

ORDINANCE NO. 240.8

AN ORDINANCE OF THE FISCAL COURT OF PULASKI COUNTY, KENTUCKY ("COUNTY"), AUTHORIZING AND APPROVING THE A GENERAL OBLIGATION LEASE IN A PRINCIPAL AMOUNT NOT TO EXCEED \$2,100,000 WITH JP MORGAN CHASE BANK, N.A. (THE "LEASE") THE PROCEEDS OF WHICH ARE TO BE USED FOR ROAD IMPROVEMENTS, LAND ACQUISITION AND IMPROVEMENT, AND AMBULANCE ACQUISITION; AUTHORIZING THE LEVY OF A DIRECT ANNUAL TAX ON ALL TAXABLE PROPERTY WITHIN THE COUNTY, IN ADDITION TO ALL OTHER TAXES, IN AN AMOUNT SUFFICIENT TO PAY THE LEASE RENTAL PAYMENTS ON THE LEASE WHEN AND AS THE SAME BECOME DUE; AUTHORIZING THE ESTABLISHMENT OF CERTAIN FUNDS TO PROVIDE FOR THE COLLECTION OF REVENUES, IF ANY, FROM THE PROJECTS AND, TO THE EXTENT REQUIRED, THE PROCEEDS OF THE TAX; AUTHORIZING THE EXECUTION OF THE LEASE AND THE DISBURSEMENT OF THE PROCEEDS THEREOF; AUTHORIZING THE INVESTMENT OF FUNDS PURSUANT TO KRS § 66.480; PROVIDING FOR DELEGATION BY THE FISCAL COURT OF AUTHORITY TO THE JUDGE/EXECUTIVE OF THE COUNTY TO DETERMINE CERTAIN MATTERS RELATING TO THE LEASE; AND AUTHORIZING SUCH OTHER DOCUMENTS, AGREEMENTS AND CERTIFICATES NECESSARY OR REQUIRED FOR THE ENTERING INTO OF THE LEASE; AND DESIGNATING THE LEASE AS A "QUALIFIED TAX-EXEMPT OBLIGATION" FOR FEDERAL INCOME TAX PURPOSES.

WHEREAS, the County of Pulaski, Kentucky, acting by and through its Fiscal Court, (the "County") desires to (i) provide financing for road improvements, land acquisition and improvement and acquisition of ambulances (the "Projects"); and (ii) pay the costs associated with financing such Projects; and

WHEREAS, to finance the Projects the County proposes to enter into a General Obligation Lease Agreement to be dated, as determined by the Financial Advisor, in a principal amount not to exceed \$2,100,000 (the "Lease"), and using the net proceeds, together with other moneys available therefor, for the purpose of financing acquisition and construction of the Projects and paying the costs of entering into the lease; and

WHEREAS, in order to assure the payment of the Lease Rental Payments it is necessary that the County authorize a levy of a tax sufficient for that purpose; provided, however, it is now anticipated that the Revenues of the County will be sufficient to provide, in full, for the payment of the Lease, as applicable.

NOW, THEREFORE, BE AND IT IS HEREBY ORDAINED BY THE FISCAL COURT OF THE COUNTY OF PULASKI, KENTUCKY, AS FOLLOWS:

**Section 1. Preamble Incorporated; Ordinance as Contract; Definitions.**

That the Preamble to this Ordinance is hereby incorporated within the body of this Ordinance as fully as if copied in full hereat.

That this Ordinance shall constitute a contract between the County and the lessor of the Lease herein authorized and no change, alteration, or amendment in the provisions hereof shall be made subsequent to the delivery of said Lease.

For the purposes of this Ordinance and the Lease the following terms shall have the meanings hereinafter set forth:

“Act” means Sections 65.940 through 65.956 of the Kentucky Revised Statutes.

“Bond Counsel” means Steptoe & Johnson PLLC, Louisville, Kentucky.

“Bond Registrar” or “Registrar” means the Depository acting in its capacity as the registrar of the Bonds and Paying Agent for the Bonds or Lease, as applicable, and assuming the obligations of a registrar as set forth in this Ordinance.

“Code” means the Internal Revenue Code of 1986, as amended, and the Regulations promulgated thereunder.

