

County Council of Cuyahoga County, Ohio

Resolution No. R2016-0206

Sponsored by: **County Executive Budish**

A Resolution approving an agreement with City of Cleveland for the period 8/1/2015 - 7/31/2035 for the purpose of distributing alcohol and cigarette excise tax proceeds; authorizing the County Executive to execute the agreement and all other documents consistent with this Resolution; and declaring the necessity that this Resolution become immediately effective.

WHEREAS, pursuant to Resolution No. R2014-0002 adopted by this Council on January 28, 2014, this Council caused to be submitted to the electors of Cuyahoga County at the special election on May 6, 2014 the question of whether to extend an excise tax on alcohol and cigarette sales for the purpose of paying the costs of constructing, renovating, improving, or repairing sports facilities and reimbursing the county for costs incurred by the county in the construction of sports facilities; and,

WHEREAS, that ballot measure received a majority affirmative vote of the electors of Cuyahoga County and, consequently, the taxes thereby levied (the "County Excise Tax") went into effect beginning August 1, 2015; and,

WHEREAS, pursuant to Resolution No. R2015-0210 adopted by this Council, Cuyahoga County issued County Excise Tax revenue bonds in the aggregate principal amount of \$60,485,000 pursuant to Ohio Revised Code Chapters 133 and 307 for the purpose of paying the costs of constructing, renovating, improving or repairing sports facilities and for the purpose of paying any capitalized interest on the Bonds; and,

WHEREAS, the County Executive desires to enter into an agreement with the City of Cleveland for the purpose of equitably distributing the County Excise Tax; and,

WHEREAS, it is necessary that this resolution become immediately effective in order that critical services provided by Cuyahoga County can continue and to provide for the usual, daily operation of a County agency.

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

SECTION 1. That the Cuyahoga County Council hereby approves the attached agreement with City of Cleveland for the period 8/1/2015 - 7/31/2035 for the purpose

of distributing the County Excise Tax proceeds to pay the costs of constructing, renovating, improving or repairing sports facilities.

SECTION 2. That the County Executive is authorized to execute the attached agreement and all other documents consistent with this Resolution.

SECTION 3. To the extent an exemption from competitive bidding is needed, it is hereby granted.

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: (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.

SECTION 5. It is found and determined that all formal actions of this Council relating to the adoption of this Resolution were adopted in an open meeting of the 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 of the Ohio Revised Code.

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

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

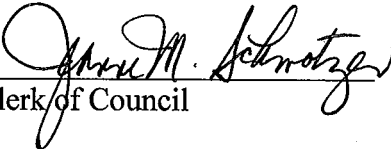
Nays: None

Dean P. Brady
County Council President

12/14/2016
Date

Ann B. B.
County Executive

12-14-16
Date


Clerk of Council

12/13/2016
Date

First Reading/Referred to Committee: November 15, 2016
Committee(s) Assigned: Committee of the Whole

Legislation Substituted in Committee: November 29, 2016

Committee Report/Second Reading: November 29, 2016

Journal CC024
December 13, 2016

ALLOCATION AGREEMENT

THIS ALLOCATION AGREEMENT (this "Agreement"), is made and entered into as of November __, 2016 (the "Effective Date"), by and among the COUNTY OF CUYAHOGA, OHIO (the "County"), a county and political subdivision in and of the State of Ohio (the "State") and duly organized and validly existing under and by virtue of the Constitution and laws of the State and its Charter, and the CITY OF CLEVELAND, OHIO (the "City"), a political subdivision of the State duly organized and validly existing under and by virtue of the Constitution and laws of the State and its Charter.

RECITALS

1. Pursuant to Resolution No. R2014-0002, adopted by the Council of the County on January 28, 2014 (the "County Excise Tax Resolution"), the Council of the County caused to be submitted to the electors of the County at the special election on May 6, 2014, the question of whether excise taxes shall continue to be levied by the County on spirituous liquor, beer, wine and other beverages and cigarettes sold in the County for 20 years beginning August 1, 2015, for the purpose of paying the cost of constructing, renovating, improving or repairing sports facilities and reimbursing the County for costs incurred by the County in the construction of sports facilities.

2. Prior to that special election, officials of the County sought the endorsement and support of officials of the City for the passage of the continuation of the levee of the excise taxes, and officials of the City, including the Mayor and the President of the Council of the City, provided that endorsement and support, based in part on the assurance from officials of the County that the proceeds of the extended excise taxes would be allocated to fund improvements to First Energy Stadium, Progressive Field and Quicken Loans Arena, each as more fully defined below (the "Sports Facilities").

