

ORDINANCE NO. _____-2020

ORDINANCE OF THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT AUTHORIZING AND APPROVING THE EXECUTION OF A 2020 AMENDMENT TO THE 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 2020 AMENDMENTS TO THE 2018 AMENDED CREDIT FACILITY, BY AND BETWEEN THE LEXINGTON-FAYETTE URBAN COUNTY AIRPORT BOARD AND TRUIST BANK (FORMERLY BRANCH BANKING AND TRUST COMPANY), WHICH WILL BE ENTERED INTO TO (1) EXPAND THE SCOPE OF PURPOSES FOR WHICH CREDIT FACILITY ADVANCES THEREUNDER MAY BE MADE TO INCLUDE CURRENT EXPENSES OF THE BOARD AND (2) ADD CERTAIN PROVISIONS REGARDING THE DETERMINATION OF THE INTEREST RATE APPLICABLE TO CREDIT FACILITY ADVANCES THEREUNDER.

WHEREAS, the Lexington-Fayette Urban County Airport Board (the “Board”) previously entered into the 2014 Credit Facility which provided for the 2014 Loan, in the form of Credit Facility Advances by the Credit Support Provider to the Board, from time to time, under a revolving line of credit in a maximum aggregate principal amount not to exceed \$10,000,000, in order to provide interim financing for the 2014 Project; and

WHEREAS, the Board previously entered into the 2018 Amended Credit Facility to provide for the amendment of the 2014 Credit Facility for the purposes of (i) extending the maturity date of the 2014 Note to September 26, 2023, (ii) increasing the maximum aggregate principal amount of the 2014 Loan to \$15,000,000.00 and restructuring the 2014 Loan as non-revolving, and (iii) expanding the scope of the 2014 Project (the 2014 Project as expanded is further described herein as the “2018 Project”) and providing interim financing therefor; and

WHEREAS, the Board has determined to amend the 2018 Amended Credit Facility to (i) expand the scope of purposes for which Credit Facility Advances thereunder may be made to include Current Expenses paid or incurred in connection with or related to the Blue Grass Airport, Lexington, Kentucky (the “Airport”) and (ii) add certain provisions regarding the determination of the interest rate applicable to Credit Facility Advances thereunder; and

WHEREAS, in order to effectuate such amendment of the 2018 Amended Credit Facility, the Board has determined to enter into the 2020 Amendments to the 2018 Credit Facility; and

WHEREAS, the Loan Agreement shall continue to constitute a Credit Support Instrument under the Trust Indenture and the Credit Facility shall continue to constitute a “revenue bond” under the Act and an Obligation, in the form of an Additional Obligation Instrument, under the Trust Indenture (including the 2020 Amendment to the Eighth Supplemental Indenture, to be entered into in connection with the 2020 Amendments to the 2018 Amended Credit Facility); and

WHEREAS, in connection with the anticipated execution and delivery of the 2020 Amendments to 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 including the 2020 Amendment to the Eighth Supplemental Indenture, and the Lease, including the Sixth Supplemental Lease and the 2020 Amendment to the Sixth Supplemental 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:

“Amended Sixth Supplemental Lease” means the Sixth Supplemental Lease, as amended by the 2020 Amendment to the Sixth Supplemental Lease, amending and supplementing the Lease.

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

“Credit Facility Advances” shall mean advances of funds under the Loan, as further described in the Credit Facility, in the form of 2018 Project Credit Facility Advances and/or Current Expense Credit Facility Advances.

“Credit Support Provider” means Truist Bank (formerly Branch Banking and Trust Company).

“Current Expense Credit Facility Advance” means a Credit Facility Advance made under the Loan for the purpose of paying Current Expenses, as further described in the Credit Facility.

“Current Expenses” means any cost or expense paid or incurred in connection with or related to the Airport whether or not of a capital nature and whether or not related to Airport Facilities, including but not limited to, amounts needed to satisfy any judgment and the cost of any noise mitigation programs (which includes operating expenses of the Airport).

“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.

“Lease” means the Lease Agreement, dated as of November 1, 2008, 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.

“Loan” means the 2014 Loan as modified pursuant to:

(i) the 2018 Amended Credit Facility for the purposes of (a) extending the maturity date of the 2014 Note to September 26, 2023, (b) increasing the maximum aggregate principal amount of the 2014 Loan to \$15,000,000.00 and restructuring the 2014 Loan as non-revolving, and (c) expanding the scope of the 2014 Project (the 2014 Project as expanded is further described herein as the “2018 Project”) and providing interim financing therefor; and

(ii) the 2020 Amendments to the 2018 Amended Credit Facility to provide financing for Current Expenses.

“Loan Agreement” means the 2018 Amended Loan Agreement, as amended by the 2020 Amendment to the 2018 Amended Loan Agreement, as further provided therein.

“Note” means the 2018 Amended Note as amended by the 2020 Amendment to the 2018 Amended Note, as further provided in the 2020 Amendment to the 2018 Amended Loan Agreement.

“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.

“2014 Credit Facility” means together, the 2014 Loan Agreement and the 2014 Note.

“2014 Loan” means the loan in the form of Credit Facility Advances by the Credit Support Provider to the Board, from time to time, pursuant to the 2014 Credit Facility, under a revolving line of credit in a maximum aggregate principal amount not to exceed \$10,000,000, in order to provide interim financing for the 2014 Project.

“2014 Loan Agreement” means the Line of Credit Agreement dated as of June 25, 2014, previously entered into between the Board and the Credit Support Provider.

“2014 Note” means the Revolving Credit Note, dated June 25, 2014, evidencing the 2014 Loan under the 2014 Loan Agreement, further designated as the Lexington-Fayette Urban County Airport Board General Airport Revenue Obligation (Lexington-Fayette Urban County Government General Obligation), 2014 Series A.

