities, (v) to establish a reserve for past or future liabilities or casualties, (vi) to pay one or more final judgments rendered against an issuer, including settlement of claims approved by the court and (vii) to fund or refund any outstanding bonds or obligations previously issued;

WHEREAS, Subsection (1) of Section 66.101 of the Act provides that the authorizing bond legislation shall (i) declare the necessity of the bond issue, (ii) state the principal amount or maximum principal amount of the bonds to be issued, (iii) state the purpose of the bond issue, (iv) state or provide for the date of, and the dates and amounts or maximum amounts of, maturities or principal payments on the bonds, (v) state any

provisions for a mandatory sinking fund, mandatory sinking fund redemption or for redemption prior to maturity, (vi) provide for the rate or rates of interest, or maximum rate or rates of interest, or the method from time to time for establishing or determining the rate or rates of interest to be paid on the bonds and (vii) state any provision for a designated officer of the issuer to determine any of the specific terms required to be stated or provided for in such section, subject to any limitations stated in the proceedings;

WHEREAS, Subsection (2) of Section 66.101 of the Act provides that (i) the legislation authorizing issuance of bonds shall identify the source or sources of payment of debt charges on the bonds, which may be any moneys of the issuer required by law to be used, or lawfully available and (ii) such legislation shall provide (but only to the extent the amount lawfully available from existing taxes is insufficient) for the levying of a tax sufficient in amount to pay the debt charges on the bonds issued under the legislation;

WHEREAS, Subsection (1) of Section 66.111 of the Act provides that the issuer shall, after the issuance of the bonds (and to the extent the amount lawfully available from existing taxes is insufficient), levy a tax in a sufficient amount and appropriate in its annual budget, together with any other moneys available to the issuer, an amount of funds sufficient to pay debt charges on the bonds;

WHEREAS, Subsection (2) of Section 66.111 of the Act provides that if the issuer determines it to be necessary and appropriate, and if not prohibited by other law, proceedings relating to issuance of the bonds may contain or provide for a pledge to the payment of debt charges on the bonds, and a related covenant to levy, charge, collect, deposit, and apply, receipts of the issuer (including but not limited to ad valorem property taxes as permitted by law, occupational license fees, insurance premium taxes, excises,

utility and service revenues and any other receipts from taxes, excises, permits, licenses, fines or other source of revenue of, or of revenue distributions to, the issuer); provided no such pledge or covenant may be made that impairs the express contract rights of the holders of outstanding bonds of the issuer;

WHEREAS, the projects constitute public projects within the meaning of the Act, and the weighted average number of years of life or period of usefulness thereof, as estimated by Metro Government exceeds the maximum maturity of the bonds proposed to be issued;

WHEREAS, the proposed projects financed constitute public projects within the meaning of KRS 66.011; and the life or period of usefulness of said projects, as estimated by Metro Government, extends beyond the respective maturity of the proposed bonds; and

WHEREAS, on issuance of the line of credit authorized to be issued pursuant to this Ordinance, the total indebtedness of the Issuer within the meaning of Section 158 of the Kentucky Constitution, and the total net indebtedness of the Issuer within the meaning of the Act, do not exceed any applicable limitation based on the total value of taxable property within the consolidated local government as determined by the last certified assessment with respect to such property.

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

Section I. Incorporation of Preambles into Ordinance; Determinations of Fact. It is hereby determined and declared that all statements of fact set forth in the preambles to this Ordinance are true and accurate in all respects. Said preambles are

hereby incorporated in this Ordinance by reference, the same as if set forth at length herein.

Section II. Authorization of Line of Credit. In order to provide Metro Government with a line of credit to fund, on an interim basis until bonds are issued, the capital projects, as approved by the Council in Ordinance No. 109, Series 2018, and future capital projects budgets, Metro Government is hereby authorized to enter into a line of credit with a financial institution authorized to do business in the Commonwealth of Kentucky in the maximum principal amount of \$50,000,000, to be dated the date of delivery, the same to bear interest from the date of any advance thereunder and which shall mature on the date as provided in the line of credit and the line of credit documents, provided that such maturity date shall be on or before five (5) years the dated date.

