

COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO

RESOLUTION NO. R2011-0152

<p>Sponsored by: County Executive FitzGerald/ Office of Budget & Management and Councilmember Gallagher</p>	<p>A Resolution authorizing the issuance of notes in the maximum principal amount of \$10,400,000.00 in anticipation of Bonds for the purpose of refunding bond anticipation notes, the proceeds of which were originally to refund the County’s \$10,150,000.00 Rock and Roll Hall of Fame Museum Project Notes, Series 2010, that were issued to pay the costs of acquiring, constructing and equipping a library and an archives facility for the Rock and Roll Hall of Fame and Museum and certain improvements and renovations to the Rock and Roll Hall of Fame Museum, and declaring the necessity that this Resolution become immediately effective.</p>
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WHEREAS, the County has heretofore issued its \$10,000,000 Rock and Roll Hall of Fame and Museum Project Notes, Series 2009 for the purpose described in Section 1 hereof, which notes were stated to mature on May 13, 2010 (the “Original Notes”);

WHEREAS, the County has heretofore issued its \$10,150,000 Rock and Roll Hall of Fame and Museum Project Notes, Series 2010 for the purpose of refunding the Original Notes and which notes are stated to mature on May 13, 2011 (the “Outstanding Notes”);

WHEREAS, this County Council has determined to refund the Outstanding Notes with the proceeds of the Rock and Roll Hall of Fame and Museum Project Notes, Series 2011 (the “Notes”) authorized in Section 3 of this resolution (the “Resolution”) and additional funds available to the County and appropriated for the purpose; and

WHEREAS, the County has authorized the levy of a 1% sales and use tax pursuant to Section 5739.021 of the Ohio Revised Code by resolutions adopted by this County on March 10, 1969 and July 6, 1987 (the "County Sales Tax"); and

WHEREAS, this County Council has determined to issue the Notes in anticipation of the issuance of the Bonds referred to in Section 1 pursuant to Section 133.081 of the Ohio Revised Code (the “Act”) secured by a pledge of, and the Debt

Service on which is payable from, receipts of the County Sales Tax received by the County (the "County Sales Tax Receipts"); and

WHEREAS, the Interim Fiscal Officer of this County (the "Fiscal Officer"), has certified to this County Council the County Sales Tax Receipts for the two preceding calendar years and that the estimated annual Debt Service on the Bonds (as defined below) and the Notes in any calendar year will not exceed the annual County Sales Tax Receipts averaged for those two preceding calendar years; and

WHEREAS, the Fiscal Officer, has certified to this County Council that the estimated life or period of usefulness of the improvement described in Section 1 is at least five years, the estimated maximum maturity of the Bonds described in Section 2 is twenty years, and the maximum maturity of the Notes described in Section 3, to be issued in anticipation of the Bonds, is the last day of the fifth year following the year in which the Original Notes were issued;

BE IT RESOLVED by the County Council of the County of Cuyahoga, Ohio, that:

Section 1. Findings and Determinations. This County Council finds and determines the following matters (capitalized terms are defined in Section 14 hereof):

(a) It is necessary for the County to issue the Bonds to pay the costs of the Project. It is necessary to issue the Notes in anticipation of the Bonds for the purpose of (1) refunding the Outstanding Notes, the proceeds of which were used to refund the Original Notes that were originally issued to pay the costs of acquiring, constructing and equipping a library and an archives facility for the Rock and Roll Hall of Fame and Museum located on the campus of Cuyahoga Community College and certain improvements and renovations to the Rock and Roll Hall of Fame Museum (the "Project") and (2) paying the Financing Costs of the Notes.

(b) It is necessary to secure the Notes with a pledge of the County Sales Tax. This County Council, pursuant to the Act and the Charter of the County and based on the certification received from the Fiscal Officer referenced in the preambles hereto and the terms of the Bonds and the Notes set forth in this Resolution, hereby finds, determines, declares and certifies that the annual Debt Service on the Bonds and the Notes does not exceed the estimated annual County Sales Tax Receipts.

(c) The Fiscal Officer has certified to this County Council the maximum maturity of the Bonds and Notes.

