

# County Council of Cuyahoga County, Ohio

## Resolution No. R2014-0088

Sponsored by: **County Executive FitzGerald/Department of Public Works**

Co-sponsored by: **Councilmembers Simon, Germana and Jones**

A **Resolution** approving a Qualified Management Agreement with Hilton Management LLC relating to management of a Convention Center Hotel; authorizing the County Executive to execute a Qualified Management Agreement, a Technical Services Agreement, a Pre-Opening Services Agreement, a Room-Block Agreement, and all other documents consistent with this Resolution; authorizing and approving related matters; and declaring the necessity that this Resolution become immediately effective.

WHEREAS, the County intends to develop an approximately 600-room Convention Center Hotel on property immediately adjacent to and in support of the Cleveland Convention Center and Global Center for Health Innovation (“Hotel”); and

WHEREAS, because the County intends to finance the construction of the Hotel through bonds or other obligations the interest on which will be exempt from federal income taxes (“Obligations”), the management agreement for the Hotel must meet the requirements of the Internal Revenue Service for a Qualified Management Agreement (“QMA”); and

WHEREAS, the County desires to enter into a QMA for the Hotel with Hilton Management LLC, a Delaware limited liability company (“Hilton”), for an initial term commencing on the opening date of the Hotel, which is expected to be June 1, 2016 (the “Projected Opening Date”), and ending 15 years thereafter (the “QMA Term”); and

WHEREAS, under the QMA, Hilton is authorized to enter into contracts and agreements necessary to the operation of the Hotel in the name of and on behalf of the County; and

WHEREAS, under the QMA, revenues from the Hotel will be directed to payment of operating costs and expenses of the Hotel, including taxes, insurance, and certain services provided exclusively by Hilton, and to the Base Management Fee (defined below), all in accordance with a budget to be reviewed and approved periodically by the County; and

WHEREAS, excess revenues from the Hotel will be transferred, at least quarterly, by Hilton to the trustee of the Obligations, for deposit in the manner set forth in the trust agreement authorizing issuance of the Obligations; and

WHEREAS, the Base Management Fee paid to Hilton during the first five full-operating years of the QMA will be fixed at: \$639,000 for year one, \$823,000 for year two, \$1,066,000 for year three, \$1,201,000 for year four, and \$1,231,000 for year five; the Base Management Fee during any period prior to the first full-operating year will be prorated based on the Base Management Fee for the first full-operating year; after the fifth full-operating year, the Base Management Fee will be adjusted annually by the previous calendar year's CPI for the Cleveland MSA; the Base Management Fee will be paid monthly, in arrears; and

WHEREAS, the Owner's Priority Payment will be \$8,000,000 per year during the first three full-operating years of the QMA (which amount shall be prorated for the period beginning on the Projected Opening Date through December 31, 2016) and \$9,000,000 per year of the QMA thereafter; the Owner's Priority Payment will be directed to paying debt service on the Obligations; and

WHEREAS, provided that the Hotel meets certain criteria regarding revenue-per-available-rooms and the generation of net revenues sufficient to meet the Owner's Priority Payment, Hilton will be paid a Subordinate Management Fee; during the first five full-operating years of the QMA, the Subordinate Management Fee will be fixed at zero dollars for the period beginning on the opening date of the Hotel through the end of the second full-operating year and a total of \$1,484,000 for years three through five; after the fifth full-operating year, the Subordinate Management Fee will be adjusted annually by the previous calendar year's CPI for the Cleveland MSA; and

WHEREAS, the County reserves the right to terminate the QMA after the sixth full-operating year thereof in the event the Hotel does not meet certain performance tests and Hilton does not exercise its cure rights under the QMA; and

WHEREAS, prior to opening the Hotel, Hilton will provide certain technical services related to the architecture, engineering, and interior design of the Hotel under a Technical Services Agreement for the period beginning on the date of execution thereof through the Projected Opening Date (the "TSA Term"); and

