

ORDINANCE NO. 170, SERIES 2007

AN ORDINANCE ESTABLISHING A DEVELOPMENT AREA PURSUANT TO 2007 HOUSE BILL 549 TO BE KNOWN AS THE LOUISVILLE LIFE AND HEALTH SCIENCES DEVELOPMENT AREA, DESIGNATING THE LOUISVILLE MEDICAL CENTER DEVELOPMENT CORPORATION AS AN "AGENCY", APPROVING ENTERING INTO A LOCAL PARTICIPATION AGREEMENT, AUTHORIZING THE PAYMENT OF THE "RELEASED AMOUNT" PURSUANT TO THE TERMS AND CONDITIONS OF THE LOCAL PARTICIPATION AGREEMENT; REQUIRING THE SUBMISSION OF REGULAR REPORTS TO LOUISVILLE AND AUTHORIZING THE EXECUTION AND DELIVERY OF ANY OTHER DOCUMENTS AND THE TAKING OF ANY OTHER ACTIONS NECESSARY TO ACCOMPLISH THE PURPOSES AUTHORIZED BY THIS ORDINANCE.

SPONSORED BY: Councilmen Jandy & Blackwell

WHEREAS, the 2007 General Assembly enacted 2007 House Bill 549 (the "Act") relating to tax increment financing and urban redevelopment, which Act authorizes the Signature Project Program to encourage private investment in the development of major projects that will have a significant impact in the Commonwealth; and

WHEREAS, the Louisville Medical Center Development Corporation ("LMCDC") intends to undertake a major project within the Louisville Medical Center to complete the LMCDC Research Park and the Louisville Medical Center and the related public infrastructure, as more particularly described in Exhibit A attached hereto (the "Project"); and

WHEREAS, the Project will cost in excess of \$200 million and will represent new economic activity in the Commonwealth and therefore qualifies as a "Signature Project" under the Act; and

WHEREAS, the Council finds that the Development Area as illustrated on Exhibit B attached hereto is an area in need of public improvement and the Project to be undertaken in the Development Area by LMCDC will result in the increase in the value of property located in the Development Area and will result in increased employment within the Development Area; and

WHEREAS, it is therefore in the interest of Louisville and LMCDC that there be a plan for the optimal revitalization and development of the Development Area in a most efficient manner; and

WHEREAS, the use of tax increment financing has proven 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 "Signature Project", within the meaning of Act

and as presented by LMCDC, to enable Louisville and the Commonwealth to use tax increment financing to encourage major economic development projects, is a worthy public purpose; and

WHEREAS, Louisville is authorized under the Act to execute a local participation agreement with an agency in acknowledgement of benefits to be derived by Louisville within a development area in order to promote the public purpose of Louisville; and

WHEREAS, LMCDC is organized and incorporated as a non-profit corporation which is seeking and anticipates tax-exempt charitable status and is located within Louisville; and

WHEREAS, Louisville desires to assist LMCDC with the costs of the Project and agrees to enter into the Local Participation Agreement in order to pay to LMCDC the Released Amount (as hereinafter defined) for use solely for purposes of the Project.

BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

Section 1. That the Council finds as follows:

- A. All statements of fact set forth in the recitals to this Ordinance are found true and correct and are incorporated herein by reference.
- B. The establishment of the Development Area shall not cause the assessed value of taxable real estate in all development areas located in Louisville to exceed 20% of the assessed value of all taxable real property in Louisville.
- C. There exists inadequate public infrastructure in the Development Area and the costs required to repair and improve existing infrastructure and to construct new infrastructure impedes the development of commercial property within the Development Area.
- D. As supported by the data and findings contained in Exhibit C, attached hereto:
 1. The Development Area will not reasonably be developed without public assistance; and
 2. The public benefits to be derived by the Project justify the public costs to Louisville; and
 3. The area immediately surrounding the Development Area has not been subject to the expected growth and development through investment by private enterprise.

Section 2. That the Development Area as illustrated in Exhibit B is designated as a development area pursuant to the Act and shall be named the Louisville Life and Health Sciences Development Area and shall be established as of the effective date of this Ordinance and shall terminate on the earlier of (a) the termination of the Local Participation Agreement, or (b) 40 years from the date hereof.