3. That ballot measure received a majority affirmative vote of the electors of the County at that special election, and, consequently, the taxes thereby levied (as more fully defined below, the "County Excise Taxes") went into effect beginning August 1, 2015.

4. The County and the City now desire to memorialize and elaborate upon their agreement to allocate the proceeds of the County Excise Taxes.

TERMS OF AGREEMENT

In consideration of the foregoing Recitals and other good and valuable consideration received to the full satisfaction of each of them, the parties, intending to be legally bound, hereby agree as follows:

Section 1. Defined Terms. Unless otherwise defined herein or unless the context indicates a different intent, the following capitalized words and terms used in this Agreement shall have the following meanings:

"Additional Bonds" means any Bonds issued on a parity with the Series 2015 Bonds upon the terms and conditions set forth in the Indenture.

“Allocable Excise Taxes Proceeds” means all County Excise Taxes received by, or on behalf of, the County, less any tax collection costs deducted by the State of Ohio.

“Bond Fund” means the Bond Fund established under the Indenture.

“Bond Reserve Fund” means the Bond Reserve Fund established under the Indenture.

“City’s FES Account” means the account designated as the “COPs Improvement Account of the County Contribution Fund” held by U.S. Bank as Trustee (Account No. 12-1632G).

“City’s Share” means the Allocable Excise Tax Proceeds allocable to First Energy Stadium under this Agreement.

“County Excise Tax Bonds” means the Series 2015 Excise Tax Bonds and any Additional Bonds.

“County Excise Taxes” means the excise taxes on spirituous liquor, beer, wine and other beverages and cigarettes sold in the County, the question of the continuing levy of which for 20 years beginning August 1, 2015, for the purpose of paying the cost of constructing, renovating, improving or repairing sports facilities and reimbursing the County for costs incurred by the County in the construction of sports facilities, the Council, pursuant to the County Excise Tax Resolution, caused to be submitted to the electors of the County at the special election on May 6, 2014, at which special election that ballot measure received a majority affirmative vote of the electors of the County, with the consequence that the taxes thereby levied went into effect beginning August 1, 2015.

“Facilities Improvement Fund” means the Facilities Improvement Fund Established under the Indenture.

“FES Reserve Account” means the account of that name to be established in the Facilities Improvement Fund and funded and drawn upon pursuant to Section 4(a) of this Agreement.

“First Energy Stadium” means the stadium that is known as First Energy Stadium as of the date of this Agreement, as it may be improved from time to time and regardless of any change in its name that may occur during the term of this Agreement, together with all parking facilities, walkways, and other auxiliary facilities, real and personal property, property rights, easements, and interest that may be appropriate for, or used in connection with, the operating of that facility.

“First Energy Stadium Account” means the First Energy Stadium Account to be established in the Facilities Improvement Fund pursuant to the Indenture and this Agreement.

“First Energy Stadium Bonds” means any Additional Bonds issued by the County at the request of the City to fund costs of improvements to First Energy Stadium.

“Indenture” means the Trust Indenture, between the County and Trustee, dated as of December 1, 2015, as the same has been and may be supplemented and amended from time to the time.

“Progressive Field” means the ballpark that is known as Progressive Field as of the date of this Agreement, as it may be improved from time to time and regardless of any change in its name that may occur during the term of this Agreement, together with all walkways, and other auxiliary facilities, real and personal property, property rights, easements, and interest that may be appropriate for, or used in connection with, the operating of that facility.

“Quicken Loans Arena” means the arena that is known as Quicken Loans Arena as of the date of this Agreement, as it may be improved from time to time and regardless of any change in its name that may occur during the term of this Agreement, together with all walkways, and other auxiliary facilities, real and personal property, property rights, easements, and interest that may be appropriate for, or used in connection with, the operating of that facility.

“Series 2015 Excise Tax Bonds” means the County’s \$60,485,000 Excise Tax Revenues Bonds, Series 2015 (Sports Facilities Improvement Project).

“Sports Facilities” means First Energy Stadium, Progressive Field and Quicken Loans Arena.

“Trustee” means U.S. Bank National Association, as trustee under the Indenture.

Section 2. Allocable Excise Taxes Proceeds. The Allocable Excise Taxes Proceeds, from the commencement of their levy and collection on August 1, 2015 and throughout the period of their levy and collection, shall be allocated equally among the Sports Facilities in accordance with this Agreement. Specifically, one-third of all Allocable Excise Taxes Proceeds and of each receipt thereof shall be allocated to First Energy Stadium and disbursed to fund improvements to First Energy Stadium under and in accordance with this Agreement.

