

County Council of Cuyahoga County, Ohio

Resolution No. R2014-0034

Sponsored by: **County Executive FitzGerald/ Department of Development**

Co-sponsored by: **Councilmember Conwell**

A Resolution authorizing the issuance of not-to-exceed \$11,955,000.00 County of Cuyahoga, Ohio Economic Development Revenue Refunding Bonds, Series 2014 (Cleveland Hearing and Speech Center Project), for the purpose of refunding the outstanding principal amount of County of Cuyahoga, Ohio Tax-exempt Variable Rate Economic Development Revenue Bonds, Series 2008 (Cleveland Hearing and Speech Center Project), that were issued to provide funds to assist the Cleveland Hearing and Speech Center in financing costs of a project consisting generally of the acquisition, construction, improvement, furnishing and equipping of real and personal property consisting of an approximately 48,000 square foot headquarters and operations facility located at 11635 Euclid Avenue, Cleveland, Ohio; authorizing the execution and delivery of a loan agreement and trust indenture; authorizing the execution and delivery of a bond purchase agreement and authorizing the execution and delivery of certain other documents and actions in connection with the issuance of such bonds; and declaring the necessity that this Resolution become immediately effective.

WHEREAS, the County of Cuyahoga, Ohio (the "*County*"), a county and political subdivision duly organized and validly existing under the laws of the State of Ohio and its Charter, is authorized and empowered, by virtue of the laws of the State of Ohio, including without limitation, Chapter 165, Ohio Revised Code (the "*Act*") and Section 13 of Article VIII, Ohio Constitution, (i) to issue bonds for the purpose of assisting in the financing of eligible costs of constructing and equipping facilities of The Cleveland Hearing and Speech Center (the

“*Borrower*”) constituting a “project” within the meaning of the Act for industry, commerce, distribution, or research located within the boundaries of the County; (ii) to enter into a loan agreement with the Borrower with respect to those facilities to provide for “revenues” sufficient to pay the principal and purchase price and interest and any premium on those revenue bonds, (iii) to secure those revenue bonds by a trust indenture and by an assignment of those revenues for the benefit of the owners of those revenue bonds, and (iv) to enact this Resolution and to sign and deliver documents in connection therewith upon the terms and conditions provided herein; and

WHEREAS, this Council of the County of Cuyahoga, Ohio (the “*Council*”), pursuant to the foregoing authority and at the request of, and based upon the representations of, the Borrower, determined that it is willing to authorize the issuance and sale of revenue refunding bonds (the “*Series 2014 Bonds*”) pursuant to the Act to assist Borrower in financing and refinancing the costs of acquiring, constructing, equipping and improving real and personal property consisting of an approximately 48,000 square foot headquarters and operations facility located at 11635 Euclid Avenue, Cleveland, Ohio 44106 (the “*Project*”) by refunding the outstanding principal amount of the County’s \$17,000,000 Tax-Exempt Variable Rate Economic Development Revenue Bonds, Series 2008 (The Cleveland Hearing and Speech Center Project) (the “*Prior Bonds*”), which were issued pursuant to a Trust Indenture dated as of June 1, 2008, by and between the County and The Huntington National Bank, as trustee, and the proceeds of which were used to finance a portion of the costs of the Project; and

WHEREAS, the Series 2014 Bonds will be issued pursuant to the provisions of the Act and a Trust Indenture (the “*Indenture*”) between the County and The Huntington National Bank, as trustee (the “*Trustee*”); and

WHEREAS, the Series 2014 Bonds shall not represent or constitute a general obligation, debt or bonded indebtedness, or a pledge of moneys raised by taxation or the faith and credit of the County, the State or any political subdivision thereof, and the holders of the Series 2014 Bonds shall not be given and shall not have any right to have excises or taxes levied by this Council or the County, or the State or the taxing authority of any political subdivision thereof, for the payment of bond service charges or any other costs of the Project, and the Series 2014 Bonds will be payable solely from the rentals, revenues, and other income, charges, and moneys as are pledged for their payment in accordance with the bond proceedings;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:

SECTION 1. Definitions and Interpretations. All words and terms used herein as defined words and terms but not otherwise defined herein shall have the

respective meanings given to them in the Indenture, the substantially final form of which is on file with this Council.

Any reference herein to the County or this Council or to any officers, employees or members thereof, shall include those which succeed to their functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing their functions.

