

ORDINANCE NO. 89-010

AN ORDINANCE OF THE COUNTY OF SCOTT, KENTUCKY, DIRECTING, AUTHORIZING AND APPROVING THE PUBLIC SALE AND ISSUANCE OF \$4,950,000 LEASE REVENUE BONDS, SERIES 1990, BY THE SCOTT COUNTY PUBLIC PROJECTS CORPORATION AND DIRECTING AND AUTHORIZING OTHER NECESSARY ACTIONS, ALL ON BEHALF OF THE COUNTY AND AS THE AGENCY, INSTRUMENTALITY AND CONSTITUTED AUTHORITY OF THE COUNTY, IN ORDER TO FINANCE CONSTRUCTION, ACQUISITION AND INSTALLATION OF A NEW JAIL AND JUSTICE COMPLEX PROJECT OF THE COUNTY; APPROVING AND ADOPTING A CONTRACT, LEASE AND OPTION BETWEEN THE CORPORATION, AS LESSOR, AND THE COUNTY, AS LESSEE, PROVIDING FOR THE YEAR-TO-YEAR LEASE AND PROJECT TO THE COUNTY; APPROVING A TRUST INDENTURE AND MORTGAGE SECURING THE BONDS; APPROVING THE CONTRACTS, DOCUMENTS AND ACTIONS NECESSARY OR APPROPRIATE TO CARRY OUT THE FINANCING PLAN, INCLUDING AN OFFICIAL STATEMENT OF THE CORPORATION; AUTHORIZING APPROPRIATE OFFICIALS OF THE COUNTY TO TAKE ANY AND ALL ACTIONS NECESSARY TO CARRY OUT THE FINANCING PLAN IN COOPERATION WITH THE CORPORATION.

WHEREAS, the Scott County Public Projects Corporation, a Kentucky nonprofit, no-stock corporation (the "Corporation"), duly organized pursuant to Sections 273.161 through 273.390 and 58.180 of the Kentucky Revised Statutes for the purpose of acting as the agency, instrumentality and constituted authority of and on behalf of the County of Scott, Kentucky (the "County"), in the construction, installation and financing of public projects of the County, has been directed by the County to undertake and implement for and on behalf of the County the financing of the construction, acquisition and installation of the new Scott County Jail and Justice Complex project on North Hamilton Street in Georgetown (the "Project"); and

WHEREAS, the County has initiated the planning, acquisition and construction of the Project, subject to reimbursement of costs from the proceeds of Lease Revenue Bonds to be issued by the Corporation, and it is now the purpose of the County and the Corporation to carry out the financing of the construction, acquisition and installation of the Project; and

WHEREAS, to provide for the payment of the costs of constructing, acquiring and installing the Project (all to the extent not otherwise provided to be paid from other sources), the County intends to direct the Corporation, acting for and on behalf of the County and as its agency, instrumentality and constituted authority, to issue \$4,950,000 principal amount of Lease Revenue Bonds, Series 1990, of the Corporation (the "Bonds"), and to take all necessary action to accomplish such financing; and

WHEREAS, the County has caused plans for the Project to be prepared, has acquired the Project site, has received competitive bids for the construction of the Project and has awarded a contract for such construction; and the County and the Corporation have ascertained that the necessary construction, acquisition and installation work may be accomplished for a

total estimated expenditure by the Corporation on behalf of the County, including reimbursements to the County for Project expenditures made in anticipation of receipt of Bond proceeds, together with incidental costs of issuance and related Project expenses, of \$4,950,000, which amount can be provided through issuance of the Bonds in that amount by the Corporation following public advertising and competitive sale of the Bonds; and

WHEREAS, the County has determined or will determine that it will, inter alia, (i) cause the construction, acquisition and installation of the Project to be financed and undertaken by the Corporation, (ii) lease the Project and the site thereof from the Corporation on a year-to-year basis pursuant to a Contract, Lease and Option, hereinafter identified, thereby providing to the Corporation adequate moneys to pay the Bonds and interest thereon, and (iii) so long as any of the Bonds remain outstanding and such Contract, Lease and Option remains in effect, continuously operate, maintain, repair, replace and insure the Project, exercising the same degree of care exercised by the County in respect of other like public facilities owned and operated by the County; and

