FLOYD COUNTY COUNCIL RESOLUTION NO. 2024-03

RESOLUTION OF THE FLOYD COUNTY COUNCIL APPROVING A LEASE WITH THE FLOYD COUNTY, INDIANA BUILDING CORPORATION, PLEDGING CUMULATIVE CAPITAL DEVELOPMENT FUND REVENUES TO THE PAYMENT OF LEASE RENTALS THEREUNDER AND APPROVING MATTERS RELATED THERETO

WHEREAS, representatives of the Board of Commissioners of Floyd County, Indiana (the "Board") and the Floyd County Council (the "County Council") have investigated the need for, and the feasibility of, the acquisition of a structure and/or the construction, renovation, repair, improvement and/or equipping of a structure for the purpose of providing office space for one or more of the public offices or departments of Floyd County, Indiana (the "County"), together with any related projects or improvements, to be used in connection with providing public services to residents of the County and for the more effective operation of County government (collectively, the "Project"); and

WHEREAS, in order to assist the County in financing of the Project, the Board, acting as the executive and legislative body and leasing agent of the County, adopted a resolution approving the terms and conditions of a proposed Lease between the Floyd County, Indiana Building Corporation (the "Building Corporation"), as lessor, and the County, as lessee (the "Lease"), for all or a portion of any real estate upon which the Project is, or will be, located together with any structures, parking lots or parking facilities, and other improvements currently located on such real estate, as such structures or improvements currently exist and as constructed, improved, renovated, rehabilitated, repaired and equipped, and the equipment and appurtenances to such structures, all as more particularly described in the Lease; and

WHEREAS, the Building Corporation was incorporated to assist the County in financing, from time to time, the construction and renovation of County facilities to be operated by the County, including the Project; and

WHEREAS, as part of the plan of finance for the Project, the Board has proposed that the Building Corporation (i) issue one or more series of its cumulative capital development fund lease rental revenue bonds (collectively, the "Bonds") and use the proceeds thereof to pay costs of the Project, (ii) issue one or more series of cumulative capital development fund lease rental revenue bond anticipation notes (collectively, the "BANs") payable from the proceeds of the Bonds (iii) lease the Project to the County through the proposed Lease for a term not to exceed thirty (30) years, (iv) use the lease rental payments to secure and pay debt service on the BANs and Bonds, and (v) following the retirement of all the BANs and Bonds, convey fee simple ownership of all premises subject to the Lease to the County; and

WHEREAS, Indiana Code 36-1-10-7 provides that the Board may not lease a structure unless the County Council, as fiscal body of the County, determines, after investigation, that the structure is needed; and

WHEREAS, a form of the proposed Lease has been presented to the County Council for its examination and approval in the form attached hereto; and

WHEREAS, there have been prepared preliminary drawings, plans, specifications, and estimates for the cost of such Project which have been reviewed by the County Council; and

WHEREAS, the lease rentals under the proposed Lease will be secured and payable by the County solely from revenues derived from ad valorem property taxes levied by the County on all taxable property within the corporate boundaries of the County for its Cumulative Capital Development Fund pursuant to Indiana Code 36-9-14.5 and Indiana Code 36-9-16-2, each as amended, and pledged to amounts due under the Lease pursuant to Indiana Code 5-1-14-4 and Indiana Code 36-1-10-17, each as amended (the "CCD Fund Revenues"); and

WHEREAS, the County Council has received on the date hereof information regarding the anticipated CCD Fund Revenues to be received by the County during the term of the Lease; and

WHEREAS, the County Council now desires to approve the Lease and pledge all CCD Fund Revenues to the payment of lease rentals due under the Lease pursuant to the terms of this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE FLOYD COUNTY COUNCIL, AS FOLLOWS:

Section 1. Findings; Approval of Lease. After investigation, the County Council hereby finds and determines that a need exists for the Project and that the Project to be financed through the Lease will be of public utility and benefit to the County. The County Council further determines that the Project cannot be acquired, constructed, improved, and equipped from any funds available to the County. The County Council hereby approves the Lease in substantially the form presented on the date hereof, and authorizes the Board to proceed to take such steps as may be necessary to secure the acquisition, construction, equipping, and leasing of the Project in accordance with Indiana Code 36-1-10.