“Costs of Issuance” means those expenses incident to the issuance of the Lease, including, but not being limited to, the fees of any rating agency, Financial Advisor, Bond and/or Tax Counsel, Bond Registrar and Paying Agent, publication cost, and any other cost associated with the issuance and delivery of the Lease.

“Costs of Issuance Fund” means the separate account established with the Depository from the proceeds of the Bonds or Lease, as applicable, from which the Costs of Issuance are to be paid.

“Depository” means such bank as may be appointed by the County Judge/Executive, without further action of the Fiscal Court, who may act as depository for the various funds established by this Ordinance.

“Event of Default” shall mean the County’s (i) failure to comply with the provisions of the Act or this Ordinance; (ii) failure to pay the principal and interest on the Bonds or Lease Rental Payments on the Lease when due; (iii) failure to reimburse any Fund established hereby, in accordance with the reimbursement provisions hereof; or (iv) failure to comply with the Code.

“Project Costs” means all costs of payment of, or reimbursement to the County of amounts paid or advanced by it for costs of acquisition, construction or equipping of the Projects.

“Project Fund” means the Project Fund established at JP Morgan Chase Bank, N.A. pursuant to the Lease.

“Project Revenues” or “Revenues” means proceeds from operations of the Projects, if any.

“Financial Advisor” means Ross, Sinclair & Associates, LLC, Lexington, Kentucky.

“Investments” means those investments permitted under KRS § 66.480.

“Issuer” or “County” means the County of Pulaski, Kentucky.

“KRS” means the Kentucky Revised Statutes, as amended.

“Lease” means any General Obligation Lease Agreement entered into by the County as lessee pursuant to the authority granted by this Ordinance, as authorized by KRS 65.940 through 65.956.

“Lease Rental Payments” means Base Rentals and Additional Rentals, as defined in the Lease, payable pursuant to the Lease.

“Lessor” means the party identified as such in the Lease.

“Pledged Receipts” means the combination of the Tax and Projects Revenues adequate each year to pay the principal and interest requirements of the Bonds or the Lease, as applicable.

“Projects” means road improvements, land acquisition and improvement and acquisition of ambulances to be completed with the proceeds of the Lease.

“Registered Owners” or “Owner” means the lessor of the Lease.

“State” means the Commonwealth of Kentucky.

“State Local Debt Officer” shall have the same meaning as set forth in KRS § 66.011(24).

“Tax” means the direct, annual ad valorem tax on all property within the County of Pulaski, Kentucky, which is subject to taxation for County purposes, which are pledged to the payment of Lease Rental Payments.

## **Section 2. Necessity for and Authorization of Bonds or Lease.**

That for the purposes set forth in the Preamble to this Ordinance, there is hereby declared a necessity for, and there is hereby authorized a General Obligation Lease with JP Morgan Chase

Bank, N.A. in a principal amount not to exceed \$2,100,000, as authorized by this Ordinance and shall be dated as determined by the Financial Advisor.

The Lease shall be dated as determined by the County Judge/Executive, without further action of the Fiscal Court and with the advice of the Financial Advisor pursuant to section 5 of this Ordinance. Lease Rental Payments with respect to the Lease shall be payable on such dates as shall be determined by the County Judge/Executive with the advice of the Financial Advisor. The final maturity date of the Lease shall be no longer than 10 years from the date of the Lease and, the aggregate net interest cost of the Lease shall not exceed five percent (5%) per annum.

### **Section 3. Form of Lease.**

The Lease shall be substantially in the same form as that attached to this Ordinance as Exhibit "A", and shall contain such payment terms as shall be determined by the County Judge/Executive with the advice of the Financial Advisor and Bond Counsel, without further action of the Fiscal Court. The Lease form attached hereto may be amended, changed, or revised following enactment of this Ordinance but prior to execution and issuance of the Lease, if required by the Lessor, Bond Counsel or Financial Advisor, and approved by the County Judge/Executive, without further action of the Fiscal Court, provided that such amendments, changes or revisions are in compliance, and not inconsistent, with this Ordinance and KRS. The County Judge/Executive's execution of the Lease shall be evidence of the approval of any amendments, changes or revisions.

### **Section 4. Compliance with Constitution; Designation and Certification of Public Project; Authorization of Tax; Pledge of Tax, Project Revenues and Pledged Receipts to Payment of Lease; Designation as General Obligation Lease.**

(A) That the debt represented by the Lease is hereby determined to be within the maximum indebtedness of the County permitted under Section 158 of the Constitution of Kentucky.

