

RESOLUTION NO. _____, SERIES 2021

AN INDUCEMENT RESOLUTION OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE “ISSUER”) AUTHORIZING THE EXECUTION OF A MEMORANDUM OF AGREEMENT BETWEEN THE ISSUER AND BOYD COMPANY OR ITS AFFILIATE (THE “COMPANY”) RELATING TO THE ACQUISITION, CONSTRUCTION, EQUIPPING AND INSTALLATION OF FACILITIES AT 1400 CECIL AVENUE, LOUISVILLE, KENTUCKY, INCLUDING FOUR OR MORE NEW BUILDINGS TO BE USED FOR LIGHT MANUFACTURING OR WAREHOUSING AND DISTRIBUTION (THE “PROJECT”); AGREEING TO UNDERTAKE THE ISSUANCE OF INDUSTRIAL BUILDING REVENUE BONDS AT THE APPROPRIATE TIME TO FINANCE THE COSTS OF ACQUIRING, CONSTRUCTING, EQUIPPING AND INSTALLING SAID FACILITIES; AND TAKING OTHER PRELIMINARY ACTION (AS AMENDED).

SPONSORED BY: COUNCIL MEMBER JESSICA GREEN

WHEREAS, Boyd Company, a Kentucky corporation, or its affiliate (the “Company”) proposes the acquisition, construction, equipping and installation of four or more new buildings at 1400 Cecil Avenue in the City of Louisville, Kentucky (the “Project”), as provided for in Section 103.200 of the Kentucky Revised Statutes, and in this connection it has been determined that the Louisville/Jefferson County Metro Government (the “Issuer”), a consolidated local government and political subdivision of the Commonwealth of Kentucky, may assist the Company by causing the acquisition, construction, equipping and installation of the Project and by entering into at the appropriate time a lease agreement with reference thereto pursuant to authority of Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes (collectively, the “Act”), all in furtherance of the purposes of the Act and the public benefit of the residents and inhabitants of the Issuer; such lease agreement to be upon such terms and conditions as the Act may require and the Issuer may deem advisable; and

WHEREAS, the acquisition, construction, equipping and installation of the Project by the Company will encourage the expansion of commerce in accordance with the public policy of the Commonwealth of Kentucky by promoting the economic development of the Commonwealth of Kentucky and the Issuer, will relieve conditions of unemployment, will encourage the increase of industry and will improve the economic welfare of the people of the Issuer; and

WHEREAS, the Issuer is further authorized by the Act to issue bonds, which term under the Act encompasses bonds, variable rate bonds, commercial paper bonds, bond anticipation notes or any other obligations for the payment of money issued by a city, county or other authority pursuant to the Act, for the purpose of defraying the cost of acquiring, constructing, equipping and installing an industrial building or buildings, as defined in the Act; discussions have occurred between representatives of the Company and the Issuer incident to the issuance of industrial building revenue bonds by the Issuer; the Issuer has agreed with the Company to issue such bonds upon compliance by the Company with certain conditions, requirements and obligations, and subject to the approval of the Issuer of the terms of all agreements, ordinances and other documents required incident to said bond issue; and the Issuer has authorized the Company to proceed with the acquisition, construction, equipping and installation of the Project, subject to reimbursement of the costs of the Project from the proceeds of such bonds, when, as and if issued; and

WHEREAS, based upon an estimate of the costs of the Project, the Issuer proposes to issue its industrial building revenue bonds in one or more series as determined by the Company and agreed to by the Issuer in an amount not to exceed ONE

HUNDRED MILLION DOLLARS (\$100,000,000) (the “Bonds”), such Bonds to be sold and delivered by the Issuer to pay the costs of the Project, together with costs incident to the authorization, sale and issuance of such Bonds, but with such contributions from the Company as may be necessary; and

WHEREAS, the Issuer proposes to enter into at the appropriate time a lease agreement with the Company with respect to the Project, whereby the Company will covenant and agree to pay amounts sufficient to provide for the payment of principal of and premium, if any, and interest on the Bonds, together with all trustee and paying agents’ fees in connection with the Bonds as the same become due and payable; the liability of the Company under this instrument or any other instrument related to the issuance of the Bonds shall be limited to its interest in the Project to be financed thereby and no party shall have the right to obtain payment from the Company or from any assets of the Company other than such Project; and

WHEREAS, it is deemed necessary and advisable that a Memorandum of Agreement between the Issuer and the Company be executed setting forth the preliminary agreements of the parties with respect to the acquisition, construction, equipping and installation of the Project, the issuance of the Bonds to defray the costs thereof and the payments to be made by the Company with respect to the Project.

