

ORDINANCE NO. 2011-09

**AN ORDINANCE OF THE FISCAL COURT OF MARSHALL COUNTY, KENTUCKY, AUTHORIZING AND APPROVING THE ISSUANCE OF MARSHALL COUNTY, KENTUCKY GENERAL OBLIGATION REFUNDING BONDS, IN SUCH SERIES TO BE DETERMINED BY THE FINANCIAL ADVISOR (THE "BONDS") IN A PRINCIPAL AMOUNT NOT TO EXCEED \$6,000,000; 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 PRINCIPAL OF AND INTEREST ON THE BONDS WHEN AND AS THE SAME BECOME DUE; AUTHORIZING THE ESTABLISHMENT OF CERTAIN FUNDS TO PROVIDE FOR THE COLLECTION OF REVENUES FROM THE FACILITY AND, TO THE EXTENT REQUIRED, THE PROCEEDS OF THE TAX; AUTHORIZING AND APPROVING A LEASE AGREEMENT WITH THE ADMINISTRATIVE OFFICE OF THE COURTS OF THE COMMONWEALTH OF KENTUCKY; AUTHORIZING THE PUBLICLY ADVERTISED, COMPETITIVE SALE OF SAID BONDS AND THE DISBURSEMENT OF THE PROCEEDS THEREOF; AUTHORIZING THE INVESTMENT OF FUNDS PURSUANT TO KRS § 66.480; AND AUTHORIZING CERTAIN OTHER ACTIONS WITH REGARD TO REFUNDING AND REDEEMING THE PRIOR BONDS GENERALLY, INCLUDING THE AUTHORIZATION OF AN ESCROW AGREEMENT, IF REQUIRED, CONTINUING DISCLOSURE AGREEMENT, DEED RECONVEYING THE REAL PROPERTY UPON WHICH THE FACILITY IS LOCATED BACK TO THE COUNTY, AND SUCH OTHER DOCUMENTS, AGREEMENTS AND CERTIFICATES NECESSARY OR REQUIRED FOR THE ISSUANCE OF THE BONDS.**

WHEREAS, the County of Marshall, Kentucky, acting by and through its Fiscal Court, (the "County") desires to refund the \$8,005,000 Marshall County Public Properties Corporation First Mortgage Revenue Bonds (Justice Center Project), Series 2000 (the "Prior Bonds");

WHEREAS, the proceeds from the Series 2000 Bonds were used to (i) finance the construction of a courthouse facility, and (ii) pay for the costs of issuance for the Prior Bonds;

WHEREAS, the County proposes to (i) refund the Marshall County Public Properties Corporation First Mortgage Revenue Bonds (Justice Center Project), Series 2000, the proceeds of which were used for the construction of a courthouse facility ("Prior Bonds"); (ii) paying accrued interest, if any; and (iii) paying the cost of issuance incurred with respect to the issuance of the Bonds ("Project"); and

WHEREAS, the County proposes to lease to the Administrative Office of the Courts for the Commonwealth of Kentucky ("AOC") a majority of the Facility for use by the AOC as a courthouse

and to collect Rentals or "Use Allowance" as defined in KRS 26A.090 and in the Lease (hereinafter defined).

WHEREAS, in order to assure the payment of the Bonds, it is necessary that the County authorize a levy of a tax sufficient for that purpose; provided, however, it is now anticipated that the Rentals or Rental Payments, as hereinafter defined, will be sufficient to provide for the payment of the Bonds.

NOW, THEREFORE, BE AND IT IS HEREBY ORDAINED BY THE FISCAL COURT OF THE COUNTY OF MARSHALL, 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 Registered and Beneficial Owners of the Bonds herein authorized and no change, alteration, or amendment in the provisions hereof shall be made subsequent to the delivery of said Bonds.

For the purposes of this Ordinance and the Bonds, unless defined elsewhere herein or the context clearly indicates some other meaning, the following terms shall have the meanings hereinafter set forth:

"Act" means Sections 66.011 through 66.191 of the Kentucky Revised Statutes.

"AOC" means the Administrative Office of the Courts of the Commonwealth of Kentucky.

"Bond Counsel" means Steptoe & Johnson PLLC, Lexington, Kentucky.

"Bonds" means the principal amount not to exceed \$6,000,000, as authorized by this Ordinance, of **County of Marshall, Kentucky General Obligation Refunding Bonds**, to be dated and in such series as determined by the Financial Advisor.

"Bond Registrar" or "Registrar" means the Depository acting in its capacity as the registrar of the Bonds and Paying Agent for the Bonds, 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" means all costs incident to the current refunding and redemption of the Prior Bonds; including, but not being limited to, the expenses of financing the Costs of Issuance expenses incident to the issuance of the Bonds.

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

“Costs of Issuance Fund” means the separate account established with the Depository from the proceeds of the Bonds 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 also act as Bond Registrar and Paying Agent for the Bonds and depository for the various funds established by this Ordinance.

“Escrow Fund” and/or “Project Fund” shall mean the fund so designated and established pursuant to 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 when due; (iii) failure to reimburse any Fund established hereby, in accordance with the reimbursement provisions hereof; (iv) failure to comply with the Code; and (v) a Determination of Taxability.

“Facility” means the courthouse facility located in Marshall County, Kentucky.

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

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

“Issuer” or “County” means the Marshall County, Kentucky.

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

“Lease” or “Lease Agreement” shall mean the Lease Agreement entered into by and between the County and the AOC.

“Paying Agent” means the Bond Registrar assuming the obligations of a paying agent as set forth in this Ordinance.

“Pledged Receipts” means the combination of the Tax and Rentals or Rental Payments adequate each year to pay the principal and interest requirements of the Bonds.

“Prior Bonds” means \$8,005,000 Marshall County Public Properties Corporation First Mortgage Revenue Bonds (Justice Center Project), Series 2000.

“Project” shall mean (i) refunding the Marshall County Public Properties Corporation First Mortgage Revenue Bonds (Justice Center Project), Series 2000, the proceeds of which were used for the construction of a courthouse facility (“Prior Bonds”); (ii) paying accrued interest, if any; and (iii) paying the cost of issuance incurred with respect to the issuance of the Bonds.

“Registered Owners” or “Bondowner” or “Owner” means, when used with referenced to the Bonds, the registered owner of any Bonds.

“Rentals” or “Rental Payments” or “Revenue” means proceeds or Use Allowance paid by the AOC for use of the Facility.

“Sinking Fund” shall mean the fund so designated for payment of principal of and interest on, and premium in respect of, the Bonds, which is established and created pursuant to this Ordinance.

“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 Marshall, Kentucky, which is subject to taxation for County purposes, occupational license fees, insurance premium taxes and any and all other receipts of taxes, excises, utilities and service revenues, permits, licenses, fines or other sources of revenue of, or of revenue distributions to, the County.

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

That for the purposes set forth in the Preamble to this Ordinance, there is hereby declared a necessity for, and there is hereby authorized to be issued, an amount not to exceed \$6,000,000, as authorized by this Ordinance, principal amount of the **Marshall County, Kentucky General Obligation Refunding Bonds**, to be dated and in such series as determined by the Financial Advisor.