(d) All acts and conditions necessary to be performed by the County or to have been met for the issuance of the Notes in order to make them legal, valid, and binding special obligations of the County, have been performed and met, or will have been performed and met, at the time of delivery of the Notes, as required by law.

(e) No statutory or constitutional limitation of indebtedness or taxation will be affected by the issuance of the Notes.

(f) All formal actions of this County Council relating to the enactment of this Resolution were taken in an open meeting of this County Council, and all deliberations of this County Council and of any of its committees that resulted in those formal actions, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22, Ohio Revised Code.

Section 2. Bond Terms. The Bonds shall have the following terms:

(a) Amount, Rate and Term. The Bonds will be issued in the maximum principal amount of \$10,400,000 and will bear interest at the now estimated average annual interest rate of 5% per year, payable semi-annually until the principal amount is paid, and are estimated to mature in twenty (20) annual principal installments that are substantially equal.

(b) Debt Service. The Bonds will be payable as to Debt Service from the County Sales Tax Receipts and from such other available moneys that the County may lawfully elect to apply to that purpose, including, without limitation, payments received by the County from the Museum for the payment of Debt Service pursuant to the Cooperative Agreement.

Section 3. Note Terms. The Notes will have the following terms:

(a) Amount. The Notes shall be issued in the principal amount of \$10,400,000 or any lesser principal amount as determined by the County Executive in the Certificate of Award.

(b) Date. The Notes shall be dated the Closing Date, or any other date, not more than 31 days before the Closing Date, as determined by the County Executive in the Certificate of Award.

(c) Maturity. The Notes shall mature on December 31, 2015 or such earlier date as set forth in the Certificate of Award. The County Executive may, if he determines it to be in the best interests of the County, establish a different maturity date, less than one year from the Closing Date.

(d) Interest. The Notes shall bear interest from their date at a rate not to exceed 7% per annum, payable at maturity. Interest will be calculated on the basis of a 360-day year consisting of twelve, 30-day months. The rate of interest on the Notes shall be determined by the County Executive in the Certificate of Award.

(e) Redemption before Stated Maturity. The Notes will not be subject to optional redemption prior to maturity and will be subject to mandatory redemption, unless otherwise determined by the County Executive in the Certificate of Award, provided that the redemption premium on the Notes shall not exceed 103%.

(f) Form, Numbering and Denomination. The Notes shall be issued in fully registered form. They shall be issued in book-entry form unless the County Executive

determines in the Certificate of Award that it would not be in the best interest of the County for the Notes to be in book-entry form.

They shall be issued in Authorized Denominations and in the numbers and amounts as requested by the Purchaser and approved by the County Executive. They shall be numbered as determined by the County Executive in a manner to distinguish each Note from any other Note. They shall express on their faces the purpose for which they are issued and that they are issued in accordance with this Resolution. The Notes will be designated "Rock and Roll Hall of Fame and Museum Project Notes, Series 2011," unless otherwise designated in the Certificate of Award. Notwithstanding the use of the term "Notes" herein, the County Executive may determine to issue long-term bonds on the terms set forth herein.

Section 4. Payment. The Debt Service on the Notes shall be payable in lawful money of the United States of America, without deduction for the services of the Registrar as paying agent. Debt Service on the Notes will be payable when due upon presentation and surrender of the Notes at the office of the Registrar. The County Executive may select such other paying agent as he deems appropriate.

Section 5. Signing and Authentication of the Notes. The Notes shall be signed by the County Executive, in the name of the County and in his official capacity, which signature may be by facsimile.

No Note will be valid or obligatory for any purpose or will be entitled to any security or benefit under the Note Proceedings unless and until the certificate of authentication printed on the Note is signed by the Registrar as authenticating agent. Authentication by the Registrar will be conclusive evidence that the Note so authenticated has been duly issued, signed, and delivered under, and is entitled to the security and benefit of, the Note Proceedings. The certificate of authentication may be signed by any authorized officer or employee of the Registrar or by any other person acting as an agent of the Registrar and approved by the County Executive on behalf of the County. The same person need not sign the certificate of authentication on all of the Notes.

