

AMENDED AND RESTATED MEMORANDUM OF AGREEMENT

THIS AMENDED AND RESTATED MEMORANDUM OF AGREEMENT ("Memorandum") is made and entered into this ____ day of _____, 2018 by and among the FINANCE AND ADMINISTRATION CABINET, a governmental agency of the Commonwealth of Kentucky, with an address of Capitol Annex, Room 383, 702 Capital Avenue, Frankfort, Kentucky 40601, hereinafter known as "Cabinet"; LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT, a public body and a political subdivision of the Commonwealth of Kentucky, with an address of 200 E. Main Street, Lexington, Kentucky 40507, hereinafter known as "LFUCG"; and LEXINGTON CENTER CORPORATION, an agency and instrumentality of the Lexington-Fayette Urban County Government, with an address of 430 West Vine Street, Lexington, Kentucky 40507, hereinafter known as "LCC".

WHEREAS, the Cabinet, LFUCG and LCC are parties to a Memorandum of Agreement dated March 23, 2016, and now desire to amend and restate that Memorandum of Agreement as follows:

WITNESSETH:

WHEREAS, the 2016 Kentucky House of Representatives has adopted House Bill 55, which would amend KRS 153.450 to allow an urban-county government to levy an additional transient room tax not to exceed two and one-half (2.5%) percent of the room rents (in addition to the 6% tax currently authorized by statute) in order to provide funding for the renovation, expansion or improvements of a convention center; and

WHEREAS, House Bill 55 also provides that proceeds from the additional transient room tax are to be used for the direct expenditure for or repayment of debt associated with a convention center project; and

WHEREAS, LFUCG has adopted Resolution No. 71-2016 ("Resolution"), attached hereto as Exhibit A, authorizing the additional transient room tax within Fayette County of two and one-half (2.5%) percent, as authorized by House Bill 55 (hereinafter the "Increased Tax") in order to partially fund a proposed renovation, expansion and improvement of the Lexington Convention Center, which is owned and operated by LCC; and

WHEREAS, the project to renovate, expand and improve the Lexington Convention Center shall be defined herein as the "Designated Project"; and

WHEREAS, the estimated cost of the Designated Project is \$263,000,000.00 ("Total Project Cost"), a portion of which Total Project Cost LCC intends to finance with available cash reserves and with approximately \$108,500,000.00 through the issuance of revenue bonds ("LCC Bonds") and approximately \$106,000,000 of Senior and Subordinate Transient Tax Bonds ("Transient Tax Bonds"); and

WHEREAS, the Resolution also authorizes the LFUCG's contribution of TEN MILLION AND NO/100 (\$10,000,000.00) DOLLARS for the Designated Project ("LFUCG Contribution"); and

WHEREAS, the LFUCG has committed up to an additional \$20,000,000.00 toward funding the Designated Project; and

WHEREAS, the Commonwealth of Kentucky ("Commonwealth") has agreed to invest SIXTY MILLION AND NO/100 (\$60,000,000.00) DOLLARS in the Designated Project ("Investment"); and

WHEREAS, the Commonwealth's Investment in the Designated Project is conditioned upon (a) the LFUCG's delivery of the LFUCG Contribution; (b) LCC's financing for the Designated Project through the sale of LCC Bonds and Transient Tax Bonds; (c) during the period of time that the Transient Tax Bonds remain outstanding, the allocation and use of a portion of the Increased Tax for the Commonwealth's recoupment of the Investment, which portion shall be one-half (0.5%) percent of the room rents or one-fifth (1/5th) of the Increased Tax (the "Designated Project Portion"); and (d) the allocation and use of the entire amount (2.5%) of the Increased Tax for the Commonwealth's recoupment of the Investment at such time as the Transient Tax Bonds have been paid in full and retired.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt, mutuality and sufficiency of all of which is hereby acknowledged by the parties hereto, the Cabinet, LFUCG and LCC each agree as follows:

SECTION 1

OBLIGATIONS OF THE CABINET

The Cabinet covenants and agrees to undertake the following obligations:

- A. Upon the Kentucky General Assembly's enactment of House Bill 55 and inclusion of the Investment in the 2016 biennial budget, and the completion of all legal requirements for review of this Memorandum by the State Government Contract Review Committee, and upon the LFUCG's payment to LCC in full of the LFUCG Contribution and the successful issuance and sale of the LCC Bonds and Transient Tax Bonds, the Cabinet shall pay to LCC the sum of \$60,000,000.00, which represents the Investment of the Commonwealth in the Designated Project.
- B. The Cabinet may, but is not required to, make periodic inspections of the Designated Project and may send inspection reports to LCC. Any deficiencies identified in an inspection report shall be corrected by LCC, and its correction reported in writing to the Cabinet within two (2) weeks of receipt of the inspection report.
- C. The Cabinet shall cooperate fully with LCC in order to facilitate the obligations set out in this Memorandum.

SECTION 2

OBLIGATIONS OF LCC

- A. LCC shall use the Investment solely for costs and expenses related to the Designated Project. Other than expenditures relating to the Designated Project, including enhancements and significant repairs thereto, LCC shall initiate no further projects paid for in any part by the Increased Tax until the Commonwealth has recouped its Investment in the Designated Project in full, or this Memorandum is amended.
- B. LCC shall perform any and all acts reasonably necessary to complete the Designated Project to the extent funding is available.

C. LCC shall use applicable procurement procedures for purchases of services and products related to the Designated Project.

D. LCC agrees and acknowledges that revenues received pursuant to the Increased Tax shall be paid for debt service on the Transient Tax Bonds, except that the Commonwealth shall be paid the Designated Project Portion. LCC further agrees that once the Transient Tax Bonds have been paid in full, LFUCG shall pay the full amount of the Increased Tax to the Commonwealth until the Commonwealth recoups all of its Investment.

E. LCC has taken the appropriate measures to authorize it to enter into, and has entered into, the contracts for the design and construction of the Designated Project.

F. LCC, or its agents and contractors, shall obtain all necessary permits, licenses and approvals from the appropriate governmental entities for construction of the Designated Project.

G. LCC shall cooperate fully with the other parties in order to facilitate the obligations set out in this Memorandum.

H. LCC shall retain all records relating to the Designated Project until such records are audited by the Cabinet, or for three (3) years after completion of the Designated Project, whichever first occurs.

SECTION 3

OBLIGATIONS OF LFUCG

LFUCG covenants and agrees as follows:

A. LFUCG agrees to ensure that the Resolution shall continue in full force and effect until such time as the total amount of the Investment has been recouped in full.

B. LFUCG shall retain all records relating to the Designated Project until such records are audited by the Cabinet, or for three (3) years after completion of the Designated Project, whichever first occurs.

C. LFUCG shall cooperate fully with the other parties in order to facilitate the obligations set out in this Memorandum.

D. LFUCG, as the entity that collects the transient room taxes generated by room rents paid in Fayette County, shall serve as a "pass-through" agency for the collection and distribution of the Increased Tax, including the Designated Project Portion, on a monthly basis.

E. LFUCG shall submit a Payment Form, in the form substantially the same as the form attached hereto as Exhibit B to this Memorandum, each time payment of the Designated Project Portion is remitted to the Commonwealth.

F. LFUCG shall provide a copy of all continuing disclosure documents pursuant to rule 15c2-12 of the Securities and Exchange Commission, within 60 days of filing with the Municipal Securities Rulemaking Board ("MSRB") in a format as prescribed by the MSRB.

SECTION 4

MUTUALITY OF OBLIGATIONS

A. The parties agree that the obligations imposed upon the parties are for the benefit of the parties and that the timely fulfillment of each and every obligation in accordance with this Memorandum is necessary. The failure of any party to fulfill its obligations under this Memorandum or the failure of any event to occur by the date established by this Memorandum shall constitute a breach of this Memorandum unless the fulfillment of such obligation is waived or modified by written agreement of the parties.

B. In the event of default by LCC under this Memorandum, the Cabinet may declare this Memorandum void from the beginning without further obligation to LCC and may commence appropriate legal or equitable action to enforce its rights under this Memorandum, including action for recovery of funds expended hereunder.