Section III. Term, Form and Execution of Line of Credit and Line of Credit Documents. The line of credit shall be awarded to a financial institution as a result of a competitive solicitation from three or more financial institutions by Metro Government. The award of the line of credit to the financial institution shall be determined by the Mayor and Chief Financial Officer from the proposals submitted by financial institutions.

Said proposals or bids shall be received in the Chief Financial Officer's office, or such other place as may be designated. The Mayor and Chief Financial Officer are hereby authorized to accept the proposal determined to be the best and most advantageous for Metro Government. The Mayor and the Chief Financial Officer shall determine, establish and set the aggregate principal amount of the line of credit, the maturity date, terms relating to security, revolving terms, the exact rate or rates of interest which said line of credit shall bear, which rates of interest may be either a fixed rate or

rates of a variable rate based on a percentage of an easily identifiable and calculable index formula, and the interest rates on the line of credit shall be automatically set at the rates set out in the proposal and accepted by the Mayor and the Chief Financial Officer, without the necessity of any further action by the Council fixing said rates, provided however that the line of credit shall not have an interest rate in excess of 6% per annum.

If, for any reason, it is determined that no proposal should be accepted after the conclusion of the competitive solicitation process, then the Chief Financial Officer may solicit new proposals pursuant to a new competitive solicitation or by a public sale, without the necessity of the Council taking any further action or granting any further authority for such proceedings, provided that such competitive solicitations occur within two (2) years of date that this Ordinance is enacted.

The line of credit and line of credit documents shall reflect the terms of the awarded proposal and shall contain such terms and provisions as approved by the Mayor and the Chief Financial Officer.

The official signatures of the Mayor and Chief Financial Officer shall be valid and binding notwithstanding that before delivery of the line of credit and payment therefor any and all persons whose signatures appear thereon shall have ceased to be such officers.

The Council hereby authorizes the Mayor, Chief Financial Officer and other officers and employees of Metro Government to structure and prepare the line of credit documents for the issuance and establishment of the line of credit and to take any and all other necessary actions to effect the purposes of this Ordinance.

Section III. Provisions Relating to Issuance and Delivery of the Line of Credit.

The Chief Financial Officer of Metro Government shall deliver such notes and other

documents securing the line of credit to the financial institution chosen pursuant to Section II of this Ordinance.

Section IV. Security for the Line of Credit. The line of credit is a general obligation of the Issuer and the full faith, credit and taxing power of the Issuer are hereby irrevocably pledged to the prompt payment of the principal of and interest as such becomes due.

As a general obligation of the Issuer, the line of credit shall be and hereby is declared to be payable in accordance with the Act from all lawfully available pledged receipts (including, but not by way of limitation, any moneys attributable to line of credit proceeds or the income from the temporary investment thereof, moneys held in the funds and accounts and any other moneys held for the benefit of the payment of the line of credit); provided there shall be no impairment of the express contract rights, if any, of the holders of outstanding bonds of Metro Government. No liability shall attach to the officials, agents, directors, employees or representatives of Metro Government for the payment of principal, interest or premium, if any, on the Bonds.

For the purpose of providing funds required to pay the interest on the line of credit (as well as all other general obligation debt, if any) as and when the interest becomes due and in order to create a sinking fund to pay and discharge the principal thereof (and premium, if any) as the line of credit and any other general obligation debt become due, and pursuant to and in compliance with (i) Section 159 of the Constitution of the Commonwealth and (ii) the Act, there shall be and there is hereby levied on all of the taxable property within the jurisdiction of Metro Government, beginning as of the date hereof and continuing in each year as long as any of the line of credit amount is