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE “COUNCIL”) AS FOLLOWS:

SECTION I: It is hereby found, determined and declared that (i) the recitals set forth in the preamble to this Resolution, which are incorporated in this Section by reference, are true and correct; (ii) the total amount of money necessary to be provided

by the Issuer for the acquisition, construction, equipping and installation of the Project to be financed by the Bonds will not exceed ONE HUNDRED MILLION DOLLARS (\$100,000,000); (iii) the Company has represented that it will have sufficient financial resources to acquire, construct, equip and install the Project and to place it in operation and to continue to operate, maintain and insure the Project throughout the term of the Bond issue, meeting when due the obligations of the proposed lease agreement; and (iv) sufficient safeguards will be provided by the lease agreement to insure that all money provided by the Issuer from the proceeds of the sale of the Bonds will be expended by way of direct expenditure or reimbursement, solely and only for the purposes of the Project.

SECTION II: It is hereby found, determined and declared that the cost of acquiring, constructing, equipping and installing the Project will be paid out of the proceeds of the Bonds and such contributions of the Company as may be necessary to complete the Project as defined in the lease agreement to be executed by and between the Issuer and the Company at the appropriate time pursuant to the Act; **THAT NONE OF THE BONDS WILL BE GENERAL OBLIGATIONS OF THE ISSUER; THAT NEITHER THE BONDS NOR THE INTEREST THEREON SHALL CONSTITUTE OR GIVE RISE TO ANY INDEBTEDNESS OF THE ISSUER OR ANY CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER, BUT THAT THE BONDS AND THE PAYMENT OF INTEREST THEREON SHALL BE SECURED AND PAYABLE SOLELY AND ONLY BY A PLEDGE OF AMOUNTS TO BE PAID BY THE COMPANY UNDER SUCH LEASE AGREEMENT; AND THAT NO PART OF SAID COSTS WILL BE PAYABLE OUT OF ANY GENERAL FUNDS, REVENUES, ASSETS, PROPERTIES OR OTHER**

CONTRIBUTIONS OF THE ISSUER.

SECTION III: The Bonds will be structured as either a conduit loan or a conduit lease transaction.

SECTION IV: If the Bonds are structured as a conduit lease transaction, as a condition to the issuance of the Bonds:

(A) The Company and the Jefferson County School District (the "School District") shall enter into an agreement pursuant to which the Company shall make payments in lieu of taxes ("PILOT Payments") to the School District in amounts equal to and at the same times as the ad valorem taxes that would otherwise be due to the School District with respect to the Project; and

(B) The Company and the Issuer shall enter into an agreement pursuant to which the Company shall make PILOT Payments to the Issuer, (i) prior to the cap of \$10,847,480 in abated ad valorem taxes otherwise due being met, in amounts equal to 20% of the amount (with the other 80% of the amount counting towards the cap) and at the same times as the ad valorem taxes that would otherwise be due to the Issuer with respect to the Project, and (ii) once the cap of \$10,847,480 in abated ad valorem taxes otherwise due to the Issuer has been met, in amounts equal to and at the same times as the ad valorem taxes that would otherwise be due to the Issuer with respect to the Project; and

SECTION V: In order to induce the acquisition, construction, equipping and installation of the Project in the Issuer with the resultant public benefits which will flow therefrom, it is deemed necessary and advisable that the Memorandum of Agreement hereinafter referred to be approved and executed for and on behalf of the Issuer.

Accordingly, the Memorandum of Agreement by and between the Company and the Issuer substantially in the form and with the contents set forth in Exhibit A attached hereto and incorporated herein by reference is hereby approved with the following amendment: that the language in Section 4(h)(ii) of the Memorandum of Agreement will conform to the language in Section XIII of this Resolution, and the Mayor is hereby authorized and directed to execute and deliver said Memorandum of Agreement.