Section 3. That the Louisville Medical Center Development Corporation, a Kentucky non-profit corporation (a) is designated as the Agency, pursuant to the terms of the Act, (b) shall be the recipient of the Released Amount under the Local Participation Agreement and (c) shall be required to oversee and administer the implementation of the Project within the Development Area. No less than annually, LMCDC shall (a) submit a report to the Division of Tax Increment Financing within the Office of the Kentucky Department of Revenue (i) certifying the use of the Released Amount for the payment of approved project costs within the Development Area, and (ii) providing an accounting of the receipt and use of the Released Amount, and (b) submit the report to the Department of Finance required pursuant to the Local Participation Agreement.

Section 4. That the Mayor is authorized to negotiate and enter into a Local Participation Agreement with LMCDC for the release to LMCDC of a portion of the new occupational license fees expected to be derived by Louisville from the Project to be constructed in the Development Area ("Released Amount"), substantially in the form attached hereto as Exhibit D.

Section 5. That the Department of Finance is designated as the department in Louisville to oversee the payment of the Released Amount and to review all documentation concerning the Project, its progress, costs and development. The Department of Finance shall annually submit to the Council a report concerning the Development Area including but not limited to:

- A. An accounting of all payments made to LMCDC pursuant to the Local Participation Agreement;
- B. An analysis and review of development activity within the Development Area;
- C. The progress made toward meeting the stated goals of the Development Area;
- D. An accounting of the Approved Public Infrastructure Costs, Approved Signature Project Costs and Financing Costs incurred by LMCDC.

Section 6. That the Council authorizes Louisville Metro to pay annually to LMCDC, the Released Amount which shall be a sum equal to 50% of the Withholding Tax Increment (as calculated pursuant to the Local Participation Agreement) subject to the following conditions:

- A. Louisville shall have no obligation to pay the Released Amount to LMCDC until the Commonwealth and LMCDC have entered into the Grant Agreement pursuant to the Act;
- B. Louisville shall withhold payment of the Released Amount until the Commonwealth certifies to Louisville, pursuant to the terms of the Local Participation Agreement that the minimum capital investment equal to \$200 million has been made in the Project (the "Minimum Capital Investment"). Until such time that the Minimum Capital Investment has been made, the Department of Finance shall deposit the Released Amount into an escrow account. Upon the certification of the Minimum Capital Investment, the Department of Finance shall pay to LMCDC the accumulated balance of the Released Amount in the escrow fund ("Escrowed Amount"). In the event that the Minimum Capital

Investment is not certified by a date ten (10) years from the effective date of this Ordinance, the Escrowed Amount shall be paid into the General Fund.

- C. In no event shall the total of the Released Amount paid to LMCDC over the term of the Local Participation Agreement exceed the Eligible Project Costs as defined in the Local Participation Agreement.

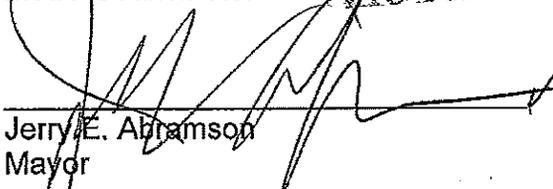
Section 7. That LMCDC shall establish a Special Fund pursuant to the Act for the Development Area as set forth in the Local Participation Agreement

Section 8. That the Mayor and other appropriate Louisville officials, and each of them, for and on behalf of Louisville, are hereby authorized, empowered and directed to do and perform any and all things necessary to effect the execution of the Local Participation Agreement, the performance of all obligations of Louisville under and pursuant to the Local Participation 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 Ordinance and the Local Participation Agreement. The Mayor and other appropriate Louisville officials, and each of them, is hereby further authorized, empowered and directed for and on behalf of Louisville to execute all papers, letter, 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 Ordinance and the Local Participation 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 Louisville under the Local Participation Agreement and related documents and to perform all of the obligations of Louisville under the Local Participation Agreement and related documents.

Section 9. This Ordinance shall take effect upon its passage and approval.