Section 6. Registration; Transfer and Exchange; book-entry system.

(a) Registrar. So long as any of the Notes remain outstanding, the County shall cause the Registrar to maintain the Register. The person in whose name a Note is registered on the Register will be regarded as the absolute owner of that Note for all purposes of the Note Proceedings. Payment of the Debt Service on any Note will be made only to or upon the order of that person.

(b) Transfer and Exchange. Any Note may be transferred or exchanged for Notes of any Authorized Denomination, as provided in the Registrar Agreement.

(c) Book-Entry System. The County and the Registrar shall recognize and treat the Depository as the owner of the Notes for all purposes, including payment of Debt Service, redemption and other notices, and enforcement of remedies.

If any Depository determines not to continue to act as a Depository for the Notes for use in a book-entry system or if the County determines to discontinue the book-entry system, the County Executive may attempt to establish a securities depository relationship with another qualified Depository. If the County Executive does not or is unable to do so, the County Executive shall direct the Registrar to make provision for notification of the book-entry interest owners by the Depository and to make any other arrangements necessary for the withdrawal of the Notes from the book-entry system.

Section 7. Sale of the Notes. The Notes are awarded and sold to PNC Bank, National Association (the “Purchaser”), in accordance with law and the provisions of this Resolution and the Purchase Agreement, if any, at a purchase price to be determined by the County Executive in the Certificate of Award. That purchase price shall not be less than 97% of the principal amount of the Notes, plus accrued interest on the Notes, if any, from their date to the Closing Date. The Notes shall be sold with and upon such other terms as are required or authorized by this Resolution to be specified in the Certificate of Award, in accordance with the law, the provisions of this Resolution, and the Purchase Agreement.

The County Executive is hereby authorized and directed to sign and deliver the Certificate of Award. The County Executive shall state in the Certificate of Award: the principal amount of the Notes, the interest rate on the Notes, the purchase price for the Notes, and any other terms required by this Resolution. The County Executive may state in the Certificate of Award: any changes in the date, the maturity date, the redemption provisions, and the designation of the Notes; and any other terms authorized by this Resolution, subject to the limitations stated in this Resolution.

The County Executive shall sign and deliver the Certificate of Award and shall cause the Notes to be prepared, signed, and delivered, together with a true transcript of proceedings of the issuance of the Notes, to The Purchaser upon payment of the purchase price.

Section 8. Financing Costs. The County retains the professional services and authorizes the payment of the Financing Costs for the Notes, as provided in this Section 8.

(a) Bond Counsel. The County retains the legal services of Roetzel & Andress, a Legal Professional Association, as bond counsel for the Notes. The legal services will be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the issuance and sale of the Notes and rendering legal opinions upon the delivery of the Notes. Bond counsel shall render those services to the County in an attorney-client relationship. Bond counsel shall be paid just and reasonable compensation for those legal services in accordance with its proposal and letter of engagement, in an amount not to exceed \$6,000.

(b) Purchaser. The County selects PNC Bank, National Association as the Purchaser for the Notes. The Purchaser shall purchase the Notes and be paid for its services in accordance with the Purchase Agreement.

(c) Registrar. The County retains the services of The Bank of New York Mellon Trust Company, N.A., or another bank or trust company as determined by the County Executive in the Certificate of Award, to act as Registrar for the Notes. The Registrar shall perform the services as bond registrar, authenticating agent, paying agent, and transfer agent for the Notes, as provided in this Resolution. The Registrar shall be paid for those services in accordance with the Registrar Agreement.