C. Except as may otherwise be provided herein, each party to this Memorandum shall be solely responsible for any costs incurred in fulfilling its respective obligations under this Memorandum and no party shall have any claim against any other party for reimbursement of such costs, whether or not any party is in default.

SECTION 5

TERM OF MEMORANDUM

A. This Memorandum shall be elective upon review by the State Government Contract Review Committee and shall terminate, except for the audit provisions set forth in Section 5(H), upon the full repayment of the Investment, unless extended by the parties.

SECTION 6

MISCELLANEOUS PROVISIONS

A. This Memorandum may be signed by each party upon a separate copy, and in such case one counterpart of this Memorandum shall consist of a sufficient number of such copies to reflect the signature of each party hereto. This Memorandum may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Memorandum or the terms and conditions hereof to produce or account for more than one of such counterparts.

B. The headings set forth in this Memorandum are for convenience or reference only, and the words contained herein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Memorandum.

C. The terms and conditions of this Memorandum shall be binding upon and shall inure to the benefit of the successor and assigns, respectively, of the parties. This provision shall not be construed to permit assignment by any party of any of its rights and duties under this Memorandum, which assignment shall be prohibited except with the prior written consent of all parties hereto.

D. This Memorandum sets forth the entire understanding of the parties with respect to the subject matter hereof, supersedes all existing agreements among them concerning the subject matter hereof, and may be modified only by a written instrument duly executed by each of the parties hereto.

E. Time is of the essence in the performance of each of the terms and conditions of this Memorandum.

F. The parties agree that in any suit, action or proceeding with respect to this Memorandum may only be brought in or entered by, as the case may be, the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky; or the United States District Court for the Eastern District of Kentucky, Frankfort Division.

G. All notices, requests, demands, waivers, and other communications given as provided in this Memorandum shall be in writing, and shall be addressed as follows:

If to the Cabinet:	Finance and Administration Cabinet Office of the Secretary Room 383, Capitol Annex Frankfort, Kentucky 40601 Attn: Secretary of the Finance and Administration Cabinet
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If to LFUCG:	Lexington Fayette Urban County Government 200 E. Main Street Lexington, Kentucky 40507 Attn: Mayor LFUCG
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If to LCC:	Lexington Center Corporation 430 West Vine Street Lexington, Kentucky 40507 Attn: LCC CEO
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H. The Cabinet may audit or review all documentation and records of LCC relating to the Designated Project pursuant to the provisions of KRS 45A.150.

I. The parties agree that this Memorandum is not entered into under provisions of KRS 56.8161 et seq.

IN WITNESS WHEREOF, the Cabinet, LFUCG and LCC have executed this Memorandum as of the date first above written.

COMMONWEALTH OF KENTUCKY
FINANCE AND ADMINISTRATION CABINET

By: _____
Name: _____
Title: _____

LEXINGTON FAYETTE URBAN COUNTY
GOVERNMENT

By: _____
Jim Gray, Mayor

LEXINGTON CENTER CORPORATION

By: _____
Title: _____

APPROVED AS TO FORM AND LEGALITY

EXHIBIT A

RESOLUTION NO. 71 -2016

A RESOLUTION SUPERSEDING RESOLUTION NO. 784-2015, AND REQUESTING THAT THE KENTUCKY GENERAL ASSEMBLY INSTEAD ADOPT LEGISLATION ALLOWING THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT TO INCREASE THE TRANSIENT ROOM TAX FOR URBAN COUNTY GOVERNMENTS BY AN ADDITIONAL TWO AND ONE-HALF PERCENT (2.5%) FOR THE PURPOSE OF FUNDING CONVENTION CENTERS, AND EXPRESSING THE WILLINGNESS OF THE LEXINGTON-FAYETTE URBAN COUNTY COUNCIL TO PROVIDE \$10 MILLION IN MATCHING FUNDS TOWARD THE RENOVATION OR RECONSTRUCTION OF THE LEXINGTON CENTER.