“2014 Project” means collectively (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 (as such portion of the 2014 Project was revised in connection with the execution of the 2018 Amended Credit Facility); and (e) realignment of the northernmost section of Taxiway A.

“2018 Amended Credit Facility” means together the 2018 Amended Loan Agreement and the 2018 Amended Note, entered into for the purposes set forth in the definition of “Loan” herein.

“2018 Amended Loan Agreement” means the 2014 Loan Agreement as amended by the 2018 Amendment and Extension.

“2018 Amended Note” means the Credit Facility Note, dated September 26, 2018, which renewed and extended the 2014 Note, further designated as the Lexington-Fayette Urban County Airport Board General Airport Revenue Obligation (Lexington-Fayette Urban County Government General Obligation), 2018 Series A.

“2018 Project” means the 2014 Project (consisting of the Airport Facilities described in subparts (a)-(e) of the definition of the 2014 Project provided herein), as expanded under the 2018 Amended Credit Facility to include: (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 at the Airport.

“2018 Project Credit Facility Advance” shall mean a Credit Facility Advance made under the Loan for the purpose of financing the 2018 Project, as further described in the Credit Facility.

“2020 Amendment to the 2018 Amended Loan Agreement” means the 2020 Amendment, to be dated as provided therein, by and between the Board and Credit Support Provider, amending the 2018 Amended Loan Agreement.

“2020 Amendment to the 2018 Amended Note” means the 2020 Amendment to Note, to be dated as provided therein, by and between the Board and Credit Support Provider, which amends the 2018 Amended Note.

“2020 Amendment to the Eighth Supplemental Indenture” means Amendment No. 1 to the Eighth Supplemental Trust Indenture, to be dated as provided therein, by and between the Board and the Trustee, amending the Eighth Supplemental Indenture.

“2020 Amendment to the Sixth Supplemental Lease” means Amendment No. 1 to the Sixth Supplemental Lease, to be dated as provided therein, by and between the Board and the Lexington-Fayette Urban County Government, amending the Sixth Supplemental Lease.

“2020 Amendments to the 2018 Amended Credit Facility” means together the 2020 Amendment to the 2018 Amended Loan Agreement and the 2020 Amendment to the 2018 Amended Note.

“2020A Series Resolution” means the Series Resolution adopted by the Governing Body on May 27, 2020, which authorized the execution and delivery of the 2020 Amendments to the 2018 Amended Credit Facility and the obtaining of Credit Facility Advances thereunder.

“Trust Indenture” means the Trust Indenture, dated as of November 1, 2008, between the Board 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 the 2020 Amendments to the 2018 Amended Credit Facility and any Credit Facility Advances thereunder.

The Lexington-Fayette Urban County Government specifically acknowledges and approves the execution and delivery by the Board of the 2020 Amendments to the 2018 Amended Credit Facility and any Credit Facility Advances to be made thereunder, in accordance with the terms of the 2020A Series Resolution, a copy of which is attached hereto as *Exhibit A*.

SECTION 3. Authorization of the 2020 Amendment to the Sixth Supplemental Lease.

The Lexington-Fayette Urban County Government hereby approves the 2020 Amendment to the Sixth Supplemental Lease, in substantially the form attached hereto as *Exhibit B*, supplementing and amending the Sixth Supplemental Lease, in accordance with the requirements of the Trust Indenture and the Lease. It is hereby found and determined that interim financing for the 2018 Project and for Current Expenses 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 2020 Amendment to the Sixth Supplemental Lease for the purposes therein specified, and the execution and delivery of the 2020 Amendment to the Sixth Supplemental Lease and all representations, certifications and other matters with respect to the 2020 Amendment to the Sixth Supplemental Lease, or as may be required by Dinsmore & Shohl LLP, as Bond Counsel 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 2020 Amendment to the Sixth Supplemental Lease, with such changes 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 2020 Amendment to the Sixth Supplemental Lease by such officials.

The Lexington-Fayette Urban County Government reaffirms 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 reaffirms its ratification and approval of the Board's assignment of such right to the Trustee under the Trust Indenture, for the benefit of the Holders of Obligations secured thereunder.

SECTION 4. Reaffirmation of 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 continue as a full general obligation of the Lexington-Fayette Urban County Government and, for the payment of the Lease Rental Payments, as defined therein, the Lexington-Fayette Urban County Government reaffirms its pledge of its full faith, credit and revenue for the prompt payment thereof. During the period the Lease is outstanding, the Lexington-Fayette Urban County Government hereby reaffirms that 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.

The Lexington-Fayette Urban County Government has previously established a sinking fund (the "Sinking Fund") to provide for the payment of all bonds issued under KRS Chapter 66 and Tax Supported Leases, as defined in KRS Chapter 66, including the Lease (collectively, the "LFUCG Obligations"), when and as the same fall due. The Lexington-Fayette Urban County Government hereby reaffirms that 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 such LFUCG Obligations, 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 connection with the plan of financing represented by the Amended Sixth Supplemental Lease.

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 AND SECOND READING AND ADOPTED at a duly convened meeting of Urban County Council of the Lexington-Fayette Urban County Government held on the _____ day of _____, 2020, signed by the Mayor, attested under seal by the Clerk of Urban County Council, and ordered to be published, filed and indexed as provided by law.

**LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT**

Approved: _____
Linda Gorton
Mayor

Attest:

Abigail Allan
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 _____, 2020, 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 _____, 2020.

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
2020A SERIES RESOLUTION
[SEE ATTACHED]

EXHIBIT B

2020 AMENDMENT TO THE SIXTH SUPPLEMENTAL LEASE AGREEMENT

[SEE ATTACHED]