(a) Interest Expense. The City’s Share will not be reduced to reflect required payments of interest on County Excise Tax Bonds other than any First Energy Stadium Bonds. To the extent that interest expenses paid on First Energy Stadium Bonds create a required use of Allocable Excise Tax Proceeds, those interest expenses will be allocated to the City’s Share.

(b) Interest Earned. The Allocable Excise Taxes Proceeds will include any interest earned on the County Excise Taxes receipts prior to their disbursement (including interest earned on the County Excise Taxes receipts while on deposit in the Facilities Improvement Fund), other than interest earned on the Bond Fund or the Bond Reserve Fund established under the Indenture. The City’s Share will not include any interest earned on the proceeds of County Excise Tax Bonds (or on moneys in the Bond Fund or the Bond Reserve Fund attributable to such Bonds) except to the extent that such proceeds derive from or relate to First Energy Stadium Bonds.

Section 3. Accounting of Allocable Excise Tax Proceeds.

(a) Initial Accounting. Within ten (10) days of the date hereof, the County will deliver to the City a certification as to (i) the amounts of the Allocable Excise Taxes Proceeds received by or on behalf of the County (including by the Trustee) since August 1, 2015 through and including October 31, 2016; (ii) the dates, amounts, recipients and purposes of disbursements of the Allocable Excise Taxes Proceeds through and including October 31, 2016 (including any disbursements made for payment of debt service charges or for other funding requirements related to the Series 2015 Excise Tax Bonds); and (iii) the balance of the Allocable Excise Taxes Proceeds held by or for the County in the Facilities Improvement Fund or otherwise legally available for disbursement of the City's one-third share of the total amount certified pursuant to (i) above. If the date of this Agreement is after November 30, 2016, then the reference in this paragraph to October 31, 2016 shall be to November 30, 2016.

(b) Continuing Accounting. Within ten (10) days of the end of each calendar month beginning November 2016 and ending with the calendar month in which the final collection of the County Excise Taxes occurs, the County will deliver to the City a certification as to (i) the amounts of the Allocable Excise Taxes Proceeds received by or on behalf of the County (including by the Trustee) during the preceding calendar month; and (ii) the dates, amounts, recipients and purposes of disbursements of the Allocable Excise Taxes Proceeds during the preceding calendar month (including any disbursements made for payment of debt service charges or for other funding requirements related to the Series 2015 Excise Tax Bonds). If the date of this Agreement is after November 30, 2016, then the reference in this paragraph to November 2016 shall be to December 2016.

Section 4. Allocation and Disbursement of Allocable Excise Tax Proceeds.

(a) Initial Allocation; establishment and funding of FES Reserve Account. Simultaneously with the execution of this Agreement, the County will cause the Trustee to establish a First Energy Stadium Account in the Facilities Improvement Fund established under the Indenture. Within ten (10) days of the County's delivery of the certification described in Section 3(a)(i) above, the County will cause one-third (1/3) of the amount described in clause (a) of that certification to be deposited in the First Energy Stadium Account and will provide the City with written evidence of that deposit. Pending the full funding of the required deposit to the First Energy Stadium Account, the County shall not authorize, and the Trustee shall not allow, any other deposit or disbursement of Allocable Excise Taxes Proceeds (whether from the Facilities Improvement Fund or any other source) for any purpose (except for deposits to the Bond Fund or the Bond Reserve Fund that are required under the Indenture) other than the full funding of the required deposit to the First Energy Stadium Account.

Simultaneously with the County's initial deposit in the First Energy Stadium Account, the County will cause an additional \$2,000,000 in the Facilities Improvement Fund to be deposited in the FES Reserve Account, which the County shall have established with the Trustee in the Facilities Improvement Fund. After fully funding the Bond Fund and the Bond Reserve Fund and then making all deposits to the First Energy Stadium Account then required to be made under Section 4(b) of this Agreement, and before making any other uses of the moneys in or to be deposited to the Facilities Improvement Fund, the County shall cause an additional

\$1,000,000 to be deposited in the FES Reserve Account in each of the years 2017 and 2018. Moneys on deposit in the FES Reserve Account shall be used solely for the purpose of immediately curing any deficiency in any deposit in the First Energy Stadium Account pursuant to Section (4)(b) of this Agreement. If all required deposits to the First Energy Stadium Account required to be made under this Section 4 shall have been made at the time and in the full amount required without any draws having been made on the FES Reserve Account to fund any portion of any of those deposits, then promptly after the principal payment date for the Series 2015 Bonds occurring in December in each of the years 2023, 2024, 2025, and 2026, \$1,000,000 shall be released from the FES Reserve Account and be available for any lawful use of moneys in the Facilities Improvement Fund. Prior to those dates, the City reserves the right to authorize and direct a release of funds from the FES Reserve Account for transfer to the First Energy Stadium Account.

