



Lexington-Fayette Urban County Government

200 E. Main St
Lexington, KY 40507

Legislation Text

File #: 0241-18, Version: 1

An Ordinance of the Lexington-Fayette Urban County Government making certain findings concerning and establishing a development area for economic development purposes within Fayette County to be known as the Coldstream Research Campus Development Area; approving a Local Participation Agreement between Lexington-Fayette Urban County Government, the Dept. of Finance of the Lexington-Fayette Urban County Government, and the University of Ky., as developer, establishing an incremental tax special fund for payment of administrative costs, public infrastructure costs, and redevelopment assistance; designating the Dept. of Finance of the Lexington-Fayette Urban County Government as the agency responsible for oversight, administration, and implementation of the development area; approving a Master Development Agreement between the Lexington-Fayette Urban County Government, the Dept. of Finance of the Lexington-Fayette Urban County Government and the University of Ky.; and authorizing the Mayor and other officials to take such other appropriate actions as are necessary or required in connection with the establishment of the development area. [Mayor's Office, Atkins]

Authorization to establish a TIF for the University of Kentucky Coldstream Research Campus Development Area and for the Mayor and Commissioner of Finance to execute the Local Participation Agreement and Master Development Agreement and any other related documents. (L0241-18) (Atkins)

Budgetary Implications [select]: Yes/NO

Advance Document Review:

Law: { Select Yes/No, Completed by Dave Barberie

Risk Management: {Select Yes/No, Completed by [Official, Date]}

Fully Budgeted [select]: Yes/No/Partial

Account Number:

This Fiscal Year Impact: \$

Annual Impact: \$

Project:

Activity:

Budget Reference:

Current Balance:

WHEREAS, the Lexington-Fayette Urban County Government, an Urban County Government organized pursuant to Chapter 67A of the Kentucky Revised Statutes (the "LFUCG") by virtue of the laws of the Commonwealth of Kentucky (the "State"), Kentucky Revised Statutes, specifically Sections 65.7041 to 65.7083, as may be amended, is authorized to, among other things, (1) establish a development area to encourage investment in the development and use of areas of the LFUCG, (2) enter into agreements in connection with the establishment and development of a Development Area, (3) establish a special fund for deposit of incremental revenues resulting from the development of a Development Area, and (4) designate an agency to oversee, administer and implement projects within a Development Area; and

WHEREAS, the LFUCG desires to establish a "Development Area" as defined in the Act (as hereinafter defined) to encourage reinvestment and development within such Development Area and to pledge a portion of the "Incremental Revenues" as defined in the Act generated from the development of such Development Area to the payment of Redevelopment Assistance, approved public infrastructure costs, land preparation, and/or financing costs within such Development Area; and

WHEREAS, the LFUCG has identified a contiguous tract of previously undeveloped land in a university research park consisting of not more than three square miles within the LFUCG, specifically described in Exhibit A hereto, that is in need of being developed and which is not reasonably expected to be developed without public assistance; and

WHEREAS, the University of Kentucky (the "Developer") has proposed the development of a mixed use project in a university research park within the Development Area that meets the definition of a "mixed use project" as defined in KRS 65.7041 to 65.7083 and KRS 154.30-010 to KRS 154.30-090; and

WHEREAS, the LFUCG has determined to establish the Development Area as a Development Area pursuant to the Act to encourage investment and development within the Development Area; and

WHEREAS, the LFUCG and the Developer intend to enter into a Memorandum of Understanding regarding a swap of real property within the Coldstream Research Campus (the "MOU") that is necessary for the development of the Development Area; and

WHEREAS, the LFUCG has agreed to support and encourage development within the Development Area by pledging certain Incremental Revenues (hereinafter defined) to pay for Redevelopment Assistance, and Public Infrastructure Costs (hereinafter defined), under a Local Participation Agreement (hereinafter defined); and

WHEREAS, the LFUCG has prepared and presented a "Development Plan", as defined in the Act, for the consideration and adoption of the LFUCG proposing the development and establishment of the Development Area; and

WHEREAS, the LFUCG pursuant to the Act held a public hearing on December 7, 2017 after giving proper notice concerning the LFUCG's intention to consider the adoption of the Development Plan; and

WHEREAS, the adoption of the Development Plan and the establishment of the Development Area are for a public purpose and that the establishment and creation of the Development Area within the LFUCG is for the benefit and welfare of the LFUCG's citizens; and

WHEREAS, the LFUCG deems it necessary to enact this Ordinance in accordance with the Act and for the purposes set forth and described herein and in the Act.