WHEREAS, the payment of maturing principal of and interest on the Bonds shall be provided for through rental payments; and the County may lawfully lease the Project from the Corporation for an initial one-year period at a rental, hereinafter set forth, which will not cause the County to exceed the income and revenues provided for the current fiscal year and may renew such lease annually until retirement of the Bonds; and

WHEREAS, the County desires to authorize the conveyance of the Project and its site to the Corporation and a lease-back of such properties under the terms of said Contract, Lease and Option, which provides for a renewable year-to-year lease of, and annual rental payments for, the Project in order to pay the maturing principal of and interest on the Bonds, as aforesaid; and

WHEREAS, the County desires to direct the Corporation to offer at public, competitive sale and to issue the Bonds, and has approved said Contract, Lease and Option and other related documents, and documents incident to the security and sale of the Bonds, so that the construction, acquisition and installation of the Project may be financed and carried forward, and it is now appropriate for the Corporation to act;

NOW, THEREFORE, THE COUNTY OF SCOTT, KENTUCKY, ACTING BY AND THROUGH ITS FISCAL COURT, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The recitals contained in the preamble of this Resolution, including all of the terms therein defined, are hereby affirmed and adopted as a part of this Ordinance.

Section 2. The County hereby authorizes, orders and directs the establishment, construction, acquisition, installation and financing of the Project, as more particularly described in the Contract, Lease and Option hereinafter identified and approved, as a public project within the meaning of Chapter 58 of the Kentucky Revised Statutes. The transfer of the Project site and the Project to the Corporation at the appropriate time is hereby ordered, and the County

Judge/Executive is authorized and directed to execute and to deliver to the Corporation an appropriate deed and a bill of sale with respect to any equipment constituting a part of the Project.

Section 3. The Corporation, heretofore created as an agency, instrumentality and constituted authority of the County, is hereby ordered and directed by the County to adopt such proceedings as may be necessary for the formal authorization, sale and issuance by the Corporation of \$4,950,000 principal amount of Scott County Public Projects Corporation Lease Revenue Bonds, Series 1990, to be dated January 1, 1990 (the "Bonds"). The maturity schedule, security provisions, redemption provisions, designation of Trustee, form of Bonds, conditions of sale and other terms and provisions incident to the Bonds shall be in accordance with the provisions of the Resolution of the Board of Directors of the Corporation authorizing the Bonds and subsequent resolutions relating to the sale of the Bonds, and an Indenture and Mortgage and the Official Statement hereinafter referred to and described, and such other provisions as may be adopted by the Corporation. The Bonds shall be issued pursuant to Section 58.010 through 58.110, 58.170 through 58.190 and 58.410 through 58.430 of the Kentucky Revised Statutes and other provisions of Kentucky law. The Bonds and their sale and issuance are hereby approved in all respects by the County.

Section 4. It is acknowledged that the Bonds are to be issued by the Corporation, acting as the agency, instrumentality and constituted authority of and on behalf of the County, for the purpose of providing funds to pay the costs of construction, acquisition and installation of the Project, and related costs, all as described and provided for herein and in the Contract, Lease and Option and Trust Indenture and Mortgage hereinafter referred to and described. It is specifically acknowledged and reaffirmed that the County has heretofore advanced and expended and will advance and expend from its general funds, for purposes of constructing, acquiring and installing the Project, certain sums (to be certified by the County Treasurer) in anticipation of reimbursements from Bond proceeds; and upon issuance of the Bonds, the County hereby directs the Corporation to make such reimbursement to the County from Bond proceeds in the amount certified by the County Treasurer.

Section 5. It is further acknowledged that the County has heretofore entered into certain architectural, engineering and construction contracts with architects, engineers and a contractor in connection with the Project, and the County has agreed that it will continue to provide for the construction, acquisition and installation of the Project, as the agent of the Corporation as provided in the Contract, Lease and Option hereinafter referred to and described, and will carry out such work with due diligence to completion. All prior actions of the County in entering into said contracts are hereby ratified and affirmed, and with respect to said contracts and any future contracts to be entered into by the County, as agent for the Corporation, following public, competitive bidding as may be required by law, the County hereby assigns its rights and interests thereunder to the Corporation as third party beneficiary as provided in the aforesaid Contract, Lease and Option.