(B) That the County is authorized to contract the indebtedness represented by the Lease pursuant to Section 159 of the Constitution of Kentucky and provide for the collection of an annual tax sufficient to pay the Lease Rental Payments on the Lease and establish the hereinafter identified Sinking Fund to provide for the payment of the principal thereof.

(C) That pursuant to Section 157 of the Constitution of Kentucky and KRS § 66.111, there is hereby authorized to be levied, and the County hereby covenants to so levy and collect, each year that the Lease remains outstanding, a Tax in an amount sufficient to provide for the full payment of the principal and interest requirements on said Lease; provided, however, that said Tax shall be levied only to the extent that the Project Revenues or other receipts from taxes or other sources are not sufficient to provide for the full payment of the Lease Rental Payments on the Lease each year.

(D) That by the adoption of this Ordinance, the County covenants with the Lessor of the Lease that it shall levy each year a Tax in a sufficient amount and appropriate in its annual budget,

together with other moneys available to it, including the Project Revenues, an amount of funds sufficient to pay the Lease Rental Payments on the Lease as defined in KRS § 66.011(4).

(E) That the Tax shall include the ad valorem property taxes permitted under Section 157 of the Constitution of Kentucky levied and collected by the County.

Notwithstanding the foregoing, the Tax shall only be levied, collected and applied to the payment of said Lease Rental Payments on the Lease to the extent the Project Revenues are not sufficient to meet such Lease Rental Payments.

(F) That there is hereby pledged to the payment of the Lease, as applicable, the Tax, to the extent required each year, and the Project Revenues, which together, shall constitute the "Pledged Receipts" securing said Bonds or Lease, as applicable, in accordance with the terms of this Ordinance.

(G) That the County hereby declares, determines and certifies that the Projects constitute "public projects" within the meaning of KRS § 66.011(17).

(H) The County covenants to levy, collect and segregate the Tax to the extent the Project Revenues, if any, or the general revenues of the County, are inadequate to meet the current annual debt service requirements of the Bonds or Lease, as applicable, and hereby designates the Bonds or Lease, as applicable, as full general obligations of the County to the payment of which the full faith, credit, revenue and taxing authority of the County are hereby pledged for the prompt payment thereof.

(I) That the Tax, to the extent required, and the Project Revenues, shall, as received, be deposited in the appropriate Sinking Fund for the Lease and applied solely to the payment of the Lease Rental Payments of the Lease.

#### **Section 5. Delegation of Authority to Determine Certain Matters Relating to the Lease.**

The Lease shall be sold pursuant to a private negotiated sale under the authority of KRS 65.942(3). The County Judge/Executive is hereby delegated the authority to determine the final terms of the Lease so that it may be provided to the Lessor.

#### **Section 6. Execution of Documents Authorized; Approval of State Local Debt Officer.**

That in order to effect the financing plan evidenced by the Lease the County Judge/Executive, Fiscal Court Clerk, County Treasurer and/or such other County official as may be designated by the County, are hereby authorized to execute those documents necessary to provide for the issuance of said Lease and the payment thereof, including but not limited to the following:

- (i) the Lease and such closing documents and/or certificates as Bond Counsel may require, and



- (ii) such other documents as are required to implement the financing of the Projects and the execution of the Lease generally, including Tax Certificates and any other certificates or documents required by Bond Counsel to enter into the Lease.

The Lease shall only be issued after notice to, or approved by a decision of, the State Local Debt Officer, as may be required.

#### **Section 7. Employment of Financial Advisor and Bond Counsel.**

The employment of Ross, Sinclair & Associates, LLC, Lexington, Kentucky, as Financial Advisor is hereby authorized, approved and directed; and, the employment of Steptoe & Johnson PLLC, Louisville, Kentucky, as Bond Counsel is hereby authorized, approved and directed.

If a Lease is issued or entered into, such Lease may be sold pursuant to a private negotiated sale under authority of KRS 65.942(3) pursuant to the authority granted in Section 6 of this Ordinance without further action of the Fiscal Court.

#### **Section 8. Establishment of Funds.**

That there are hereby authorized to be established the following funds or accounts which shall be maintained with the Depository:

(A) The Sinking Fund (or Bond Fund), which shall receive the receipts of the Tax herein authorized, to the extent required for the Lease the Project Revenues of or from the Projects Said Sinking Fund moneys shall be used only for the payment of the Lease Rental Payments of the Lease. Upon the delivery of the Lease any accrued or capitalized interest shall be deposited into said fund.

