

County Council of Cuyahoga County, Ohio

Resolution No. R2016-0219

Sponsored by: County Executive Budish/Department of Development	A Resolution authorizing the issuance of not-to-exceed \$11,000,000.00 County of Cuyahoga, Ohio Economic Development Refunding Revenue Bonds, Series 2016, for the purpose of refunding the remaining outstanding principal amount of \$13,315,000.00 County of Cuyahoga, Ohio Economic Development Revenue Refunding Bonds, Series 2010 (Hathaway Brown School), which were issued to provide funds to assist Hathaway Brown School in the refinancing of costs of a “Project” within the meaning of Chapter 165, Ohio Revised Code; authorizing the execution and delivery of a loan agreement pertaining to the project and refinancing and an assignment securing the payment of the Bonds; 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.
Co-sponsored by: Councilmembers Conwell and Hairston	

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, is authorized and empowered, by virtue of the laws of the State of Ohio, including without limitation, Section 13 of Article VIII, Ohio Constitution, and Chapter 165 and Sections 9.98 through 9.983, as amended, Ohio Revised Code (collectively, the “*Act*”), (a) to issue its revenue bonds for the purpose of making a loan to assist in the financing or refinancing of costs of acquiring, constructing, equipping and improving a “project”, as defined in Section 165.01, as amended, Ohio Revised Code, (b) to enter into a loan agreement and to provide for “revenues” sufficient to pay the principal of and interest and any premium on those revenue bonds, (c) to secure those revenue bonds by an assignment, as provided herein, and (d) to enact this Resolution and to enter into the Assignment, the Loan Agreement

and the Bond Purchase Agreement, all as defined herein, upon the terms and conditions provided herein and therein; and

WHEREAS, Hathaway Brown School (the "*Borrower*") has requested that the County issue revenue bonds (the "*Bonds*") pursuant to the Act, to assist it in refinancing the costs of acquiring, constructing, equipping and improving real and personal property located within the boundaries of the County (as further described in Resolution 103708 of the Commissioners of the County adopted on September 8, 2010, the "*Project*"), by refunding the outstanding principal amount of the County's \$13,315,000.00 Adjustable Rate Economic Development Revenue Refunding Bonds, Series 2010 (Hathaway Brown School) (the "*Series 2010 Bonds*"), which were previously issued to refund the County's \$20,000,000 Adjustable Rate Economic Development Revenue Bonds, Series 1999 (Hathaway Brown School Project); and

WHEREAS, the Cuyahoga County Community Improvement Corporation ("*CIC*") previously certified to the County that the Project is in accordance with the plan for the industrial, commercial, distribution and research development of the County heretofore confirmed by legislative authority of the County pursuant to Section 1724.10, Ohio Revised Code; and

WHEREAS, the 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 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 Bonds will be payable solely from revenues of the Project and other monies available to the Borrower;

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 Loan Agreement with respect to the Bonds (the "*Loan Agreement*") between the County and the Borrower, 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. Determinations. This Council confirms the County's previous determinations, based on the representations of the Borrower including those contained in its application to the CIC, that:

(a) The Project constitutes a “project” within the meaning of that term as defined in Section 165.01(H), Ohio Revised Code;

(b) The Project is consistent with the purposes of Section 13 of Article VIII, Ohio Constitution, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State of Ohio; and

(c) Provision of the loan to refinance costs of the Project through a refunding of the Series 2010 Bonds will require the issuance, sale and delivery of the Bonds.

SECTION 3. Authorization of Bonds. It is hereby determined, based upon the representations of the Borrower, to be necessary to, and the County shall, issue, sell and deliver, as provided herein and in the Bonds and the Assignment and pursuant to the authority of the Act, the Bonds in the principal amount that shall be determined in the Bond Purchase Agreement not to exceed \$11,000,000, for the purpose of making a loan to assist the Borrower in refinancing the costs of acquiring, constructing, equipping and improving the Project and refunding the Series 2010 Bonds, including paying a portion of the costs of the issuance of the Bonds, all in accordance with the provisions of the (i) Bonds; (ii) the Loan Agreement; and (iii) the Assignment of Loan Agreement and Revenues (the “*Assignment*”) from the County to Key Government Finance, Inc. (the “*Purchaser*”) dated as of even date with the Loan Agreement.

SECTION 4. Terms and Provisions of the Bonds

(a) Bond Terms. The Bonds shall (i) be issued and secured under the terms of the and in the aggregate principal amount, not to exceed \$11,000,000, set forth in this Bond Legislation, the Bond Purchase Agreement, the Bonds, the Loan Agreement and the Assignment, (ii) be issued in the forms and shall be numbered and payable as provided in the Bonds and the Assignment, (iii) be designated “County of Cuyahoga, Ohio Economic Development Revenue Refunding Bonds, Series 2016 (Hathaway Brown School)”; (iv) be issuable only in fully registered form; (v) be exchangeable as set forth therein in authorized denominations; (vi) be numbered in a manner that will distinguish each Bond from each other Bond of that series and each other series; (vii) be dated the date the Bonds are issued; (viii) 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 or their date of delivery as set forth in the Bonds, at the rates to be set forth in the Bonds and in the Bond Purchase Agreement among the County, the Borrower and the Purchaser (the “*Bond Purchase Agreement*”), as applicable, and be payable on the Interest Payment Dates set forth in the Bonds; (ix) be subject to redemption, in accordance with the Bonds; and (viii) mature, subject to prior redemption as set forth above, on the dates set forth in the Bonds, the final maturity date of which shall not exceed December 1, 2035.

(b) Method of Payment; Paying Agents. The principal of and any premium and interest on the Bonds (the "*Bond Service Charges*") shall be payable as provided in the Bonds, the Assignment and the Loan Agreement without deduction for the services of any paying agent.

