

## RESOLUTION NO. TIF-F-10-04

A RESOLUTION OF THE KENTUCKY ECONOMIC DEVELOPMENT FINANCE AUTHORITY ("KEDFA") AUTHORIZING THE EXECUTION AND DELIVERY OF THE AMENDED AND RESTATED GRANT CONTRACT (THE "AGREEMENT") BY AND BETWEEN THE COMMONWEALTH, KEDFA, THE LOUISVILLE REGIONAL AIRPORT AUTHORITY ("AUTHORITY") AND THE LOUISVILLE RENAISSANCE ZONE CORPORATION ("CORPORATION") RELATING TO THE LOUISVILLE RENAISSANCE ZONE TAX INCREMENT FINANCING PROJECT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF ANY OTHER DOCUMENTS AND THE TAKING OF ANY OTHER ACTION NECESSARY TO ACCOMPLISH THE TERMS OF THE AGREEMENT.

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WHEREAS, KEDFA has been created and established as a public body, corporate and politic, under KRS Section 154.20-010 and has all the powers, duties and responsibilities delegated to it by law and is empowered to review, approve and monitor the Commonwealth's participation in tax increment financing programs.

WHEREAS, from 1988 to 2003, the Commonwealth, Louisville Metro Government, the Authority and others have invested approximately \$800 million in the development of the Louisville International Airport (the "Airport") through the Louisville Airport Improvement Program ("LAIP"), consisting of a new system of independent parallel runways, a new air traffic control tower, new navigational systems and other improvements, thereby serving as a catalyst for United Parcel Service's \$1.1 billion investment in its UPS Worldport international sorting center located at the Airport ("UPS Worldport") and a subsequent \$1.0 billion expansion of UPS Worldport completed during 2010.

WHEREAS, the Authority has acquired, or will acquire in connection with its Part 150 noise mitigation voluntary residential relocation program, approximately 700 acres south of the Airport in the Minors Lane area (the "Part 150 Property") at a projected cost of approximately \$150 million; and under federal law, the Authority must either utilize the Part 150 Property for aviation-related projects approved by the Federal Aviation Administration (the "FAA") or resell the Part 150 Property, with the proceeds applied to aviation-related projects or repaid to the FAA.

WHEREAS, in light of its prior and ongoing activities and projects, the Authority previously engaged in a master planning process that identified various additional public projects that are necessary or desirable to promote and develop aviation and to continue to meet the opportunities and demands which have been created by the LAIP, which, if developed, will require the acquisition of land and the construction of

improvements in the Development Area, the location and boundaries of which are described in Exhibit B – Louisville Renaissance Zone Pilot Program TIF Development Area to the Agreement (“Development Area”).

WHEREAS, the Commonwealth has previously found that the Development Area is an area in need of public improvement and that the projects to be undertaken in the Development Area (together with all costs incidental thereto, the “Project”), as preliminarily presented to the Commonwealth by the Authority over several years from 2000 to 2003 in various planning papers, should result in an increase in the value of property located in the Development Area or result in increased employment within the Development Area.

WHEREAS, the Commonwealth, Louisville Metro Government and the Authority have previously recognized their joint interest in developing a rational plan for the optimal revitalization and development of the Development Area (including but not limited to the Part 150 Property lying within the Development Area) in a more efficient manner which promotes aviation, accomplishes the recommendations in the Authority’s master plan, furthers airport-compatible economic development initiatives in the Development Area, ensures that the Development Area, including any portions of the Development Area that are surplus to the Authority’s needs, possess the transportation infrastructure which will support airport, aviation-related and various intermodal transportation activities within the Development Area and the community and/or are improved in a manner which ensures the maximum value for such surplus property, and promotes economic development strategies that benefit the Commonwealth as recited in KRS 65.491.

WHEREAS, the use of tax increment financing has proved to be successful and of great benefit to areas in need of revitalization and development in other parts of the country; therefore, the development of a “pilot program”, within the meaning of the Pilot Program Legislation and as preliminarily presented by the Authority in its various planning papers, within the Commonwealth to test the usefulness of increment financing to assist local governments in restoring and revitalizing their communities is a most worthy public purpose.

WHEREAS, the Pilot Program Legislation authorized the Commonwealth to execute a grant contract with any agency in acknowledgement of benefits to be derived by it within a development area with an existing economic development asset and in order to promote the public purpose of the Commonwealth; and the Authority and UPS Worldport are such existing economic development assets.