Kathleen J. Herron
Metro Council Clerk


Rick Blackwell
President of the Council


Jerry E. Abramson
Mayor

8-27-07
Approval Date

APPROVED AS TO FORM AND LEGALITY:

Irv Maze
Jefferson County Attorney

**LOUISVILLE METRO COUNCIL
READ AND PASSED
8-23-07**

BY: 
LouMedCtrDevCorpEstOrdFromDMorrisROCbknDraft1.doc

8-3-07

Exhibits

- A. Description of Project**
- B. Map of Development Area**
- C. Data & Finding Re: Development Area**
- D. Local Participation Agreement**

**EXHIBIT A
PROJECT DESCRIPTION
(\$'s In millions)**

The health sciences campus is the physical, economic and intellectual center of downtown Louisville. With the leadership of the University of Louisville and Jewish Hospital, our city's medical advances have made more than headlines; they have increased the quality of care for patients throughout the world.

Today, medical research, discovery and innovation in Louisville are at an all time high. In order to bring all potential advancements to fruition for patients, however, the health sciences campus must include expanded research and clinical education areas, infrastructure, and specialized commercial space that specifically support the effort.

With the leadership of the University of Louisville and Jewish Hospital, capital investments in the health sciences campus over the next 20 years are projected to exceed \$2 billion. The planned development over the next 20 years will include:

Project	Capital Investment
Land Acquisition	\$ 62
MedCenter 3 - Complete fit out	2
Research/Business Park Buildings with over 700,000 sq ft of space	235
Relocation - Public Safety Services	7
Cardiovascular Innovation Center - Fit out 2 floors currently in shell condition	8
New Research Buildings	520
Renovate Resource Center Cage Area Wash	2
Expand and Renovate the Dental School	25
Old Home of the Innocents Building - Renovate	5
Ky Lions Eye Research Building - Renovate	13
Gross Anatomy Building - Renovate	2
Medical School Library - Renovate	15
New Instructional Building	17
Medical and Dental Research Building - Renovate	23
Medical School Tower - Renovate	20
Academic & Support Offices	56
University Office Space (5 buildings)	73
New parking decks (8)	154
Expansion and Modification of Existing Decks	69
I-65 Ramp Relocation	5
Pedestrian corridors and tunnel systems, green spaces and gateways	95
Frazier Pedway to Garage Addition	3
Faculty Office Building (2)	63
Clinical Ancillary Support	80
Expansion/Renovation of Clinical Space	447
Inpatient/Outpatient Clinic	150
Land Acquisition	40
Veterans' Administration Hospital	250
Heating & Chill Water Plant	50
Power Plants	14
	<u>\$ 2,505</u>

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Land Acquisition

MedCenter 3 - Complete fit out

Research/Business Park Buildings with over 700,000 sq ft of space

Relocation - Public Safety Services

Cardiovascular Innovation Center - Fit out 2 floors currently in shell condition

New Research Buildings

Renovate Resource Center Ancillary Support

Expand and Renovate the Dental School

Old Home of the Innocents Building - Renovate

Ky Lions Eye Research Building - Renovate

Gross Anatomy Building - Renovate

Medical School Library - Renovate

New Instructional Building

Medical and Dental Research Building - Renovate

Medical School Tower - Renovate

Academic & Support Offices

University Office Space (5 buildings)

New parking decks (8)

Expansion and Modification of Existing Decks

I-65 Ramp Relocation

Pedestrian corridors and tunnel systems, green spaces and gateways

Frazier Pedway to Garage Addition

Faculty Office Building (2)

Expansion of Ancillary Support

Expansion/Renovation of Clinical, Education and Research Space

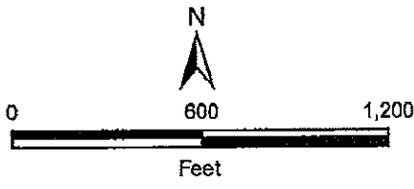
Inpatient/Outpatient Space

Land Acquisition

Veterans' Administration Hospital

Heating & Chill Water Plant

Power Plants



Development Area

Exhibit B

Aerial Imagery: Spring, 2006

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 BPost, Econ Dev, 8-07

EXHIBIT C

Louisville Health Sciences Campus Data and Findings

The Louisville Health Sciences Campus project area is roughly bordered by Broadway (south), Market Street (north), Campbell Street (east) and Brook Street (west).

Current research, educational and clinic spaces in the Louisville health sciences campus are at capacity, threatening not only realization of potential growth, but also maintenance of the current level of economic and intellectual success.

Proposed investments include land acquisition, public improvements, new and renovated research and clinical facilities. Completion of this new development and infrastructure is not possible absent public investment. The wholly private development of properties for other commercial or economic purposes within the proposed Development Area is currently impeded by lack of public infrastructure and other factors.

