



# Louisville Metro Government

## Legislation Text

File #: O-332-15, Version: 1

### **ORDINANCE NO. \_\_\_, Series 2015**

**AN ORDINANCE OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AUTHORIZING A SECOND SUPPLEMENT TO THE INDENTURE OF TRUST RELATING TO METRO GOVERNMENT'S VARIABLE RATE DEMAND INDUSTRIAL BUILDING REVENUE BONDS, SERIES 2008 (SPALDING UNIVERSITY, INC. PROJECT), THE PROCEEDS OF WHICH WERE LOANED TO SPALDING UNIVERSITY, INC. AND TAKING OTHER RELATED ACTION.**

Sponsored By: Councilperson Marianne Butler

WHEREAS, the Louisville/Jefferson County Metro Government (the "Metro Government") is a consolidated local government organized and existing under the laws of the Commonwealth of Kentucky (the "Commonwealth") and as such is authorized under the Industrial Buildings for Cities and Counties Act, as amended, Sections 103.200 to 103.285 of the Kentucky Revised Statutes (the "Act"), to issue its industrial building revenue bonds and loan the proceeds thereof to any person to finance and refinance the costs of acquiring, constructing, and equipping an "industrial building" (as defined in the Act), including specifically land, buildings, improvements, equipment, and other facilities related to or in furtherance of the charitable purposes of any nonprofit institution, so as to accomplish thereby the public purposes of promoting the economic development of the Commonwealth, relieving conditions of unemployment, and encouraging the increase of industry therein, PROVIDED THAT SUCH BONDS ARE PAYABLE SOLELY FROM THE LOAN REPAYMENTS AND OTHER REVENUES DERIVED IN RESPECT OF THE LOAN AND DO NOT CONSTITUTE AN INDEBTEDNESS OF THE METRO GOVERNMENT WITHIN THE MEANING OF THE CONSTITUTION AND LAWS OF THE COMMONWEALTH; and

WHEREAS, Metro Government previously issued its Variable Rate Demand Industrial Building Revenue Bonds, Series 2008 (Spalding University, Inc. Project) in the aggregate principal amount of \$13,500,000 (the "Bonds") under an Indenture of Trust dated as of October 1, 2008 (the "Original Indenture"), between the Metro Government and U.S. Bank National Association, as trustee (the "Trustee"), to provide funds for a loan to Spalding University, Inc. (the "University"), a non-stock, nonprofit corporation organized and existing under the laws of the Commonwealth of Kentucky in order to: (a) redeem and retire the outstanding City of Shively, Kentucky Variable Rate Demand Educational Revenue Bonds, Series 2003, (b) refinance the purchase of the Breckinridge Building and finance a portion of the costs of renovating, improving and equipping such building for use by the University, (c) renovate, expand and improve existing structures or purchase equipment consistent with the University's Campus Master Plan and (d) pay the costs of issuance of the Bonds (collectively, the "Project"); and

WHEREAS, the Issuer (at the request of the University) together with the Trustee entered into a First Supplement to the Indenture of Trust (the "First Supplement", which together with the Original Indenture and the Second Supplemental Indenture (hereinafter identified), the "Indenture"), dated as of June 1, 2010, for the purpose of modifying the calculation of the Flex Private Placement Rate of the Bonds while in the Flex Private Placement Rate Mode (as defined in the Original Indenture); and

WHEREAS, the University, with the consent of U.S. Bank National Association, as Owner of all of the Bonds (the “Initial Purchaser”), has notified the Trustee of its election under the Indenture to further amend and supplement the Indenture to further modify the calculation of the Flex Private Placement Rate of the Bonds while in the Flex Private Placement Rate Mode (as defined in the Indenture); and

WHEREAS, the Metro Government and the University entered into a loan agreement dated as of October 1, 2008 (the “Loan Agreement”), to effect the loan to the University with respect to the Project; and

WHEREAS, in connection with the further modification of the Flex Private Placement Rate, the University has requested that the Metro Government and the Trustee enter into the Second Supplemental Indenture described herein; and

WHEREAS, the Act authorizes the governing body of an issuer to delegate to an official thereof or to establish by ordinance or resolution the method or methods for determining the interest rate or rates and actual terms and maturities of any bonds issued pursuant to the Act, subject to certain limitations; and

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

1. Recitation and Incorporation. The facts and recitations set out in the preamble of this Resolution are adopted and incorporated as a part hereof, and the terms defined in the preamble shall have the same meanings when used herein.

2. Public Purposes. The Metro Council hereby finds and declares that the issuance of the Bonds and the loan of the proceeds thereof to the University to finance the Project 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. THE BONDS ARE PAYABLE SOLELY FROM THE LOAN REPAYMENTS AND OTHER REVENUES DERIVED IN RESPECT OF THE LOAN AND DO NOT CONSTITUTE AN INDEBTEDNESS OF THE METRO GOVERNMENT, THE COMMONWEALTH OR ANY OTHER POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF THE CONSTITUTION AND LAWS OF THE COMMONWEALTH.