The Bonds shall be dated as determined in the winning bid set forth in the Official Bid Form and selected by the County Judge/Executive, without further action of the Fiscal Court and with the advise of the Financial Advisor pursuant to section 6 of this Ordinance, awarding Bonds to the purchaser thereof and establishing the interest rate or rates on the Bonds. Principal on the Bonds shall be payable at maturity. Interest on the Bonds shall be payable semiannually, at the stated interest rate or rates on the principal amount thereof. The Bonds shall be serial or term bonds maturing in the years and in the amounts to be established in the Official Bid Form accepted by the County Judge/Executive as the successful bid for the purchase of the Bonds, after advertised competitive sale of the Bonds, based on the interest rates bid in the successful bid and the provisions of this Ordinance and specifically this Section 2, provided that the final maturity date of the Bonds shall be set forth in the Official Bid Form accepted by the County Judge/Executive as the successful bid for the purchase of the Bonds; and, further provided that the aggregate net interest cost of the Bonds shall not exceed nine percent (9%) per annum.



**Section 3. Form and Execution of Bonds; Authentication; Optional and Mandatory Redemption.**

(A) The Bonds shall be issued in book-entry only form, unless the successful bidder elects to issue standard bond certificates, and shall be substantially in the same form as that attached to this Ordinance as Exhibit "A" (except as amounts and dates may be changed therein), the redemption provisions of which are incorporated herein by reference thereto.

The Bonds shall be executed with the facsimile signature of the County Judge/Executive, attested by the facsimile signature of the Fiscal Court Clerk and may be imprinted with a facsimile of the corporate seal of the County.

The Bonds shall be payable at the principal office of such bank as may be appointed by the County Judge/Executive, without further action by the Fiscal Court. No Bond shall be valid or binding upon the County unless and until it is authenticated by the manual signature of a duly authorized representative of the Registrar and Paying Agent.

(B) Mandatory Redemption/Term Bonds. In the event the purchaser of the Bonds so elects, the Bonds may be issued as term bonds in which event the Paying Agent shall select by lot a principal maturity originally scheduled to mature on the principal due date as reflected by the successful bid and shall notify the Registered Owners of Bonds so selected for mandatory redemption not less than thirty (30) days prior to the principal due date by regular United States Mail. Any Mandatory Sinking Fund Redemption provisions shall be set forth in the final Bond certificate and/or the Final Official Statement or similar disclosure document or memorandum, which provisions are incorporated herein, without further action of the Fiscal Court.

(C) Optional Redemption. Any Optional Redemption provisions shall be set forth in the final Bond certificate and/or the Final Official Statement or similar disclosure document or memorandum, which provisions are incorporated herein, without further action of the Fiscal Court.

(D) Notice of Redemption. If less than all Bonds which are payable by their terms on the same date are to be called, the particular Bonds, or portions of Bonds payable on such same date and to be redeemed from such series, shall be selected by lot by the Registrar and Paying Agent, in such manner as the Registrar and Paying Agent in its discretion may determine; provided, however, that the portion of any Bond to be redeemed shall be in the principal amount of \$5,000 or some multiple thereof, and that, in selecting Bonds for redemption, the Registrar and Paying Agent shall treat each Bond as representing that number of Bonds which is obtained by dividing the principal amount of such Bond by \$5,000.

At least thirty (30) days before the Redemption Date of any Bonds, the Registrar and Paying Agent shall cause a notice of such redemption to be mailed, postage prepaid, to all Registered Owners of the Bonds to be redeemed at their addresses as they appear on the registration books kept by the Registrar and Paying Agent, but failure to mail any such notice shall not affect the validity of the proceedings for such redemption. Each such notice shall set forth the date fixed for redemption,

the redemption price to be paid and, if less than all of the Bonds being payable by their terms on a single date then outstanding shall be called for redemption, the distinctive numbers or letters, if any, of such Bonds to be redeemed and, in the case of Bonds to be redeemed in part only, the portion of the principal amount thereof to be redeemed. In case any Bond is to be redeemed in part only, the notice of redemption which relates to such Bond shall state also that on or after the Redemption Date upon surrender of such Bonds, a new Bond in principal amount equal to the unredeemed portion of such Bonds will be issued.

On the date so designated for redemption, notice having been sent in the manner and under the conditions hereinabove provided and moneys for payment of the redemption price being held in separate accounts by the Bond Registrar/Paying Agent for the Bondowners or portions thereof to be redeemed, the Bonds or portions of Bonds so called for redemption shall become and be due and payable at the redemption price provided for redemption of such Bonds or portions of Bonds on such date, interest on the Bonds or portions of the Bonds so called for redemption shall cease to accrue, and the Bondowners or Registered Owners of such Bonds or portions of Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof and to receive Bonds for any unredeemed portions of Bonds.

In case part but not all of an outstanding Bond shall be selected for redemption, the Registered Owner thereof or his attorney or legal representative shall present and surrender such Bond to the Bond Registrar/Paying Agent for payment of the principal amount hereof so called for redemption, and the County shall execute and the Bond Registrar/Paying Agent shall authenticate and deliver to or upon the order of such Registered Owner or his legal representative, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered a Bond of the same series and maturity and bearing interest at the same rate.

**Section 4. Compliance with Constitution; Designation and Certification of Public Project; Authorization of Tax; Pledge of Tax, Rentals or Rental Payments and Pledged Receipts to Payment of Bonds; Designation as General Obligation Refunding Bonds.**

(A) That the debt represented by the Bonds 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 Bonds pursuant to Section 159 of the Constitution of Kentucky and provide for the collection of an annual tax sufficient to pay the interest on said Bonds 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 Bonds remain outstanding, a Tax in an amount sufficient to provide for the full payment of the principal and interest requirements on said Bonds; provided, however, that said Tax shall be levied only to the extent that the Rentals or Rental Payments or other receipts from taxes or other

sources are not sufficient to provide for the full payment of the accruing interest and maturing principal on the Bonds each year.

(D) That by the adoption of this Ordinance, the County covenants with Owners of the Bonds 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 Rentals or Rental Payments, an amount of funds sufficient to pay the "debt charges" on the Bonds 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, occupational license fees, insurance premium taxes, excises and any other receipts from taxes, excises, utilities and service revenues, permits, licenses, fines or other sources of revenue of, or of revenue distributions to, the County.

Notwithstanding the foregoing, the Tax shall only be levied, collected and applied to the payment of said "debt charges" on the Bonds to the extent the Rentals or Rental Payments are not sufficient to meet such "debt charges."

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

(G) That the County hereby declares, determines and certifies that the Facility constitutes a "public project" within the meaning of KRS § 66.011(17).

(H) That in accordance with KRS § 66.011(22), the County hereby states its belief that the Bonds shall be "self-supporting obligations" to be retired exclusively from the Rentals or Rental Payments, but, nevertheless, the County covenants to levy, collect and segregate the Tax to the extent the Rentals or Rental Payments are inadequate to meet the current annual debt service requirements of the Bonds and hereby designates the Bonds 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 Rentals or Rental Payments, shall, as received, be deposited in the appropriate Sinking Fund for the Bonds and applied solely to the payment of the principal and interest requirements of and administrative expenses for the Bonds.

**Section 5. Execution of Documents Authorized; Approval of State Local Debt Officer.**

That in order to effect the financing plan evidenced by the Bonds, 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 Bonds and the payment thereof, including but not limited to the following:

- (i) the Bonds and such Bond closing documents and/or certificates as Bond Counsel may require, and
- (ii) such other documents as are required to implement the refunding and redemption of the Prior Bonds and the issuance of the Bonds generally, including an Escrow Agreement, if required, Continuing Disclosure Agreement, Tax Certificates, Deed of Conveyance from the AOC to the County, and any other certificates or documents required by Bond Counsel to sell and issue the Bonds.

The Bonds shall only be issued to the extent approved by a decision of the State Local Debt Officer, if required.

**Section 6. Employment of Financial Advisor and Bond Counsel; Advertised Sale of Bonds; Acceptance of Bid.**

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, Lexington, Kentucky, as Bond Counsel is hereby authorized, approved and directed. Notwithstanding, the County Judge/Executive may designate a successor Financial Advisor or Bond Counsel without further action of the Fiscal Court.

