

ORDINANCE NO. _____-2018

ORDINANCE OF THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF A SIXTH SUPPLEMENTAL LEASE AGREEMENT BETWEEN THE LEXINGTON-FAYETTE URBAN COUNTY AIRPORT BOARD AS THE LESSOR AND THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT AS THE LESSEE IN CONNECTION WITH THE ISSUANCE OF THE LEXINGTON-FAYETTE URBAN COUNTY AIRPORT BOARD GENERAL AIRPORT REVENUE OBLIGATION, 2018 SERIES A (CREDIT NOTE) (LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT GENERAL OBLIGATION), EVIDENCING A LINE OF CREDIT AGREEMENT BY AND BETWEEN THE LEXINGTON-FAYETTE URBAN COUNTY AIRPORT BOARD AND BRANCH BANKING AND TRUST COMPANY, IN A MAXIMUM AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$15,000,000, FOR THE PURPOSE OF PROVIDING INTERIM FINANCING FOR CERTAIN AIRPORT FACILITIES AT THE BLUE GRASS AIRPORT IN FAYETTE COUNTY, KENTUCKY.

WHEREAS, the Lexington-Fayette Urban County Airport Board (the "Board") seeks to provide interim financing for (a) construction of a new approximately 54,000 square foot maintenance facility, which will include a maintenance garage, offices, a warehouse, and storage for snow removal and field maintenance equipment; (b) movement of approximately 500,000 cubic yards of fill material to allow construction of Taxiway D and a new Aircraft Rescue and Firefighting Facility; (c) construction of the new approximately 27,000 square foot Aircraft Rescue and Firefighting Facility, which will include offices, housing for officers, training rooms, and storage of public safety vehicles; (d) realignment of Taxiway A and the construction of Taxiway C; (e) realignment of the northernmost section of Taxiway A; (f) demolition of old Aircraft Rescue and Fire Fighting facility; (g) demolition of a general aviation hangar; (h) runway rehabilitation and safety modifications projects, which will include in-depth pavement testing, a runway safety area determination, initial safety coordination, preliminary design and development; (i) acquisition of equipment including but not limited to aircraft rescue and firefighting equipment, and (j) the acquisition, equipping, furnishing and installation of other capital expenditures (collectively, the "2018 Project"), at the Blue Grass Airport, Lexington, Kentucky (the "Airport"); and

WHEREAS, the Board has determined to provide such interim financing for such 2018 Project by extending the Line of Credit Agreement dated as of June 25, 2014 previously entered into between the Board and Branch Banking and Trust Company (the "2014 Agreement") by entering into an Amendment and Extension dated September 1, 2018 (the "Amendment") to the 2014 Agreement (collectively the 2014 Agreement and the Amendment are referred to as the "2018 Credit Facility"), in order to obtain a line of credit in a maximum aggregate principal amount not to exceed \$15,000,000; and

WHEREAS, the 2018 Credit Facility will be secured by the Eighth Supplement, amending and supplementing the Trust Indenture and shall constitute an Obligation, in the form of an Additional Obligation Instrument, thereunder (as such terms are defined therein); and

WHEREAS, in connection with the anticipated execution and delivery of the 2018 Credit Facility, it is necessary that all actions of the Board and all documents necessary to be executed and delivered by the Board be specifically approved by the Urban County Council of the Lexington-Fayette Urban County Government; and

WHEREAS, the documents identified herein have been prepared and tendered to the Board and this Urban County Council.

NOW, THEREFORE, BE IT ORDAINED BY THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT AS FOLLOWS:

SECTION 1. Definitions.

All words and terms defined in the Trust Indenture, as amended by the Eighth Supplement, and the Lease, and all interpretations therein provided shall have the same meanings, respectively, and be subject to the same interpretations as therein provided where used in this Ordinance, unless the context or use clearly indicates another or different meaning or intent. The terms "hereof," "hereby," "hereto," "herein," and "hereunder," and similar terms, mean this Ordinance. In addition, the following terms used herein shall have the meanings set forth below:

“Advances” shall mean advances of funds under the Loan, as further described in the 2018 Credit Facility.

“Credit Support Provider” means Branch Banking and Trust Company.

“Sixth Supplemental Lease” means the Sixth Supplemental Lease Agreement, dated as of September 1, 2018, by and between the Board and the Lexington-Fayette Urban County Government, amending and supplementing the Lease, entered into in connection with the execution and delivery of the 2018 Credit Facility.

