

ORDINANCE NO. #01-23

AN ORDINANCE OF THE FISCAL COURT OF THE COUNTY OF MADISON, KENTUCKY, AUTHORIZING AND APPROVING THE ISSUANCE OF GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS, SERIES 2001 IN THE APPROXIMATE AMOUNT OF \$3,295,000 (WHICH AMOUNT MAY BE INCREASED OR DECREASED BY UP TO 10%); 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 SERIES 2001 NOTES WHEN AND AS THE SAME BECOME DUE; AUTHORIZING THE ESTABLISHMENT OF CERTAIN FUNDS TO PROVIDE FOR THE COLLECTION OF REVENUES FROM THE PROJECT AND, TO THE EXTENT REQUIRED, THE PROCEEDS OF THE TAX; AUTHORIZING THE PUBLICLY ADVERTISED, COMPETITIVE SALE OF SAID NOTES AND THE DISBURSEMENT OF THE PROCEEDS THEREOF; AND AUTHORIZING CERTAIN OTHER ACTIONS WITH REGARD TO THE FINANCING AND THE ACQUISITION, CONSTRUCTION, AND EQUIPPING OF THE PROJECT GENERALLY.

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WHEREAS, the County of Madison, Kentucky, acting by and through its Fiscal Court, (the "County") has determined that it is in the best interest of its citizens to issue the Series 2001 Bonds for the purpose of refinancing the Series 1995 Notes issued for the Courthouse and Detention Facility projects, and to provide \$1,000,000 for public projects for use by the County, which the County hereby finds are proper public projects for governmental purposes for the benefit and welfare of the citizens of the County; and

WHEREAS, the County has determined that the total cost of said project is \$3,295,000, plus or minus 10%, and proposes to issue its General Obligation Refunding and Improvement Bonds, Series 2001 (the "Bonds") for such purpose; and

WHEREAS, the County has determined that it is necessary and desirable that the Project be acquired, constructed and equipped; and

WHEREAS, the County proposes to implement the Project by issuing approximately \$3,295,000 of its General Obligation Refunding and Improvement Bonds, Series 2001, and using the proceeds for the purpose of refinancing the Series 1995 Notes issued for the Courthouse and Detention Facility projects, and to provide \$1,000,000 for public projects for use by the County, which the County hereby finds are proper public projects for governmental purposes for the benefit and welfare of the citizens of the County; and

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 Project revenues, as hereinafter defined, will be sufficient to provide, in full, for the payment of the Bonds; and

NOW, THEREFORE, BE AND IT IS HEREBY ORDAINED BY THE FISCAL COURT OF THE COUNTY OF MADISON, 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 herein.

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, the following terms shall have the meanings hereinafter set forth:

"Act" means Sections 66.011 through 66.220 of the Kentucky Revised Statutes.

"Bond Counsel" means Cox, Bowling & Johnson, P.L.L.C., Lexington, Kentucky, Bond Counsel to the County.

"Bonds" means the \$3,295,000 of **County of Madison, Kentucky, General Obligation Refunding and Improvement Bonds, Series 2001**, dated August 1, 2001.

"Note Registrar" means the Depository acting in its capacity as the registrar of the Bonds and Paying Agent for the Bonds, as designated by the County Judge/Executive.

"Costs" means all costs incident to the acquisition, construction and equipping of the Projects; including, but not being limited to, the expenses of financing the Costs of Issuance expenses incident to the issuance of the Bonds.

"Depository" means the Bank designated by the County Judge/Executive who may also act as Note Registrar and Paying Agent for the Bonds and depository for the various funds established by this Ordinance.

"Financial Advisor" means Ross, Sinclair & Associates, Inc., Lexington, Kentucky.

"Sinking Fund" means the "Series 2001 Sinking Fund" established with the Depository as trust funds into which the proceeds of the Tax and Project Revenues shall be deposited and applied only to the payment of the Bonds. Semi-annual transfers from each Sinking Fund shall be made to the corresponding Note Payment Fund.