SECTION 2. Authorization of the Series 2014 Bonds. This Council determines, based on the representations of the Borrower, that it is necessary to, and the County shall, issue, sell and deliver, as provided and authorized herein and in accordance with the Indenture and pursuant to the authority of the Act, the Series 2014 Bonds in the aggregate principal amount that shall be determined in the Bond Purchase Agreement, but in any event not to exceed \$11,955,000, for the purposes of refinancing a portion of the costs of the Project by refunding the Prior Bonds, and paying certain costs of issuing the Series 2014 Bonds.

SECTION 3. Terms and Provisions of the Series 2014 Bonds

(a) Bond Terms. The Series 2014 Bonds shall (i) be issuable only in fully registered form and substantially as set forth in the Indenture; (ii) be exchangeable only for Bonds of the same series in Authorized Denominations, as provided in the Indenture; (iii) be numbered in a manner determined by the Trustee which will distinguish each Bond of a series from each other Bond of that series; (iv) be dated as set forth in the Indenture, provided that such date shall not be later than May 1, 2014; (v) bear interest from the most recent date to which interest has been paid or duly provided for, or if no interest has been paid or duly provided for, from their date of delivery, at the rates set forth in the Indenture, provided that the rates for the Series 2014 Bonds shall not exceed the maximum rate, if any, set forth in the bond indenture; (vi) payable on the interest payment dates set forth in the Indenture; (vii) be subject to optional redemption, extraordinary optional redemption, mandatory redemption, optional and mandatory tender for purchase, and purchase in lieu of redemption in accordance with the Indenture; and (viii) mature, subject to prior redemption as set forth above, on the dates set forth in the Indenture, the final maturity date of which shall be no later than June 1, 2038.

The Series 2014 Bonds shall initially bear interest at the Bank Rate described in the Bond Purchase Agreement during the initial Bank Rate Period, and thereafter shall bear interest at the Bank Rate, a Weekly Rate, a Long-Term Rate, a Fixed Rate, or a Pledged Bond Rate for a particular rate period (being a Bank Rate Period, Weekly Rate Period, Long-Term Rate Period, Fixed Rate Period, or Pledged Bond Rate Period all as defined and provided for in the Indenture).

(b) Method of Payment; Paying Agents. The principal of and any premium and interest on the Series 2014 Bonds (the "*Bond Service Charges*")

shall be payable as provided in the Indenture without deduction for the services of any paying agent. The Trustee initially shall be paying agent for the Series 2014 Bonds and may designate additional paying agents as provided in the Indenture.

(c) Execution. The Series 2014 Bonds shall be signed by the County Executive or his designee. Neither the County Executive, the members of this Council nor any person executing the Series 2014 Bonds shall be liable personally on the Series 2014 Bonds by reason of issuance thereof. In case the County Executive shall cease to be in office before the issuance or delivery of the Series 2014 Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in office until after that time.

(d) Book-Entry System. The Series 2014 Bonds are permitted, but not required, to be issued to the Depository for holding in a book-entry system as provided in the Indenture, as the official(s) or member(s) executing and delivering the Indenture shall approve in the manner described in and under authority of Section 8 hereof.

SECTION 4. Sale of the Series 2014 Bonds.

The Series 2014 Bonds are hereby sold and awarded to PNC Bank, National Association or its designee (the "*Original Purchaser*") in accordance with the terms of this Resolution and the Bond Purchase Agreement, at a purchase price equal to the aggregate principal amount of the Series 2014 Bonds to be issued. The sale of the Series 2014 Bonds to the Original Purchaser shall be conditioned upon the Original Purchaser's delivery of an investor acknowledgement letter to the County, or the inclusion of investor acknowledgement provisions in the Bond Purchase Agreement, in a form acceptable to the County and its legal counsel. It is hereby determined, based upon the advice of Bond Counsel and the representations of the Original Purchaser that the purchase price and the manner of sale and the terms of the Series 2014 Bonds, as provided in this Resolution and the Indenture, are consistent with all legal requirements and will carry out the public purposes of the Act.

The County Executive, the Clerk of this Council and the Fiscal Officer are authorized and directed, alone or together, to make the necessary arrangements, as directed by the Trustee and upon the advice of Bond Counsel, with the Original Purchaser to establish the date, location, procedure and conditions for the delivery of the Series 2014 Bonds to the Original Purchaser. The County Executive is further authorized and directed, upon the advice of Bond Counsel, to make the necessary arrangements for the execution, authentication and delivery of the Series 2014 Bonds to the Original Purchaser under the terms of this Resolution, the Indenture and the Bond Purchase Agreement.