(c) Execution. The Bonds shall be signed by the County Executive and such signature may be a facsimile. Neither the County Executive, the members of this Council nor any person executing the Bonds shall be liable personally on the by reason of issuance thereof. In case the County Executive shall cease to be in office before the issuance or delivery of the 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.

SECTION 5. Sale of the Bonds. The Bonds are hereby sold and awarded to Key Government Finance, Inc. or its designee, as Purchaser, in accordance with the terms of this Resolution, at a purchase price equal to the aggregate principal amount of the Bonds to be issued. The sale of the Bonds to the Purchaser shall be conditioned upon the Purchaser's delivery of an investor acknowledgement letter to the County, or the inclusion of investor acknowledgement provisions in the Bond Purchase Agreement, in substantially the form attached thereto and on file with this Council. It is hereby determined that the purchase price and the manner of sale and the terms of the Bonds, as provided in this Resolution, the Assignment, the Loan Agreement, the Bonds and the Bond Purchase Agreement, 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 to establish the date, location, procedures and conditions for the delivery of the Bonds, and to take all steps necessary to effect due execution, authentication and delivery of the Bonds to the Purchaser under the terms of this Resolution, the Loan Agreement, the Assignment and the Bond Purchase Agreement.

SECTION 6. Loan and Terms Thereof. This Council authorizes and approves the loan of the Bond proceeds by the County to the Borrower pursuant to the terms of the Bonds, the Assignment, the Loan Agreement and the Bond Purchase Agreement, each substantially in the form now on file with the Clerk of this Council, to assist in financing the Project.

SECTION 7. Security for the Bonds. The Bonds shall be special, limited obligations of the County and the principal of and any premium and the interest on the Bonds shall be (i) payable solely from the revenues pledged therefor in the Assignment and (ii) secured as provided by the Assignment and the Loan Agreement.

Anything in this Resolution or the Bonds to the contrary notwithstanding, the Bonds do not and 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 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 Bonds will be payable solely from revenues of the Project and other monies available to the Borrower. The Bonds shall contain a statement to that effect and to the effect that the Bonds are payable solely from the sources specified in the Bonds, the Assignment and the Loan Agreement and from any other moneys paid by the Borrower or obtained by the Purchaser or successor bondholder upon the exercise of rights and remedies under the Loan Agreement.

SECTION 8. Covenants, Agreement and Approval of County. In addition to the other covenants of the County set forth in this Resolution, the Bonds, the Bond Purchase Agreement, the Assignment and the Loan Agreement (collectively, the "*Issuer Documents*"), the County further covenants and agrees as follows:

(a) Authority and Actions. The County is, and upon delivery of the Bonds will be, duly authorized by the laws of the State, particularly and without limitation the Act, to issue the 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 Bonds solely in the manner and from the sources and to the extent set forth herein, all as authorized by this Council. All actions on the part of the County for the issuance of the 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 Bonds shall 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 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. To the extent within its authority and control, the County will restrict the use of the proceeds of the Bonds in such manner and to such extent as is necessary so that the 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 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 Bonds setting forth the reasonable expectations of the County regarding the amount and use of all of the proceeds of the 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 Bonds.

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 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 federal income tax laws, the County may rely upon the advice of nationally recognized bond counsel that is provided to the County at the Borrower's expense.

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

(d) Tax Approval. A public hearing has been held with respect to the Project and the Bonds, a report of which has been submitted to this Council. Reasonable notice of that hearing was published in the *Plain Dealer*. This Council, and the County Executive by his signature herein, hereby approves the Bonds as the "applicable elected representative" pursuant to Section 147(f) of the Code.

SECTION 9. Issuer Documents. To provide for the issuance and sale of the Bonds and the consummation of the transactions contemplated herein, the County Executive 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, each Issuer Document, in substantially the respective forms thereof submitted to and approved by this Council and 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 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 10. Other Documents. The County Executive, 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 the Assignment, necessary or appropriate to perfect the assignments contemplated in the Assignment or the Loan Agreement and to consummate the transactions contemplated in the Issuer Documents, including the issuance of the Bonds. Those certifications and other instruments and documents include, without limitation, one or more reports on IRS Form 8038 (including Forms 8038-R and 8038-T), any other agreement, 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 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 11. Acknowledgement of Assignment. The County acknowledges that pursuant to the Assignment, the County will assign without recourse its rights under Loan Agreement to the Purchaser, except for Unassigned Issuer's Rights.

SECTION 12. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Resolution, or in the 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 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 Bonds.


SECTION 13. 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.

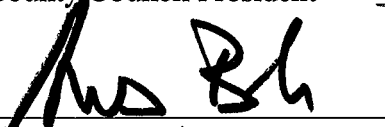
SECTION 14. Effective Date. This Resolution shall be in full force and effect immediately upon the signature of the County Executive, provided this Resolution receives the affirmative vote of eight members elected to Council. It is hereby determined to be necessary that this Resolution become immediately effective in order that financing may proceed in a timely manner.

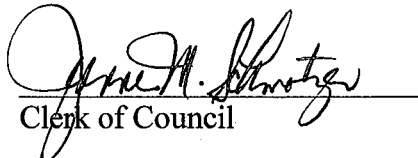
On a motion by Mr. Schron, seconded by Mr. Hairston, the foregoing Resolution was duly adopted.

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

Nays: None


County Council President 11/30/2016
Date


County Executive 12.1.16
Date


Clerk of Council 11/29/2016
Date

First Reading/Referred to Committee: November 15, 2016
Committee(s) Assigned: Economic Development & Planning

Additional Sponsorship Requested: November 22, 2016

Additional Sponsorship Requested on the Floor: November 29, 2016

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