WHEREAS, prior to opening the Hotel, Hilton will provide certain pre-opening services related to marketing, staffing, and other services necessary to opening-day operations of the Hotel under a Pre-Opening Services Agreement for the period beginning on the date of execution thereof through the Projected Opening Date (the "POSA Term"); and

WHEREAS, the County intends to enter into an agreement with Hilton to assure that, throughout the QMA Term, sufficient Hotel accommodations will be available to

attendees, participants, and planners of events being held in the Cleveland Convention Center and Global Center for Health Innovation (the "Room-Block Agreement"); and

WHEREAS, it is necessary that this Resolution become immediately effective in order that the time-sensitive project can continue proceeding on schedule and that critical services provided by Cuyahoga County can continue and to provide for the usual, daily operation of a County entity.

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

**SECTION 1.** That County Council hereby authorizes, and the County Executive is hereby authorized to conclude negotiations of, the following agreements with Hilton in relation to the Convention Center Hotel: a Technical Services Agreement, for an amount not to exceed \$350,000, including fees of approximately \$250,000 and the balance for reimbursable expenses, for the TSA Term; a Pre-Opening Services Agreement, for an amount not to exceed \$6,370,000, including fees of approximately \$300,000 and the balance for reimbursable expenses, for the POSA Term; a Room Block Agreement for the QMA Term; and a Qualified Management Agreement, for the QMA Term. To the extent that any exemptions are necessary under the County Code and contracting procedures, they shall be deemed approved by the adoption of this Resolution. The final negotiated terms of the agreements, including the actual maximum not to exceed amount and risk management protections, shall be subject to the approval of the Director of Law, but in no event shall the finally negotiated maximum amounts under the Technical Services Agreement and Pre-Opening Services Agreement exceed the herein authorized aggregate maximum of \$6,720,000.

**SECTION 2.** That the County Executive or his authorized designee is authorized to (a) take all actions, and to execute, acknowledge, deliver and/or file for record (as and where appropriate) (i) all documents and instruments necessary or desirable to facilitate and/or consummate the transactions contemplated hereby, including, but not limited to, the Technical Services Agreement, the Pre-Opening Services Agreement, the Qualified Management Agreement, and the Room-Block Agreement, and all documents to be executed by the County thereunder, and all financing-related documents (including but not limited to subordination, non-disturbance and attornment agreements, pledges, and security agreements), (ii) all other and further documents, instruments, certificates, agreements, amendments, assignments, subleases, consents, affidavits, certifications, disbursement authorizations, settlement statements, closing statements, proration statements, escrow agreements, escrow instructions, and notices, and (iii) amendments, modifications and supplements to any of the foregoing, that the County Executive may deem necessary or advisable in connection with the consummation of the transactions contemplated hereby, in all cases containing such terms and conditions not adverse to the County and approved by the County's Director of Law or his authorized designee, (b) agree to such payments, prorations, credits, deposits, holdbacks, escrows and other

arrangements as may be necessary or advisable in connection therewith to facilitate and/or consummate such transactions, and (c) prosecute and/or defend any actions or proceedings that may be necessary or advisable relative to any of the foregoing matters.

**SECTION 3.** This Council finds and determines that all formal actions of this Council relating to the adoption of this Resolution were adopted in an open meeting of Council, and that all deliberations of this 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 Ohio Revised Code Section 121.22.

**SECTION 4.** 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: (i) its approval by the County Executive through signature, (ii) the expiration of the time during which it may be disapproved by the County Executive under Section 3.10(6) of the Charter, or (iii) its passage by at least eight members of Council after disapproval pursuant to Section 3.10(7) of the 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 Ms. Conwell, the foregoing Resolution was duly adopted.

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

Nays: Greenspan

  
County Council Vice-President

4/22/2014  
Date

  
County Executive

4/23/14  
Date

  
Clerk of Council

4/22/2014  
Date

First Reading/Referred to Committee: March 25, 2014  
Committee(s) Assigned: Committee of the Whole

Committee Report/Second Reading/Referred to Committee: April 8, 2014  
Committee(s) Assigned: Committee of the Whole

Additional Sponsorship Requested on the Floor: April 22, 2014

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