The Louisville Medical Center Development Corporation, in accordance with the Louisville's downtown development plans, purchased and has completed initial planning for the development of a Business and Research Park on the "Haymarket" properties.

With current facilities near capacity and research producing unlimited potential, Louisville could lose not only economic opportunity, but also university-based research teams to cities better-equipped to accommodate the demand.

A research park located on the "Haymarket" properties will be a key component of a healthy and growing health sciences industry in Louisville. The park will remove the final barriers that stand between discovery in the laboratory, development of a commercial enterprise and introduction of advances in care. To achieve the seamless system, the research park will include:

- Public improvements to make the Louisville health sciences campus physically "one community"
- New business/research buildings to house companies recruited to Louisville and those formed from university research
- State-of-the-art laboratory space that will provide fertile soil for new commercialization ideas and an attractive lure for existing biotech companies.

Currently, the Haymarket properties are almost completely undeveloped – an economic and visual wasteland in the midst of a thriving downtown. The best efforts to spark wholly private development of the area have not come to fruition. Public investment, however, will provide that spark.

The Business and Research Park will provide a foundation for vibrant industry:

- At full build out, the park will provide more than 700,000 square feet of much needed office and research space.
- MetaCyte will play a key role in establishing and recruiting companies to the park, targeting 12-13 new companies by 2015, with estimated employment of 1500-2000 people.
- The national average annual pay per job in the industries created by biomedical research is more than \$70,000.

UofL's research programs have achieved unprecedented success over the last decade. This success has created a significant strain on current research space and resources. Without new funding sources to support needed expansion and renovation, the growth that has benefited the city and the Commonwealth over the past 10 years will continue to slow significantly.

New and renovated research facilities are essential to moving new knowledge from the mind to the marketplace, including technology-enabled labs and buildings, infrastructure for high-throughput computer analyses, shared analytical resources and appropriate spaces for conducting pharmaceutical research.

The physical integration of the "urban campus" of the Louisville health sciences campus and its external connections to the rest of downtown has not, as yet, matched its intellectual and entrepreneurial growth.

The primary means of access to the campus is I-64 and I-65. These interstate highways provide excellent access, but once downtown, each entrance creates a circuitous and confusing route to the Louisville health sciences campus. A redesign and relocation of the Jefferson Street exit ramp one block further south from its present location removes it from the bend in I-65, increases visibility, and improves safety. It would also provide much needed clarity of access to the health sciences campus.

Internally, a series of streetscape improvements with a common theme, combined with enhanced landscaping and drop-off configurations at the institutions would do much to lessen the confusion and disjointed nature of the campus, while at the same time providing a unifying sense of place to the entire area.

A second major improvement to the physical character of the campus is the establishment of a special patient corridor on Jackson Street from Broadway to Muhammad Ali Boulevard. Addition of new landscaping and improved patient drop-off areas would greatly enhance the patient access to the UofL Health Care facilities.

Expansion of the health science campus infrastructure will create additional demand on campus utilities. Therefore, renovation of the Heating and Chill Water Plant and power plants are considered prudent investments.

Conclusion

This initiative is a key component of a comprehensive economic development strategy to foster growth in the knowledge-based economy of Louisville and the Commonwealth. Proposed development will not negatively affect the current city or state tax base; in fact, if the project is merely minimally successful, the result will be a dramatic increase in tax revenue.

The project will allow the current infrastructure limitations to be overcome, and will complete the cycle of support for Louisville's growing health sciences industry, providing much-needed high paying jobs and quality investment in the community.

EXHIBIT D

LOCAL PARTICIPATION AGREEMENT

This **LOCAL PARTICIPATION AGREEMENT** (the "Agreement") effective as of the ___ day of _____, 2007, by and between (i) **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, a Kentucky consolidated local government ("Louisville") and (ii) the **LOUISVILLE MEDICAL CENTER DEVELOPMENT CORPORATION**, a Kentucky non-profit corporation ("LMCDC").

RECITALS:

WHEREAS, LMCDC, Louisville and the Commonwealth of Kentucky ("Commonwealth"), intend to cause the investment of approximately \$2 billion in the development of Louisville's Life and Health Sciences Signature Project, as described in Exhibit A attached hereto ("Project").

