

RESOLUTION NO. 014, SERIES 2022

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 MEMBERS GREEN, PIAGENTINI, HOLLANDER, AND COUNCIL PRESIDENT JAMES

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.

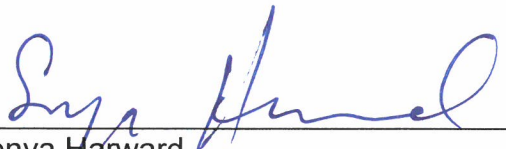
SECTION XI: No recourse shall be had for the payment of the principal of or premium or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement therein contained against any past, present or future officer, member, employee or agent of the Issuer, as such, 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.

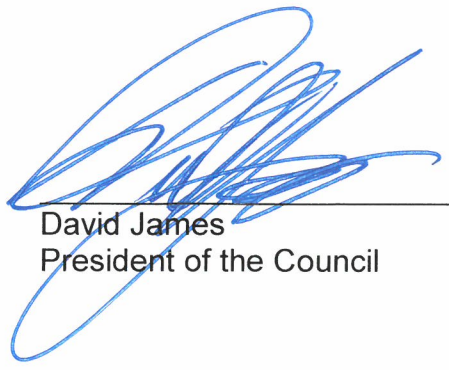
SECTION XIII: Unless the Company enters into agreements for PILOT Payments, which shall at least include (i) an agreement with the School District to make payments to the School District in amounts equal to and at the same times as the ad valorem taxes that would otherwise be due to the School District, 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.

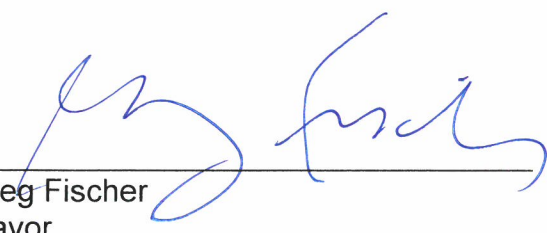
This Resolution was given a first reading at a duly convened meeting of the Council, held on the 16th day of December, 2021, and given second reading and approval at a duly convened meeting of the Council held on the 3rd day of February, 2022.



Sonya Harward
Metro Council Clerk



David James
President of the Council



Greg Fischer
Mayor

2/11/2022

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

**LOUISVILLE METRO COUNCIL
ADOPTED
February 3, 2022**

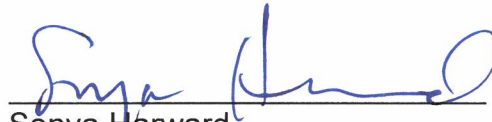
By: M. Holliday Hopkins

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 3rd day of February, 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 15th day of February, 2022.



Sonya Harward,
LOUISVILLE METRO COUNCIL CLERK

(SEAL)

MEMORANDUM OF AGREEMENT REGARDING ISSUANCE
OF INDUSTRIAL BUILDING REVENUE BONDS

This MEMORANDUM OF AGREEMENT REGARDING ISSUANCE OF INDUSTRIAL BUILDING REVENUE BONDS, executed as of _____, 2022, by and between the LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (the “Issuer”), a consolidated local governmental political subdivision of the Commonwealth of Kentucky, and BOYD COMPANY, a corporation organized and existing under the laws of the Commonwealth of Kentucky, or affiliate (the “Company”), with its principal office located in Louisville, Kentucky.

WITNESSETH:

1. Preliminary Statement. Among the facts and circumstances which have resulted in the execution of this Memorandum of Agreement by and between the parties are the following:

(a) The Company, as lessee, has applied to the Issuer for the issuance of industrial building revenue bonds (the “Bonds”) of the Issuer in order to finance (i) the acquisition, construction, equipping and installation of four or more new buildings to be used for light manufacturing or warehousing and distribution located at 1400 Cecil Avenue in the City of Louisville, Kentucky (the “Facilities”), (ii) the acquisition and installation of equipment at the Facilities and (iii) the payment of costs of issuance (collectively, the “Project”).

(b) The Project proposed to be acquired, constructed, equipped and installed constitutes an “industrial building” within the meaning of Section 103.200 of the Kentucky Revised Statutes.