outstanding or any other general obligation debt is outstanding, a direct annual tax sufficient, to the extent other lawfully available moneys of Metro Government are not provided, for that purpose, which tax shall be unlimited as to rate or amount. Metro Government hereby covenants and pledges to levy, charge, collect, deposit and apply the proceeds of such special annual tax to the payment of such debt charges on the line of credit and any other general obligation debt. Metro Government acknowledges, however, that in the current fiscal year no such special tax would actually be required to be levied or collected in order for Metro Government to make payments on the line of credit (and such other general obligation debt, if any) when due, there being sufficient other moneys lawfully available to Metro Government for the making of such payments. Metro Government further acknowledges that in no future fiscal year does Metro Government currently expect that a special tax would actually be required to be levied or collected for Metro Government to make payments on the line of credit (and such other general obligation debt, if any) when due, Metro Government having projected there shall be sufficient other moneys lawfully available to Metro Government for the making of such payments.

Any and all proceeds derived from the special annual tax authorized above and levied from time to time, together with other lawfully available moneys of Metro Government provided for the purpose, including but not limited to proceeds of the proposed bonds to be issued to finance the projects, shall be deposited and carried in a separate and special account of Metro Government, held apart from all other funds of Metro Government, and shall be applied only for the purpose of paying the principal of and interest on the line of credit as provided in this Ordinance and any other general

obligation debt, if any. The proceeds of the special annual tax and the balances accumulated from time to time in the separate fund are hereby irrevocably pledged for the purpose of paying the principal of and interest (and premium, if any) on the line of credit and any other general obligation debt, if any, and shall never be used for any other purpose. Metro Government hereby covenants and pledges with the chosen financial institution that Metro Government will levy the special annual tax in each year at whatever rates may be necessary from time to time in order to produce the amounts required in each year, to the extent funds are not otherwise provided, to pay the principal of and interest (and premium, if any) on the line of credit and such other general obligation debt, if any, when due.

If principal or interest (or premium, if any) on the line of credit or any other general obligation debt should fall due in any year at a time when there are insufficient funds on hand, collected by reason of the foregoing special tax levy, such principal and interest (and premium, if any) shall be paid from other available funds of Metro Government and reimbursement therefor shall be made out of the special tax hereby provided, when the same shall have been collected.

This Ordinance also constitutes a continuing appropriation from such taxes and all other lawfully available pledged receipts, of the sum annually necessary to pay the principal of and interest (and premium, if any) on the line of credit and such other general obligation debt when due. The Revenue Commission is hereby authorized to collect occupational taxes and any other amounts received by or on behalf of Metro Government, and to apply the same to the payment of debt charges on the line of credit and such other

general obligation debt and all other obligations due or coming due under this Ordinance or otherwise with respect to such general obligation debt.

Payment of the principal of and interest (and premium, if any) on the line of credit and such other general obligation debt when due in accordance with the foregoing provisions is subject only to the prior application of the pledged receipts in accordance with the express contract rights, if any, of the holders of outstanding bonds of Metro Government, as provided pursuant to the Act.

Section V. Maximum Percentages of Net Indebtedness. Metro Government covenants not to incur "net indebtedness" (within the meaning of the Act) to an amount exceeding any applicable limitation based on the value of taxable property within the Issuer's corporate limits and jurisdiction, as estimated by the last certified assessment previous to the incurring of the indebtedness.

Section VI. Provisions in Conflict Repealed. All ordinances, resolutions, and orders, or parts thereof, in conflict herewith, are, to the extent of such conflict, hereby repealed.

Section VII. Signature of Officers. If any of the officers whose signatures or facsimile signatures shall appear on the line of credit and line of credit documents cease to be such officers before delivery of the line of credit and line of credit documents, such signatures shall nevertheless be valid for all purposes the same as if said officers had remained in office until delivery, as provided in KRS 58.040 and in 61.390.

Section VIII. Severability Clause. If any section, paragraph, clause, or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance.

Section IX. Ordinance Effective Immediately. This Ordinance shall be effective immediately following its passage and approval.

H. Stephen Ott
Clerk of the Metro Council

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 _____

O-057-19