WHEREAS, Louisville, to induce LMCDC to undertake the Project, agrees to release to LMCDC a portion of the new tax increments created by the Project pursuant to 2007 House Bill 549 (the "Act"); and

WHEREAS, pursuant to the Act, the Metro Council of Louisville by Ordinance No ___, Series 2007 has designated the Project site as a Development Area, as more particularly depicted in Exhibit B attached hereto ("Development Area"); and

WHEREAS, the Project shall represent new economic development in Louisville; and

WHEREAS, Louisville finds that the Development Area is an area in need of public improvement and that the Project to be undertaken in the Development Area, as presented to Louisville by LMCDC in preliminary planning papers, will result in the increase in the value of property located in the Development Area and result in increased employment within the Development Area; and

WHEREAS, the Project qualifies as a "Signature Project" under Section 18 of 2007 House Bill 549 (the "Act"), relating to incentives for development and redevelopment; and

WHEREAS, it is therefore in the interest of Louisville and LMCDC that there be a plan for the optimal revitalization and development of the Development Area in a most efficient manner; and

WHEREAS, the use of tax increment financing has proven 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 "Signature Project," within the meaning of the Act and as presented by LMCDC, to enable Louisville and the Commonwealth to use tax increment financing to encourage major economic development projects, is a worthy public purpose; and

WHEREAS, Louisville is authorized under the Act to execute a local participation agreement or contract with an agency in acknowledgement of benefits to be derived by Louisville within a development area in order to promote the public purpose of Louisville; and

WHEREAS, the Ordinance declares the Development Area to be a "development area" within the meaning of the Act, and the Project constitutes a "project" within the meaning of the Act; therefore, the Project is eligible to be financed through the use of tax increment "local participation agreements", "grant agreements" and "contracts of release" within the meaning of the Act; and

WHEREAS, LMCDC is organized and incorporated as a non-profit corporation which is seeking and anticipates tax-exempt charitable status and is located within Louisville/Jefferson County Metro Government; and

WHEREAS, pursuant to the Ordinance, LMCDC has been designated as the "agency," within the meaning of the Act for the purposes of identifying, developing, acquiring, financing and accomplishing the Project and entering into one or more grant agreements with the Commonwealth; and

WHEREAS, Louisville desires to assist LMCDC with the costs of the Project and agrees to enter into this Local Participation Agreement in order to release to LMCDC a portion of the Withholding Tax Increment (as hereinafter defined) for use solely for purposes of the Project; and

NOW THEREFORE, Louisville and LMCDC agree that in consideration of the premises and the additional consideration provided herein, the parties 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 mean the separate Withholding Tax Numbers for businesses located in the Development Area as determined pursuant to Section 3.1 of this Agreement.

(b) "*Activation Date*" means _____, 200__, being within two (2) years of the Commencement Date which, upon the written request of LMCDC to the Commonwealth and Louisville, may be extended, but in no event more than four (4) years from the Commencement Date.

(c) "*Base Year*" means January 1, 2006 through December 31, 2006, the last full year prior to the Commencement Date.

(d) "*Calendar Year*" means January 1 through and including December 31.

(e) "**Commencement Date**" shall mean the later of (i) the effective date hereof or (ii) the effective date of the Local Participation Agreement.

(f) "**Department**" means the Kentucky Department of Revenue.

(g) "**Eligible Project Costs**" shall mean the Project Expenditures certified by the Office pursuant to Section 4.3 of this Agreement.

(h) "**New Withholding Tax Revenue**" means the amount of Withholding Taxes received by Louisville after the Activation Date has occurred through the term of this Agreement.

(i) "**Occupational License Fees**" means the taxes levied by Louisville pursuant to Louisville Metro Codified Ordinances Chapter 110.

(j) "**Office**" means the Division of Tax Increment Financing within the Office of the Commissioner in the Department, established by the Act.

(k) "**Old Withholding Tax Revenue**" means the amount of Withholding Taxes received by Louisville in the Base Year. [Do we build in an escalator?]

(l) "**Termination Date**" means the date ending thirty (30) years from the Activation Date, unless terminated earlier pursuant to Section 4.1 of this Agreement.

(m) "**Grant Agreement**" means the agreement entered into between the Commonwealth and LMCDC pursuant to the terms of the Act.