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

SECTION 1. Definitions.

1.1 The capitalized terms set forth below when used herein shall have the following meanings.

"Act" means Kentucky Revised Statutes, Sections 65.7041 to 65.7083 and KRS 154.30-010 to KRS 154.30-090.

"Administrative Costs" means those costs set forth in the Master Development Agreement at Section V(A) to be retained by Agency before reimbursing any costs to the Developer for Public Infrastructure Costs.

"Agency" means the Department of Finance of the LFUCG.

"Approved Public Infrastructure Costs" shall be the Capital Investment, as defined in the Act, within the Development Area that is approved for reimbursement pursuant to the Tax Incentive Agreement by KEDFA, and as further identified in the Tax Incentive Agreement.

"Developer" means the University of Kentucky, an instrumentality of the Commonwealth of Kentucky, its successors, affiliates, subsidiaries or related entities.

"Development Area" means a contiguous geographic area inside a university research park, located within the geographical boundaries of the LFUCG, which is created for economic development purposes by this Ordinance in which one (1) or more Projects are proposed to be located and consisting of less than 3 square miles, as more specifically described in Exhibit A attached hereto, to be known as the "Coldstream Research Campus Development Area".

"Development Plan" means the Tax Increment Financing Development Plan for The Coldstream Research Campus Development Area attached hereto as Exhibit C.

"Establishment Date" means the date that the Development Area is established by this Ordinance.

"Incremental Revenues" means the amount of revenues received by the LFUCG with respect to the Development Area and the State with respect to the Footprint, as designated in the Tax Incentive Agreement by subtracting Old Revenues from New Revenues (Old Revenues and New Revenues are defined in the Local Participation Agreement and/or Tax Incentive Agreement) in a calendar year.

"KEDFA" means the Kentucky Economic Development Finance Authority.

"Local Participation Agreement" shall mean the Local Participation Agreement between the LFUCG, the Agency, and the Developer attached as Exhibit "B" hereto.

"Master Development Agreement" shall mean the Master Development Agreement among LFUCG, the Agency, and the Developer relating to the Project.

"Mixed-Use Program" means the Commonwealth Participation Program for Mixed-Use Redevelopment in Blighted Urban Areas as set forth at KRS 154.30-060 of the Act.

"Mixed-Use Project" means a project meeting the qualifications of a mixed-use development as provided in the Act.

"Project" or "Coldstream Research Campus Project" means a mixed-use development to be constructed by the Developer, as more specifically described in the Development Plan, and expected to fulfill the criteria for a "Mixed-Use Project" and for a pledge of State Incremental Revenues under the Mixed-Use Program, being a Mixed-Use Project within a university research park.

"Pledged Revenues" means that portion of the Incremental Revenues which are pledged by the LFUCG and/or State, pursuant to the Local Participation Agreement and/or the Tax Incentive Agreement, to the pay for Public Infrastructure Costs and Redevelopment Assistance for the Development Area as set forth in the Local Participation Agreement and Tax Incentive Agreement.

"Public Infrastructure Costs" shall mean the project costs incurred within the Development Area related to the construction and financing of the Project including both Approved Public Infrastructure Costs and Redevelopment Assistance as each is defined by the Act, reimbursable by Incremental Revenues from the State and LFUCG, respectively.

"Redevelopment Assistance" shall have the meaning as provided in the Act, and shall include Public Infrastructure Costs.

"State" means the Commonwealth of Kentucky.

"Tax Incentive Agreement" shall mean the agreement entered into pursuant to KRS 154.30-010 to KRS 154.30-090 of the Act between the Kentucky Economic Development Finance Authority and the Agency, relating to the Development Area.

"TIF Documents" shall mean the LFUCG Ordinance establishing the Coldstream Research Campus Development Area, the Local Participation Agreement, the Master Development Agreement, and the Tax Incentive Agreement.