Section 2. Source of Payment; Pledge of Revenues. The lease rentals due under the Lease shall be payable by the County from the CCD Fund Revenues. Pursuant to Indiana Code 5-1-14-4 and Indiana Code 36-1-10-17, the County Council hereby pledges all CCD Fund Revenues to the payment of all lease rental due under the Lease for a term equal to the term of the Lease. The County Council hereby certifies and represents that there are no prior claims or pledges of the CCD Fund Revenues; that the County has made no prior pledges of the CCD Fund Revenues to any other obligations of the County; and that the pledge of CCD Fund Revenues to the Lease shall be a first lien claim thereon. Notwithstanding anything herein or in the proposed Lease to the contrary, the County reserves the right to pay the lease rentals or any other amounts due thereunder from any other revenues legally available to the County, however, the County shall be under no obligation to pay any amounts due under the Lease from any revenue or assets of the County, except the CCD Fund Revenues received by the County.

Section 3. Issuance of Parity Obligations Payable from CCD Fund Revenues. The County reserves the right to authorize and issue bonds or incur additional lease or other obligations

entitled to the pledge of CCD Fund Revenues on a parity with the pledge thereof to the Lease in accordance with the requirements set forth below (such additional obligations, the "Parity Obligations"). The authorization and issuance of any Parity Obligations shall be subject to the following conditions precedent:

(a) All payments due under the Lease, all payments on any other Parity Obligations then outstanding and any junior obligations payable from CCD Fund Revenues then outstanding shall be current to date in accordance with the terms thereof, with no payment in arrears.

(b) The County shall have received a certificate prepared by an independent, qualified accountant or feasibility consultant certifying the amount of the CCD Fund Revenues estimated to be received in each succeeding year shall be at least equal to one hundred twenty-five percent (125%) (or such higher amount as may be determined by the President of the Board of Commissioners prior to the sale of the Bonds or BANs) of the lease rental and debt service requirements with respect to the Lease, any other Parity Obligations then outstanding, and the proposed Parity Obligations for each respective year during the term of the Lease, any other Parity Obligations then outstanding, and the proposed Parity Obligations. The County shall approve and confirm the figures and estimates set forth in the above-described certificate in any resolution or ordinance authorizing the Parity Obligations.

(c) To the extent that the Lease or any other Parity Obligations then-outstanding are secured by one or more reserve funds or accounts, the balance in such reserve funds is at least equal to the amount required to be maintained on deposit therein.

(d) Payments of any Parity Obligations shall be payable semiannually on January 15 and July 15.

The terms and conditions of any Parity Obligations shall be set forth in the ordinance or resolution authorizing such Parity Obligations.

The County may issue obligations payable from CCD Fund Revenues on a junior basis to the pledge thereof to the Lease and any Parity Obligations then outstanding. However, any such junior obligations shall be payable semiannually on January 15 and July 15.

Section 4. Sinking Fund. (a) There is hereby created a separate fund designated as the Sinking Fund, which shall consist of a Principal and Interest Account. One day prior to each January 15 and July 15, there shall be deposited in the Principal and Interest Account an amount of CCD Fund Revenues, which, together with any money contained in the Principal and Interest Account, will be sufficient to pay the the lease rentals coming due under the Lease and the lease rentals or principal of and interest on any Parity Obligations therewith due on the immediately following January 15 and July 15, as the case may be. No such deposit need be made into the Principal and Interest Account if the amount contained therein is sufficient to pay such amounts. All money in the Principal and Interest Account shall be used and withdrawn solely for the purpose of paying the lease rentals due under the Lease and the lease rentals or principal of and interest on any Parity Obligations, including accrued interest on any such obligations purchased or redeemed

prior to maturity. Notwithstanding the foregoing, the County may agree to make monthly transfers and deposits of CCD Fund Revenues to the Principal and Interest Account of the Sinking Fund with regards to a pro rata portion of the lease rentals or debt service coming due under the Lease or on any Parity Obligations, as the case may be, on the immediately following January 15 and July 15.