WHEREAS, pursuant to the Pilot Program Legislation, then-Governor Paul Patton, on behalf of the Commonwealth, designated the Development Area to be eligible to benefit from the provisions of a Grant Contract dated December 8, 2003, by and among the Commonwealth, the Authority and the Corporation, as amended by a First Amendment to Grant Contract dated as of May 8, 2007 (as amended, the “Original Agreement”).

WHEREAS, Louisville Metro Government by Ordinance declared the Development Area to be a "development area" within the meaning of the Pilot Program Legislation, and the Project constitutes a "project" within the meaning of the Pilot Program Legislation; therefore, the Project is eligible to be financed through the use of tax increment "grant contracts" and "contracts of release" within the meaning of the Pilot Program Legislation.

WHEREAS, the Corporation is incorporated as a public project corporation pursuant to the provisions of KRS Section 58.010, *et seq.* to accomplish the public purposes of the Commonwealth, Louisville Metro Government and the Authority.

WHEREAS, pursuant to an Interlocal Cooperation Agreement by and among the Commonwealth, Louisville Metro Government and the Authority (the "Interlocal Cooperation Agreement"), the Corporation has been designated as the "agency", within the meaning of the Pilot Program Legislation for the purposes of identifying, developing, acquiring, financing and accomplishing the Project and entering into one or more grant contracts with the Commonwealth and contracts of release with Louisville Metro Government.

WHEREAS, the Commonwealth entered into the Original Agreement to assist the Corporation with the costs of the Project and in order to release to the Corporation a portion of the Increment (as hereinafter defined) for use solely for the purposes of the Project.

WHEREAS, pursuant to KRS 65.7044, as enacted by the 2008 Kentucky General Assembly, the State Tax Increment Financing Commission was abolished and oversight and responsibility for the Commonwealth's participation in tax increment financing projects was transferred to KEDFA, effective July 15, 2008.

WHEREAS, the parties to the Agreement now desire to amend the Original Agreement to acknowledge KEDFA's responsibility and authority to monitor the Commonwealth's participation in the Project and to implement the submission of routine reports by the Corporation to KEDFA for that purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE KENTUCKY ECONOMIC DEVELOPMENT FINANCE AUTHORITY, AS FOLLOWS:

Section 1. Amended and Restated Grant Contract. Any one of the Chairman, the Vice-Chairman, the Secretary-Treasurer of KEDFA, any other duly authorized official of KEDFA, any authorized signatory (as set forth in the KEDFA Bylaws) for the Office of the Secretary of the Cabinet for Economic Development ("Office of the Secretary") or any authorized signatory (as set forth in the KEDFA Bylaws) for the Department of Financial Incentives (the "Department") is hereby authorized, empowered and directed to execute, acknowledge and deliver on behalf of KEDFA, the Agreement, which is hereby approved, authorized and adopted in substantially the form submitted

herewith and designated Exhibit A with such changes therein as the officer, other duly authorized official of KEDFA, authorized signatory for the Office of the Secretary or authorized signatory for the Department executing the same may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 2. Miscellaneous Documents. The Chairman, the Vice-Chairman, the Secretary-Treasurer of KEDFA, other appropriate KEDFA officials, any authorized signatory for the Office of the Secretary and any authorized signatory for the Department, and each of them, for and on behalf of KEDFA, are hereby authorized, empowered and directed to do and perform any and all things necessary to effect the execution of the Agreement, the performance of all obligations of KEDFA under and pursuant to the Agreement and related documents, and the performance of all other actions of whatever nature necessary to effect and carry out the authority conferred by this Resolution and the Agreement. The Chairman, the Vice-Chairman, the Secretary-Treasurer, other appropriate KEDFA officials, any authorized signatory for the Office of the Secretary and any authorized signatory for the Department, and each of them, are hereby further authorized, empowered and directed for and on behalf of KEDFA to execute all papers, letters, documents, undertakings, certificates, assignments, forms, instruments and closing papers that may be required for the carrying out and effectuation of the authority conferred by and for the purposes of this Resolution and the Agreement, or to evidence said authority and purposes, and to exercise and otherwise take all action necessary to the full realization of the rights and purposes of KEDFA under the Agreement and related documents and to perform all of the obligations of KEDFA under the Agreement and related documents.

