

County Council of Cuyahoga County, Ohio

Resolution No. R2014-0090

Sponsored by: County Executive FitzGerald/Department of Public Works	A Resolution providing for the acquisition by lease purchase of real property including a convention center hotel facility; authorizing a Lease Purchase Agreement with respect to the convention center hotel facility; authorizing and approving other documents relating to the convention center hotel facility and financing thereof; and declaring the necessity that this Resolution become immediately effective.
Co-sponsored by: Councilmembers Simon, Germana and Jones	

WHEREAS, in order to enhance the ability of the Cleveland Convention Center and Global Center for Health Innovation (the "Convention Center") to attract large meetings to the Convention Center and additional visitors to the region, the County intends to develop an approximately 600-room Convention Center Hotel on property immediately adjacent to and in support of the Convention Center ("Hotel"); and

WHEREAS, in furtherance of the County's intention to develop the Hotel, and in order to participate in other cooperative activities identified therein, the County entered into a Cooperative Agreement dated as of December 17, 2014 among the County, the City of Cleveland and the Cleveland-Cuyahoga Count Port Authority (the "Cooperative Agreement"); and

WHEREAS, it will be necessary for the County to enter into certain financing arrangements and other agreements in order to finance the cost of a Hotel in accordance with the terms of the Cooperative Agreement; and

WHEREAS, in order to implement the financing arrangements with respect to the Hotel, it will be necessary for the County to take the following actions:

A. Execute and deliver a lease purchase agreement (the "Lease") under which the County (a) will lease from the Cleveland-Cuyahoga County Port Authority (the "Lessor") the Leased Premises for an Initial Term, each as defined in the Lease, and for Renewal Terms, as defined in the Lease, upon appropriations being made by this Council of funds sufficient to enable the County to pay the Base Rent and Additional Rent, as defined in the Lease, during the Initial Term and Renewal Terms (each a "Lease Term") and (b) will have an obligation, which will constitute a "public obligation" as defined in Ohio Revised Code Section 133.01, to pay Base Rent and Additional Rent during each Lease Term subject to such appropriations;

B. Approve a trust agreement (the "Trust Agreement") between the Lessor and U.S. Bank National Association (the "Trustee") pursuant to which (a) the Lessor will assign its interest in the Lease to the Trustee, (b) the Lessor will direct the Trustee to and the Trustee will execute not to exceed \$260,000,000 aggregate principal amount of Certificates of Participation (the "Certificates") in the payments of Base Rent to be made by the County under the Lease, which Certificates will constitute "fractionalized interests in public obligations", as defined in Ohio Revised Code Section 133.01, and (c) proceeds of the sale of the Certificates will be used to pay a portion of the cost of constructing the Hotel;

C. Execute a letter of representations (the "Letter of Representations") to Stifel, Nicolaus & Company, Incorporated, as representative of the original purchasers of the Certificates (the "Original Purchaser"), the Lessor, and/or and the Trustee evidencing the approval of a certificate purchase agreement (the "Purchase Agreement") between the Original Purchaser, the Lessor and the Trustee setting forth the purchase price and other terms upon which the Original Purchaser will purchase the Certificates from the Trustee;

D. Provide certain information relating to the Hotel project and the County to the Original Purchaser for inclusion in a disclosure document to be used in connection with the initial offering of the Certificates by the Original Purchaser; 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. It is hereby determined that, for the reasons set forth in the preambles to this Resolution, and in furtherance of the cooperative activities identified in the Cooperative Agreement, the acquisition of the Lease Premises and the financing by the County of the convention center hotel facility pursuant to the Lease are in support the Convention Center and in furtherance of the County's interests.

SECTION 2. The County Executive and the Fiscal Officer are each authorized and directed to sign and deliver the Lease and to signify approval of the Trust Agreement in substantially the forms as are now on file with the Clerk of Council after approval thereof by the Director of Law. The Lease and the Trust Agreement are approved in substantially the forms as are now on file with the Clerk of Council, together with any changes or amendments that are not inconsistent with this Resolution and not substantially adverse to the County that are approved by the County Executive and the Fiscal Officer and the Director of Law on behalf of the County, all of which shall be

conclusively evidenced by the signing of the Lease or amendments thereto and the signifying of approval of the Trust Agreement or amendments thereto.