The Bonds shall be sold at public sale after advertising according to law, and the County Judge/Executive is hereby authorized and directed to make such advertising. The specific terms, bidding conditions and restrictions governing the sale of said Bonds shall be as set forth in the forms of "Notice of Bond Sale," "Official Terms and Conditions of Bond Sale" and "Official Bid Form" which shall be prepared by the Financial Advisor.

Upon the receipt of the sealed, competitive bids after the required advertisement, the County Judge/Executive, in conjunction with the Financial Advisor, shall calculate the best purchase offer and the exact principal amount of Bonds to be awarded, and accept the offers to purchase said Bonds on behalf of the County without further action by the Fiscal Court.

**Section 7. 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 Bonds, the Rentals or Rental Payments of or from the Facility and any amount remaining in the Escrow Fund after the Prior Bonds have been finally discharged and all fees and expenses in connection therewith have been paid. Said Sinking Fund moneys shall be used only for the payment of the principal and interest requirements of the Bonds. Upon the delivery of the Bonds, the accrued and capitalized interest shall be deposited into said fund.

(B) Costs of Issuance Fund, which shall receive from the proceeds of the Bonds, the amounts necessary to pay the Costs of Issuance of the Bonds upon the delivery of said Bonds. 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 Bonds. Any amounts remaining in the Costs of Issuance Fund following the payment of all such Costs of Issuance shall be transferred to the Escrow Fund.

(C) Escrow Fund and/or Project Fund, which shall receive the proceeds from the issuance of the Bonds, which shall be used to pay the costs and expenses associated refunding and redeeming the Prior Bonds, and funding of an Escrow Agreement, if any, as specified in writing by the County Judge/Executive, or such other County official as may be designated by the County.

(D) Any other fund authorized by this Ordinance, 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 8. Registration of Bonds; Duties of Bond Registrar and Paying Agent.**

Such bank as may be appointed by the County Judge/Executive, without further action by the Fiscal Court, is hereby designated as the Bond Registrar, Paying Agent and Depository for the Bonds. The Bond Registrar, Paying Agent and Depository shall receive compensation for its services in accordance with its agreement with the County.

(A) The duties of the Bond Registrar shall be as follows:

- (i) To register all Bond certificates in the name of the Registered Owner thereof in accordance with the provisions of the Code;
- (ii) Upon being supplied with a properly authenticated assignment satisfactory to said Bond Registrar (in the sole discretion of said Bond Registrar), to transfer the ownership of Bond certificates from one Registered Owner to another within three (3) business days of the receipt of proper authentication by said Bond Registrar; and
- (iii) To cancel and destroy (or remit to the County for destruction) all exchanged or matured Bond certificates, and to maintain adequate records relative thereto;

(B) The duties of the Paying Agent and Depository shall be as follows:

- (i) To maintain the various funds established under this Ordinance and to invest the same in accordance with the provisions hereof;
- (ii) Receive and deposit Rentals to the appropriate fund maintained by the Paying Agent or Depository for payment of principal and interest due on the Bonds;
- (iii) To remit, but only to the extent that all required funds are made available to the Paying Agent by the County, semiannual interest payments direct to the Registered Owner of each Bond by regular United States Mail; said interest payments shall be deposited in the United States Mail no later than each interest due date. Matured or redeemed Bonds shall be payable upon presentation of Bond certificates to the Paying Agent. For interest payment purposes, the Paying Agent shall be entitled to rely on its records as Bond Registrar as to the ownership of each Bond as of the 15th day of the month preceding an interest due date and the Paying Agent's checks shall be drawn and mailed accordingly;
- (iv) To notify each Registered Owner to be prepaid and to redeem Bonds prior to their stated maturity upon their presentation in accordance with the provisions of this Ordinance upon being supplied with sufficient funds; and
- (v) To supply the County with a written accounting evidencing the payment of interest and principal within thirty days following each due date.

The Bond Registrar/Paying Agent shall be entitled to the advice of its attorney and shall be protected for any acts taken by it in good faith and reliance upon such advice. The Bond Registrar/Paying Agent shall not be liable for any action taken or omitted to be taken by it in good faith and believed by it to be within its discretion or the power conferred upon it by this Ordinance or any agreement with the County, or be responsible for the consequences of any oversight or error of judgment.

The Bond Registrar/Paying Agent may at any time resign from its duties set forth in this Ordinance or in any agreement with the County by filing its resignation with the County Judge/Executive and notifying the Registered Owners of the Bonds herein authorized. Thereupon, the County shall designate a successor Bond Registrar/Paying Agent which shall be an incorporated bank or trust company. Notwithstanding the foregoing, in the event of the resignation of the Bond Registrar/Paying Agent, provisions shall be made for the orderly transition of the books, records and accounts relating to the Bonds to the successor Bond Registrar/Paying Agent in order that there will be no delinquencies in the payment of interest or principal due on the Bonds.

The Bond Registrar/Paying Agent may be removed by the County if at any time so requested by an instrument or concurrent instruments in writing, filed with the Bond Registrar/Paying Agent

and signed by the Registered Owners of a majority in principal amount of the Bonds then outstanding or their attorneys-in-fact duly authorized.

**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 on the Bonds 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 Bonds to be used directly or indirectly to acquire any securities or obligations the acquisition of which would cause such Bonds 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 Bonds 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 Bonds, it is not expected that the proceeds of said Bonds 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 all who may become the Registered Owners of the Bonds, and any Bonds subsequently issued ranking on a parity therewith, and after the issuance and delivery of such Bonds, 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.

The County Judge/Executive and Fiscal Court Clerk are hereby authorized to execute a Continuing Disclosure Agreement with the Depository in order to comply with Rule 15c2-12 of the Securities and Exchange Commission in providing annual financial information in connection with the Bonds; all expenses in connection therewith to be borne by the County.

**Section 11. Bank Qualified.** The Fiscal Court, 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, 2011, will not exceed \$10,000,000 and therefore designates the Bonds as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code.

**Section 12. Lease Agreement.** A certain instrument designated "Lease Agreement" substantially in the form attached hereto as Exhibit "B", intended for execution by and on behalf of the County, as Lessor, and AOC, as Lessee, is hereby expressly approved and the same is hereby authorized to be executed in the name and on behalf of the County by the County Judge/Executive, with attestation by the Fiscal Court Clerk. The Lease Agreement as so executed on the behalf of the

County shall be tendered to the AOC in connection with the issuance of the Bonds and upon execution thereof by the County and the AOC shall be duly recorded in the office of the Marshall County Clerk in Benton, Kentucky. The terms and provisions set forth in the Lease may be changed or amended, if required by the AOC, Bond Counsel, and/or the Financial Advisor, in order to facilitate the issuance of the Bonds, without further action of the Fiscal Court.

Section 13. **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 14. 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]*



Given first reading on Oct 11, 2011.

Given second reading and passed and adopted on November 1, 2011.

Mike Miller  
County Judge/Executive

Attest:

Melanie Chambers  
Fiscal Court Clerk

**CERTIFICATION**

I, the undersigned, do hereby certify that I am the duly qualified and acting Fiscal Court Clerk of the Marshall County, Kentucky; that the foregoing is a true and complete copy of a certain Ordinance duly adopted by the Fiscal Court of Marshall County, Kentucky, at a duly convened public meeting properly held on November 1, 2011; 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 November 1, 2011.