Section 3. Limited Obligations. KEDFA shall never be required to pay from its own funds any obligations deriving from the Agreement.

Section 4. Severability. The provisions of this Resolution except Section 3 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 Resolution.

Section 5. Priority of Resolution. In the event of any conflict or conflicts between the provisions of this Resolution and of any prior resolutions or parts thereof, the provisions of this Resolution shall prevail.

Section 6. Binding Effect. This Resolution shall inure to the benefit of and shall be binding in accordance with its terms upon KEDFA and its successors and assigns.

Section 7. Effective Date. This Resolution shall be in full force and effect from and after its adoption and publication as provided by law. The summary of this Resolution read at the meeting of KEDFA described below is approved for purposes of publication as provided by law.

INTRODUCED, SECONDED, READ, AND ADOPTED at a duly convened meeting of the Board of Directors of the Kentucky Economic Development Finance Authority, this 30<sup>th</sup> day of June, 2010.

A handwritten signature in black ink, appearing to read "Jean R. Hale", written over a horizontal line.

JEAN R. HALE, CHAIR  
KENTUCKY ECONOMIC DEVELOPMENT  
FINANCE AUTHORITY

**EXHIBIT A**  
**FORM OF AMENDED AND RESTATED GRANT CONTRACT**

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## **AMENDED AND RESTATED GRANT CONTRACT**

THIS AMENDED AND RESTATED GRANT CONTRACT (the "Agreement") is made and entered into as of the 30th day of June, 2010, by and among (i) the COMMONWEALTH OF KENTUCKY (the "Commonwealth"), (ii) the KENTUCKY ECONOMIC DEVELOPMENT FINANCE AUTHORITY ("KEDFA"), a public body, corporate and politic, and (iii) the LOUISVILLE REGIONAL AIRPORT AUTHORITY, (the "Authority"), a body politic and corporate and public agency of the Commonwealth, and (iv) the LOUISVILLE RENAISSANCE ZONE CORPORATION (the "Corporation"), a Kentucky non-profit corporation, pursuant to Kentucky Revised Statutes ("KRS") Sections 65.490 through 65.499, inclusive (the "Pilot Program Legislation").

### **RECITALS**

From 1988 to 2003, the Commonwealth, Louisville Metro Government, the Authority and others have invested approximately \$800 million in the development of the Louisville International Airport (the "Airport") through the Louisville Airport Improvement Program ("LAIP"), consisting of a new system of independent parallel runways, a new air traffic control tower, new navigational systems and other improvements, thereby serving as a catalyst for United Parcel Service's \$1.1 billion investment in its UPS Worldport international sorting center located at the Airport ("UPS Worldport") and a subsequent \$1.0 billion expansion of UPS Worldport completed during 2010.

The Authority has acquired, or will acquire in connection with its Part 150 noise mitigation voluntary residential relocation program, approximately 700 acres south of the Airport in the Minors Lane area (the "Part 150 Property") at a projected cost of approximately \$150 million; and under federal law, the Authority must either utilize the Part 150 Property for aviation-related projects approved by the Federal Aviation Administration (the "FAA") or resell the Part 150 Property, with the proceeds applied to aviation-related projects or repaid to the FAA.

In light of its prior and ongoing activities and projects, the Authority previously engaged in a master planning process that identified various additional public projects that are necessary or desirable to promote and develop aviation and to continue to meet the opportunities and demands which have been created by the LAIP, which, if developed, will require the acquisition of land and the construction of improvements in the Development Area, the location and boundaries of which are identified in Exhibit B – Louisville Renaissance Zone Pilot Program TIF Development Area, which is incorporated into this Agreement by reference (the "Development Area").

The Commonwealth has previously found that the Development Area is an area in need of public improvement and that the projects to be undertaken in the Development Area (together with all costs incidental thereto, the "Project"), as preliminarily presented to the Commonwealth by the Authority over several years from 2000 to 2003 in various

planning papers, should result in an increase in the value of property located in the Development Area or result in increased employment within the Development Area.