(n) "**Louisville Department of Finance**" means the department of Louisville with that name.

(o) "**Released Amount**" means the amount payable in each Calendar Year from Louisville to LMCDC pursuant to Section 5.4 of this Agreement.

(p) "**Withholding Taxes**" means the Occupational License Fees received by Louisville from or attributable to the Development Area.

(q) "**Withholding Tax Increment**" means the incremental amount of Withholding Taxes collected in each Calendar Year following the Activation Date, during the term hereof, determined by subtracting the amount of Old Withholding Tax Revenue from the amount of New Withholding Tax Revenue.

Section 2. Representations and Warranties

2.1 Representations and Warranties of LMCDC. LMCDC, represents and warrants to Louisville as follows:

(a) **Existence.** LMCDC is a duly organized and validly existing non-profit corporation created under the laws of the Commonwealth of Kentucky.

(b) Authority to Act. LMCDC 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. The officers and officials executing and delivering this Agreement on behalf of LMCDC have been or are otherwise duly authorized to enter into this Agreement on behalf of LMCDC.

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

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

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

(f) Grant Agreement. LMCDC and the Commonwealth have executed the Grant Agreement.

2.2 Designation of Subsidiary or Related Entity. Notwithstanding the provisions of Subsection 2.1, LMCDC shall have the right to designate as the "Agency" a subsidiary or related entity of LMCDC provided that such subsidiary or related entity (i) qualifies as an agency pursuant to the Act, (ii) such subsidiary entity can make to Louisville the representations and warranties required pursuant to subsection 2.1 and (iii) such subsidiary or related entity is reasonably acceptable to Louisville.

2.3 Representations and Warranties of the Louisville. Louisville represents and warrants to LMCDC and as follows:

(a) Authority to Act. Louisville 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 Louisville has been and is duly authorized to enter into this Agreement on behalf of Louisville.

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

(c) *Bond Financing.* If requested by LMCDC, Louisville agrees to request the Metro Council to authorize the issuance of Industrial Revenue bonds for the Project, or a portion of the Project.

Section 3. Withholding Taxes

3.1 Account Numbers. LMCDC accepts the sole responsibility to identify all businesses located in the Development Area so that Louisville can assign separate Withholding Tax numbers (the "Account Numbers") for each business situs in the Development Area. The Account Numbers shall be used exclusively to report Withholding Taxes generated within or attributable to the Development Area. Louisville agrees to cooperate with and assist LMCDC to obtain the Account Numbers.

Section 4. Released Amount

4.1 Term. Provided that the requirements of Section 4.2 are met, Louisville agrees to pay to LMCDC, and LMCDC does accept from Louisville, the Released Amount for each calendar year beginning in the year including the Activation Date, with payment to be made beginning in the year following the Activation Date, and for successive calendar years continuing automatically thereafter until the earliest of: (i) that date thirty (30) years following the initial payment to LMCDC; (ii) Louisville's election to terminate this Agreement at the end of any current calendar year following written notice to LMCDC delivered at least sixty (60) days' prior to such calendar year end; or (iii) the aggregate of the total of the Released Amount paid to LMCDC by Louisville and the aggregate Released Amount paid to LMCDC by the Commonwealth on a cumulative basis during the term of the Agreement equals the Eligible Project Costs as verified by the Office.

4.2 Certification of Minimum Capital Investment. Prior to any Released Amount being paid by Louisville to LMCDC for the Project, the Office shall certify to Louisville that the minimum capital investment of \$200 million has been made as required by the Act. Any amount of the Released Amount received after the Activation Date but prior to certification of the minimum capital investment being made shall be held in a non-interest bearing escrow account by Louisville until the minimum capital investment is certified by the Office. All accumulated amounts of the Released Amount shall be released to LMCDC upon certification. If the minimum capital investment is not certified within ten (10) years from the Activation Date, the escrow shall be forfeited to Louisville.

4.3 Eligible Project Costs. Louisville and LMCDC shall rely on the Office to approve or verify, as applicable, each Project Expenditure identified as Approved Public Infrastructure Costs, Approved Signature Project Costs, and Financing Costs as defined in the Act.