(c) The Company is developing plans, specifications and designs for the Project and has entered into discussions with the Issuer with respect to the financing of the Project. The Company estimates that the aggregate bond indebtedness incurred in connection with the Project will not exceed ONE HUNDRED MILLION DOLLARS (\$100,000,000), including financing costs of issuance.

(d) The Issuer is authorized and empowered by the provisions of Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes (collectively, the “Act”) to issue bonds, which term under the Act encompasses bonds, notes, 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 costs of acquiring, constructing, equipping and installing an industrial building or buildings, as defined in the Act, in order to promote the economic development of the Commonwealth and the establishment, retention or expansion of industry. The Issuer is empowered, with respect to such industrial building facilities so acquired, constructed, equipped and installed, to enter into at the appropriate time a loan or lease agreement with a concern such as the Company providing for

such payments by the Company and such other terms and conditions as the Issuer may deem advisable.

(e) The purposes of the Act, inter alia, are to promote the economic development of the Commonwealth of Kentucky, to relieve conditions of unemployment, to promote reconversion to a peacetime economy, to aid in the rehabilitation of returning veterans, to encourage the increase of industry in Kentucky, and to aid in the retention of existing industry by certain described means. The Issuer intends to finance the Project and to enter into at the appropriate time a loan or lease agreement with the Company pursuant to the provisions of the Act with respect to the Project.

(f) In view of escalating construction costs and the necessity of maintaining the Company's schedule, it is deemed essential that the Project be acquired, constructed, equipped, installed and completed at the earliest practicable date. The Company is ready, willing and able to cause the acquisition, construction, equipping and installation of the Project to be undertaken, but has been advised by counsel that in order to warrant the issuance of industrial building revenue bonds by the Issuer it is necessary that official action be taken by the Issuer approving the Project and agreeing to issue at the appropriate time industrial building revenue bonds to finance the costs of acquisition, construction, equipping and installation of the Project.

(g) Representatives of the Issuer have indicated the willingness of the Issuer to proceed with and to carry out such industrial building revenue bond financing in order to effectuate the purposes of the Act and have advised the Company that, subject to due compliance with all requirements of law and the obtaining of all necessary consents and approvals required by law, and to the happening of all acts, conditions and things required precedent to such financing, including satisfaction of all requirements of the Issuer, the Issuer, by virtue of authority of the Act, will issue and sell 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").

(h) The Issuer considers and determines that the acquisition, construction, equipping and installation of the Project, and the execution of a loan or lease agreement with the Company at the appropriate time with reference to the Project, will promote and further the purposes of the Act.

(i) Pursuant to KRS 103.230(l), the Company has requested and hereby requests that the sale of the Bonds by the Issuer be made upon a negotiated basis in a manner to be determined by the Company.

2. Representations and Undertakings on the Part of the Company. The Company represents, undertakes, covenants and agrees as follows:

(a) The Company intends to utilize the Project, or cause the Project to be utilized, at all times during the term of the loan or lease agreement to be entered into at the appropriate time by and between the Issuer and the Company with reference to the Project for the purposes hereinbefore indicated;

(b) The Project will tend to relieve conditions of unemployment;

(c) The Company will cause contracts to be entered into for the acquisition, construction, equipping and installation of the Project;

(d) Prior to or contemporaneously with the delivery of the Bonds the Company will enter into a loan or lease agreement with the Issuer under the terms of which the Company will obligate itself (i) to undertake and to complete the acquisition, construction, equipping and installation of the Project, (ii) to pay to the Issuer sums sufficient in the aggregate to pay the principal of, interest on, and premium, if any, on the Bonds as and when the Bonds shall become due and payable, (iii) to pay as the same may become due, all taxes and governmental charges of any kind that may be lawfully assessed or levied against the Project, and (iv) to provide in the loan or lease agreement such other provisions as shall be agreed upon by the Issuer and the Company;

(e) The Company will take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it or the Issuer may deem appropriate in pursuance thereof.