The Commonwealth, Louisville Metro Government and the Authority have previously recognized their joint interest in developing a rational plan for the optimal revitalization and development of the Development Area (including but not limited to the Part 150 Property lying within the Development Area) in a more efficient manner which promotes aviation, accomplishes the recommendations in the Authority's master plan, furthers airport-compatible economic development initiatives in the Development Area, ensures that the Development Area, including any portions of the Development Area that are surplus to the Authority's needs, possess the transportation infrastructure which will support airport, aviation-related and various intermodal transportation activities within the Development Area and the community and/or are improved in a manner which ensures the maximum value for such surplus property, and promotes economic development strategies that benefit the Commonwealth as recited in KRS 65.491.

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The use of tax increment financing has proved to be successful and of great benefit to areas in need of revitalization and development in other parts of the country; therefore, the development of a "pilot program", within the meaning of the Pilot Program Legislation and as preliminarily presented by the Authority in its various planning papers, within the Commonwealth to test the usefulness of increment financing to assist local governments in restoring and revitalizing their communities is a most worthy public purpose.

The Pilot Program Legislation authorized the Commonwealth to execute a grant contract with any agency in acknowledgement of benefits to be derived by it within a development area with an existing economic development asset and in order to promote the public purpose of the Commonwealth; and the Authority and UPS Worldport are such existing economic development assets.

Pursuant to the Pilot Program Legislation, then-Governor Paul Patton, on behalf of the Commonwealth, designated the Development Area to be eligible to benefit from the provisions of a Grant Contract dated December 8, 2003, by and among the Commonwealth, the Authority and the Corporation, as amended by a First Amendment to Grant Contract dated as of May 8, 2007 (as amended, the "Original Agreement"), copies of which are attached to this Agreement as Schedule 1.

Louisville Metro Government by Ordinance declared the Development Area to be a "development area" within the meaning of the Pilot Program Legislation, and the Project constitutes a "project" within the meaning of the Pilot Program Legislation; therefore, the Project is eligible to be financed through the use of tax increment "grant contracts" and "contracts of release" within the meaning of the Pilot Program Legislation.

The Corporation is incorporated as a public project corporation pursuant to the provisions of KRS Section 58.010, *et seq.* to accomplish the public purposes of the Commonwealth, Louisville Metro Government and the Authority.

Pursuant to an Interlocal Cooperation Agreement by and among the Commonwealth, Louisville Metro Government and the Authority (the "Interlocal Cooperation Agreement"), the Corporation has been designated as the "agency", within the meaning of the Pilot Program Legislation for the purposes of identifying, developing, acquiring, financing and accomplishing the Project and entering into one or more grant contracts with the Commonwealth and contracts of release with Louisville Metro Government.

The Commonwealth entered into the Original Agreement to assist the Corporation with the costs of the Project and in order to release to the Corporation a portion of the Increment (as hereinafter defined) for use solely for the purposes of the Project.

KEDFA has been created and established as a public body, corporate and politic, under KRS Section 154.20-010 and has all the powers, duties and responsibilities delegated to it by the Kentucky Economic Development Partnership and as otherwise provided by law.

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Pursuant to KRS 65.7044, as enacted by the 2008 Kentucky General Assembly, the State Tax Increment Financing Commission was abolished and oversight and responsibility for the Commonwealth's participation in tax increment financing projects was transferred to KEDFA, effective July 15, 2008.

The Parties now desire to amend the Original Agreement to acknowledge KEDFA's responsibility and authority to monitor the Commonwealth's participation in the Project and to implement the submission of routine reports by the Corporation to KEDFA for that purpose.

KEDFA adopted Resolution No. TIF-F-10-04 on June 30, 2010, authorizing KEDFA to enter into this Agreement.

The Commonwealth and the Corporation entered into the First Amendment to Grant Contract on May 8, 2007, to accommodate the Commonwealth's request that the Corporation provide certain information to the Kentucky State Tax Increment Financing Commission and to memorialize the Commonwealth's approval of Project No. 1.

NOW THEREFORE, in consideration of the premises and the additional consideration provided herein, the Commonwealth, the Authority and the Corporation agree as follows:

**Section 1. Definitions.**

In addition to the terms defined in the above recitals, the following additional terms used in this Agreement shall have the meanings assigned in this Section 1 unless the context clearly indicates that a contrary meaning is intended.

- (a) "Account Numbers" shall have that meaning set forth in Section 3.2.

(b) "Activation Date" shall mean January 1, 2004,

(c) "Adjusted Increment" shall mean eighty percent (80%) of the Increment.

(d) "Ad Valorem Taxes" means that portion of ad valorem property taxes levied by the Commonwealth pursuant to KRS Chapter 132 on all real and personal property owned or occupied by Area Businesses and situated within the Development Area.