3. Authorization of the Bonds and the Project. For the purposes set forth in the preamble hereto, there is hereby authorized and directed:

A. the issuance, execution, sale, and delivery of the Bonds, as provided herein and in the Indenture as supplemented, which Bonds (i) shall be in a principal amount not to exceed Eight Million Three Hundred Thirty Thousand Dollars (\$8,330,000), (ii) shall bear interest at a variable rate and/or fixed rate as provided in the Indenture as supplemented and as approved as provided in Section 4 hereof, but in no event shall the interest rate exceed ten percent (10%) per annum, and (iii) shall have the maturities and be subject to redemption at the times and in the manner set forth in the Indenture as supplemented and as approved as provided in Sections 4 hereof; and

B. the approval of the Second Supplemental Indenture (hereinafter identified), the related modification of the Flex Private Placement Rate, and the execution and approval of related documentation which 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.

4. Authorization of Second Supplemental Indenture and Consent to and Approval of Amendments.

For the purposes set forth in the preamble hereto, the Mayor and the Clerk of the Metro Council are hereby authorized and directed to execute and deliver on behalf of the Metro Government a Second Supplement to the Indenture of Trust (the "Second Supplemental Indenture") substantially in the form attached hereto as Exhibit A, providing for modification of the Flex Private Placement Rate on the Bonds as set forth in the Second Supplemental Indenture, with such changes as the Mayor shall approve, the execution thereof to constitute conclusive evidence of such approval. The Metro Council consents to and approves the amendments to the terms of the Indenture and the Bonds to be effected by the Second Supplemental Indenture.

5. Authorization of Official to Approve Other Terms of Bonds. The Mayor is hereby authorized to approve on behalf of the Metro Government the final principal amounts, conversion privileges and actual terms and maturity schedule for the Bonds, provided that (i) the final principal amount of the Bonds shall not exceed Eight Million Three Hundred Thirty Thousand Dollars (\$8,330,000), (ii) the final maturity of any of the Bonds shall not extend beyond the year 2023 and (iii) the interest rate or rates and the procedures for determining such rates, any conversion privileges and actual terms and maturity schedule for the Bonds are approved by the University and the Initial Purchaser.

6. Further Acts and Deeds. The Mayor, the Clerk of the Metro Council, and other appropriate officers and employees of the Metro Government, as may be designated by the Mayor or the Clerk of the Metro Council, are hereby authorized and directed to execute, acknowledge, and deliver on behalf of the 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 and effecting this Bond Ordinance, the Second Supplemental Indenture, and the Bonds, and the financing of the Project, provided that neither the Metro Government nor any of its councilmen, officers, employees, or agents incur any general liability thereby.

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.

8. Bonds Not a General Obligation. **The Bonds 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 or on behalf of the University to Metro Government pursuant to the Loan Agreement and any security pledged therefor.**

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

10. Effective Date. This ordinance shall be in full force and effect from and after its enactment and publication as provided by law.

INTRODUCED, SECONDED AND GIVEN FIRST READING at a duly convened meeting of the Metro Council of the Louisville/Jefferson County Metro Government held on October 8, 2015.

GIVEN SECOND READING AND ENACTED at a duly convened meeting of the Metro Council of the Louisville/Jefferson County Metro Government held on October 22, 2015, signed by the President and the Clerk of the Metro Council and approved by the Mayor of the Issuer, and ordered to be published in summary form, filed and indexed as provided by law.

H. Stephen Ott, Metro Council Clerk

David W. Tandy, President of Council

Greg Fischer, Mayor

Approved: Date

**APPROVED AS TO FORM AND LEGALITY:** Michael J. O'Connell Jefferson County Attorney

By: Nicholas Lococo, Assistant County Attorney

Spalding University Reissue to Reduce Interest Rate and Extend Maturity ROC nl,bkn 100115 O-332-15

### CERTIFICATION

The undersigned hereby certifies that she is the duly qualified and acting Clerk of the Metro Council, that the foregoing is a true, correct, and complete copy of an ordinance duly enacted by the Metro Council at a duly convened meeting held on October 22, 2015, on the same occasion signed by the Mayor, duly filed, recorded, and indexed in her office and now in full force and effect, and that all actions taken in connection with such ordinance were in compliance with the requirements of KRS 61.810, 61.815, 61.820, and 61.825, all as appears from the official records of said Council in her possession and under her control.

WITNESS my hand and the seal of the Louisville/Jefferson County Metro Government this 22<sup>nd</sup> day of October, 2015.

H. Stephen Ott,

Clerk of the Metro Council

[SEAL]

### **EXHIBIT A**

### **SECOND SUPPLEMENT TO INDENTURE OF TRUST**