SECTION 3. (a) Base Rent. The Fiscal Officer is hereby authorized and directed to negotiate and provide for the terms of the Base Rent, as defined in the Lease, including the aggregate principal component thereof, which for the Initial Term and all Renewal Terms in aggregate shall not exceed \$260,000,000 and the interest components thereof, which interest components may be fixed rate interest components or variable rate interest components, the weighted average of which fixed rate interest components shall not exceed 8% per annum, provided that if the interest rate component is not to be excluded from gross income for federal income tax purposes, the fixed interest rate components shall not exceed 12% per annum.

The County acknowledges that the principal component of the Lease shall be equal to the principal amount of the Certificates and shall be that amount which, together with other funds to be made available for the acquisition and construction of the convention center hotel facility, shall be sufficient to pay the cost of the convention center hotel facility, including without limitation the cost of providing any reserves that the Fiscal Officer determines are necessary and appropriate for the Certificates to be issued on the terms most favorable to the County as the payor on the public obligations in which the Certificates constitute fractionalized interests (which determination shall be confirmed by the Fiscal Officer by the Fiscal Officer's signing of the Letter of Representations described above), and the costs of issuance of the Certificates, and which the Fiscal Officer determines are necessary and reasonable in light of the character of the Certificates (which determination shall be confirmed by the Fiscal Officer by the Fiscal Officer's execution of the Letter of Representations). The County further acknowledges that the payment schedule for the Certificates shall include interest components on the principal amount thereof which shall be based upon the interest components of the Base Rent. The Certificates may be issued in one or more series which may differ as to interest rate components, credit enhancement, priority of payment and other terms. The Base Rent to be payable under and in accordance with the Lease during the Initial Term of the Lease and any Renewal Terms, shall be an amount sufficient to cover the amount of principal of and interest component on the outstanding Certificates of any series that are due and payable during that Initial Term or Renewal Term, and such Base Rent shall be specified or determined in an exhibit to the Lease; provided, however, that the County's payment of Base Rent and Additional Rent is Subject to Appropriation and Certification as provided in the Lease and nothing in the Lease, the Certificates or the Trust Agreement constitutes a pledge by the Lessee, or an obligation of the Lessee, of any taxes or other moneys to the payments due thereunder.

(b) Purchase Agreement. The Fiscal Officer is authorized to sign and deliver, in the name and on behalf of the County, the Letter of Representations attached as Exhibit A to the Purchase Agreement, in substantially the form as is now on file with the Clerk of this Council after approval thereof by the Director of Law, signifying approval of the Purchase Agreement and setting forth the schedule of Base Rent and the principal components and interest components thereof, the costs of issuance of the Certificates and

the reserves for the Certificates and approving the appointment of the Trustee. The Purchase Agreement and the Letter of Representations are approved, together with any changes or amendments that are not inconsistent with this Resolution and not substantially adverse to the County and that are approved by the Fiscal Officer and Director of Law on behalf of the County, all of which shall be conclusively evidenced by the signing of the Letter of Representations or amendments thereto.

(c) Primary Offering Disclosure. If, in the judgment of the Fiscal Officer after consultation with the Original Purchaser, a disclosure document is appropriate relating to the initial offering of the Certificates, the Fiscal Officer, on behalf of the County and in that officer's official capacity, is authorized to (i) cooperate with the Original Purchaser in the preparation of, and the making of modifications, completions or changes of or supplements to, such a disclosure document, (ii) determine, and to certify or otherwise represent, when the disclosure document is to be deemed final or is final, (iii) authorize the use and distribution of that disclosure document and any supplements thereto in connection with the initial offering of the Certificates, and (iv) sign certificates, statements or other documents in connection with the finality, accuracy and completeness of that disclosure document.