(e) "Area Business" means (i) a holder of a Kentucky sales tax permit collecting tax within the Development Area pursuant to KRS 139.200 or (ii) an "employer" (as defined in KRS Chapter 141) with a business situs within the Development Area which employs one or more persons to work or to perform services within the Development Area.

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(f) "Area Employee" means an "employee" (as defined in KRS Chapter 141), who (i) is subject to control by an Area Business and (ii) has a "primary work situs" within the Development Area. For purposes of this definition, "primary work situs" means the location at which an employee regularly reports for work to perform services or, if at two or more locations, the single location at which the employee spends the majority of his or her working hours performing services, regardless of where payment of wages is made or received.

(g) "Base Year" means January 1, 2002, through December 31, 2002.

(h) "Increment" means that amount of Taxes received by or on behalf of the Commonwealth that is determined by subtracting the amount of Old Revenue from the amount of New Revenue in each calendar year during the term of this Agreement.

(i) "New Revenue" means the amount of Taxes received by or on behalf of the Commonwealth from the Development Area in any year after the Base Year. New Revenue shall not include any Taxes that will be refunded to, or taken as a credit by, an Area Business pursuant to the terms of a tax incentive program with the Commonwealth and/or a Cabinet of the Commonwealth.

(j) "Old Revenue" means the amount of Taxes received by or on behalf of the Commonwealth from the Development Area in the Base Year, being \$6,511,864.55, as adjusted each calendar year after the Base Year by the non-seasonally adjusted Consumer Price Index for all urban consumers, all items (base year computed for 1982 to 1984 equals one hundred (100) (Series Id: CUUR0000SA0)), published by the United States Department of Labor, Bureau of Labor Statistics, or an equivalent price escalator in the event that the aforementioned Consumer Price Index is no longer available from the Bureau of Labor Statistics.

(k) "Project" means the projects to be undertaken in the Development Area in accordance with the Pilot Program Legislation together with all costs incidental thereto, including but not limited to costs related to the development, acquisition, design and construction of the Project and any and all legal, administrative and debt service costs related thereto. Project No. 1 is more particularly described in Exhibit A – Project Description, which is incorporated into this Agreement by reference,

(l) "Sales Taxes" means the total amount of sales taxes received by the Commonwealth pursuant to KRS 139.200 from Area Businesses and attributable to sales within the Development Area.

(m) "Taxes" means collectively Withholding Taxes, Sales Taxes and Ad Valorem Taxes.

(n) "Withholding Taxes" means the individual income taxes received by the Commonwealth from Area Businesses in the form of withholding pursuant to KRS Chapter 141 and attributable to work or services performed within the Development Area. Withholding Taxes shall be determined using an appropriate effective tax rate consistent with the general practice of the Revenue Cabinet, which rate shall not exceed 4.2% of income earned within the Development Area; provided, however, this not to exceed amount shall be adjusted as may be necessary to compensate for any amendments to the Commonwealth's income tax rate. Withholding Taxes shall not include individual income taxes received by the Commonwealth that will be refunded by the Commonwealth under a reciprocal arrangement with another state.

## **Section 2. Representations and Warranties.**

2.1 Representations and Warranties of the Authority and the Corporation. The Authority and the Corporation, as applicable, hereby represent and warrant to the Commonwealth as follows:

(a) Existence.

(i) The Corporation is a duly organized and validly existing non-stock, non-profit corporation under the laws of the Commonwealth of Kentucky.

(ii) The Authority is a body politic and corporate and public agency of the Commonwealth.

(b) Authority to Act. The Corporation and the Authority have the requisite power, capacity and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby, and to observe and to perform this Agreement, in accordance with its terms and conditions. The officers and officials executing and delivering this Agreement on behalf of the Corporation and the Authority have been and are duly authorized to enter into this Agreement on behalf of the Corporation and/or the Authority.

(c) Validity of Agreement; Compliance with Law. This Agreement is the legal, valid and binding obligation of the Corporation and the Authority enforceable in accordance with its terms and conditions. The execution and delivery of this Agreement, and the performance or observance by the Corporation and the Authority of the terms and conditions hereof, do not and will not violate any provisions of the Corporation's Articles of Incorporation, or any laws applicable to either the Corporation or the Authority.