"Required Minimum Balance" means an amount equal to the maximum annual principal and interest requirements of the respective Series of Bonds actually issued and delivered which shall be deposited in the respective Sinking Fund for the particular Series as a Debt Service Reserve and maintained therein until the retirement of all Bonds of the respective Series.

"Debt Service Reserve" means a segregated account within each Sinking Fund which shall be maintained at the Required Minimum Balance and held as a reserve to prevent a default in the payment of the principal or interest requirements of the respective Series.

"Tax" means the direct, annual ad valorem tax on all property within the County of Madison, Kentucky, which is subject to taxation for County purposes, occupational license fees, insurance premium taxes and any and all other receipts of taxes, excises, permits, licenses, fines or other sources of revenue of, or of revenue distributions to, the County.

"Project Revenues" means those cash rental payments due.

"Pledged Receipts" means the combination of the Tax and Project Revenues adequate each year to pay the principal and interest requirements of the Bonds.

"Project" means the refunding of the Series 1995 Bonds, the proceeds of which were used for the Courthouse and Detention Facilities, and for public and governmental projects within the County, which the County has determined are proper governmental and public projects for the welfare and benefit of the citizens of the County.

"Investments" means those investments permitted under KRS 66.480; said investments may be effected through the Kentucky Cooperative Liquid Assets Securities System. ("CLASS").

"KRS" means the Kentucky Revised Statutes as amended.

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

"Costs of Issuance" means those expenses incident to the issuance of the Bonds, including, but not being limited to, the fees of the rating agency, Financial Advisor, Bond and Tax Counsel, Title Attorneys, Note Registrar and Paying Agent and Refinancing Verification charges and publication cost.

"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.

**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 are hereby authorized to be issued, \$3,295,000 (plus or minus 10%) principal amount of the **County of Madison, Kentucky, General Obligation Refunding and Improvement Bonds, Series 2001** dated August 1, 2001, (the "Series 2000 Bonds" or the "Bonds").

Said Series 2001 Bonds shall bear interest from their date, payable April 1, 2002, and semi-annually thereafter at rates established through the public sale thereof and shall mature or be subject to mandatory redemption as to principal on April 1 in each of the years as follows:

<u>Date</u>	<u>Principal Payment</u>	<u>Est. Interest Payment</u>
2002	\$ 5,000	\$ 105,990
2003	5,000	158,795
2004	5,000	158,600
2005	5,000	158,400
2006	5,000	158,195
2007	5,000	157,985
2008	5,000	157,773
2009	5,000	157,558
2010	5,000	157,340

2011	5,000	157,120
2012	5,000	156,895
2013	5,000	156,670
2014	5,000	156,445
2015	5,000	156,215
2016	5,000	155,985
2017	5,000	155,750
2018	5,000	155,515
2019	5,000	155,278
2020	5,000	155,040
2021	<u>3,225,000</u>	<u>154,800</u>
	\$3,320,000	\$3,086,348

**Note: The schedule shown above was computed using a projected average interest rate of 4.79% and an average live of 19.37 years.**

Notwithstanding the authorization of \$3,295,000 of Series 2001 Bonds, the County may elect to issue up to ten (10%) percent, more or less of said Series 2001 Bonds. The Debt Service Schedule set forth above is based upon a principal amount of \$3,320,000, which is within 10% of the amount authorized by this Ordinance.

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

(A) The Bonds shall be issued in fully registered form and shall be in substantially the same form as that attached to this Ordinance as Exhibit A.

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

The Bonds shall be payable at the principal office of the Paying Agent. No Note shall be valid or binding upon the County unless and until it is validated by the manual signature of a duly authorized representative of the Note Registrar.

(B) 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.