SECTION 5. Security for the Series 2014 Bonds. The Series 2014 Bonds shall be special obligations of the County and, except as otherwise provided under the Indenture, the principal of and interest and any premium on, and any other obligations relating to, the Series 2014 Bonds shall be equally and ratably payable solely from the Revenues. To secure the payment of Bond Service Charges, all right, title and interest of the County in and to all moneys and investments in the Bond Fund and all of the County's rights and remedies under the Loan Agreement (except for the Unassigned Issuer's Rights) have been duly and validly pledged to the Trustee by the Indenture.

Anything in this Resolution, the Series 2014 Bonds or the Indenture to the contrary notwithstanding, the Series 2014 Bonds do not and shall not represent or constitute general obligations, debt, bonded indebtedness or a pledge of the faith and credit of the County, the State or any other political subdivision thereof and further, nothing herein or therein gives the holders or owners of the Series 2014 Bonds, and they do not have, the right to have excises, ad valorem or other taxes levied by the County, or by the State or the taxing authority of any other political subdivision, for the payment of the principal of and interest and any premium on, or any other obligations relating to, the Series 2014 Bonds. The Series 2014 Bonds shall contain a statement to that effect and to the effect that the Series 2014 Bonds are payable solely from the Special Funds established under and other sources permitted by the Indenture and from any other money paid by Borrower or obtained by the Trustee upon the exercise of rights and remedies under the Indenture and the Loan Agreement. Nothing in the Series 2014 Bonds or the documents securing them, however, shall be deemed to prohibit the County from using, of its own volition, to the extent that it is authorized by law to do so, any other resources for the fulfillment of any of the terms or conditions of, or its obligations under, the Indenture or the Series 2014 Bonds.

SECTION 6. Covenants and Agreement of County. In addition to the other covenants of the County set forth in this Resolution and the Issuer Documents (as hereinafter defined), the County further covenants and agrees as follows:

(a) Authority and Actions. The County is, and upon delivery of the Series 2014 Bonds will be, duly authorized by the laws of the State, particularly and without limitation the Act, to issue the Series 2014 Bonds, to execute and deliver the Issuer Documents and other instruments and documents to which it is a party, to provide the security for payment of the principal of and any premium or interest on the Series 2014 Bonds solely in the manner and from the sources and to the extent set forth herein, all as authorized by this Council and upon the advice of Bond Counsel. All actions on the part of the County for the issuance of the Series 2014 Bonds and the execution and delivery of the Issuer Documents and such other instruments and documents have been or will be duly and effectively taken. The Series 2014 Bonds will be valid and enforceable special obligations of the County according to the terms thereof. Each duty of the County and of its officers and employees undertaken pursuant to the Series 2014

Bonds and the Issuer Documents, is a duty specifically enjoined by law upon the County and each of those officers and employees having authority thereunder or by provision of law to perform the duty, resulting from an office, trust or station, within the meaning of Section 2731.01, Ohio Revised Code, providing for enforcement by writ of mandamus.

(b) Arbitrage and Tax Compliance Provisions; Transcript. Upon the advice of Bond Counsel and to the extent within its authority and control, the County will restrict the use of the proceeds of the Series 2014 Bonds in such manner and to such extent as is necessary so that the Series 2014 Bonds will not constitute arbitrage bonds under Section 148 of the Code. The members of this Council, the County Executive, the Fiscal Officer or the Clerk of this Council or any other officer of the County having responsibility for the issuance of the Series 2014 Bonds, alone or in conjunction with the Borrower or any officer, employee or agent of or consultant to the Borrower, shall give an appropriate certificate of the County for inclusion in the transcript of proceedings for the Series 2014 Bonds setting forth the reasonable expectations of the County regarding the amount and use of all of the proceeds of the Series 2014 Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on the Series 2014 Bonds.

Upon the advice of Bond Counsel, and to the extent within its authority and control, the County (i) will take, or require to be taken, all actions that are required of it for the interest on the Series 2014 Bonds to be and remain excluded from gross income for federal income tax purposes, and (ii) will not knowingly take or authorize to be taken any actions that would adversely affect that exclusion under the provisions of the Code. The members of this Council, the County Executive, the Fiscal Officer and the Clerk of this Council and any other appropriate officers are hereby authorized and directed to take any and all actions and make or give such reports and certifications, as may be appropriate to assure such exclusions of that interest.

In its performance of these covenants, and other covenants of the County pertaining to the Series 2014 Bonds and federal income tax laws, the County may rely upon the advice of Bond Counsel.

The Clerk of this Council shall furnish to the Original Purchaser a true transcript of proceedings, certified by the Clerk, of all proceedings had with reference to the issuance of the Series 2014 Bonds together with such information from the records as is necessary to determine the regularity and validity of the issuance of the Series 2014 Bonds.