1.2 All capitalized terms used herein and not defined above or in the recitals to this Ordinance shall have the meaning as set forth in the Act, as of the effective date of this Ordinance.

SECTION 2. Findings and Determinations. In accordance with the Act, the LFUCG hereby makes the following findings and determinations with respect to the Development Area:

(a) The Development Area consists of a contiguous tract of land that is no more than three (3) square miles. The actual size of the Development Area is approximately 176 acres;

(a) The Development Area is characterized by the following conditions that make it eligible for tax increment financing under KRS 65.7049(3):

1. It is a mixed-use development project located in a university research park.

(a) The establishment of the Development Area will not cause the assessed taxable value

of real property within the Development Area and within all "development areas" and "local development areas" established by the LFUCG (as those terms are defined in the Act) to exceed twenty percent (20%) of the total assessed taxable value of real property within Lexington. The assessed value of taxable real property within the Development Area for calendar year 2017 was \$0. The LFUCG has previously established five other development areas pursuant to the Act, the Phoenix Park/Courthouse Development Area, the Red Mile Development Area, the Turfland Town Center Development Area, the 21C Lexington Development Area, the Summit Lexington Development Area, and the Midland Avenue Development Area. The combined real property assessed valuation for those development areas is approximately \$24,838,000 and when combined with the real property assessed value for the proposed Development Area, the total real property assessed value for all development areas established by the LFUCG will be approximately \$24,838,000. The total assessed value of taxable real property within Lexington for the calendar year 2017 is approximately \$26 Billion. Therefore, the assessed value of taxable real property within all development areas is significantly less than twenty percent (20%) of the assessed value of taxable real property within Lexington;

- (a) There are inadequate public improvements and infrastructure to support the development of the Development Area. In its current state, the Development Area is not suited for residential or commercial use. The Development Area faces several infrastructure issues that will prevent it from attracting new development and experiencing long term economic growth without the assistance of the LFUCG and State. The Development Area lacks the necessary utilities, walkways, public parking and sanitary and storm sewer infrastructure to support reasonable development within the Development Area. These public infrastructure needs are significant and are of critical importance to the successful development of the Development Area and to support the sustained economic activity proposed by the Project;
- (a) That the Development Area is not reasonably expected to be developed without public assistance. The public infrastructure costs associated with any successful development of the Development Area are too high to occur without the help of the public. It is estimated that the total cost of these public infrastructure improvements needed within the Development Area is approximately \$33.1 million. Without public funding, including the critical pledge of State incremental revenues under the Commonwealth Participation Program for Mixed-Use Development in a University Research Park, as provided in the Act, the proposed Project within the Development Area would not be possible;
- (a) That the public benefits of developing the Development Area justify the public costs proposed. The public investment is expected to reach \$33.1 million, but the private investment within the Development Area will reach \$165.9 million. Over a 20-year period, the project is expected to support over 1,800 jobs annually and \$5.9 billion in total economic impact. While the LFUCG will pledge eighty percent (80%) of new ad valorem property taxes and occupational taxes to pay for the public projects proposed, it will generate significant new revenues from the twenty (20%) of those new incremental revenues not pledged and one hundred (100%) of the other local taxes generated from the Project.

- (a) The Project is expected to generate much more tax revenue than current use in the Development Area. According to the Report, total incremental tax revenues generated over 20 years are estimated at \$127.9 million. After 20 percent is retained, such amount translates to an estimated \$67.5 million of cash available for State participation and an estimated \$34.9 million for local participation.

- (a) Based on research and analysis documentation in the Report, the Project is estimated to have a significant economic and fiscal impact to the local economy. Its construction is estimated to generate a one-time impact that includes over \$199 million of total spending, \$108.1 million of total wages, support for 2,276 jobs, and \$321.2 million in total economic impact. According to the Report, over a 20-year period, the impact of the business activity occurring within the anticipated development is estimated to include \$5.9 billion of total output, \$2.2 billion of labor income, and support for 1,882 jobs annually throughout the Commonwealth.