3. Undertaking on the Part of the Issuer. Subject to the fulfillment of the several conditions herein stated, the Issuer agrees as follows:

(a) It will at the appropriate time authorize or cause to be authorized the issuance and sale of the Bonds pursuant to the terms of the Act as then in force in an aggregate principal amount not to exceed ONE HUNDRED MILLION DOLLARS (\$100,000,000);

(b) It will adopt or cause to be adopted such proceedings and authorize the execution of such documents as may be necessary or acceptable for (i) the authorization, issuance and sale of the Bonds, (ii) the acquisition, construction, equipping and installation of the Project, (iii) providing for the payment of principal of and interest on the Bonds by loan or lease agreement with the Company pursuant to the Act, all as shall be authorized by the Act and upon terms which shall be mutually satisfactory to the Issuer and the Company;

(c) The aggregate basic payments stipulated to be made by the Company under the loan or lease agreement with the Issuer with reference to the Project shall be at least sufficient (in addition to covenants of the Company to properly operate, maintain and insure the Project) to pay the principal of, interest on and redemption premium, if any, on all of the Bonds

as and when the same become due and payable, whether at maturity or prior redemption or upon any acceleration of payment of principal as provided in the Bond proceedings; and

(d) It will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings as it may deem appropriate.

4. General Provisions.

(a) The Company has requested that the sale of the Bonds be negotiated in the manner permitted by statute and that the terms of the sale be subject to approval by the Company.

(b) All commitments of the Issuer and the Company pursuant to this Memorandum of Agreement are 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 and the Company, the Issuer and the Company shall have agreed to mutually acceptable terms and conditions with respect to the loan or lease agreement referred to in this Memorandum of Agreement and the details of the industrial building revenue bond financing.

(c) If the event set forth in (b) of this paragraph does not take place within the time set forth therein, or any agreed extension thereof, and the Bonds are not issued within such time, the Company agrees that it will reimburse the Issuer for all reasonable and necessary direct out-of-pocket expenses which the Issuer incurred as a result of the execution of this Agreement, and the performance by the Issuer of its obligations hereunder shall thereupon terminate.

(d) This Memorandum of Agreement and the Resolution approving this Memorandum of Agreement constitute the present official intent of the Issuer to issue the Bonds at a later date.

(e) **IT IS UNDERSTOOD AND AGREED, THAT NONE OF THE BONDS WILL BE GENERAL OBLIGATIONS OF THE ISSUER AND 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; BUT 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 ANY LOAN OR LEASE AGREEMENT WITH THE ISSUER; AND NO SAID PART OF THE COSTS OF ACQUISITION, CONSTRUCTION, EQUIPPING OR INSTALLATION OF THE PROJECT WILL BE PAYABLE OUT OF ANY GENERAL FUNDS, ASSETS, PROPERTIES OR OTHER CONTRIBUTIONS OF THE ISSUER.**

(f) The Company will protect and hold harmless the Issuer, all members of the Legislative Council of the Issuer, and all of the Issuer's officers, employees and agents from all expenses and liability arising from or in connection with the Project or the issuance of the Bonds.

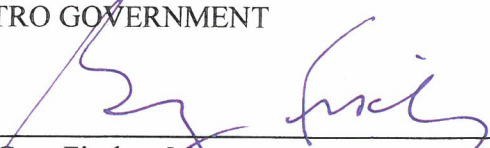
(g) No recourse shall be had for the payment of the principal of or premium or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement therein contained against any past, present or future officer, member, employee or agent of the Issuer, as such, either 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 the accompanying Inducement Resolution and the issuance of the Bonds.

(h) Unless the Company enters into agreements for payments in lieu of taxes, 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, 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.

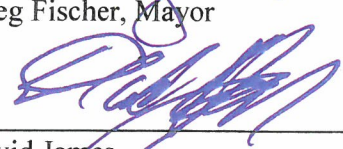
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IN WITNESS WHEREOF, the parties hereto have entered into this Memorandum of Agreement by their officers thereunto duly authorized as of the 17th day of February, 2022.

LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT

BY: 

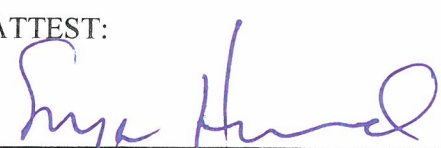
Greg Fischer, Mayor

BY: 

David James
President of the Council

(SEAL)

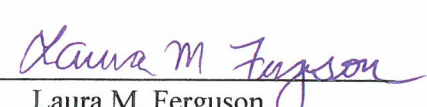
ATTEST:



Sonya Harward
Metro Council Clerk

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY

By: 

Laura M. Ferguson,
Assistant County Attorney

BOYD COMPANY

By: _____

Title: _____