(d) Disclosure Document, Ratings and Insurance. If, in the judgment of the County Executive, the preparation and distribution of a preliminary disclosure document of the County relating to the Notes is in the best interest of and financially advantageous to the County, such a preliminary disclosure document is authorized to be distributed. The County Executive is authorized and directed to complete and sign, on behalf of the County and in his official capacity, a disclosure document, with such modifications, changes and supplements from the preliminary disclosure document as the County Executive shall approve or authorize. The County Executive is authorized, on behalf of the County and in his official capacity, to (i) determine, and to certify or otherwise represent, when the disclosure document is "deemed final" (except for permitted omissions) by the County as of its date or is a final disclosure document for purposes of SEC Rule 15c2-12(b)(1), (3) and (4), (ii) use and distribute, or authorize the use and distribution of, those disclosure documents and any supplements thereto in connection with the original issuance of the Notes, and (iii) complete and sign those disclosure documents as so approved together with such certificates, statements or other documents in connection with the finality, accuracy and completeness of those disclosure documents. If, in the judgment of the County Executive, the filing of an application for (1) a rating on the Notes by one or more nationally-recognized statistical rating organizations or (2) a policy of insurance to better assure the payment of principal of and interest on the Notes, is in the best interest of and financially advantageous to the County, the County Executive shall prepare and submit those applications and provide to each of those organizations or insurance companies the information required for the purpose. This County Council further authorizes the fees for those ratings and the premiums for the insurance to be included in Financing Costs authorized under Section 8(f) below.

(e) Limits on Authority of Service Providers. In rendering the services described above, as independent contractors, those service providers shall not exercise any administrative discretion on behalf of the County in the formulation of public policy; expenditure of public funds; enforcement of laws, rules and regulations of the State of Ohio, the County, or any other political subdivision; or the execution of public trusts.

(f) Payment of Financing Costs. This County Council authorizes and approves the expenditure of the amounts necessary to pay those Financing Costs specifically authorized above and all other necessary Financing Costs in connection with the issuance and sale of the Notes. Those Financing Costs may be paid by the Purchaser in accordance with the Purchase Agreement. To the extent they are not paid by the Purchaser, this County Council authorizes and directs the County Executive to provide for the payment of those Financing Costs from any funds lawfully available and appropriated for the purpose.

Section 9. Use of Note Proceeds. The proceeds from the sale of the Notes shall be deposited and used as provided in this Section 9.

(a) Any premium received on the sale of the Notes shall be deposited in the Bond Retirement Fund of the County and be used for the payment of interest on the Notes.

(b) To the extent that the Financing Costs of the Notes are not paid by the Purchaser in accordance with the Purchase Agreement and to the extent that the County Executive determines to pay those Financing Costs from the proceeds of the Notes, the Notes shall be used to pay those Financing Costs.

(c) The remainder of the proceeds shall be used to retire the Outstanding Notes.

Section 10. Security and Sources of Payment.

(a) The Notes will be special obligations of the County. This County Council pledges to the payment of Debt Service on the Notes:

(i) the County Sales Tax Receipts;

(ii) The proceeds to be received from the sale of any notes issued to refund or renew the Notes and of the Bonds in anticipation of which the Notes are issued; and

(iii) Any money remaining from the sale of the Outstanding Notes and the Notes not required for the payment of costs of the Project.

(b) The Debt Service on the Notes shall be paid at their maturity from any of the amounts set forth above pledged to their payment, or any other available funds that the County may lawfully elect to apply for their payment, including, without limitation, payments received by the County from the Museum for the payment of Debt Service pursuant to the Cooperative Agreement.

(c) The Notes and the Bonds are special obligations of the County, and Debt Service on the Notes, the Bonds and any other obligations hereafter issued pursuant to the Act is payable from the County Sales Tax Receipts, and such payment is secured by a pledge of and a lien on the County Sales Tax Receipts as provided by the Act and this Resolution. The County has heretofore levied and covenants that it shall continue to collect the County Sales Tax for so long as the Notes or the Bonds are outstanding and further covenants, subject and pursuant to the Act, to appropriate annually from the County Sales Tax Receipts such amounts as are necessary to meet such annual Debt Service on the Notes or the Bonds, taking into account other moneys available for that purpose. The County hereby covenants and agrees that, so long as the Notes or the Bonds are outstanding, it shall not suffer the repeal, amendment or any other change in this Resolution, or the County Sales Tax, that in any way adversely affects or impairs (a) the sufficiency of the County Sales Tax Receipts levied and collected or otherwise available for the payment of Debt Service on the Notes or the Bonds or (b) the pledge or the application of the County Sales Tax Receipts to the payment of Debt Service on the Notes or the Bonds.