(d) Litigation. No litigation or proceeding involving the Corporation or the Authority is pending or, to the best of the knowledge of the Corporation and the Authority, is threatened in any court or administrative agency which, if determined adversely to the Corporation or the Authority, could have a materially adverse impact on the ability of the Corporation or the Authority to perform any of their respective obligations under this Agreement.

(e) Conflicting Transactions. The consummation of the transactions contemplated hereby and the performance of the obligations of the Corporation and the Authority under and by virtue of this Agreement shall not result in any breach of, or constitute a default under, any material contract, agreement, lease, indenture, bond, note, loan or credit agreement to which either of them are parties or by which either of them are bound.

(f) Disclosure. This Agreement does not contain any false or misleading statement of or omission of any material fact. necessary to approve the Agreement, the Project and the Development Area.

(g) Approvals. Each of the Corporation and the Authority has taken all actions necessary to approve the Agreement, the Project and the Development Area.

2.2 Representations and Warranties of the Commonwealth. The Commonwealth hereby represents and warrants to the Corporation and the Authority as follows:

(a) Authority to Act. The Commonwealth has the requisite power, capacity and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby, and to observe and to perform this Agreement in accordance with its terms and conditions. Each of the officials executing and delivering this Agreement on behalf of the Commonwealth has been and is duly authorized to enter into this Agreement on behalf of the Commonwealth.

(b) Validity of Agreement; Compliance with Law. This Agreement is the legal, valid and binding obligation of the Commonwealth enforceable in accordance with its terms and conditions. The execution and delivery of this Agreement, and the performance or observance by the Commonwealth of the terms and conditions hereof, do not and will not violate any provisions of the Commonwealth's Constitution, or any laws applicable to the Commonwealth.

**Section 3. Determination of Increment and Portion of Increment Payable.**

3.1 Determination of Increment. The Corporation shall agree to assume responsibility for making the initial determination of the amount of the Increment that is the subject of this Agreement; and such amount shall be subject to the approval of the official charged with the collection of taxes in the Development Area consistent with the provisions of KRS 65.499.

(a) Calculation of Old Revenue. The Corporation shall, subject to approval by the Commonwealth and in accordance with the terms of this Agreement, calculate with reasonable accuracy the Old Revenue and, in doing so, the Corporation may make such assumptions as may be reasonably required. The Commonwealth, through its various cabinets, agrees to provide the Corporation with such assistance and documentation as it may reasonably require in order to determine the Old Revenue. Because incremental revenues are measured by subtracting Old Revenues from New Revenues, a determination of Old Revenue is necessary prior to a distribution of the Increment. Each of the parties acknowledges that Old Revenue for the Base Year has been determined to be \$6,511,864.55 and that the Commonwealth has approved this determination. Notwithstanding anything in this Agreement to the contrary, before the Commonwealth shall be required to pay to the Corporation any Increment to which the Corporation shall be eligible for each year during the term of this Agreement, the Old Revenue Determination described in Section 3 of this Agreement must be calculated and provided to KEDFA as set forth in Exhibit D to this Agreement. Exhibit D shall set forth the amounts which are deemed to be Old Revenue for the Base Year and shall set forth the CPI or other adjustments to be made annually.

(b) Calculation of New Revenue. The Corporation shall calculate with reasonable accuracy the New Revenue for each calendar year during the term of this Agreement and, in doing so, the Corporation may make such assumptions as may be reasonably required. The Commonwealth, through its various cabinets, agrees to provide the Corporation with such assistance and documentation as it may reasonably require in order to determine the New Revenue. The Corporation shall submit the New Revenues Determination in writing to KEDFA for review, along with a report which includes (i) the name of each Area Business and (ii) all state tax account numbers used by each Area Business in connection with the Development Area. The submission by the Corporation of complete and accurate information required under this Section along with a Request for Disbursement (substantially in the form of Exhibit E) shall constitute a formal request for the Adjusted Increment. KEDFA, with assistance from the Department of Revenue, shall review and verify the information submitted and shall certify the verified amount.

3.2 New Revenue Requirements. The Commonwealth shall require, and the Authority agrees to cause Louisville Metro Government to require, that all Area Businesses maintain separate sales and withholding tax account numbers (the "Account Numbers") for each business situs within the Development Area. The Account Numbers

shall be used exclusively to report sales and withholding taxes generated within the Development Area.