Section 6. The Contract, Lease and Option dated January 1, 1990 (the "Contract, Lease and Option"), a copy of which is submitted with this Ordinance, intended for execution by and on

behalf of the County, as lessee, and by the Corporation, as lessor, conforming to the plan of financing of the construction, acquisition and installation of the Project approved by the County and the Corporation (and contemplating the lease by the County from the Corporation of the Project and the site thereof for an initial period ending December 31, 1990, with exclusive options to the County to renew the same from year-to-year for one year at a time upon the terms and conditions therein expressed) is hereby approved in substantially the same form as submitted, and the same is hereby authorized and directed to be executed on behalf of the County by the County Judge/Executive, with attestation under seal by the Fiscal Court Clerk, in substantially the form so submitted to this Fiscal Court, with such modifications as may be necessary, upon advice of counsel, and approved by the officers of the County executing the document. All of the provisions set forth in the Contract, Lease and Option, as finally executed, are incorporated as part of this Ordinance by reference. A copy of the Contract, Lease and Option shall be kept as a part of the official record of this meeting.

Section 7. In order to secure the payment of the Bonds, the County hereby approves a certain Trust Indenture and Mortgage dated as of January 1, 1990 (the "Indenture"), a copy of which is submitted with this Ordinance, by and between the Corporation and First National Bank and Trust Company, Georgetown, Kentucky, as Trustee (the "Trustee"). The Indenture provides for the security of the Bonds and, in addition to assigning to the Trustee all of the Corporation's right, title and interest in the Contract, Lease and Option (including rental payments to be made by the County), which assignment is hereby acknowledged, creates a first mortgage lien on the real property portion of the Project in favor of the Trustee for the benefit of the Bondholders. The Indenture is hereby approved by the County in substantially the form submitted hereto, with such modifications as the executing officers of the Corporation may deem necessary, upon advice of counsel, as evidenced by their execution thereof on behalf of the Corporation. A copy of the Indenture shall be kept as a part of the official record of this meeting.

Section 8. It is hereby acknowledged that the Corporation has, in connection with the issuance and sale of the Bonds, caused to be prepared a preliminary Official Statement (the "Official Statement"), a draft copy of which has been presented to the Fiscal Court of the County. The Official Statement and the use thereof by the Corporation in offering and selling the Bonds at public, competitive sale is hereby expressly approved, the Corporation and the County, through certain of their officials and employees, having reviewed the Official Statement and having found factual statements therein (including the Appendix thereof) relating to the Corporation and the County to be accurate and correct, and the County Judge/Executive is authorized to sign same on behalf of the County, with such modifications as may be necessary or desirable and approved by the executing officer of the County, as evidenced by such execution. The Official Statement may be supplemented following sale of the Bonds, and the County Judge/Executive is authorized to approve and sign such supplement on behalf of the County.

Section 9. In connection with the undertaking and implementation by the Corporation of the financing of the construction, acquisition and installation of the Project, as herein authorized and described, the Corporation, its Board of Directors and officers and appropriate officials of the County, and their counsel, are hereby authorized, requested and directed to continue to take

all necessary, desirable or appropriate action to carry out such financing, construction, acquisition and installation as may be required.

Section 10. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions.

Section 11. All ordinances, resolutions or parts thereof in conflict with the provisions of this Ordinance are, to the extent of any such conflict, hereby repealed and superseded.

Section 12. The summary of this Ordinance read at the two meetings of the Fiscal Court of the County at which this Ordinance was considered for approval for purposes of first and second readings according to law.

Section 13. This Ordinance shall be in full force and effect upon its adoption and as provided by law.

INTRODUCED, SECONDED AND GIVEN FIRST READING at a duly convened meeting of the Fiscal Court of the County of Scott, Kentucky, on the 15th day of December, 1989.

GIVEN SECOND READING AND ADOPTED at a duly convened meeting held on the 22nd day of December, 1989, signed by the County Judge/Executive, ordered published in summary form and filed as required by law.

  
County Judge/Executive

(Seal)

Attest:

  
Fiscal Court Clerk

CERTIFICATION

I, the undersigned, do hereby certify that I am the duly qualified and acting Fiscal Court Clerk of the County of Scott, Kentucky, and as such Fiscal Court Clerk I further certify that the foregoing is a true, correct and complete copy of an Ordinance duly adopted by the Fiscal Court of said County at a duly convened meeting held on December 22, 1989, signed by the County Judge/Executive as evidenced by his approval and now in full force and effect, all as appears in the official records of said County in my possession and under my control.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said County this 22nd day of December, 1989.

(Seal)

  
Fiscal Court Clerk

Fiscal Court Clerk