(d) The Notes and the Bonds do not constitute a general obligation debt, or a pledge of the full faith and credit, of the State, the County, or any other political subdivision of the State, and the holders or owners of the Notes or the Bonds have no right to have taxes levied by the general assembly or property taxes levied by the taxing authority of any political subdivision of the State, including the taxing authority of the County, for the payment of Debt Service on the Notes or the Bonds. Nothing herein shall be construed as requiring the County to use or apply to the payment of Debt Service on the Notes or the Bonds any funds or revenues from any source other than County Sales Tax Receipts. Nothing herein, however, shall be deemed to prohibit the County, of its own volition, from using, to the extent that it is authorized by law to do so, any other resources for the fulfillment of any of the terms, conditions or obligations of this Resolution or of the Notes or the Bonds, including, without limitation, payments received by the County from the Museum for the payment of Debt Service pursuant to the Cooperative Agreement.

(e) At or prior to such time as is needed, the portion of the County Sales Tax Receipts needed to pay Debt Service on the Notes or the Bonds shall be placed in a separate and distinct fund which, together with the interest collected on the same, shall be irrevocably pledged for the payment of the principal of and interest on the Notes or the Bonds, when and as the same fall due; provided, however, that in each year to the extent that revenues are available from other sources for the payment of the Notes or the Bonds are appropriated for such purpose, the amount of such County Sales Tax Receipts shall be reduced by the amount of the revenues so available and appropriated from:

- (i) Any payments to the County from the Museum (pursuant to the Cooperative Agreement) to advance Debt Service payments on the Notes.
- (ii) Any surplus in the Bond Retirement Fund.
- (iii) Proceeds received from the sale of the Bonds or any notes issued to refund or renew the Notes.
- (iv) Any other money lawfully available to the County.

Section 11. Federal Tax Matters. The County covenants that it will take those actions required to maintain the Federal Tax Status on the Notes and that it will not take or permit to be taken any actions that would adversely affect that Federal Tax Status. Without limiting these covenants, the County specifically covenants that it will restrict the use of the proceeds of the Notes in such manner and to such extent, if any, as may be necessary so that (a) the Notes will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Code, or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest thereon will not be treated as a preference item under Section 57 of the Code.

Section 12. Signing and Delivery of Notes and Documents. This County Council authorizes the County Executive to sign and deliver the Notes in accordance with Section 5 of this Resolution.

(a) This County Council authorizes the County Executive to sign and deliver, on behalf of the County:

- (i) The Certificate of Award;
- (ii) The Purchase Agreement;
- (iii) The Registrar Agreement;
- (iv) Any agreements or letters of representation in connection with a book-entry system for the Notes;
- (v) Applications for and agreements in connection with obtaining a policy of municipal bond insurance for the Notes, if any; and
- (vi) Applications for and agreements in connection with obtaining one or more ratings for the Notes, if determined to be necessary by the Purchaser and the County Executive.

The Purchase Agreement and the Registrar Agreement shall be substantially in the form submitted to this Council at or prior to this meeting, with such changes as are necessary to reflect the terms and provisions of the Notes hereby authorized and as are not inconsistent with this Series Resolution and not substantially adverse to the County as may be approved by the officers executing the same on behalf of the County. In the absence of the County Executive, this County Council authorizes and directs the either the Fiscal Officer or the President of this County Council to sign and deliver any of those documents and certificates. In the absence of the Fiscal Officer and the President of the County Council, this County Council authorizes and directs any member of the County Council to sign and deliver any of those documents.

(b) This County Council authorizes and directs the Fiscal Officer to sign and deliver, on behalf of the County, in his capacity as fiscal officer of the County, any certificates in accordance with Section 5705.41, Revised Code, required for any of the agreements in connection with the Notes. In the absence of the Fiscal Officer, this

County Council authorizes and directs any deputy Fiscal Officer to sign and deliver those certificates.

(c) This County Council authorizes and directs the County Executive, the Fiscal Officer, the County Prosecuting Attorney, and any other County officials:

(i) to sign and deliver any certificates, instruments, and other documents that the official considers necessary or appropriate in connection with the issuance and sale of the Notes, and that are not inconsistent with this Resolution and the Certificate of Award; and

(ii) to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Resolution.