Melanie Chambers  
Fiscal Court Clerk

**EXHIBIT “A”**

**[Form of Bond]**

**EXHIBIT “B”**

**[Form of Lease Agreement]**

**LEASE AGREEMENT**

**By and Between**

**COUNTY OF MARSHALL, KENTUCKY**

**and**

**ADMINISTRATIVE OFFICE OF THE COURTS  
OF THE COMMONWEALTH OF KENTUCKY**

**\* \* \* \* \***

**Dated as of:**

\_\_\_\_\_, 2011

## LEASE AGREEMENT

This **LEASE AGREEMENT** (the "Lease") is made, entered into and effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the **ADMINISTRATIVE OFFICE OF THE COURTS OF THE COMMONWEALTH OF KENTUCKY** ("AOC"), an agency of the Supreme Court of the Commonwealth of Kentucky established pursuant to Kentucky Supreme Court Rule 1.050 and acting as the administrative and fiscal agency of the Court of Justice pursuant to the AOC Act hereinafter defined; and the **COUNTY OF MARSHALL, KENTUCKY** (the "County"), a *de jure* body politic and political subdivision of the Commonwealth of Kentucky acting by and through its Fiscal Court.

### WITNESSETH

**WHEREAS**, the County heretofore authorized the issuance of the **Marshall County, Kentucky General Obligation Refunding Bonds (Justice Center Project), Series 2011**, in a principal amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Bonds"), the proceeds of which are being used for the purpose of (i) refunding the Marshall County, Kentucky First Mortgage Revenue Bonds (Justice Center Project), Series 2000, the proceeds of which were used for the construction of a courthouse facility ("Prior Bonds"); (ii) paying accrued interest, if any; and (iii) paying the cost of issuance incurred with respect to the issuance of the Bonds ("Project"), and

**WHEREAS**, the borrowing by the County of the amount represented by the Bonds, the application of the proceeds of the Bonds to the purposes aforesaid, and the execution, authentication and delivery of the Bonds evidencing the indebtedness of the County, has been authorized and directed by an Ordinance of the County at meetings duly called and held for the purposes of authorizing the Bonds at which times the Fiscal Court voted, ordered and directed the issuance thereof, voted for the adoption of said Ordinance as set forth in the records of the County and authorized and approved the execution of this Lease; ; and

**WHEREAS**, the Bonds are issued pursuant to the authority of an Ordinance adopted by the County, dated \_\_\_\_\_, 2011 (the "Ordinance"), relating solely to the Bonds and secured by the assignment of the Rentals and Pledged Receipts identified in this Lease and the Ordinance; and

**NOW, THEREFORE, IN CONSIDERATION OF THESE PREMISES AND IN FURTHER CONSIDERATION OF THE ISSUANCE BY THE COUNTY OF THE MARSHALL COUNTY, KENTUCKY GENERAL OBLIGATION REFUNDING BONDS (JUSTICE CENTER PROJECT), SERIES 2011, IN THE PRINCIPAL AMOUNT OF \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) (THE "BONDS") AND THE PAYMENT OF THE RENTALS AS HEREIN SET FORTH, FROM WHICH, TOGETHER WITH ALL PLEDGED RECEIPTS, THE BONDS WILL BE PAID, THE AOC AND THE COUNTY MUTUALLY COVENANT AND AGREE AS FOLLOWS:**

SECTION 1. Definitions. Unless the context clearly indicates some other meaning, the following words and terms shall, for all purposes of this Lease, have the following meanings:

“Act” means Sections 66.011 through 66.191 of the Kentucky Revised Statutes.

“AOC” shall mean the Administrative Office of the Courts of the Commonwealth of Kentucky.

“AOC ACT” shall mean Rules of Administrative Procedure of the Court of Justice, Part X, Sections 26A.090 through 26A.168, inclusive of the Kentucky Revised Statutes and Supreme Court Rule 1.050.

“AOC PORTION” shall mean that portion of the Facility used and occupied by AOC for its uses and purposes.

“AOC’S PROPORTIONATE SHARE” shall mean currently 92%.

“AUTHORIZED OFFICER” shall mean, with respect to the to the AOC, the Director and Budget Director or any other officer or employee authorized by resolution or Regulation or Rule of Administrative Procedure to act on behalf of AOC and, with respect to the County, the Judge/Executive and any officer, agent or employees duly authorized by ordinance or resolution of the County to perform the act or sign the document in question.

“BOND COUNSEL” shall mean Steptoe & Johnson PLLC, Lexington, Kentucky.

“BONDHOLDER” or “HOLDER” or “OWNER” or “REGISTERED OWNER” or “BENEFICIAL OWNER” shall mean, when used with referenced to the Bonds, the registered owner of any Bonds.

“BONDS” or “OBLIGATIONS” means the principal amount not to exceed \$6,000,000, as authorized by this Ordinance, of **County of Marshall, Kentucky General Obligation Refunding Bonds**, to be dated and in such series as determined by the Financial Advisor.

“CERTIFICATE” shall mean a document signed by an Authorized Officer of the AOC or the County attesting to or acknowledging the circumstances or other matters therein stated.

“CODE” shall mean the Internal Revenue Code of 1986, as amended, and applicable Regulations promulgated thereunder.

“COSTS OF ISSUANCE” shall mean the costs of issuing the Bonds.

“COST OF ISSUANCE FUND” shall mean the fund so designated and established pursuant to the Ordinance.

"COUNTY" shall mean the County of Marshall, Kentucky, a political subdivision of the Commonwealth of Kentucky, acting by and through its Fiscal Court.

"COUNTY PORTION" shall mean that portion of the Facility used and occupied by the County for its uses and purposes.

"COUNTY PROPORTIONATE SHARE" shall mean currently 8%.

"DEPOSITORY" shall mean any bank or trust company in which moneys in any Fund may be deposited pending the application of such moneys for the Project or the payments on the Bonds.

"ESCROW FUND" and/or "PROJECT FUND" shall mean the fund so designated and established pursuant to the Ordinance.

"FACILITY" shall mean the courthouse facility located in Marshall County, Kentucky, as described in Exhibit "A" to this Lease.

"FIDUCIARY" or "FIDUCIARIES" shall mean Paying Agent and Depository or Depositories, or any of them, as may be appropriate.

"FUND" shall mean, collectively, all funds and accounts established pursuant to the Ordinance.

"INVESTMENTS" or "INVESTMENT OBLIGATIONS" means those investments permitted under KRS § 66.480.

"LEASE" or "LEASE AGREEMENT" shall mean this Lease Agreement entered into by and between the County and the AOC, dated as of \_\_\_\_\_, 2011.

"OBLIGOR" or "ISSUER" shall mean the Marshall County, Kentucky.

"OPERATING COSTS ALLOWANCE" means compensation equivalent to the annual expenses borne by the County for utilities, janitorial services, property insurance and necessary maintenance, repair and upkeep of the courthouse facility, which does not increase the permanent value or expected life of the courthouse facility, but keep the courthouse facility in efficient operating condition, including, at the election of the AOC, capital costs of interior or mechanical renovations for the benefit of the County, which costs shall commence with occupancy of the courthouse facility by the AOC. Operating costs shall remain constant except where a subsequent audit by the AOC shows any required increase or decrease in the amount of the operating cost allowance.

“ORDINANCE” shall mean the Ordinance duly adopted by the County authorizing the issuance of the Bonds and the execution and delivery of this Lease, and stating the intent of the County to issue the Bonds.