- (a) It is proposed that the incremental revenues from the LFUCG and the State will be used to help fund the costs of the “approved public infrastructure” as defined by the Act and to provide Redevelopment Assistance needed for the Project within the Development Area. The estimated cost of the approved public infrastructure needed for the Project is approximately \$33.1 million. It is estimated that approximately \$102.4 million in local and State TIF-applicable incremental revenues from the Project will be available over 20 years to pay for approved public infrastructure costs needed for the Project. The net present value of the \$102.4 million is dependent upon many variables in the tax-exempt financing/bonding market.

- (a) This amount far exceeds the estimated \$33.1 million in approved public infrastructure cost, even before considering the benefits of the taxes generated that are not eligible for recovery under the TIF agreements. As a result, the Project represents an enormous benefit to the LFUCG and the State.

SECTION 3. Establishment, Name, Boundaries. All that area described herein by Exhibit A attached hereto and made a part hereof, is located within the LFUCG and is hereby established and designated as the "Coldstream Research Campus Development Area"; provided, however, that should the swap of real property as provided by the MOU not occur, the Development Area established by this Ordinance shall be considered to be dissolved, and the related agreements authorized herein shall be considered to be terminated. At the time of the enactment of this Ordinance the Development Area is less than three (3) square miles.

SECTION 4. Establishment Date, Commencement Date, Termination date. The Establishment

Date is the effective date of this Ordinance. The Commencement Date of the Development Area is the date of execution of the Local Participation Agreement and the Termination Date shall be exactly twenty (20) years subsequent to activation of the Development Area; provided, that if the Tax Incentive Agreement for the Project or a Local Participation Agreement relating to the Development Area has a Termination Date that is later than the Termination Date established in this Ordinance, the Termination Date for the Development Area shall be extended to the Termination Date of the Tax Incentive Agreement, or the Local Participation Agreement. However, the Termination Date for the Development Area shall in no event be more than forty (40) years from the Establishment Date.

SECTION 5. Adoption of Development Plan. The LFUCG hereby adopts the Development Plan, attached hereto as Exhibit C. The LFUCG Council hereby finds and determines that a public hearing was duly held on December 7, 2017 to solicit public comment on the Development Plan, following publication of notice thereof in accordance with Chapter 424 of the Kentucky Revised Statutes, as amended. It is hereby confirmed that a copy of the Development Plan was filed with the LFUCG Clerk of Council, the Office of the Mayor, and with the Office of the Fayette County Judge/Executive on November 30, 2017.

SECTION 6. Local Participation Agreement. The Mayor of the LFUCG is hereby authorized and directed to execute, acknowledge and deliver on behalf of the LFUCG a Local Participation Agreement, a form of which is attached as Exhibit B and made a part hereof, between the LFUCG, the Agency, and the Developer authorizing the pledge of a portion of the Incremental Revenues of the LFUCG from the Development Area to the payment of Public Infrastructure Costs, Administrative Costs and/or Redevelopment Assistance.. The form of Local Participation Agreement to be signed by the Mayor on behalf of the LFUCG and by the Commissioner of the Department of Finance, on behalf of the Agency, shall be in substantially the form attached hereto, subject to further negotiations and changes therein that are not inconsistent with this Ordinance and not substantially adverse to the

LFUCG. The approval of such changes by said officers, and that such changes are not substantially adverse to the LFUCG, shall be conclusively evidenced by the execution of such Local Participation Agreement by such officials.

SECTION 7. Special Fund. There is hereby established a Special Fund of the LFUCG to be known as The Coldstream Research Campus Development Area Tax Increment Fund, into which the LFUCG covenants to deposit, and into which LFUCG officials are hereby authorized and directed to deposit all Pledged Revenues. The LFUCG's Agency shall maintain the Special Fund unencumbered except for the purposes set forth in Section 8 hereof. Funds deposited in the Special Fund shall be disbursed in accordance with the Act, the TIF Documents, the Development Plan and related documents to pay for Administrative Costs and Public Infrastructure Costs within the Development Area.

SECTION 8. Use of Pledged Revenues. Subject to the requirements and conditions set forth in the Local Participation Agreement, Pledged Revenues shall be deposited by the LFUCG into the Special Fund created under Section 7 hereof and shall be used solely to: (a) to pay for Administrative Costs, Public Infrastructure Costs and/or Redevelopment Assistance,, as those terms are defined herein or in the Local Participation Agreement and the Master Development Agreement; and (b) for such other purposes as may be determined by the LFUCG and that are appropriate and in compliance with the purposes set forth in the TIF Documents and the Act, as the same may be amended from time to time.

