



Louisville Metro Government

Legislation Text

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ORDINANCE NO. _____, SERIES 2016
AN ORDINANCE OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, KENTUCKY, AUTHORIZING THE MAYOR TO ENTER INTO A SECOND AMENDED AND RESTATED MEMORANDUM OF AGREEMENT FOR THE LOUISVILLE ARENA PROJECT IF CERTAIN CONDITIONS ARE MET

Sponsored by: Council Members Butler, Downard, Leet

WHEREAS, pursuant to actions taken by the Commonwealth of Kentucky (the "Commonwealth"), the Louisville/Jefferson County Metro Government ("Louisville Metro"), the University of Louisville, University of Louisville Athletic Association, Inc. and certain non-governmental entities, the Louisville Arena Project, a public project intended for multi-uses as a public, recreational and sports facility (the "Arena Project"), was undertaken, and the Arena Project has significantly benefited Louisville Metro and the Commonwealth by increasing state and local tax revenues, creating new jobs, enhancing regional tourism, increasing property tax values and stimulating private investment in and around the Louisville Metro area;

WHEREAS, the Louisville Arena Authority, Inc., a Kentucky non-stock, nonprofit corporation (the "Arena Authority") was created as an independent entity to oversee the acquisition, development, construction, and financing of the Arena Project;

WHEREAS, the Legislative Council of Louisville/Jefferson County Metro Government (the "Council") enacted Resolution No. 81, Series 2006, ratifying, approving and adopting a Memorandum of Agreement, dated July 21, 2006, by and between Louisville Metro and the Arena Authority (the "Guarantee Agreement") pursuant to which Louisville Metro guaranteed to the Arena Authority, to the fullest extent permitted by law, the payment of funds to pay a portion of the debt costs for the Arena Project during a period commencing on November 1, 2010, to and including November 1, 2039, in an aggregate principal amount not to exceed \$309,000,000 (the "Guaranteed Payments");

WHEREAS, Resolution No. 81, Series 2006, and the Guarantee Agreement were adopted by Louisville Metro with the intent that the Guaranteed Payments would fund a portion of the costs of the Arena Project by

paying a portion of the debt arising from bonds issued by the Kentucky Economic Development Finance Authority (“KEDFA”). These debt payments would constitute a long-term monetary obligation of Louisville Metro payable from (i) legally available Louisville Metro revenues, moneys and funds and (ii) moneys derived from the imposition of existing general taxes in the same manner as for payment of other outstanding monetary obligations of Louisville Metro, including ad valorem property taxes, as permitted by law, occupational license fees, insurance premium taxes, excises, permits, licenses, fines, available moneys from tax increment districts, or other sources of revenues of, or distributions to, Louisville Metro (collectively, the “Pledged Receipts”) as selected by Louisville Metro, provided that such long-term monetary obligation shall not constitute a general obligation indebtedness of Louisville Metro within the meaning of the Constitution or Statutes;

WHEREAS, to effectuate the intent of Louisville Metro to make the Guaranteed Payments, the Council enacted Ordinance No. 143, Series 2007, to legally comply with the requirements and utilize the authority of KRS Chapters 58 and 67C, KRS Sections 83.420 and Sections 91.200 - 91.280, inclusive;

WHEREAS, Ordinance No. 143, Series 2007, amended, readopted, and restated Resolution No. 81, Series 2006 and the Guarantee Agreement to conform Louisville Metro’s final terms of the Guarantee Agreement as those identified in the Amended and Restated Memorandum of Agreement, including the “Modified Exhibit B,” dated July 30, 2007, (the “Amended Guarantee Agreement”) attached hereto and incorporated herein as “Exhibit A”;

WHEREAS, in addition to the Guaranteed Payments, other security--as such is identified in the Loan Agreement dated August 1, 2008, by and between KEDFA and the Arena Authority and the Bond Trust Indenture dated August 1, 2008, by and between KEDFA and U.S. Bank National Association, as Bond Trustee--was pledged to the payment of bonds issued by KEDFA;

WHEREAS, pursuant to KRS Chapter 154, KEDFA issued its bonds (the “Arena Bonds”) to loan to the Arena Authority to provide financing for the Arena Project;

WHEREAS, as contemplated by the “Modified Exhibit B” in the Amended Guarantee Agreement, Louisville Metro agreed to annually pay an amount, not below the Minimum Annual Guaranteed Payment and

not above the Maximum Annual Guaranteed Payment;

WHEREAS, Louisville Metro's Guaranteed Payment has been the maximum for fiscal year 2013 through 2017 (5 years);

WHEREAS, the debt service for the Arena Bonds will increase in the coming years and, in order to refinance the debt, Louisville Metro desires to amend the Amended Guarantee, specifically the "Modified Exhibit B," but only if certain conditions are met;