“OUTSTANDING” when used with reference to the Bonds, shall mean, as of any date, all Bonds theretofore or then being authenticated and delivered under the Ordinance, except:

(i) Bonds canceled at or prior to such date;

(ii) Bonds (or portions thereof) for the payment or redemption of which there shall be held in trust (whether at or prior to maturity or redemption date) (a) cash, equal to the principal amount or redemption price thereof, as the case may be, with interest to the date of maturity or redemption date, or (b) Investment Obligations as defined in the Ordinance, in such principal amounts, having such maturities and bearing such interest, which, together with cash, if any, shall be sufficient to pay when due, the principal amount or redemption price, as the case may be, with interest to the date of maturity or redemption date; provided that if such Bonds are to be redeemed, notice of such redemption shall have been given as provided in the Ordinance, or provisions shall have been made for the giving of such notice;

(iii) Bonds in lieu of or in substitution for which other Bonds shall have been authenticated and delivered pursuant to the Ordinance; and

(iv) Bonds deemed to have been paid as provided in the Ordinance.

“PERSON” shall mean or words importing persons shall mean firms, associations, partnerships, joint ventures, societies, estates, trusts, Corporations, public or governmental bodies, other legal entities and natural persons.

“PLEDGED RECEIPTS” means the combination of the Tax and Rentals or Rental Payments adequate each year to pay the principal and interest requirements of the Bonds.

“PRIOR BONDS” shall mean the \$8,005,000 Marshall County, Kentucky First Mortgage Revenue Bonds (Justice Center Project), Series 2000.

“PROJECT” shall mean (i) refunding the Marshall County, Kentucky First Mortgage Revenue Bonds (Justice Center Project), Series 2000, the proceeds of which were used for the construction of a courthouse facility (“Prior Bonds”); (ii) paying accrued interest, if any; and (iii) paying the cost of issuance incurred with respect to the issuance of the Bonds.

“REBATE FUND” shall mean the fund so designated and established pursuant to the Ordinance.

“REGISTRAR” or “BOND REGISTRAR” shall mean and refer to the Paying Agent and Depository, as defined in the Ordinance.



"RENTAL PAYMENT DATES" means the dates specified in this Lease.

"RENTALS" or "RENTAL PAYMENTS" means the Use Allowance paid under this Lease, as further defined herein.

"SINKING FUND" shall mean the fund so designated for payment of principal of and interest on, and premium in respect of, the Bonds, which is established and created pursuant to the Ordinance.

"USE ALLOWANCE" shall mean the AOC's Proportionate Share, as defined in KRS 26A.090, of the annual principal and interest cost of the Project, as set forth in this Lease.

Actions taken by the County in such respects are expressly affirmed and ratified. The County covenants and agrees that the Facility shall at all times be occupied and used by it and AOC during the term of this Lease solely for public, governmental purposes.

SECTION 2. Covenant Not to Affect Tax-Exempt Status of the Bonds. The County and the AOC covenant and agree that so long as any of the Bonds remain Outstanding, neither the AOC nor the County shall themselves, or through any instrumentality or agency of either of them, if any, enter into any agreements, leases, or other contracts so that the Bonds would be designated "Private Activity Bonds" as that term is defined in § 141(a) of the Code, with respect to the long-term use of the Facility. The covenants, warranties and representations contained in this Section are expressly made by the County and the AOC for and on behalf of those who shall become holders of the Bonds.

SECTION 3. Lease of Project by the County and AOC; Use Allowance. AOC hereby leases from the County and the County hereby leases to the AOC, the AOC Portion of the Facility, together with all the improvements thereon for a period ending June 30, 2012, at the agreed and stipulated Rentals equal to the AOC Use Allowance set forth in Exhibit "B" hereto.

The Rentals shall be payable directly to the Paying Agent on the Rental Payment Dates set forth in Exhibit "B".

SECTION 4. Operation, Maintenance and Insurance of Facility. In addition to the Use Allowance, AOC agrees to pay the Operating Cost Allowance to the County, for utilities, janitorial services, property insurance, and necessary maintenance, repair and upkeep of the Facility which do not increase the permanent value or expected life of the Facility, but keeps it in efficient operating condition. The County provides that all insurable improvements presently existing, and all insurable improvements to be constructed and located upon the Facility are insured, to the greater of the amount of Bonds outstanding or full insurable value thereof, against fire, flood, tornado, windstorm and other casualties in good and solvent insurance companies (with standard comprehensive coverage endorsement including rental interruption insurance in an amount sufficient to pay the maximum principal of and interest coming due on the Bonds

during any twenty-four month period in the event of damage or destruction to the Facility rendering the Facility unusable by AOC for its intended purposes during a maximum reconstruction or repair period of twenty-four months); and the County will make said policies payable to the County and the AOC as their respective interests may appear, or cause said policies to be endorsed in an appropriate manner so that in the event of loss the proceeds thereof will be payable to the County and the AOC, as their interests may appear. Further, the County will provide for Title Insurance on the Facility during the term the Bonds remain outstanding.

AOC agrees to pay the agreed Operating Cost Allowance directly to the County.

**SECTION 5. Operation, Maintenance and Repair of Leased Premises and Equipment.**

The County agrees to take good care of all of the Facility and any equipment, to maintain and repair the same at the expense of the County, to keep any equipment and premises and improvements thereon in good repair, working order and first-class condition, and to return the same in as good condition as when received, ordinary wear and tear, accident damage by fire and the elements, and other unavoidable casualties excepted. The County further agrees to pay any and all improvement assessments of any kind whatever against said properties hereby leased. The County has and does hereby covenant for the benefit of the Owners from time to time of the Bonds, that it will:

- (i) cause the Facility to comply with state, local and federal regulations applicable thereto;
- (ii) operate, maintain and repair the Facility; and
- (iii) adequately insure the Facility against casualty loss, with any insurance policies to name the County and the AOC, as beneficiaries, as their interest may appear.

Actions taken by the County pursuant to this Lease in respect of operating, maintaining and insuring the Facility shall be carried out in a manner consistent with actions taken in respect of similar facilities of the County, and evidence thereof shall be furnished annually by the County to the AOC.

**SECTION 6. Damage or Destruction to Project.** In the event destruction, total or partial shall ensue, there shall first be applied all proceeds of insurance as shall be necessary to fully restore and repair the Facility to make the Facility suitable for its intended use within twenty-four months of the date of such damage or destruction. So long as the County is continuing with the repair and restoration of the Facility and the Facility can continue to be used for its intended purposes, AOC and the County agree that they will be bound by the terms of this Lease and AOC will continue to pay the Use Allowance and Operating Cost Allowance herein stipulated to the County. In the event the Facility cannot be repaired or restored to make the Facility suitable for its intended use within twenty-four months of the date of damage or destruction, all proceeds of insurance coverage will be applied to the discharge of the Bonds, subject to the provisions of the Ordinance.

SECTION 7. Relinquishment of Project at End of Lease Term. Subject to the provisions of Section 8 hereof, AOC agrees to relinquish the Facility without any demand and without any notice at the expiration of the initial terms ending June 30, 2012, or any extensions thereof, and the AOC agrees to keep the Facility in good repair and avoid any damage to the same (other than ordinary wear and tear) during the occupancy thereof by the AOC.

SECTION 8. AOC and County May Renew Lease.

(i) On July 1 of each even numbered year, this Lease may be renewed by the AOC for another biennial period of two years, provided that if this Lease is so renewed the Rentals for each such biennial period during which this Lease remains in effect, as regards AOC, shall be a sum equal to the amounts set forth in Exhibit "B," the Use Allowance, as the AOC Rentals. This Lease renewal shall automatically be considered to have been affirmatively exercised each even numbered year by AOC, unless notice of its election not to exercise the option for the biennial period be given by AOC to the County in writing at least 60 days prior to the renewal date hereof.