SECTION 9. Review by the LFUCG Council. The governing body of the LFUCG shall review and analyze the progress of the development activity in the Development Area on an annual basis. Such reports shall, at a minimum, include a review of the progress in meeting the stated goals of the Development Area. The Mayor and other officials of the LFUCG shall report to the governing body of the LFUCG during such reviews and shall, when necessary, invite developers to participate in the

review process to report on the progress of their developments within the Development Area. The review and documentation supporting the review shall be forwarded to KEDFA in accordance with the Tax Incentive Agreement and the Act.

SECTION 10. Designation of Oversight Agency. Pursuant to the Act, the LFUCG hereby designates the Department of Finance of the LFUCG as the agency (the "Agency") of the LFUCG for purposes of oversight, administration and review responsibility of the TIF Documents and the Development Area established hereby. The Agency shall act on behalf of the LFUCG in administering the Development Area, entering into Development Area agreements, and other related agreements, with respect to the development of the Development Area and the financing of Public Infrastructure Costs therein. The Commissioner of the Department of Finance is hereby authorized and directed to execute the Local Participation Agreement and Master Development Agreement on behalf of the Agency and to take other appropriate action to carry-out the terms of this ordinance, the Local Participation Agreement, and the Tax Incentive Agreement.

SECTION 11. Master Development Agreement. That the Mayor and the Commissioner of Finance are hereby authorized to and directed to execute the Master Development Agreement, the form of which is attached as Exhibit D and made a part hereof, between the LFUCG, the Agency, and the Developer relating to the development of the Project. The form of Master Development Agreement to be signed by the Mayor on behalf of the LFUCG and by the Commissioner of the Department of Finance, on behalf of the Agency, shall be in substantially the form attached hereto, subject to further negotiations and changes therein that are not inconsistent with this Ordinance and not substantially adverse to the LFUCG. The approval of such changes by said officers, and that such changes are not substantially adverse to the LFUCG, shall be conclusively evidenced by the execution of such Master Development Agreement by such officials.

SECTION 12. Authorization of LFUCG Officials. The Mayor and other appropriate LFUCG

officials, officers, employees and agents are hereby authorized to take all necessary actions to submit the necessary application and other documents to KEDFA and any other necessary entities to obtain the necessary approvals and to take all necessary actions as required by the KEDFA and other entities to meet all of the requirements of and qualify to participate in the Mixed-Use Program, and to carry out the intent of this Ordinance, including being authorized to execute any Memorandum of Agreement and/or Tax Incentive Agreement between KEDFA and the LFUCG and/or the Agency approving a pledge of State Incremental Revenues for the Project pursuant to the Act.

SECTION 13. Severability. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

SECTION 14. Repeal of Conflicting Orders and Ordinances. All prior resolutions, municipal orders or ordinances or parts of any resolution, municipal order or ordinance in conflict herewith are hereby repealed.

SECTION 15. Effective Date. This Ordinance shall be in full force and effect from and after its passage, attestation, recordation and publication of a summary hereof pursuant to KRS Chapter 424.

INTRODUCED, SECONDED AND GIVEN FIRST-READING APPROVAL AT A DULY CONVENED MEETING OF THE LFUCG COUNCIL, held on the _____ day of _____, 2018.

GIVEN SECOND READING AND ADOPTED AT A DULY CONVENED MEETING OF THE LFUCG COUNCIL, held on the _____ day of _____, 2018 and on the same occasion signed by the Mayor as evidence of his approval, attested by the LFUCG Clerk of Council, published and filed as required by law, and declared to be in full force and effect from and after its adoption and approval according to law.

Approved:

By:
Mayor

ATTEST:

By:
Clerk of Council

PUBLISHED:

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.

Keating Muething & Klekamp PLL

By: _____
James E. Parsons
Attorney At Law

EXHIBIT A

DEVELOPMENT AREA DESCRIPTION
AND MAP
EXHIBIT B

LOCAL PARTICIPATION AGREEMENT
EXHIBIT C

DEVELOPMENT PLAN
EXHIBIT D

MASTER DEVELOPMENT AGREEMENT

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