(b) Debt Service Reserve Fund. If it is determined by the Board on or before the sale date of the Building Corporation's BANs or Bonds to finance the Project, upon the advice of the County's municipal advisor, to establish a reserve account for the Lease, then, on the date of issuance of the BANs or Bonds (i) CCD Fund Revenues or other legally available revenues of the County, (ii) a portion of the proceeds of the BANs or Bonds, or (iii) a combination thereof, shall be deposited in Reserve Account in an amount sufficient to maintain the Reserve Account in the full amount of the Reserve Requirement (as defined below).

If the Reserve Account is so established, after making the required deposits into the Principal and Interest Account described in Section 4(a) hereof, any remaining CCD Fund Revenues shall be set aside from the Sinking Fund and (a) deposited in the Reserve Account in an amount sufficient to maintain the Reserve Account in the full amount of the Reserve Requirement, and (b) deposited in any reserve account established for any Parity Obligations secured by a reserve other than the Reserve Account in the amount required thereby.

No deposit need be made in the Reserve Account so long as there shall be on deposit therein a sum equal to but not exceeding the least of (i) the maximum annual debt service and lease rentals due on the Lease and any Parity Obligations secured by the Reserve Account, (ii) 125% of the average annual debt service and lease rentals due on the Lease and any Parity Obligations secured by the Reserve Account, or (iii) 10% of the stated principal amount or issue price of the BANs or Bonds and any Parity Obligations secured by the Reserve Account, determined in accordance with U.S. Treasury Regulation Section 1.148-2(f)(2)(ii)) (the "Reserve Requirement"). All money in the Reserve Account shall be used and withdrawn solely for the purpose of making deposits into the Principal and Interest Account of the Sinking Fund, in the event of any deficiency at any time in such account, or for the purpose of paying the interest on or principal of or redemption premiums or lease rentals due, if any, on the Lease and any Parity Obligations secured by the Reserve Account, in the event that no other money is lawfully available therefor. Any amount in the Reserve Account in excess of the Reserve Requirement shall be withdrawn from the Reserve Account and deposited in the Principal and Interest Account. Money in the Reserve Account shall also be available to make the final payments of interest and principal or lease rentals due on the Lease and any additional Parity Obligations secured by the Reserve Account. If so established, the Board at its option may satisfy the Reserve Requirement with a surety bond, letter of credit, or other financial instrutment on terms and conditions recommended to the Board by the County's municipal advisor, so long as the provider of any such surety bond, letter of credit, or other credit facility is rated, solely at the time such credit instrument is issued, in one of the two highest rating categories by any rating agency then rating the BANs or Bonds.

If necessary in order to facilitate the deposit of any revenues or other funds into the Sinking Fund and/or the Debt Service Reserve Fund, the Board is hereby authorized to execute, and the Auditor is authorized to attest, a revenue deposit agreement, in a form and substance acceptable to

the Board, based upon the advice of bond counsel, with such approval to be conclusively evidenced by the execution thereof by the Board. If so established, the Board may elect to have the Reserve Account established and held by the trustee under the terms of the trust indenture securing the Bonds.

Section 5. General. Any member of the Board or the County Council, the Auditor of the County, and the County Attorney are hereby authorized, empowered, and directed, on behalf of the County to take any other action as such individual deems necessary or desirable to effectuate the foregoing resolutions, and any actions heretofore made or taken be, and hereby are, ratified and approved.

Section 6. Effective Date. This Resolution shall be in full force and effect from and after its adoption by the County Council, and all prior resolutions and parts of resolutions insofar as they may be in conflict with this Resolution are hereby rescinded.

[Signature Page Follows]

DULY ADOPTED by the Floyd County Council on this 10th day of September, 2024, by a vote of 7 in favor, 0 opposed, and 0 abstaining.

FLOYD COUNTY COUNCIL

Danny Short, President

Connie Moon, Vice President

Dale Bagshaw

Jim Freiberger

Denise Konkle

Brad Striegel

Tony Toran

ATTEST:

Diana M. Topping, Floyd County Auditor