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

Section 1. 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 2. Amendment, Readoption and Restatement of Ordinance No. 143, Series 2007, and the Amended Guarantee Agreement. Ordinance No. 143, Series 2007, and the Amended Guarantee Agreement are each hereby amended, restated and readopted to conform the Amended Guarantee Agreement to the terms of the agreement of Louisville Metro and the Arena Authority, including the amendment, restatement and readoption of Modified Exhibit B of the Second Amended and Restated Guarantee Agreement as "Second Modified Exhibit B", also attached hereto and incorporated herein. In accordance with the Amended Guarantee Agreement, a separate second amendment agreement between Louisville Metro and the Arena Authority is attached to this Ordinance (the "Second Amendment Agreement"), and such Second Amendment Agreement and the Second Amended and Restated Guarantee Agreement incorporating such amendments are collectively attached hereto and incorporated herein as Modified Exhibit B and shall constitute an integral part of this Ordinance. The adoption by the Metro Council of this Ordinance shall also constitute the adoption of Modified Exhibit B in its entirety. Each of the Mayor of Louisville Metro, the President of the Council and the Clerk of the Council are hereby authorized and directed to execute, authenticate, seal and deliver each of this Ordinance, the Second Amendment Agreement between the Arena Authority and Louisville Metro and the Second Amended and Restated Guarantee Agreement, together with

and any and all other related documents, agreements and contracts as shall be necessary to refinance the Arena Project subject to the conditions being met in Section 3.

Section 3. Conditions Precedent to Entering into the Second Amendment Agreement and Second Amended and Restated Guarantee Agreement. The Mayor of Louisville Metro may, subject only to his discretion and with the full consent of the Metro Council, enter into the Second Amendment Agreement and Second Amended and Restated Guarantee Agreement provided the following conditions are met:

- (a) The Arena Authority and the University of Louisville or the University of Louisville Athletic Association, Inc. enter into a new lease agreement with terms and conditions that require the University of Louisville or University of Louisville Athletic Association, Inc. to contribute more money, funds, or receipts toward the retirement of debt;
- (b) In the discretion of the Mayor, the increase in contribution of money, funds, or receipts is sufficient to assist in the retirement of debt;
- (c) The Commonwealth agrees to amend the termination date of the Arena Zone TIF and correspondingly increase the released amount and cap of the TIF.
- (d) The Mayor of Louisville Metro receives an opinion from Bond Counsel that entering into the Second Amendment Agreement and Second Amended and Restated Guarantee Agreement is permitted under the Arena Bond Trust Indenture and will not adversely affect the Arena Bonds, including the tax exempt status;
- (e) The Council and the Arena Authority pass resolutions requesting KEDFA to issue refunding or advanced refunding bonds to retire the current Arena Bonds and such refinancing appears to be imminent; and
- (f) The Bond Insurer consents in writing to the amendment

Section 4. Annual Guaranteed Payments. Subject to the above conditions being met, Louisville Metro hereby covenants, agrees and promises to pay \$240,400,000 in amount, less any payments made under the Amended Guarantee Agreement and prior to the execution of the Second Amended Guarantee Agreement, which is declared and determined to be a legal and binding long-term monetary obligation to be

represented by Annual Guaranteed Payments to or on behalf of the Arena Authority in amounts per annum as set forth below. Such monetary obligation shall be paid by Louisville Metro from the moneys derived from Pledged Receipts, as assessed, levied and appropriated annually by Louisville Metro, in each case to be applied and used by the Arena Authority for the purpose of paying a portion of the debt service on the Arena Bonds. The annual monetary obligation of Louisville Metro, as set forth in "Second Modified Exhibit B," to be annually assessed, levied and appropriated by Louisville Metro during each annual period are as set forth below:

| <u>Calendar Years</u> | <u>Annual Guaranteed Payments</u> |
|-----------------------|-----------------------------------|
| 2017 - 2019 | \$9,800,000 per annum |
| 2020 - 2029 | \$10,800,000 per annum |
| 2030 - 2039 | \$10,300,000 per annum |
| TOTAL | <u>\$240,400,000</u> |

Guaranteed Payments made by Metro Louisville to or on behalf of the Arena Authority for and on behalf of the Arena Project shall be applied to pay, directly or indirectly, debt service on the Arena Bonds, including the maintenance of the required level of any debt service reserve fund which may only be used to pay debt service on the Arena Bonds and funding a renovation (replacement, repair, depreciation) fund.

Section 5. Annual Guaranteed Payments to be Included in Fiscal Year Proposed Budget. To the extent permitted by law, Louisville Metro hereby covenants that it will include or cause to be included in each and every proposed fiscal year budget of Louisville Metro the Annual Guaranteed Payment for such fiscal year, for approval by the Council and for assessment, levy and appropriation of the Annual Guaranteed Payments for such fiscal year.

Section 6. Current Arena Bonds not to Affected. Nothing in this Ordinance shall be read to affect the rights of the current Arena bondholders. Louisville Metro will continue to abide by the covenants and conditions agreed upon in the Amended Guarantee Agreement until such contractual duties and obligations shall cease to exist.

Section 7. 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 8. Supplements. The provisions of this Ordinance may be supplemented from time to time by ordinance or resolution of the Council.

Section 9. 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 10. Effective Date. This Ordinance shall be in full force and effect from and after its adoption and publication as provided by law.

H. Stephen Ott Metro Council Clerk
Greg Fischer Mayor

David Yates President of the Council
Approval Date

APPROVED AS TO FORM AND LEGALITY: Michael O'Connell Jeffersc

BY: Assistant Jefferson County Attorney
Arena Guaranteed Payment Amendment in Anticipation of Refunding ROC n1 111016

EXHIBIT A

Amended and Restated Memorandum of Agreement

(See attachment)

EXHIBIT B

Second Amendment Agreement

and

Second Amended and Restated Memorandum of Agreement

(See attachment)