4.4 LMCDC Reporting. LMCDC shall submit a report to the Department of Finance on or before January 31 of each year during the term of this Agreement including but not limited to:

(a) An audited certification prepared by an independent certified public accounting firm of the use and expenditure of the Released Amount by LMCDC in the preceding Calendar Year, including any Released Amount carried forward from earlier Calendar Years;

(b) An analysis and review of all development activities within the Development Area during the prior Calendar Year;

(c) A progress report on the current status of achieving the stated goals of the Project and the Development Area;

(d) A proposed spending plan for the Released Amount for the current Calendar Year;

The submission of the Report pursuant to this Section by LMCDC shall constitute submission of its request for the Released Amount required by subsection 4.6 of this Agreement.

4.5 Louisville Monitoring, Tracking and Reporting. The Department of Finance shall oversee the payment of the Released Amount to LMCDC and shall review all reports received from the Commonwealth pursuant to Section 4.3 or otherwise concerning the Project, its progress, and Eligible Project Costs and reports received from LMCDC pursuant to Section 4.4. The Department of Finance shall annually submit to the Metro Council a report concerning the Project and the Development Area including but not limited to:

(a) An accounting of all payments made to LMCDC pursuant to this Agreement in the prior fiscal year;

(b) An analysis and review of development activity within the Development Area as reported to Louisville by LMCDC;

(c) The progress made by LMCDC toward the stated goals of the Development Area as reported to Louisville by LMCDC; and

(d) An accounting of the amount of Eligible Project Costs incurred by LMCDC to date as reported to Louisville by the Office

4.6 Time of Payment. By the earlier of (i) March 1 of each Calendar Year beginning in the year after the year of the Activation Date or (ii) thirty (30) days after the submission by LMCDC of a request for the Released Amount under this Agreement, Louisville agrees to pay to LMCDC the Released Amount except as otherwise provided in Section 4.2 of this Agreement.

4.7 Use of Released Amount. Consistent with the Act, LMCDC covenants and agrees that it will use the Released Amount solely for the purposes of the design, acquisition, development, equipping, construction, installation, rehabilitation and financing of the research, education, support costs and related uses included within the Project. If the Released Amount derived under this Agreement is used to support notes, bonds or other debt obligations by or on behalf of LMCDC, LMCDC shall utilize the Released Amount received in a given year first to (1) pay the then current principal and interest payments, and (2) maintain a fully funded reserve

and thereafter to provide for the retirement or defeasance of all or a portion of the remaining notes, bonds or other debt obligations.

Section 5. Determination of Released Amount

5.1 Old Withholding Tax Revenue. LMCDC shall calculate with reasonable accuracy the amounts of Old Withholding Tax Revenue, and in doing so, LMCDC may make such assumptions as may reasonably be required. Louisville, through the Department of Finance, agrees to provide LMCDC with such assistance and documentation as may reasonably be required to calculate the amounts of Old Withholding Tax Revenue. LMCDC shall submit its calculations of the Old Withholding Tax Revenue to the Department of Finance for review and approval. Upon the determination of Old Withholding Tax Revenue and approval by the Department of Finance, Louisville and LMCDC shall stipulate the amount of Old Withholding Tax Revenue by written addendum to this Agreement. The amount of Old Withholding Tax Revenue so stipulated shall be binding upon the parties for the term of this Agreement.

5.2 New Withholding Tax Revenue. The Department of Finance shall calculate the amount of New Withholding Tax Revenue each year after the Activation Date, prior to the Time of Payment pursuant to Section 4.6 of this Agreement. The Department of Finance shall calculate the New Withholding Tax Revenue by aggregating the Withholding Taxes reported by businesses within the Development Area which have obtained Account Numbers for each business situs in the Development Area. Any Withholding Taxes that, by virtue of the participation by a business in a project with the Kentucky Economic Development Finance Authority ("KEDFA"), the payment of which will be taken as a credit against the Withholding Tax liability of the business, shall not be taken into account when calculating the New Withholding Tax Revenue.

5.3 Calculation of Withholding Tax Increment. The Department of Finance in each year following the Activation Date, prior to the Time of Payment pursuant to Section 4.6 of this Agreement shall calculate the Withholding Tax Increment which shall be a sum equal to the New Withholding Tax Revenue calculated pursuant to Section 5.2 of this Agreement minus the Old Withholding Tax Revenue calculated pursuant to Section 5.1 of this Agreement.