WHEREAS, the Lexington-Fayette Urban County Council previously adopted Resolution No. 784-2015 related to a request that the Kentucky General Assembly authorize a two percent (2%) increase to the transient room tax for the purpose of funding improvements to the Lexington Center; and

WHEREAS, since the adoption of the above resolution the Governor has proposed providing up to \$60 million of economic investment funding from the Commonwealth of Kentucky for the renovation or reconstruction of the Lexington Center (the "Project"); and

WHEREAS, in order to obtain this funding from the Commonwealth there is an expectation that the Lexington-Fayette Urban County Government commit an amount of \$10 million towards the Project; and

WHEREAS, the Lexington Center Corporation is willing to reimburse the Commonwealth of Kentucky for the monies it previously provided towards the Rupp Arena Project on or before December 31, 2016; and

WHEREAS, the Lexington Center Corporation is now requesting that the transient room tax be raised by an additional one-half percent (0.5%) above the two percent request in Resolution No. 784-2015, which would be dedicated for payment to the Commonwealth of Kentucky until its \$60 million economic investment in the Project is recouped;

WHEREAS, the Urban County Council is in favor of requesting the additional increase to the transient room tax and to expressing its willingness to provide the funding match referenced above.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That the Preamble to this Resolution and to Resolution No. 784-2015 be and hereby are incorporated by reference as if fully set out herein.

Section 2 - That to the extent of any conflict between this Resolution and Resolution No. 784-2015, this Resolution be and hereby supersedes Resolution No. 784-2015.

Section 3 - That the Council of the Lexington-Fayette Urban County Government hereby requests that during the term of the 2016 Regular Legislative Session the Kentucky General Assembly, through the adoption of appropriate legislation, enable or authorize the Lexington-Fayette Urban County Government to increase the existing transient room tax in Fayette County by an additional two and one-half percent (2.5%) for the purpose of funding its Convention Center.

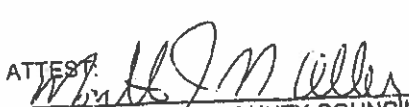
Section 4 - That such legislative action will allow for a significant investment to Fayette County's convention facilities in order to stop future business losses and improve its competitive position to meet customer needs and attract new business.

Section 5 - That by enacting this Resolution the Council of the Lexington-Fayette Urban County Government hereby expresses its willingness to adopt appropriate local legislation to increase the transient room tax after being provided such authority by the State and to provide \$10 million in local matching funds toward the renovation or reconstruction of the Lexington Center.

Section 6 - That the Clerk of the Lexington-Fayette Urban County Council be and hereby is directed to send a copy of this Resolution to the following elected officials at their respective business addresses: the Governor of the Commonwealth of Kentucky, the Kentucky Senate President, the Kentucky House Speaker, and the Fayette County legislators.

Section 7 - That this Resolution shall become effective on the date of its passage.
PASSED URBAN COUNTY COUNCIL: February 18, 2016

ATTEST:


CLERK OF URBAN COUNTY COUNCIL

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MAYOR

EXHIBIT B

PAYMENT FORM



Sept 6th, 2018

To: Ryan Barrow
Executive Director
Office of Financial Management
Finance and Administration Cabinet

From: Chad Hancock
Finance Administrator
Lexington-Fayette Urban County Government

RE: Wire instructions/Submission of Memo- Transient Room Tax .5%

Mr. Barrow,

This letter serves as instructions for the submission of the .5% Transient Room Tax to the Commonwealth of Kentucky per the Amended Memorandum of Agreement dated (month, date, 2018.) The Office of Financial Management shall provide Lexington-Fayette Urban County Government Department of Finance wire instruction for payment of the .5% Transient Room Tax to the Commonwealth.. The Department of Finance will include in the addendum of the submitted wire the following information;

Amended MOA dated __/__/2018
Monthly .5% Transient Tax Payment
LFUCG, LCC, State Finance Cabinet
Commonwealth Contribution Repayment

LFUCG shall also submit in conjunction with the electronic payment a supporting memo via e-mail with the following information pertaining to the Amended Memorandum of Agreement.

Amount of Current Remittance: _____
Total Since Inception: _____
Remaining Balance of Investment: _____

This Memo shall be provided to Ryan Barrow Executive Director of the Office of Financial Management unless otherwise directed by the Finance and Administration Cabinet.

Sincerely,

Chad Hancock
Finance Administrator
Lexington-Fayette Urban County Government