(C) The Bonds maturing on or after April 1, 2013, shall be subject to redemption prior to maturity, at the option of the Corporation, on any date on or after April 1, 2012, from any moneys available therefore, at the redemption prices, expressed as percentages of the principal amount to be redeemed, set forth in the following table, plus accrued interest to the Redemption Date:

Redemption Dates (Inclusive)	Redemption Price
April 1, 2012 through March 31, 2013	101%

April 1, 2013 through March 31, 2014	100.5%
April 1, 2014 and thereafter prior to maturity	100%

The Trustee shall, upon being indemnified to its satisfaction, and receiving funds necessary to redeem such Bonds, cause notice of the call for the redemption identifying the Bonds to be sent by United States mail, postage prepaid, at least thirty days prior to the date fixed for redemption to the Registered Owners of the Bonds at the address as set forth in the registration books maintained by the Registrar. Failure to give such notice by mailing or any defect therein in respect of any Bond shall not affect the validity of any proceedings for the redemption of any Bond.

Notice of Redemption shall be pursuant to provisions set forth in the Official Statement.

**Section 4. Compliance with Constitution; Designation of Public Projects; Authorization of Tax; Pledge of Tax and Project Revenues to Payment of Bonds; Designation as General Obligation Improvement 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 Funds to provide for the payment of the principal thereof.

(C) That pursuant to Section 157 of the Constitution of Kentucky and Section 66.111 of the Act 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 of said Bonds; provided, however, that said Tax shall be levied only to the extent that the Project Revenues or other receipts from taxes or other sources are not sufficient to provide for the full payment of the 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 monies available to it, including the Project Revenues, and amount of funds sufficient to pay the "debt charges" on the Bonds as defined in Section 66.011 (4) of the Act.

(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 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 Project Revenues 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 Project Revenues, which shall constitute the "Pledged Receipts" securing said Bonds in accordance with the terms of this Ordinance.

(G) That the County hereby declares and determines that the Project constitutes "public project" within the meaning of Section 66.011 (17) of the Act.

(H) That in accordance with Section 66.011 (22) of the Act, the County hereby states its belief that the Bonds shall be "self-supporting obligations" to be retired exclusively from the Project Revenues, but, nevertheless, the County covenants to levy, collect and segregate the Tax to the extent the Project Revenues 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 and revenue of the County are hereby pledged for the prompt payment thereof.

(I) That the Tax, to the extent required, and the Project Revenues, shall, as received, be deposited in the respective 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, County Clerk and/or County Treasurer are hereby authorized to execute those documents necessary to provide for the issuance of said Bonds and the payment thereof; provided, in each instance the particular document in question shall be subject to the review and approval of the County Attorney:

- (i) the Bonds and such Note closing documents as Note Counsel may require, and
- (ii) such other documents as are required to implement the financing of the Project and the issuance of the Bonds generally.

The Bonds shall only be issued to the extent approved by a Decision of the State Local Debt Officer.

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

That said 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 Note Sale," "Official Terms and Conditions of Note Sale" and "Official Bid Form" which shall be prepared by Cox, Bowling & Johnson, P.L.L.C., Lexington, Kentucky.

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, after calculating the Permitted Adjustment of up to 10% of the principal amount of each Series of Bonds to be awarded, if any, 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 Series 2001 Sinking Fund shall receive the receipts of the Tax herein authorized, to the extent required for the Series 2001 Bonds, and the Project Revenues from the lease of the Project. Said Sinking Fund monies shall be used only for the payment of the principal and interest requirements of the Series 2001 Bonds. Upon the delivery of the Series 2001 Bonds the accrued and Capitalized Interest shall be deposited in said Fund.

(B) A Debt Service Reserve shall be established within the Sinking Fund and funded from the proceeds of the Series 2001 Bonds in the amount of the Required Minimum Balance (but not to exceed an amount equal to 10% of the principal amount of the Series 2001 Bonds delivered). Monies on deposit in the Debt Service Reserve shall be used only to prevent a default in the payment of the principal and interest requirements of the Series 2001 Bonds. In the event the amounts on deposit in the Series 2001 Debt Service Fund fall below the Required Minimum Balance, said Balance shall be immediately reestablished from the proceeds of the Series 2001 Project Revenues, or the Tax, if required. Upon the establishment of the Required Minimum Balance, any excess in said Reserve Fund shall be transferred to the Sinking Fund.

