

County Council of Cuyahoga County, Ohio

Resolution No. R2019-0062

<p>Sponsored by: County Executive Budish/ Department of Development</p> <p>Co-sponsored by: Councilmember Gallagher</p>	<p>A Resolution authorizing the execution and delivery of a First Supplemental Bond Purchase Agreement for \$11,955,000.00 County of Cuyahoga, Ohio, Economic Development Revenue Refunding Bonds, Series 2014 (The Cleveland Hearing and Speech Center Project); authorizing the execution and delivery of certain other documents and actions in connection with the First Supplemental Bond Purchase Agreement; and declaring the necessity that this Resolution become immediately effective.</p>
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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, has authorized the issuance and sale of refunding bonds (the “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, which Bonds were originally issued on March 31, 2014; and

WHEREAS, the Bonds are currently held by PNC Bank, National Association (in such capacity, the “Bank”), and the Bank, pursuant to negotiations with the Borrower, has agreed to extend the bank holding period for the Bonds to April 1, 2024 and has agreed to certain modifications to the interest rate provisions on the Bonds; and

WHEREAS, such extension of the bank holding period and such change to the interest rate provisions on the Bonds requires the amendment of the Bond Purchase Agreement dated as of March 1, 2014 (the “Bond Purchase Agreement”), among the County, the Borrower and the Bank; and

WHEREAS, at the request of the Borrower, this Council desires to authorize the County to amend the Bond Purchase Agreement pursuant to the First Supplemental Bond Purchase Agreement, dated March 29, 2019 (the “First Supplemental”) among the County, the Borrower and the Bank, in order to change, among other things, the interest rate on the Bonds and the period during which the Bank shall agree to hold the Bonds.

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

SECTION 1. First Supplemental Bond Purchase Agreement. This Council finds and determines that in order to provide for the changes to the Bond Purchase Agreement negotiated between the Borrower and the Bank, it is necessary for the parties to execute the First Supplemental containing such terms, which First Supplemental shall be substantially in the form presented to this Council and on file with the Clerk of this Council.

SECTION 2. Authorized Officers and County Documents. To provide for the consummation of the transactions contemplated herein, the County Executive, the Fiscal Officer, and the Director of Law, alone or in conjunction with any of the foregoing, are authorized and directed to execute and deliver, for and in the name and on behalf of the County, the First Supplemental, together with such other certificates, documents and instruments in connection with the execution and delivery of the First Supplemental as may be required, necessary or appropriate, including a tax compliance agreement and other documents necessary to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes (collectively, the “County Documents”), in substantially the respective forms thereof submitted to and approved by the County’s legal officer. The County 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 officer or officers executing the respective County Documents and by Bond Counsel and the County’s legal officer. The approval of those changes by such 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 County Documents by such 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 County Documents.

SECTION 3. Conflicting Resolutions Repealed. That all resolutions or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.

SECTION 4. No General Obligation. That this Board confirms that the Bonds are not general obligations, debt or bonded indebtedness of the County or the State of Ohio or any political subdivision thereof, and the holders or owners of the Bonds are not given the right, and have no right, to have excises or taxes levied by the County or the State of Ohio or any political subdivision thereof, for the payment of the debt service on such Bonds and that the right to such payment is limited to the revenues and funds pledged for such purpose under the Bond documents.

SECTION 5. Other Documents. The County Executive, the Fiscal Officer, the Director of Law, the Clerk of 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 consummate the transactions contemplated in the County Documents. 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 transaction. 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 6. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Resolution, or in the County 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 County Documents and the issuance of the Bonds.

SECTION 7. 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 8. 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 Ms. Simon, the foregoing Resolution was duly adopted.

Yeas: Brown, Simon, Baker, Miller, Tuma, Gallagher, Schron, Conwell, Jones and Brady

Nays: None

County Council President		Date
County Executive		Date
Deputy Clerk of Council		Date

First Reading/Referred to Committee: February 26, 2019
Committee(s) Assigned: Economic Development & Planning

Bond Counsel: Thompson Hine LLP

Additional Sponsorship Requested on the Floor: March 12, 2019

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