(c) Further Assurances. To the extent within its authority and control, the County shall do all things and take all actions on its part necessary to comply with the obligations, duties and responsibilities on its part under the Issuer Documents. Nothing herein or in the Issuer Documents shall be construed as

requiring the County to operate the Project or to use any moneys from any source other than those provided in the Indenture and the Loan Agreement.

SECTION 7. Issuer Documents. To provide for the issuance and sale of the Series 2014 Bonds and the consummation of the transactions contemplated herein, the County Executive (or his designee) and the Fiscal Officer at the direction of the County Executive, alone or in conjunction with any of the foregoing, are authorized and directed to execute, acknowledge and deliver, for and in the name and on behalf of the County, the Indenture, the Loan Agreement, the Bond Purchaser Agreement and each other document to which the County is party in connection with the issuance and delivery of the Series 2014 Bonds (collectively, the "*Issuer Documents*"), in substantially the respective forms thereof submitted to and approved by the County's legal officer. The Issuer Documents are approved with any changes therein which are not inconsistent with this Resolution, are not adverse to the County, are permitted by the Act, and are approved by the member or members or officer or officers executing the respective Issuer Documents and by Bond Counsel and the County's legal officer. The approval of those changes by such member or members or officer or officers, and the character of those changes as not being adverse to the County, shall be evidenced conclusively by the execution and delivery of the respective Issuer Documents by such member or members or officer or officers. The Fiscal Officer is authorized to give any certifications that may be required under Ohio Revised Code Sections 5705.41 and 5705.44 with respect to any of the Issuer Documents.

SECTION 8. Other Documents. The County Executive (or his designee), the President of the Council, the Fiscal Officer, the Clerk of the Council or any other officer of the County, alone or in conjunction with any of the foregoing, are authorized and directed to execute, deliver and, if applicable, file, for and in the name and on behalf of the County, any certifications, financing statements, assignments and other instruments and documents which are, in the opinion of the County's legal officer and Bond Counsel to the County, necessary or appropriate to perfect the assignments contemplated in the Indenture and to consummate the transactions contemplated in the Issuer Documents, including the issuance of the Series 2014 Bonds. Those certifications and other instruments and documents include, without limitation, one or more reports on IRS Form 8038, any other certifications and forms necessary or advisable under the Code and a certification by the Clerk of this Council of the transcript of proceedings relating to the issuance of the Series 2014 Bonds. The Borrower is hereby authorized and directed, upon the request or direction of the County, to file any such certifications or instruments that require filing.

SECTION 9. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Resolution, or in the Series 2014 Bonds, or in the Issuer Documents, or under any judgment obtained against the County or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be had against any officer or employee as such,

past, present, or future, of the County, including any member of the Council, either directly or through the County, or otherwise, for the payment for or to the County or any receiver thereof, or for or to the Holder, or otherwise, of any sum that may be due and unpaid by the County upon any of the Series 2014 Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer or employee, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to the County or any receiver thereof, or for or to the Borrower or the Holder, or otherwise, of any sum that may remain due and unpaid upon any Bond, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of the Issuer Documents and the issuance of the Series 2014 Bonds.

SECTION 10. Open Meeting. This Council hereby finds and determines that all formal actions of this Council and its committees concerning and relating to the adoption of this resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including Section 121.22, Ohio Revised Code.

SECTION 11. Effective Date. It is necessary that this Resolution become immediately effective for the usual daily operation of the County; the preservation of public peace, health, or safety in the County; and any additional reasons set forth in the preamble. Provided that this Resolution receives the affirmative vote of at least eight members of Council, it shall take effect and be in force immediately upon the earliest occurrence of any of the following: (1) its approval by the County Executive through signature, (2) the expiration of the time during which it may be disapproved by the County Executive under Section 3.10(6) of the Cuyahoga County Charter, or (3) its passage by at least eight members of Council after disapproval pursuant to Section 3.10(7) of the Cuyahoga County Charter. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

On a motion by Mr. Schron, seconded by Mr. Gallagher, the foregoing Resolution was duly adopted.

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

Nays: None


County Council President


Date



County Executive

2/28/14
Date



Clerk of Council

2/28/2014
Date

First Reading/Referred to Committee: January 28, 2014
Committee(s) Assigned: Economic Development & Planning

Committee Report/Second Reading: February 11, 2014

Additional Sponsorship Requested on the Floor: February 11, 2014

Legislation Substituted on the Floor: February 25, 2014

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