(ii) Pursuant to the terms of this Lease Agreement, the County is obligated to fulfill the requirements of Section 4 and Section 5 of this Lease Agreement in compliance with the AOC Act. The AOC is required to reimburse the County pursuant to Section 5 of this Lease Agreement and the AOC Act.

(iii) All Rentals payable in each year (if this Lease is renewed for such biennial and/or annual periods as herein provided) shall be payable to the Paying Agent for the benefit of the County by the AOC in a sum equal to the amount of the semiannual interest payments due during each year and the principal amount of the Bonds maturing during each year in immediately available funds at least two (2) business days prior to the date for which a payment of interest or principal is due on the Bonds directly to the Paying Agent. It is now anticipated that the AOC's payment of the Rentals shall be effected by wire transfer.

SECTION 9. Only Biennial Periods Deemed Obligations. Following the initial lease period, nothing herein contained shall be construed as binding AOC for the payment of the biennial Rentals as set forth above beyond the Rentals for the current biennial period, but the AOC shall in each biennial renewal period become indebted to the County for the Rentals for such period only upon the exercise of its option to renew as provided herein.

SECTION 10. AOC and County to Have Exclusive Possession of Project. During the initial term of this Lease and during each term for which it may be renewed, the AOC shall have full possession, control and operation of Facility, except for the County's portion, and the County agrees that it will, at its own expense from, said Operation Costs Allowance and such other funds of the County as may be required, operate the same or cause the same to be operated according to acceptable public standards and in such manner as to promote and preserve the

public safety, health, convenience, fire protection and general welfare of the inhabitants of the County.

SECTION 11. Amendments. Notwithstanding any other provision of this Lease, the parties hereto may any time and from time to time supplement or make any amendment or change herein to:

- (i) cure any formal defect or ambiguity;
- (ii) conform the provisions of this Lease to any provisions of the Ordinance;
- (iii) achieve compliance with any federal tax law;
- (iv) maintain or improve any rating on the Bonds;
- (v) achieve compliance with any applicable statutory change case law or Supreme Court Rule; or
- (vi) to amend the AOC's Proportionate Share for change in occupancy as provided in Section 13 hereof.

SECTION 12. Amendment of AOC's Proportionate Share for change in occupancy. The parties hereto reserve the right to amend the provisions of this Lease to reduce AOC's Proportionate Share in the Rentals upon satisfaction of each of the following conditions:

- (a) the amended Lease shall provide for the County's assumption of that portion of the AOC's Proportionate Share in the Rentals which is to be reduced; and
- (b) any rating agency then rating the Bonds shall have confirmed in writing that the rating on the Bonds in effect immediately preceding such amendment shall not be withdrawn or lowered as a result of the amendment of this Lease; and
- (c) if required, the State Local Debt Officer of the Commonwealth of Kentucky shall have approved in writing the amendments to this Lease and the County's assumption of that portion of the AOC's participation in the Rentals which is to be reduced as a result of an amendment to this Lease.

SECTION 13. Rights of AOC and County Survive Events of Default. Should AOC fail to pay the stipulated Rentals due under this Lease, or during any year for which it is renewed, and fails to cure such default within 30 days, all rights of AOC and all future options herein granted to the AOC or County in respect of payments in whole of the Bonds shall in any event remain in full force and effect; provided that the County shall, upon the occurrence of an event of default, be entitled to take certain actions for the benefit of the Owners of the Bonds only with respect to enforcement of the terms and provisions of this Lease and the Ordinance.

SECTION 14. Rights of AOC Survive Defaults by Others. If AOC shall renew this Lease from biennium to biennium, in the manner herein provided, and shall promptly pay in each year the AOC Use Allowance, herein stipulated for each year, and shall well and truly keep and perform each and every covenant and condition herein stipulated for performance by them, or cause same to be well and truly kept and performed, then it is specifically agreed that this Lease and all rights of AOC under the terms hereof shall continue in full force and effect, the AOC shall have the right to the possession and use of this Facility herein described, and AOC shall have the right to continue renewing this Lease as herein provided, notwithstanding any failure on the part of the County to apply the Use Allowance so paid to it by AOC to the retirement of the principal and interest of the Bonds, and notwithstanding any default in the payment of the Bonds or interest resulting from such failure on the part of the County, and such enforcement, either voluntary or involuntary, shall not be cause for cancellation or avoidance of this Lease by the AOC or the County.

SECTION 15. Default by County. If the County shall fail to keep or perform any of their obligations as provided in this Lease in respect to:

- (i) maintenance of insurance;
- (ii) repairs and maintenance of the Facility; and/or
- (iii) compliance with legal or insurance requirements under this Lease;

The AOC, without waiving or releasing the County from any obligation under this Lease, as an additional but not exclusive remedy, may make any such payment or perform any such obligation, and all sums so paid by AOC, which are necessary incidental costs and expenses incurred by AOC in performing such obligation shall be a credit against Operating Cost Allowance payable by it under this Lease in an amount equal to such advances, notwithstanding other provisions of this Lease.

SECTION 16. AOC Intends to Renew Lease Until Bonds Are Discharged. AOC hereby expresses its present intention to renew this Lease Agreement in accordance with its terms, and in accordance with the options to renew as herein set forth, from biennium to biennium, until all of the Bonds to be issued by the County are fully paid, canceled and retired, whether at maturity or by call for redemption, but such expression of intention shall not be construed as a present election on the part of AOC to extend this Lease Agreement beyond the original terms thereof, since AOC is without legal power to incur at this time any indebtedness or obligations for Rentals beyond the Rentals stipulated for the first biennial of said Lease Agreement.

SECTION 17. Procedure in Event of Default. In the event AOC shall elect not to renew this Lease at any time, or fail to pay the stipulated Rentals, then and in that event and upon any ensuing or threatened default in the payment of the principal of or interest on the Bonds, the County shall levy, to the extent required by the Ordinance, a Tax, as defined in the Ordinance, in a sufficient amount and appropriate in its annual budget, together with other moneys available to

the County, an amount of funds, sufficient to pay the "debt charge" on the Bonds as defined in KRS §66.011(4) and in compliance with the Ordinance, the terms and provisions of which are incorporated herein by reference thereto.

SECTION 18. AOC's Covenant to Seek Appropriations. By the execution of this Lease, AOC agrees that prior to the effective date of any renewal lease term beginning on July 1 of each biennial period in which AOC exercises its option to renew this Lease, AOC states and certifies its intention to request appropriations from the Kentucky General Assembly in order to obtain sufficient funds to meet the principal and interest requirements on the Bonds as reflected by the Use Allowance and Operating Costs Allowance due hereunder. In similar fashion, the County covenants and agrees that in each year that this Lease remains in effect it will, through its Fiscal Court, adopt a budget for said ensuing year, which budget will reflect an allocation of sufficient funds to provide for the County's Obligations under this Lease and the estimated expenses of operating, insuring and maintaining the Facility taking into account its receipt of the Operating Costs Allowance.

SECTION 19. Use Allowance Recalculation Upon Issuance of Refunding Bonds. In the event that the County shall issue refunding bonds for the purpose of refinancing the Facility which refunding bonds shall result in a savings to the County after all costs, including cost of issuance are taken into consideration, then AOC shall be entitled, on a pro rata basis to benefit from any savings realized by the County upon the issuance of refunding bonds by the reduction in the Use Allowance by an amount equal to the AOC's current percentage of occupancy of the Facility times the amount of savings realized by the issuance of the refunding bonds over the life of the refunding bonds. The actual amount of savings shall be determined and ascertained by the County's financial advisor and reviewed and approved by the County and AOC. The AOC's obligation shall not extend beyond the original maturity date of the Bonds being refunded. If the final maturity date of the refunding issue is earlier than the final maturity date of the Bonds, then AOC Use Allowance payments will terminate at the final maturity date of the refunding issue.