Section 13. Certification to Fiscal Officer. This County Council directs the Clerk of this County Council to forward a certified copy of this Resolution and a copy of the Certificate of Award to the Fiscal Officer.

Section 14. Definitions. Words and terms are used in this Resolution with the following meanings:

"Authorized Denominations" means the denomination of \$100,000 or any integral multiple of \$1,000 in excess of \$100,000.

"Bonds" means the sales tax supported bonds in anticipation of the issuance of which, pursuant to the Act, the Notes are being issued.

"Certificate of Award" means the certificate authorized by Section 7 of this Resolution, setting forth the terms and other provisions of the Notes required or authorized by this Resolution.

"Closing Date" means the date of delivery of and payment for the Notes.

"Code" means the Internal Revenue Code of 1986, as amended. References to the Code and sections of the Code include applicable regulations (whether temporary or final) under the Code, and any amendments of, or successor provisions to, those sections or regulations.

"Cooperative Agreement" means the Cooperative Agreement dated as of February 26, 1993, as amended and restated by an Amendment and Restatement of Cooperative Agreement dated as of December 15, 2003, and a further amended by an First Amendment to Amendment and Restatement of Cooperative Agreement, dated as of April 1, 2009, all between the City of Cleveland, the County, the Port Authority, and the Museum, providing for the ownership, financing, refinancing, construction, maintenance, and operation of the Rock Hall as port authority educational and cultural facility in accordance with Section 307.671, Revised Code.

"County Executive" means the County Executive of Cuyahoga County.

"Debt Service" means all amounts due as principal of or interest on an issue of securities.

"Depository" means any securities depository that is a clearing agency under federal law operating and maintaining a book-entry system to record ownership of book-entry interests in securities or the principal of and interest on securities, and to effect transfers of securities, in book-entry form and means initially the Depository Trust Company, New York, New York, a limited purpose trust company.

"Federal Tax Status" means the status of the interest on the Notes as excludable from gross income, for federal income tax purposes and not treated as an item of tax preference for purposes of the alternative minimum tax.

"Financing Costs" means any financing costs authorized to be paid by Section 133.01(K), Revised Code.

"Museum" means the Rock and Roll Hall of Fame and Museum, Inc., an Ohio non-profit corporation, operating the Rock Hall.

"Note Proceedings" means, collectively, this Resolution, the Certificate of Award, the Registrar Agreement, and the other proceedings of the County, including the Notes, that provide collectively for, among other things, the rights of holders and beneficial owners of the Notes.

"Purchase Agreement" means the Note Purchase Agreement between the County and the Purchaser, entered into in accordance with Section 7 of this Resolution.

"Register" means all books and records necessary for the registration, exchange, and transfer of the Notes.

"Registrar" means The Bank of New York Mellon Trust Company, N.A., or any successor registrar designated in accordance with the Registrar Agreement, or any other bank or trust company as designated by the County Executive in the Certificate of Award.

"Registrar Agreement" means the Note Registrar Agreement between the County and the Registrar, as supplemented, amended, or modified.

"Rock Hall" means the Rock and Roll Hall of Fame and Museum, a port authority educational and cultural facility, as improved by the Project.

Section 15. Effective Date. It is necessary that this Resolution become immediately effective in order that critical services provided by Cuyahoga County can continue. Provided that this Resolution receives affirmative vote of eight members of Council, this Resolution shall become immediately effective upon the signature of the County Executive.

BE IT FURTHER RESOLVED that the Clerk of Council be, and she is, hereby instructed to transmit a copy of this Resolution to Matthew Rubino, Interim Director, Office of Budget & Management and Joyce Dodrill, Assistant Prosecuting Attorney, County Prosecutor's Office.

On a motion by Mr. Miller, seconded by Ms. Conwell, the foregoing Resolution was duly adopted.

Yeas: Simon, Greenspan, Miller, Brady, Germana, Gallagher, Schron, Conwell, Jones, Connally and Rogers

Nays: None

County Council President

Date

County Executive

Date

Clerk of Council

Date

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