“Lease” means the Lease Agreement, dated as of November 1, 2008, by and between the Board, as lessor, and the Lexington-Fayette Urban County Government, as lessee, as the same may be duly amended, modified or supplemented in accordance with its terms, including the First Supplemental Lease, dated as of November 1, 2009, the Second Supplemental Lease, dated as of November 1, 2012, the Third Supplemental Lease, dated as of March 1, 2013, the Fourth Supplemental Lease, dated as of June 1, 2014, the Fifth Supplemental Lease Agreement, dated as of October 1, 2016, and the Sixth Supplemental Lease, dated as of September 1, 2018 each by and between the Issuer and the Urban County Government.

“Eighth Supplement” means the Eighth Supplemental Trust Indenture, dated as of September 1, 2018, by and between the Board and the Trustee, amending and supplementing the Trust Indenture, entered into in connection with the execution and delivery of the 2018 Credit Facility.

“Loan” shall mean a line of credit in the amount of \$15,000,000 and any and all Advances under the 2018 Credit Facility, as further described therein.

“Loan Agreement” means collectively the Amendment and the 2014 Agreement, by and between the Board and the Credit Support Provider, entered into to provide for a Loan in the form of Advances by the Credit Support Provider to the Board, from time to time, under a line of credit in a maximum aggregate principal amount not to exceed \$15,000,000, which constitutes a Credit Support Instrument under the Trust Indenture.

“Note” means the Credit Note, to be delivered by the Board to the Credit Support Provider.

“Sixth Supplemental Lease” means the Sixth Supplemental Lease Agreement, dated as of September 1, 2018, by and between the Board and the Lexington-Fayette Urban County Government, amending and supplementing the Lease, entered into in connection with the execution and delivery of the 2018 Credit Facility.

“2018 Credit Facility” means, together, the Loan Agreement and the Note.

“2018 Project” means has the meaning set forth the in the Recitals, located at the Airport, as further described in the Sixth Supplemental Lease.

"2018A Series Resolution" means the Series Resolution adopted by the Governing Body on August 22, 2018, which authorized the execution and delivery of the 2018 Credit Facility and the obtaining of Advances thereunder.

"Trust Indenture" means the Trust Indenture, dated as of November 1, 2008, between the Lessor and the Trustee, as the same may be duly amended, modified or supplemented in accordance with its terms.

"Trustee" means U.S. Bank National Association, Louisville, Kentucky as Successor Trustee to The Bank of New York Mellon Trust Company, N.A., Louisville, Kentucky, and any successor Trustee as determined or designated under or pursuant to the Trust Indenture.

SECTION 2. Approval of Issuance of 2018 Credit Facility and Advances Thereunder.

The Lexington-Fayette Urban County Government specifically acknowledges the execution and delivery by the Board of the 2018 Credit Facility and the Loan to be made thereunder in the form of Advances by the Credit Support Provider to the Board from time to time, under a line of credit in a maximum aggregate principal amount not to exceed \$15,000,000, in accordance with the terms of the 2018A Series Resolution adopted by the Board on August

22, 2018 (the "2018A Series Resolution"), authorizing the issuance of such 2018 Credit Facility, a copy of which is attached hereto as *Exhibit A*. As set forth in the 2018A Series Resolution and the Eighth Supplement, the 2018 Credit Facility constitutes an Obligation, in the form of an Additional Obligation Instrument, under the Trust Indenture and the Note shall be further designated as the "Lexington-Fayette Urban County Airport Board General Airport Revenue Obligation, 2018 Series A (Credit Note) (Lexington- Fayette Urban County Government General Obligation)."

SECTION 3. Authorization of Sixth Supplemental Lease.

In accordance with Section 2.02 of the Trust Indenture, which provides that the Lease may be supplemented from time to time whenever Obligations are issued by the Lessor, by the execution and delivery of a Supplemental Lease, the Lexington-Fayette Urban County Government hereby approves the Sixth Supplemental Lease Agreement, in substantially the form attached hereto as *Exhibit B*, supplementing and amending the Lease, in accordance with the requirements of the Trust Indenture and the Lease. It is hereby found and determined that the interim financing for the 2018 Project is appropriate. It is further determined that it is necessary and desirable and in the best interests of the Lexington-Fayette Urban County Government to enter into the Sixth Supplemental Lease for the purposes therein specified, and the execution and delivery of the Sixth Supplemental Lease and all representations, certifications and other matters with respect to the Sixth Supplemental Lease, or as may be required by Dinsmore & Shohl LLP, as Bond Counsel, prior to delivery of the Sixth Supplemental Lease, are hereby approved, ratified and confirmed. In connection with said proposed plan of financing, the Mayor (with the Council Clerk attesting to the Mayor's signature) is hereby authorized and directed to execute the Sixth Supplemental Lease, with such changes in the Sixth Supplemental Lease not inconsistent with this Ordinance and not substantially adverse to the Lexington-Fayette Urban County Government as may be approved by the officials executing the same on behalf of the Lexington-Fayette Urban County Government. The approval of such changes by said officials, and that such are not substantially adverse to the Lexington-Fayette Urban County Government, shall be conclusively evidenced by the execution of the Sixth Supplemental Lease by such officials.