5.4 Calculation of Released Amount. The Department of Finance in each year following the Activation Date, prior to the Time of Payment pursuant to Section 4.5 of this Agreement, shall calculate the Released Amount, which shall be a sum equal to 50% of the Withholding Tax Increment.

Section 6. Pledge of Incremental Revenues Superior to Ordinances and Statutes

As provided in the Act, any pledge of the Released Amount in this Agreement shall be superior to any other pledge of revenues for any other purpose and shall, from the Activation Date to the Termination Date, supersede any statute or ordinance regarding the application or use of incremental revenues.

Section 7. Miscellaneous

7.1 Notices. All notices or other communications hereunder from any party shall be sufficiently given, and shall be deemed given, when delivered or mailed by first class mail or overnight delivery to the other parties at their respective addresses as follows:

If to Louisville:

Louisville/Jefferson County Metro
Government
c/o Economic Development Department
444 S. 5th Street, Ste. 600
Louisville, Kentucky 40202

Attn: C. Bruce Traughber

With a copy to:

If to LMCDC:

Louisville Medical Center Development
Corporation
501 East Broadway
Louisville, Kentucky 40202
Attn: President and Chief Financial Officer

With a copy to:

Jeffrey A. McKenzie, Esq.
Greenebaum Doll & McDonald PLLC
3500 National City Tower
101 South Fifth Street
Louisville, Kentucky 40202

Section 8. Default.

8.1 Default by LMCDC. If LMCDC materially breaches of defaults on its obligations under this Agreement or any of the documents incorporated herein or in the reasonable judgment of Louisville there has been a substantial decrease in LMCDC's capacity to undertake the obligations required by this Agreement, Louisville may give written notice (with a copy of said notice being given to the Commonwealth) that remedial action must be taken within thirty (30) calendar days. LMCDC shall correct such breach or default within (30) days after receipt of such notice. However, if the default is not reasonably curable within thirty (30) days, then LMCDC may continue to cure the default or breach so long as Louisville is reasonably satisfied that sufficient progress is being made toward a cure. If such corrective action is not taken, Louisville may terminate the Agreement by giving written notice to LMCDC at least ten (10) days prior to the effective date of termination and shall and be entitled to any remedy and damages available to it at law or in equity, including specific performance.

8.2 Default by Louisville. If Louisville materially breaches or defaults on its obligations under this Agreement or any of the documents incorporated herein, LMCDC may give written notice to Louisville that remedial action must be taken within thirty (30) days after Louisville's receipt of such written notice. However, if the default is not reasonably curable within thirty (30) days, Louisville may continue to cure the default or breach so long as LMCDC is satisfied that sufficient progress is being made toward a cure. If such action is not taken, LMCDC shall be entitled to any remedy and damages available to it at law or in equity, including specific performance.

8.3 Exception. In the event of any default or termination by either party, the non-defaulting party shall be relieved of any executory obligations hereunder and shall be entitled to any remedy and damages available to it at law or in equity. Provided however, that in the event LMCDC has issued bonds for the benefit of the Project (including to pay for Eligible Project Costs) which are secured by a pledge of the Released Amount, Louisville shall not terminate the payment of the Released Amount for the period said bonds remain outstanding and LMCDC shall continue to comply with all applicable provisions of this Agreement necessary to make the bond payments with all applicable Released Amounts. Neither LMCDC nor Louisville will terminate or otherwise negatively impact any such pledge, and both parties shall fully cooperate to use the Released Amount to service such bonds.

Section 9. Miscellaneous Provisions.

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

9.2 Severability. If any clause, provision, or section of this Agreement 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.

9.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky and enforceable in courts of competent jurisdiction.

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

9.5 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.

9.6 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.

9.7 Mutual Termination. In addition to any other provisions relating to termination of this Agreement contained herein, this Agreement shall terminate upon the written agreement of all the parties hereto, except as otherwise provided in Subsection 8.3 of this Agreement.

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.

[Remainder of Page Intentionally Left Blank]

**LOUISVILLE/JEFFERSON COUNTY METRO
GOVERNMENT**

Approved as to Form and Legality:

By: William P. O'Brien

Name: William P. O'Brien

Title: Asst County Atty

By: _____
Jerry E. Abramson, Mayor

**LOUISVILLE MEDICAL CENTER
DEVELOPMENT CORPORATION**

Approved as to Form and Legality:

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____