SECTION 20. Inspection. The County and the AOC, to the extent required, or their duly authorized representatives and agents, reserve the right to enter the Facility at all reasonable times during the term of this Lease for the purpose of performing such work in and about the Facility made necessary by reason of County's default under any of the provisions of this Lease.

The AOC shall also have the right at all reasonable times to examine the books and records of the County and the County and the County agrees to keep such books and records.

SECTION 21. Severability. If any section, paragraph or clause of this Agreement shall be held invalid by any court of competent jurisdiction, the invalidity of said section, paragraph or clause shall not affect any of the remaining provisions hereof.

SECTION 22. Counterpart Signatures. This Lease may be signed in one or more counterparts, which together shall constitute one Lease.

*[Signatures for Lease Agreement on following pages]*

IN TESTIMONY WHEREOF, the County of Marshall, Kentucky, acting by and through its Fiscal Court, has caused this instrument to be executed in its name and on its behalf by its County Judge/Executive, attested by its Fiscal Court Clerk, and the Administrative Office of the Courts has caused this instrument to be executed by its Director and Budget Director and effective as of the day and year first above written.

**MARSHALL COUNTY, KENTUCKY**

**Attest:** **BY:** \_\_\_\_\_  
**County Judge/Executive**

\_\_\_\_\_  
**Fiscal Court Clerk**

**ADMINISTRATIVE OFFICE  
OF THE COURTS**

**BY:** \_\_\_\_\_  
**Carole Henderson, Budget Director**

**AND**

**BY:** \_\_\_\_\_  
**Laurie K. Dudgeon, Director**



STATE OF KENTUCKY            )  
  ) SS:  
COUNTY OF MARSHALL        )

I, a Notary Public in and for the State and County aforesaid, do hereby certify that on \_\_\_\_\_, 2011, the foregoing Lease Agreement was produced to me in my office by **Mike Miller, County Judge/Executive** and \_\_\_\_\_, **Fiscal Court Clerk of the County of Marshall, Kentucky**, and they thereupon respectively acknowledged before me the execution and attestation thereof as the official act and deed of such County by them as its duly authorized officers pursuant to a duly adopted Ordinance.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State at Large

STATE OF KENTUCKY            )  
  ) SS:  
COUNTY OF FRANKLIN        )

I, a Notary Public in and for the State and County aforesaid, do hereby certify that on \_\_\_\_\_, 2011, the foregoing Lease Agreement was produced to me in my office by **Carole Henderson, Budget Director**, and **Laurie K. Dudgeon, Director**, of the Administrative Office of the Courts, and they thereupon respectively acknowledged before me the execution and attestation thereof as the official act and deed of the AOC as an agency of the Supreme Court of the Commonwealth of Kentucky.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State at Large

STATE OF KENTUCKY                    )  
  ) SS:  
COUNTY OF MARSHALL                )

I, \_\_\_\_\_, Clerk in and for the County and State aforesaid, hereby  
certify that on \_\_\_\_\_, 2011, the foregoing Lease Agreement was filed in my office to  
be and has been together with the foregoing certificates attached thereto, recorded in  
\_\_\_\_\_ Book \_\_\_\_\_, at Page \_\_\_\_\_.

\_\_\_\_\_  
Clerk

The foregoing instrument was prepared by:

\_\_\_\_\_  
Gillard B. Johnson, III  
Steptoe & Johnson PLLC  
1010 Monarch Street, Suite 250  
Lexington, Kentucky 40513  
859.255.7080

**LEASE AGREEMENT  
EXHIBIT "A"**

**LEGAL DESCRIPTION**

**LEASE AGREEMENT  
EXHIBIT "B"**

**SCHEDULE OF RENTAL PAYMENT (PROJECT COST/USE ALLOWANCE)  
AND  
RENTAL PAYMENT DATES FOR BONDS**

Bond Principal: \$ \_\_\_\_\_

Leased Premises: Justice Center located in Marshall County, Kentucky.

Project: The Project consists of a Justice Center. The facility will include Circuit and District Court.

Use Allowance: Per the attached schedules in an amount not to exceed a maximum of \$ \_\_\_\_\_ per year

Payment Dates: Two (2) business days prior to \_\_\_\_\_ 1 and \_\_\_\_\_ 1, commencing March 1, 2013

[FORM OF BOND]

UNITED STATES OF AMERICA  
COMMONWEALTH OF KENTUCKY

MARSHALL COUNTY, KENTUCKY  
GENERAL OBLIGATION REFUNDING BONDS  
SERIES 2011

**REGISTERED**

Number  
R-1

**REGISTERED**

Principal Amount

Interest Rate

Maturity Date

Date of Original Issue

CUSIP Number

Registered Owner: CEDE & CO.  
c/o The Depository Trust Company  
55 Water Street  
New York, NY 10041  
TAX ID #13-2555119

Principal Amount: \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_)

**KNOW ALL MEN BY THESE PRESENTS:** That Marshall County, Kentucky (the "County" or "Issuer") for value received, hereby acknowledges itself obligated to, and promises to pay, to the Registered Owner named above, or registered assigns or legal representatives, the Principal Amount herein specified, on the Maturity Date specified above, and, to pay interest thereon at the per annum Interest Rate specified above, calculated from the Date of Original Issue set out above and payable on \_\_\_\_\_ and \_\_\_\_\_ of each year commencing \_\_\_\_\_, 20\_\_\_\_, until payment of the Principal Amount hereof, except as the provisions hereinafter set forth with regard to redemption prior to maturity may be and become applicable hereto. The Principal Amount of this Bond (and redemption price if redeemed prior to maturity) is payable upon surrender of this Bond, at maturity or redemption prior to maturity, without deduction for exchange or collection charges, in lawful money of the United States of America at the principal corporate office of \_\_\_\_\_, \_\_\_\_\_, Registrar and Paying Agent, or the principal office of any successor Registrar and Paying Agent. Interest due on this Bond shall be paid by check mailed by regular United States mail, postmarked no later than the due date thereof, by the Paying Agent to the Registered Owner at the address shown on the Bond register as of the 15th day of the month preceding such interest payment date.



## ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto:

---

(Please print or typewrite name and address of transferee)

the within Bond, and hereby irrevocably constitutes and appoints \_\_\_\_\_,  
attorney-in-fact to transfer the within Bond on the books kept for registration thereof, with full  
power of substitution in these premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

NOTICE: The signature of this assignment must correspond with the name as it appears upon the  
face of the within bond in every particular, without alteration or enlargement or any change  
whatever.

This Bond is one of an issue of Bonds of like tenor and effect, except as to denomination  
and maturity, numbered R-1 upward, inclusive of the denomination of \$5,000 or any integral  
multiple thereof originally aggregating \_\_\_\_\_ Dollars (\$\_\_\_\_\_) in principal  
amount, issued for the purpose of financing various public projects within the County, all  
pursuant to and in full compliance with the general laws of the Commonwealth of Kentucky and  
particularly Sections 66.011 to 66.191 of the Kentucky Revised Statutes, and pursuant to an  
ordinance adopted by the County on \_\_\_\_\_, 2011 (the "Ordinance") upon the  
affirmative vote of at least a majority of the members of the Fiscal Court at a public meeting,  
duly and regularly held.