(d) Agreement to Provide Continuing Disclosure. For the benefit of the holders and beneficial owners from time to time of the Certificates, the County agrees, as the only obligated person with respect to the Certificates under SEC Rule 15c2-12 (the "Rule"), to provide or cause to be provided such financial information and operating data, audited financial statements and notices, in such manner, as may be required for purposes of paragraph (b)(5)(i) of the Rule. In order to describe and specify certain terms of the County's continuing disclosure agreement for that purpose, and thereby to implement that agreement, including provisions for enforcement, amendment and termination, the Fiscal Officer is authorized and directed to sign and deliver, in the name and on behalf of the County, the Continuing Disclosure Agreement in substantially the form as is now on file with the Clerk of Council after approval thereof by the Director of Law, with any changes or amendments that are not inconsistent with this Resolution and not substantially adverse to the County and that are approved by the Fiscal Officer and the Director of Law on behalf of the County, all of which shall be conclusively evidenced by the signing of that Continuing Disclosure Agreement or amendments to it. The Continuing Disclosure Agreement shall be the County's continuing disclosure agreement for purposes of the Rule, and its performance shall be subject to the annual appropriation of any funds that may be necessary to perform it.

(e) Application for Rating or Insurance. If, in the judgment of the Fiscal Officer after consultation with the Original Purchaser, the filing of an application for (i) a rating on a series of Certificates by one or more nationally recognized rating agencies, (ii) a policy of insurance or other credit enhancement facility from a company or companies to better assure the payment of principal of and interest on a series of Certificates, or (iii) a surety bond or other credit enhancement facility from a company or other companies to satisfy the reserve requirement for a series of Certificates is in the best interest of and financially advantageous to this County, the Fiscal Officer is authorized to prepare and

submit those applications, to provide to each such agency, company or other credit enhancement facility provider such information as may be required for the purpose. The cost of obtaining each such rating, policy, bond or credit enhancement facility, except to the extent paid by the Original Purchaser in accordance with the Purchase Agreement, shall be paid from the proceeds of the Certificates.

SECTION 4. The County Executive, the Fiscal Officer, the Director of Law and the Clerk of Council are each hereby authorized and directed to take any and all other actions and to execute any and all other instruments, certificates and documents as may in their judgment be necessary, desirable, advisable or appropriate in connection with the execution and delivery of the Lease, the execution and delivery of the Certificates by the Trustee and the purchase of the Certificates by the Original Purchaser in order to give effect to the transactions contemplated to be performed on the part of the County under the Lease and the Letter of Representations.

SECTION 5. The Fiscal Officer, or any other officer having responsibility for executing the Lease, is, alone or in conjunction with any of the foregoing or with any other officer or employee of the County, authorized and directed (a) to cooperate with the Original Purchaser and the Trustee by making, on behalf of the County, such covenants and representations in the Lease as are appropriate and necessary so that (a) the Lease and the Certificates will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the "Code") or (ii) be treated other than as obligations to which Section 103(a) of the Code applies, and (b) the interest components of the Lease and on the Certificates will not be treated as an item of tax preference under Section 57 of the Code and to the effect that the County will take or cause to be taken such actions that may be required of it for the interest components of the Lease and on the Certificates to be and remain excluded from gross income for federal income tax purposes and that it will not take or authorize to be taken any actions that would adversely affect that exclusion.

The Fiscal Officer, or any other officer of the County having responsibility for execution of the Lease is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the County with respect to the Lease and the Certificates as the County is permitted to or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in Section 148(f)(4)(C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Lease and the Certificates or the interest components thereof or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the County, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the interest

components of the Lease and on the Certificates, and (c) to give one or more appropriate certificates of the County, for inclusion in the transcript for the Certificates, setting forth the reasonable expectations of the County regarding the amount and use of all the proceeds from the sale of the Certificates, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest component of and the tax status of the Certificates. Notwithstanding the foregoing or any other provisions of this Resolution to the contrary, if the Fiscal Officer determines prior to the execution and delivery of the Purchase Agreement and Letter of Representations that it is necessary and appropriate and in the best interests of the County for the interest components of the Base Rent to be included in gross income for federal income tax purposes, the County shall not be bound by the covenants of this Section 6.

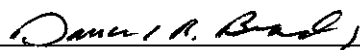
SECTION 7. This Council finds and determines that all formal actions of this Council relating to the adoption of this Resolution were adopted in an open meeting of Council, and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements, including Ohio Revised Code Section 121.22.

SECTION 8. 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 Ms. Conwell, seconded by Mr. Brady, the foregoing Resolution was duly adopted.

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

Nays: Greenspan


County Council Vice-President

4/23/2014
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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