(b) Continuing Allocation. Within ten (10) days of the County's delivery of each certification required by Section 3(b)(i) above, the County will cause the City's Share thereof (i.e., one-third of the amount described in clause (i) of that certification) to be deposited in the First Energy Stadium Account if and to the extent not previously so deposited; provided, however, that if at the time of the delivery of any such certification, all then required deposits to the Bond Fund and the Bond Reserve Fund shall not yet have been made, then the City's Share shown on that certification, together with all previously accrued but unfunded City's Share amounts, shall accrue for funding at such time as all then required deposits to the Bond Fund and the Bond Reserve Fund shall have been made, at which point all subsequent deposits to the Facilities Improvement Fund shall be deposited in the First Energy Stadium Account until the full amount of all then accrued City's Share amounts have been funded. Pending the full funding of the required deposit to the First Energy Stadium Account, the County shall not authorize, and the Trustee shall not allow, any other deposit or disbursement of Allocable Excise Taxes Proceeds (whether from the Facilities Improvement Fund or any other source) for any purpose (except for deposits to the Bond Fund or the Bond Reserve Fund that are required under the Indenture) other than the full funding of the required deposit to the First Energy Stadium Account.

(c) Disbursement of Allocable Excise Tax Proceeds. Allocable Excise Taxes Proceeds allocated to and deposited in the First Energy Stadium Account will be disbursed only for the purpose of funding future improvements to First Energy Stadium or for the purpose of funding debt service on First Energy Stadium Bonds or other debt obligations that the City may issue or incur for the purpose of funding such improvements. The City represents and warrants that (i) the moneys in the City FES Account may be used only for the purpose of funding future improvements to First Energy Stadium that are qualified uses and permitted purposes for the Allocable Excise Taxes Proceeds, and (ii) the City will at all times and throughout the term of this Agreement maintain the City FES Account and the restrictions on the use of the moneys therein to conform to and comply with the preceding clause (i). At the time of the initial deposit or deposits to the First Energy Stadium Account described in Section 4(a) above and at the time of each subsequent deposit or deposits described in Section 4(b) above, the County will cause the Trustee to transfer the full balance in the First Energy Stadium Account to the City FES Account based upon the City's foregoing representations and warranties and without the requirement of subsequent requests or requisitions from the City. Before the end of each month following the month in which the initial such deposit to the City FES Account occurs, the City will provide a

written report to the County regarding the amounts in which and purposes for which moneys in the City FES Account were disbursed and applied during the preceding month and the balance in the City FES Account at the end of the preceding month. In the event of the issuance of any First Energy Stadium Bonds as described in Section 5 below, the foregoing requirements for deposits to the First Energy Stadium Account and transfers to the City FES Account will be adjusted to reflect the requirement of deposits of a portion of the City's Share to the Bond Fund or the Bond Reserve Fund.

Section 5. Issuance of Bonds. The City and the County agree that the City shall have the right to request the County to issue First Energy Stadium Bonds from time to time, subject to the requirements for the issuance of the Additional Bonds in the Indenture. The City acknowledges and agrees that the authority to authorize and issue Bonds resides exclusively with the County. The County agrees that it will not unreasonably withhold or deny its approval of any such request from the City for the issuance of First Energy Stadium Bonds, and that if it does withhold or deny any such approval, the County will deliver to the City a written statement of its reasons for doing so, and will base any decision to withhold or deny any such approval on factors other than the nature of the improvements to First Energy Stadium that the City is proposing to make, provided that they meet the requirements of the Indenture and the laws of the State under which the County Excise Taxes are levied. The County further agrees that it shall not authorize or effect the issuance of Bonds under the Indenture if (i) at the time of any such issuance, any required deposit to the First Energy Stadium Account or the FES Reserve Account under Section 4 hereof shall not have been made at the time and in the full amount required; and (ii) after the date of delivery of such Bonds, the payment of the projected Bond Service Charges on all Bonds then outstanding, would require the allocation of more than one-third of reasonably projected Allocable Excise Tax Receipts to the payment of improvements for any one particular sports facility. The County will provide advance written notice to the City of at least sixty (60) days of any issuance of Additional Bonds, and the City shall have the right to object to any such issuance if the City reasonably demonstrates to the County, at least thirty (30) days prior to any issuance, that the payment of Bond Service Charges on such Additional Bonds would impair the County's ability to effect and achieve the continued allocation of the Excise Tax Proceeds in compliance with this Agreement.