SECTION VI: Inasmuch as the Project is to be acquired, constructed, equipped and installed in order to conform to the requirements of the Company, so that the Company may provide additional industrial and economic development and employment to citizens and residents of the local community, and inasmuch as the Company is able to plan, acquire, construct, equip and install the Project and possesses more expertise in such matters, it is hereby found, determined and declared that acquisition, construction, equipping and installation of the Project should be undertaken or caused to be undertaken by the Company. Accordingly, the Company is hereby authorized to formulate and develop plans for the acquisition, construction, equipping and installation of the Project and to enter into such contracts and undertakings as may be required for the acquisition, construction, equipping and installation of the Project. Reimbursements made to the Company after the receipt of the proceeds of the sale of the proposed Bond issue by the Issuer shall be subject to the certifications by qualified persons to be designated by the Company as specified in the lease agreement to be entered into by the Issuer and the Company at the appropriate time pursuant to the Act.

SECTION VII: This Resolution and the Memorandum of Agreement approved hereby constitute the present official intent of the Issuer to issue the Bonds at a later date.

SECTION VIII: Stites & Harbison, PLLC, Louisville, Kentucky, is hereby approved as local Bond Counsel. Local Bond Counsel is authorized and directed to take any legal action necessary or appropriate in connection with the issuance of the Bonds. The County Attorney is authorized and directed to assist Local Bond Counsel in any appropriate manner.

SECTION IX: No Issuer funds shall be expended on the Project, except such as are derived from Bond proceeds.

SECTION X: To the extent any resolution, ordinance or part thereof is in conflict, the provisions of this Resolution shall prevail and be given effect.

SECTION XI: No recourse shall be had for the payment of the principal of or premium or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement therein contained against any past, present or future officer, member, employee or agent of the Issuer, as such, either directly or through the Issuer, under any rule of law or equity, statute or constitution, or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, employees or agents as such shall be expressly waived and released as a condition of and consideration for the adoption of this Resolution and the issuance of the Bonds.

SECTION XII: The commitment of the Issuer pursuant to this Resolution is subject to the condition that on or before one year from the date hereof or such other date as shall be agreed upon by the Issuer, the Issuer shall have agreed to acceptable terms and conditions with respect to the loan or lease agreement referred to in this Resolution and the details of the industrial building revenue bond financing.

SECTION XIII: Unless the Company enters into agreements for PILOT Payments, which shall at least include (i) an agreement with the School District to make payments to the School District in amounts equal to and at the same times as the ad valorem taxes that would otherwise be due to the School District, and (ii) an agreement with the Issuer to make payments to the Issuer, (a) prior to the cap of \$10,847,480 in abated ad valorem taxes otherwise due being met, in amounts equal to 20% of the amount (with the other 80% of the amount counting towards the cap) and at the same times as the ad valorem taxes that would otherwise be due to the Issuer with respect to the Project, and (b) once the cap of \$10,847,480 in abated taxes otherwise due and payable to the Issuer is met, in amounts equal to and at the same times as the ad valorem taxes that would otherwise be due to the Issuer, the Company acknowledges and agrees that it shall be responsible for all ad valorem taxes, if any lawfully assessed and due and payable in connection with the Project.

SECTION XIV: This Resolution shall take effect upon its passage and approval or as otherwise becoming law.

This Resolution was given a first reading at a duly convened meeting of the Council, held on the _____ day of _____, 2021, and given second reading and approval at a duly convened meeting of the Council held on the _____, day of _____, 2022.

Sonya Harward
Metro Council Clerk

David James
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: _____

R-168-21 Inducement Resolution for Memorandum of Agreement with Boyd Company Relating to Industrial Revenue Bonds (as amended) (lf).docx

CERTIFICATION

I, the undersigned, do hereby certify that I am the duly qualified and acting Metro Council Clerk of the Louisville/Jefferson County Metro Government, and as such Clerk, I further certify that the foregoing is a true, correct and complete copy of a Resolution duly adopted by the Legislative Council of said Issuer at a duly convened meeting held on the ____ day of _____, 2022, signed by the Mayor and President of the Council, duly filed and recorded in my office, all as appears from the official records of said Legislative Council in my possession and under my control.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Issuer this ____ day of _____, 2022.

Sonya Harward,
LOUISVILLE METRO COUNCIL CLERK

(SEAL)