(C) Costs of Issuance Fund 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 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 Sinking Fund.

(D) Any other fund authorized by this Indenture.

(E) Monies 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 Note Registrar and Paying Agent.**

The County Judge/Executive, shall, in writing and without further action of the Fiscal Court, designate the Note Registrar, Paying Agent and/or Depository for the Bonds. The Note Registrar and Paying Agent shall receive compensation for its services in accordance with its agreement with the County.

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

- (i) To register all Note Certificates in the name of the Registered Owner thereof in accordance with the provisions of the Code;
- (ii) Upon being supplied with properly authenticated assignment satisfactory to said Note Registrar (in the sole discretion of said Note Registrar), to transfer the ownership of Note Certificates from one Registered Owner to another within three (3) business days of the receipt of proper authentication by said Note Registrar;

- (iii) To cancel and destroy (or remit to the County for destruction) all exchanged or matured Note 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) 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 Note 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 to the Paying Agent. For interest payment purposes, the Paying Agent shall be entitled to rely on its records as Note Registrar as to the ownership of each Note 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;
  - (iii) 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
  - (iv) To supply the County with a written accounting evidencing the payment of interest and principal within thirty days following each due date.

The Note Registrar/Paying Agent shall be entitled to the advice of Counsel and shall be protected for any acts taken by it in good faith and reliance upon such advice. The Note 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 Note 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 Treasurer and notifying the Registered Owners of the Bonds herein authorized. Thereupon, the County, shall designate a successor Note Registrar/Paying Agent which shall be an incorporated bank or trust company. Notwithstanding the foregoing in the event of the resignation of the Note Registrar/Paying Agent, provisions shall be made for the orderly transition of the books, records and accounts relating to the Bonds to the successor Note Registrar/Paying Agent in order that there will be no delinquencies in the payment of interest or principal due on the Bonds.

#### **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 Internal Revenue Code of 1986, as amended, and the Regulations promulgated thereunder (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 Treasurer, 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 notes" under the Code.

The County hereby certifies that it reasonably expects to issue Bonds or other obligations considered under the Code to be tax-exempt obligations in a principal amount in excess of \$5,000,000 during the calendar year ending December 31, 2001, and the County has therefore been advised by Bond Counsel that all Funds or accounts established under the provisions of this Ordinance are subject to the "rebate requirements" on excess earnings in favor of the United States of America imposed by the Code. The County covenants and agrees that if any Fund or account does in fact generate earnings from "non-purpose investments" in excess of the amount which said investments would have earned at a rate equal to the "yield" on the Bonds, plus any income attributable to such excess, there shall be established a separate and special fund with the Depository to be designated as the "Excess Earnings and Rebate Fund," which shall be utilized for the collection and payment of any excess generated from investments and the remittance thereof to the United States on or before a date five years and thirty days from the date said Bonds are delivered, and once every five years thereafter until the final retirement of the Bonds; the last installment, to the extent required, to be made no later than sixty days following the date on which funds sufficient for the complete retirement of the Bonds are deposited with the Depository or any escrow agent.

**Section 10. Contractual Nature of Resolution.** 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 County 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. 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 12. Conflicts Repealed.** 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.

Given first reading on August 14, 2001.

Given second reading and passed and adopted on August 21, 2001.

  
County Judge/Executive

Attest:

  
County Clerk

CERTIFICATION

I, the undersigned, do hereby certify that I am the duly qualified and acting Fiscal Court Clerk of the County of Madison, Kentucky; that the foregoing is a true and complete copy of a certain Ordinance duly adopted by the Fiscal Court of the County of Madison, Kentucky, at a duly convened meeting properly held on the 21<sup>st</sup> day of August, 2001; 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 61.810, 61.815, 61.820, and 61.825; 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 21<sup>st</sup> day of August, 2001.

  
Fiscal Court Clerk