(B) Costs of Issuance Fund, which shall receive from the proceeds of the Lease the amounts necessary to pay the Costs of Issuance of the Lease upon the delivery of said Lease. The Depository shall remit the required payments in the amounts and to the parties specified in writing by the County Judge/Executive or County Treasurer, or such other County official as may be designated by the County, upon the delivery of the Lease. Any amounts remaining in the Costs of Issuance Fund following the payment of all such Costs of Issuance shall be transferred to the Sinking Fund.

(C) The Project Fund which shall receive the remainder of the proceeds of the Lease from the Lessor and shall be used solely to pay the costs of acquiring, constructing and equipping the Projects. Any amounts remaining in the Project Fund following the payment of all such costs of the Projects shall be transferred to the Sinking Fund.

(D) Any other fund, including a debt service reserve fund or other fund required by law, or deemed necessary and appropriate by the Financial Advisor.

(E) Moneys on deposit in the funds enumerated in subsections (A) through (D) of this Section shall be invested in the Investments permitted and any earnings carried to the credit of the fund from which the investment was made.

#### **Section 9. Tax Covenants.**

The County shall at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the County with respect to the Lease shall be excludable from the gross income of the recipients thereof for Federal income tax purposes under any valid provision of the Code.

The County shall not permit at any time or times any of the proceeds of the Lease to be used directly or indirectly to acquire any securities or obligations the acquisition of which would cause such Lease to be "arbitrage bonds" as defined in Section 148 of the Code, as then in effect.

The County further covenants that prior to the issuance of said Lease and as a condition precedent to such issuance, the County shall certify by issuance of a certificate of the County Judge/Executive, or County Treasurer, or such other County official as may be designated by the County, supplemental to this Ordinance, that on the basis of the facts, estimates and circumstances in existence on the date of issue of said Lease, it is not expected that the proceeds of said Lease will be used in a manner which would cause such obligations to be "arbitrage bonds" under the Code.

**Section 10. Contractual Nature of Ordinance.** This Ordinance shall constitute a contract between the County and the Lessor of the Lease, and any general obligation bonds or general obligation leases subsequently issued ranking on a parity therewith, and after the issuance and delivery of such Lease no change, variation or alteration of any kind in the provisions of this Ordinance shall be made in any manner except for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective or inconsistent provisions contained herein.

**Section 11. Qualified Tax-Exempt Obligation.** The County, by the adoption of this Ordinance, reasonably anticipates that the total principal amount of qualified tax-exempt obligations which it will issue during the calendar year ending December 31, 2016, will not exceed \$10,000,000 and therefore designates the Lease as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code.

**Section 12. Severability.** If any section, paragraph or clause hereof shall be held invalid, the invalidity of said section, paragraph or clause shall not affect any of the remaining provisions of this Ordinance.

**Section 13. Conflicts Repealed; Effective Date of Ordinance.** All ordinances, resolutions or parts thereof in conflict with the provisions of this Ordinance are hereby repealed and this

Ordinance shall take effect and be in force upon its adoption. This Ordinance shall take effect from and after its passage, approval and the publication of a summary thereof.

*[Signatures and certification for Ordinance on the following pages S-1]*



Given first reading on May 24<sup>th</sup>, 2016.

Given second reading and passed and adopted on June 14, 2016.

  
County Judge/Executive

Attest:

  
Fiscal Court Clerk

### CERTIFICATION

I, the undersigned, do hereby certify that I am the duly qualified and acting Fiscal Court Clerk of the Pulaski County, Kentucky; that the foregoing is a true and complete copy of a certain Ordinance duly adopted by the Fiscal Court of Pulaski County, Kentucky, at a duly convened public meeting properly held on June 14, 2016; that said Ordinance appears as a matter of public record in the official records of the Fiscal Court; that said meeting was duly held in accordance with all applicable requirements of Kentucky law, including KRS 61.805 to 61.850; that a quorum was present at said meeting; that said Ordinance has not been amended, modified, revoked or repealed; and that same is now in full force and effect.

IN TESTIMONY WHEREOF, witness my signature this June 14, 2016.

  
Fiscal Court Clerk