3.3 Listing of Area Businesses. On or before April 30<sup>th</sup> of each year, the Corporation shall endeavor to submit to KEDFA a listing (substantially in the form of Exhibit C) of each Area Business operating within the Development Area.

#### **Section 4. Payment of Adjusted Increment.**

4.1 Term of Agreement and Payment of Adjusted Increment. The initial term of this Agreement shall be for one year, commencing on the Activation Date. On each anniversary of the Activation Date thereafter, this Agreement shall automatically renew for additional periods of one year each and shall terminate on the earlier of (i) December 31, 2023, or (ii) the date on which the Commonwealth elects to terminate this Agreement pursuant to KRS 65.497 or Section 4.3. For each year during which this Agreement remains effective, the Commonwealth by and through its Finance and Administration Cabinet agrees to pay to the Corporation, and the Corporation agrees to accept from the Commonwealth, the Adjusted Increment. Pursuant to the Pilot Program Legislation, and notwithstanding the value of the Adjusted Increment, in no event shall the Commonwealth pay to the Corporation an amount equal to less than fifty percent (50%) of the Increment for any calendar year during the term of this Agreement.

4.2 Time of Payment Within the later of (i) May 1 of each calendar year during the term of this Agreement or (ii) ninety (90) days after the submission by the Corporation of a request for the Adjusted Increment in accordance with Section 3.1(b) of this Agreement, the Finance and Administration Cabinet of the Commonwealth shall pay to the Corporation the portion of the Increment to which it is entitled under this Agreement.

4.3 Use of Adjusted Increment. Consistent with the Pilot Program Legislation, the Corporation covenants and agrees that it will use the proceeds derived under this Agreement solely for the purposes of the Project. The Corporation shall provide to KEDFA no later than ninety (90) days after the end of each calendar year during the term of this Agreement, a certification, substantially in the form of Exhibit F – Certification of Increment Use attached hereto, as to the use of the proceeds derived under this Agreement during the preceding calendar year. In the event that the Corporation fails to use the proceeds derived under this Agreement as provided in this Agreement, and such failure continues for thirty (30) days after written notice thereof from the Commonwealth to the Corporation, then the Commonwealth may immediately terminate this Agreement.

#### **Section 5. New Project Approval.**

Each project proposed to be undertaken within the Development Area shall be reviewed by KEDFA based upon the following criteria:

- (a) Whether the proposed project will improve public infrastructure within the

Development Area or otherwise promote industrial development;

(b) Whether the proposed project involves the acquisition of property within the Development Area for the creation of new business or the expansion of existing business;

(c) Whether the proposed project will result in an increase in the value of property located in the Development Area;

(d) Whether the proposed project will result in increased employment in the Development Area and whether those employment opportunities will provide reasonable pay and benefits for employees;

(e) Whether the proposed project serves a public purpose for Louisville Metro Government or the Commonwealth;

(f) Whether the proposed project results in a significant capital investment in the Development Area;

(g) Whether the proposed project will generate tax revenue or revitalize the Development Area; or

(h) Whether the proposed project is necessary or desirable to promote and develop aviation.

No project may go forward until such time as KEDFA determines that it is consistent with one or more of the criteria set forth above. Each proposed project shall be submitted to KEDFA in the form of a report, which shall contain a budget with valid cost estimates and a detailed explanation of how the proposed project meets one or more of the above criteria.

**Section 6. Miscellaneous.**

6.1 Notices. All notices or other communications hereunder from any party shall be sufficiently given, and shall be deemed given, when delivered or mailed by certified mail, postage prepaid, return receipt requested, to the other parties at their respective addresses as follows:

If to the Commonwealth:

Commonwealth of Kentucky  
Finance & Administration Cabinet  
Room 383, Capitol Annex  
Frankfort, Kentucky 40601  
Attn: Secretary

If to KEDFA: Kentucky Economic Development  
Finance Authority  
c/o Cabinet for Economic Development  
Old Capitol Annex  
300 West Broadway  
Frankfort, KY 40602  
Attn: Commissioner of Department of  
Financial Incentives

If to the Corporation: Louisville Renaissance Zone Corporation  
P.O. Box 9129  
Louisville, Kentucky 40209-9129  
Attn: Executive Director

If to the Authority: Louisville Regional Airport Authority  
P.O. Box 9129  
Louisville, Kentucky 40209-9129  
Attn: Executive Director

With a copy to: T. Kennedy Helm, III  
Stites & Harbison, PLLC  
400 West Market Street  
Suite 1800  
Louisville, Kentucky 40202

6.2 Interlocal Agreement. The effectiveness of this Agreement shall be subject to the approval by the Office of the Attorney General of the Commonwealth of the Interlocal Cooperation Agreement.