Section 6. Miscellaneous.

(a) Term of the Agreement. Unless otherwise terminated by written instrument of the City and the County, this Agreement shall be and remain in full force and effect from the date of its delivery and throughout the period of time that the County Excise Taxes are collected.

(b) Notices. All notices, certificates, requests or other communications hereunder will be in writing and will be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, and addressed to the appropriate address listed below:

As to the County: County of Cuyahoga, Ohio
2079 East Ninth Street
Cleveland, Ohio 44115
Attention: County Executive

With a copy to Director of Law

As to the City: City of Cleveland, Ohio
601 Lakeside Avenue
Cleveland, Ohio 44114
Attention: Director of Finance

With a copy to Director of Law

The County and the City, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications will be sent. Except as otherwise provided herein, the mailing of any notice will be deemed complete upon deposit of that notice in the mail and the giving of any notice by any other means of delivery will be deemed complete upon receipt of the notice by the delivery service.

(c) Extent of Covenants; No Personal Liability. All covenants, obligations and agreements of the County and the City contained in this Agreement will be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement will be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of the County or the City in other than his or her official capacity.

(d) Binding Effect. This Agreement will inure to the benefit of and will be binding in accordance with its terms upon the County, the City, and their respective permitted successors and assigns. This Agreement may be enforced only by the Parties, their assignees and others who may, by law, stand in their respective places.

(e) Amendments and Supplements. This Agreement may be amended only by written agreement of the County and the City duly authorized by their respective governing bodies.

(f) Execution Counterparts. This Agreement may be executed in any number of counterparts as may be convenient or necessary, and it will not be necessary that the signatures of both parties hereto be contained on any one counterpart hereof. Additionally, the parties hereto agree that for purposes of facilitating the execution of this Agreement, (a) the signature pages taken from the separate individually executed counterparts of this Agreement may be combined to form multiple fully executed counterparts and (b) a facsimile transmission will be deemed to be an original signature for all purposes. All executed counterparts of this Agreement will be deemed to be originals, but all such counterparts taken together or collectively, as the case may be, will constitute one and the same agreement.

(g) Severability If any term or condition of this Agreement, or application thereof to either party or in any circumstance, shall be invalid or unenforceable to any extent, then the

remainder of this Agreement and the application of such term or condition to the other party or other circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by applicable laws. That invalidity or unenforceability will not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement will be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

(h) Limitation of Rights With the exception of rights conferred expressly in this Agreement, nothing expressed or mentioned in or to be implied from this Agreement is intended or will be construed to give to any person other than the parties hereto any legal or equitable right, remedy, power or claim under or with respect to this Agreement or any covenants, agreements, conditions and provisions contained herein. This Agreement and all of the covenants, agreements, conditions and provisions hereof are intended to be, and are, for the sole and exclusive benefit of the parties hereto, as provided herein.

(i) Governing Law. This Agreement will be deemed to be a contract made under the laws of the State and for all purposes will be governed by and construed in accordance with the laws of the State.

(j) Facsimile Signatures. Signatures to this Agreement transmitted by facsimile shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver an execution original to this Agreement with its actual signature to the other party, but a failure to do so shall not affect the enforceability of this Agreement, it being expressly agreed that each party shall be bound by its own facsimile signature and shall accept the facsimile signature of the other party.

(k) Electronic Signature. The parties agree that all documents requiring signatures by the County may be executed by electronic means, and that the electronic signatures affixed by the County to this Agreement shall have the same legal effect as if that signature was manually affixed to a paper version of this Agreement. The parties also agree that the County is bound by the provisions of Chapter 304 of the Ohio Revised Code as it pertains to electronic transactions under Chapter 1306 of the Ohio Revised Code, and the County shall comply with its electronic signature policy.

IN WITNESS WHEREOF, the County and the City have caused this Agreement to be duly executed in their respective names, all as of the date first hereinbefore written.

This document approved for legal form and correctness

Robert Triozzi, Director of Law

By: _____

Name: _____

Title: _____

COUNTY OF CUYAHOGA, OHIO

By: _____
Armond Budish, County Executive

This document approved for legal form and correctness

Barbara A. Langhenry, Director of Law

By: _____
Chief Assistant Law Director

CITY OF CLEVELAND, OHIO

By: _____
Frank G. Jackson, Mayor