THIS BOND AND THE ISSUE OF WHICH IT FORMS A PART IS A GENERAL  
OBLIGATION REFUNDING OF THE COUNTY AND THE FULL FAITH, CREDIT,  
REVENUE AND TAXES OF THE COUNTY ARE PLEDGED TO THE PAYMENTS DUE  
HEREUNDER. THIS BOND IS CONTINUALLY SECURED BY THE FAITH, CREDIT,  
REVENUE AND TAXES OF THE COUNTY.

The Bonds shall bear interest from their date, payable on \_\_\_\_\_ and \_\_\_\_\_, commencing \_\_\_\_\_, 2011, and shall mature as to principal in each of the years as follows:

<u>Maturity</u>	<u>Principal</u>	<u>Interest</u>	<u>Maturity</u>	<u>Principal</u>	<u>Interest</u>
	<u>Amount</u>	<u>Rate</u>		<u>Amount</u>	<u>Rate</u>

Optional Redemption. The Bonds maturing on or after \_\_\_\_\_, 20\_\_ will be subject to redemption prior to maturity, at the option of the County, on any date on or after \_\_\_\_\_, 20\_\_, in whole or in part, prior to maturity, in the inverse order of their maturities, less than all the single maturity to be selected in such manner as the Registrar may determine, from any money available therefore, at a redemption price equal to 100% of the principal amount to be redeemed, plus accrued interest to the Redemption Date.

Mandatory Sinking Fund Redemption.  
[PURCHASER TO ELECT]

Notice of Redemption. If less than all Bonds which are payable by their terms on the same date are to be called, the particular Bonds, or portions of Bonds payable on such same date and to be redeemed from such series, shall be selected by lot by the Registrar and Paying Agent, in such manner as the Registrar and Paying Agent in its discretion may determine; provided, however, that the portion of any Bond to be redeemed shall be in the principal amount of \$5,000 or some multiple thereof, and that, in selecting Bonds for redemption, the Registrar and Paying Agent shall treat each Bond as representing that number of Bonds which is obtained by dividing the principal amount of such Bond by \$5,000.

At least thirty (30) days before the Redemption Date of any Bonds, the Registrar and Paying Agent shall cause a notice of such redemption to be mailed, postage prepaid, to all Registered Owners of the Bonds to be redeemed at their addresses as they appear on the registration books kept by the Registrar and Paying Agent, but failure to mail any such notice shall not affect the validity of the proceedings for such redemption. Each such notice shall set forth the date fixed for redemption, the redemption price to be paid and, if less than all of the Bonds being payable by their terms on a single date then outstanding shall be called for redemption, the distinctive numbers or letters, if any, of such Bonds to be redeemed and, in the case of Bonds to be redeemed in part only, the portion of the principal amount thereof to be redeemed. In case any Bond is to be redeemed in part only, the notice of redemption which relates to such Bond shall state also that on or after the Redemption Date upon surrender of such Bonds, a new Bond in principal amount equal to the unredeemed portion of such Bonds will be issued.



On the date so designated for redemption, notice having been sent in the manner and under the conditions hereinabove provided and moneys for payment of the redemption price being held in separate accounts by the Bond Registrar/Paying Agent for the Bondowners or portions thereof to be redeemed, the Bonds or portions of Bonds so called for redemption shall become and be due and payable at the redemption price provided for redemption of such Bonds or portions of Bonds on such date, interest on the Bonds or portions of the Bonds so called for redemption shall cease to accrue, and the Bondowners or Registered Owners of such Bonds or portions of Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof and to receive Bonds for any unredeemed portions of Bonds.

In case part but not all of an outstanding Bond shall be selected for redemption, the Registered Owner thereof or his attorney or legal representative shall present and surrender such Bond to the Bond Registrar/Paying Agent for payment of the principal amount hereof so called for redemption, and the County shall execute and the Bond Registrar/Paying Agent shall authenticate and deliver to or upon the order of such Registered Owner or his legal representative, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered a Bond of the same series and maturity and bearing interest at the same rate.

#### **CERTIFICATE**

It is hereby certified that the following is a correct and complete copy of the text of the legal opinion of Steptoe & Johnson PLLC, Attorneys, Lexington, Kentucky, regarding the issue of which the within Bond is one, the original of which opinion was manually executed, dated and issued as of the date of delivery of any payment for said issue and a copy of which is on file with the undersigned.

**Attest:**

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**Fiscal Court Clerk**

Marshall County Public  
Properties Corporation  
80 Judicial Drive  
Benton, Kentucky 42025

Mike Miller  
Marshall County Judge/Executive  
1101 Main Street  
Benton, Kentucky 42025

[ ] Trustee [ ]

**RE: \$ \_\_\_\_\_ Marshall County, General Obligation Refunding Bonds, Series  
2011**

Ladies and Gentlemen:

We have examined the transcript of proceedings relating to the issue of \$ \_\_\_\_\_ General Obligation Refunding Bonds, Series 2011 (the "Bonds"), of Marshall County, Kentucky (the "Issuer"), dated \_\_\_\_\_, 2011, and of the denomination of \$5,000 and any integral multiple thereof. The Bonds mature, bear interest, and are subject to mandatory and optional redemption upon the terms set forth therein. We have also examined a specimen Bond.

Regarding questions of fact material to our opinion, we have relied on the representations of the Issuer contained in the Ordinance pursuant to which the Bonds are issued (the "Bond Ordinance") and in the certified proceedings and other certifications of public officials and others furnished to us, without undertaking to verify the same by independent investigation. We have assumed that all signatures on documents, certificates and instruments examined by us are genuine, all documents, certificates and instruments submitted to us as originals are authentic and all documents, certificates and instruments relating to the issuance of the Bonds have been duly authorized, executed and delivered by all parties thereto other than the Issuer, and we have further assumed the due organization, existence and powers of such other parties other than the Issuer.

As bond counsel, we have been retained solely for the purpose of examining the validity and legality of the Bonds and of rendering the specific opinion herein stated and for no other purpose. We have not verified the accuracy, completeness or fairness of any representation or information concerning the business or financial condition of the Issuer in connection with the sale of the Bonds. Accordingly, we express no opinion on the completeness, fairness or adequacy of any such representation or information.

Based on this examination, we are of the opinion, based upon laws, regulations, rulings and decisions in effect on the date hereof, that:

1. The Bonds constitute valid obligations of the Issuer in accordance with their terms, which unless paid from other sources, are payable from taxes to be levied by the Issuer without limitation as to rate.

2. Under the laws, regulations, rulings and judicial decisions in effect as of the date hereof, interest on the Bonds is excludable from gross income for Federal income tax purposes, pursuant to the Internal Revenue Code of 1986, as amended (the "Code"). Furthermore, interest on the Bonds will not be treated as a specific item of tax preference in computing the alternative minimum tax for individuals and corporations. In rendering the opinions in this paragraph, we have assumed continuing compliance with certain covenants designed to meet the requirements of Section 103 of the Code. We express no other opinion as to the federal tax consequences of purchasing, holding or disposing of the Bonds.

3. The interest on the Bonds is not subject to taxation by the Commonwealth of Kentucky, and the Bonds are not subject to ad valorem taxation by the Commonwealth of Kentucky or by any political subdivision thereof.

The Bonds have been designated as "qualified tax-exempt obligations" with respect to investments by certain financial institutions under Section 265 of the Code.

The rights of the owners of the Bonds and the enforceability of the Bonds and the Bond Ordinance are limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, and by equitable principles, whether considered as law or in equity.

We express no opinion herein regarding the accuracy, adequacy, or completeness of the Official Statement relating to the Bonds. Further, we express no opinion regarding tax consequences arising with respect to the Bonds other than as expressly set forth herein.

This opinion is given as of the date hereof, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law that may hereafter occur.

Very truly yours,

STEPTOE & JOHNSON PLLC