6.3 Binding Effect. This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns.

6.4 Severability. If any clause, provision, or section of this Agreement shall be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision, or section shall not affect any of the remaining clauses, provisions or sections hereof.

6.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

6.6 Entire Agreement; Modifications. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. This Agreement shall not be modified, amended, cancelled or terminated except by an agreement in writing signed by the parties hereto.

6.7 Counterparts. This Agreement may be executed in any number of counterparts by some or all of the parties hereto, each of which shall be an original and all of which shall together constitute one and the same instrument.

6.8 Further Assurances. Each of the parties hereto shall use reasonable efforts and cooperate fully with each other in order to promptly and fully carry out the terms and provisions of this Agreement. Each party hereto shall from time to time execute and deliver such other agreements, documents or instruments and take such other actions as may be reasonably necessary or desirable to effectuate the terms of this Agreement.

6.9 Mutual Termination. In addition to any other provisions relating to termination of this Agreement contained herein and under any applicable law of the Commonwealth, this Agreement shall terminate upon the written agreement of all the parties hereto.

6.10 Sections. References to "Sections" shall be to sections of this Agreement, unless otherwise expressly designated.

6.11 Section Headings. Section headings are for reference only and shall have no interpretative weight or value.

6.12 Plural. The plural and singular form of words shall import either or both a plural and/or singular meaning, as the case may be.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their officers and officials thereunto duly authorized as of the date first written above.

**LOUISVILLE RENAISSANCE ZONE CORPORATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LOUISVILLE REGIONAL AIRPORT AUTHORITY**

Approved as to Form and Legality:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**COMMONWEALTH OF KENTUCKY**

Approved as to Form and Legality:

By: \_\_\_\_\_

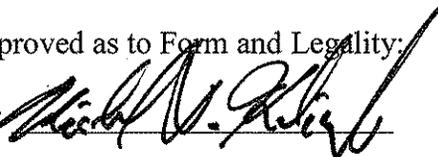
Name: \_\_\_\_\_

Title: \_\_\_\_\_

By:   
Steven L. Beshear, Governor

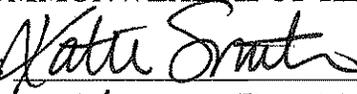
**KENTUCKY ECONOMIC DEVELOPMENT FINANCE AUTHORITY FOR THE COMMONWEALTH OF KENTUCKY**

Approved as to Form and Legality:

By: 

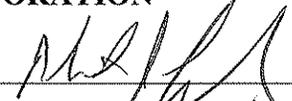
Name: Michael D. Kalinyak

Title: Attorney for KEDFA

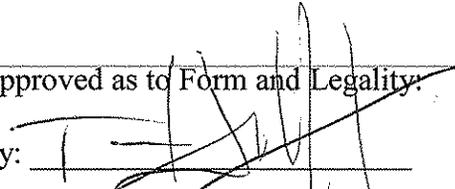
By:   
Name: Katie Smith  
Title: Deputy Commissioner

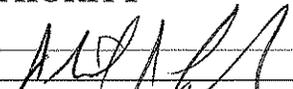
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their officers and officials thereunto duly authorized as of the date first written above.

**LOUISVILLE RENAISSANCE ZONE CORPORATION**

By:   
Name: Phil Lynch  
Title: Chairman

**LOUISVILLE REGIONAL AIRPORT AUTHORITY**

Approved as to Form and Legality:   
By:   
Name: TOM HALGLEIB  
Title: COUNSEL TO LRAA&LRZC

By:   
Name: Phil Lynch  
Title: Chairman

**COMMONWEALTH OF KENTUCKY**

Approved as to Form and Legality: \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By:   
Steven L. Beshear, Governor

**KENTUCKY ECONOMIC DEVELOPMENT FINANCE AUTHORITY FOR THE COMMONWEALTH OF KENTUCKY**

Approved as to Form and Legality: \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Schedule 1**

[Insert the Original Agreement, including the First Amendment]

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