

ORDINANCE NO. 99-03

AN ORDINANCE APPROVING A LEASE WITH CALVERT CITY FOR THE FINANCING OF THE ACQUISITION, CONSTRUCTION, INSTALLATION AND EQUIPPING OF A BUILDING, POLICE VEHICLES AND ROAD IMPROVEMENTS; PROVIDING FOR THE PAYMENT AND SECURITY OF THE LEASE; CREATING A SINKING FUND; AUTHORIZING THE EXECUTION OF VARIOUS DOCUMENTS RELATED TO THE LEASE; AND MAKING CERTAIN DESIGNATIONS REGARDING THE LEASE.

WHEREAS, the Marshall County Fiscal Court, Marshall County, Kentucky, (the "County"), a municipal corporation and political subdivision of the Commonwealth of Kentucky (the "Commonwealth") has heretofore determined to acquire, construct, install and equip (i) a building, (ii) police vehicles and (iii) road improvements for the benefit of the County and its residents (collectively, the "Project"); and

WHEREAS, the County has followed procedures prescribed by law for the acquisition, construction, installation and equipping of the Project; and

WHEREAS, the County desires to finance the Project through a \$ _____ Lease Agreement (the "Lease") with Calvert City (the "Lessor") pursuant to Section 65.940 et. Seq. of the Kentucky Revised Statutes (the "Act");

NOW THEREFORE, BE IT ORDAINED BY THE MARSHALL COUNTY FISCAL COURT:

Section 1. **Recitals and Authorization.** The County, as lessee, hereby approves the Lease Agreement (the "Lease"), in substantially the form presented to this Fiscal Court (the "Fiscal Court"). It is hereby found and determined that the Project identified in the Lease is public property to be used for public purposes. It is further determined that it is necessary and desirable and in the best interest of the County to enter into the Lease for the purposes therein specified, and the execution and delivery of the Lease and all representations, certifications and other matters contained in the Closing Memorandum with respect to the Lease, or as may be required by Peck, Shaffer & Williams LLP, as Bond Counsel, prior to delivery of the Lease, are hereby approved, ratified and confirmed. The County Judge/Executive is hereby authorized to execute the Lease, together with such other agreements or certifications which may be necessary to accomplish the transaction contemplated by the Lease.

Section 2. **General Obligation Pledge.** Pursuant to the Constitution of the Commonwealth and Chapter 66 of the Kentucky Revised Statutes, as amended (the "General Obligation Statutes"), the obligation of the County created by the Lease shall be

full general obligation of the County and, for the prompt payment of the Lease Payments, the full faith, credit and revenue of the County are hereby pledged. During the period of the Lease is outstanding, there shall be and there hereby is levied on all the taxable property in the County, in addition to all the other taxes, without limitation as to rate, a direct tax annually in an amount sufficient to pay the Lease Payments on the Lease when and as due, it being hereby found and determined that current tax rates are within all applicable limitations. Said tax shall be and is hereby ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers in the same manner and at the same time that taxes for general purposes for each of said years are certified, extended and collected. Said tax shall be placed before and in preference to all other items and for the full amount thereof, provided, however, that in each year to the extent that the other taxes of the County are available for the payment of the Lease Payments and are appropriated for such purpose, the amount of such direct tax upon all of the taxable property in the County shall be reduced by the amount of such other taxes so available and appropriated.

There is hereby established with the County a sinking fund (the "Sinking Fund"). The funds derived from said tax levy hereby required or other available taxes shall be placed for the payment of all bonds or obligation issued under the General Obligation Statutes, including the Lease herein authorized, when and as the same fall due. Amounts shall fall due. Amounts shall be transferred from the Sinking Fund to the Lessor at the times and in the amounts required by the Lease.

Section 3. **Designation as Qualified Tax-Exempt Obligation.** Pursuant to & 265 (b)(3)(B)(ii) of the Internal Revenue Code of 1986 (the "Code"), the County hereby specifically designates the Lease as a "qualified tax-exempt obligation" for purpose of & 265(b)(3) of the Code. In compliance with & 265 9b)(30(D) of the Code, the city hereby represents that the County (including all 'subordinate entities' of the County within the meaning of 7 265 (b)(3)(E) of the Code) reasonably anticipates that it will not issue in calendar year 1999, "qualified tax-exempt obligations" in an amount greater than \$10,000,000.

Section 4. **Expectation Regarding the Lease.** The County, by the adoption of this Ordinance, certifies that it does not reasonably anticipate that less than 95% of the proceeds of the Lease will be used for "local government activities" of the County or that the aggregate face amount of all tax-exempt bonds issued by the County during calendar year 1999 will exceed \$5,000,000.

Section 5. **Severability.** If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

Section 6. **Inconsistent Actions.** All prior ordinances, resolutions or parts thereof inconsistent herewith are hereby repealed.

Section 7. **Open Meetings Laws.** All meetings of the Fiscal Court and of its committees and any other public bodies, at which the formal actions in connection with the authorization of the Lease of the Bonds were taken, or at which deliberations that result in such formal actions were held, were open meetings, and such formal actions were taken and any such deliberations took place while such meetings, after proper notice, were open to public, in compliance with all legal requirements including KRS Sections 61.810, 61.815, 61.820 and 61.825.

Section 8. **Effective Date.** This Ordinance shall take effect from and after its adoption and publication of a summary thereof, as provided by law.

FIRST READING HELD on 8-3, 1999.

DULY ADOPTED AFTER SECOND READING on ⁸⁻24th, 1999.

MARSHALL COUNTY FISCAL COURT

BY: mk mll
COUNTY JUDGE/EXEC.

Attest:

Dan Duke
COUNTY CLERK

CERTIFICATION

I, the undersigned, do hereby certify that I am duly qualified and acting County Clerk of The County of Marshall, Kentucky, and as such County Clerk, I further certify that the foregoing is a true, correct and complete copy of an Ordinance duly enacted by the Fiscal Court at a duly convened meeting held on the _____ day of _____, 1999, on the same occasion signed by the County Judge/Executive as evidence of his approval, and now in full force and effect, all as appears from the official records of the County in my possession and under my control.

Witness my hand and the seal of said County as of the 10th day of _____, 1999.

Dan Duke
COUNTY CLERK