The Lexington-Fayette Urban County Government affirms the Board's right to receive Lease Rental Payments (as defined in the Lease) from the Lexington-Fayette Urban County Government under the Lease and further ratifies and approves the Board's assignment of such right to the Trustee under the Trust Indenture, for the benefit of the Holders of Obligations secured thereunder.

Upon the execution and delivery of the 2018 Credit Facility, the Lease shall be modified and amended by the Sixth Supplemental Lease.

SECTION 4. General Obligation Pledge.

Pursuant to the Constitution of the Commonwealth and the Kentucky Revised Statutes, the obligation of the Lexington-Fayette Urban County Government created by the Lease shall be a full general obligation of the Lexington-Fayette Urban County Government and, for the payment of the Lease Rental Payments, as defined therein, the full faith, credit and revenue of the Lexington-Fayette Urban County Government is hereby pledged for the prompt payment

thereof. During the period the Lease is outstanding, there shall be and there hereby is levied on all the taxable property in Fayette County, in addition to all other taxes, but within applicable limitations, a direct tax annually in an amount sufficient to pay the Lease Rental Payments when and as due. Said tax shall be and is hereby ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers in the same manner and at the same time that taxes for general purposes for each of said years are certified, extended and collected. Said tax shall be placed before and in preference to all other items and for the full amount thereof provided, however, that in each year to the extent that the other taxes of the Lexington-Fayette Urban County Government are available for the payment of the Lease Rental Payments and are appropriated for such purpose, the amount of such direct tax upon all of the taxable property in Fayette County shall be reduced by the amount of such other taxes so available and appropriated.

There is hereby established with the Lexington-Fayette Urban County Government a sinking fund (the "Sinking Fund"). The funds derived from said tax levy hereby required or other available taxes shall be placed in the Sinking Fund and, together with interest collected on the same, are irrevocably pledged for the payment of all bonds issued under KRS Chapter 66 and Tax Supported Leases, as defined in KRS Chapter 66, including the Lease, when and as the same fall due.

SECTION 5. Mayor Authorized to Sign Other Documents.

The Mayor (with the Council Clerk attesting to the Mayor's signature) is hereby authorized and directed to execute any further instruments and documents reasonably necessary in carrying out the plan of financing represented by said Lease, including, without limitation, the public approval of the execution and delivery of the 2018 Credit Facility and the Advances thereunder, as required by Section 147(f) of the Internal Revenue Code of 1986.

SECTION 6. Effective Immediately upon Enactment and Approval.

This Ordinance shall be effective immediately upon enactment and approval as required by law, and a Notice of Enactment and Summary of the provisions of this Ordinance shall be published by the Urban County Council Clerk as required by law.

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INTRODUCED AND GIVEN FIRST READING at a duly convened meeting of the Urban County Council of the Lexington-Fayette Urban County Government on the ____ day of _____, 2018.

GIVEN SECOND READING, ENACTED AND ADOPTED at a duly convened meeting of the Urban County Council of the Lexington-Fayette Urban County Government on the ____ day of _____, 2018.

**LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT**

Approved: _____
Mayor

Attest:

Urban County Council Clerk

CERTIFICATION

I, the undersigned, do hereby certify that I am the duly qualified and acting Urban County Council Clerk of the Lexington-Fayette Urban County Government, and as such Urban County Council Clerk, I further certify that the foregoing is a true, correct and complete copy of an Ordinance duly enacted by the Urban County Council of the Lexington-Fayette Urban County Government at a duly convened meeting held on the ____ day of _____, 2018, on the same occasion signed by the Mayor is evidence of his approval, and now in full force and effect, all as appears from the official records of the Lexington-Fayette Urban County Government in my possession and under my control.

WITNESS my hand and the seal of said Lexington-Fayette Urban County Government as of the ____ day of _____, 2018.

Urban County Council Clerk

[SEAL]

CERTIFICATE

I do hereby certify that the title to this enactment contains an accurate synopsis of the contents thereof and may be used to satisfy the reading and publication requirements of law.

DINSMORE & SHOHL LLP

John C. Merchant
Attorney At Law

EXHIBIT A
2018A SERIES RESOLUTION

EXHIBIT B
SIXTH SUPPLEMENTAL LEASE