

County Council of Cuyahoga County, Ohio

Resolution No. R2019-0278

<p>Sponsored by: County Executive Budish/Fiscal Officer/Office of Budget and Management</p>	<p>A Resolution authorizing the issuance and sale of County of Cuyahoga, Ohio, Economic Development Revenue Refunding Bonds, Series 2020C (Gateway Arena Project), in the maximum aggregate principal amount of \$16,000,000.00, in one or more series, for the purpose of providing moneys to refund a certain portion of the County's Economic Development Revenue Refunding Bonds, Series 2010C, originally issued for the purpose of providing moneys to pay costs of a "Project" within the meaning of Chapter 165, Ohio Revised Code and to refund bonds previously issued for that purpose; authorizing the execution and delivery of a supplemental trust indenture securing the payment of the bonds; establishing funds of the County related thereto; authorizing the execution and delivery of a purchase agreement relating to the sale of the bonds and related agreements and certificates; authorizing and approving related matters; and declaring the necessity that this Resolution become immediately effective.</p>
--	---

WHEREAS, Cuyahoga County, the City of Cleveland (City), and the Gateway Economic Development Corporation of Greater Cleveland (Gateway) worked cooperatively toward the objective of providing in the County a new open-air stadium for professional baseball games, a new multi-purpose arena for professional basketball games and other special events, related parking facilities and site and common area improvements; and

WHEREAS, the County issued its economic development revenue bonds for the purpose stated above which were refunded by the proceeds of the County's Economic Development Revenue Refunding Bonds, Series 2010C (Gateway Arena Project) (the "Series 2010C Bonds"); and

WHEREAS, this Council finds and determines that it is in the best interest of the County to refund certain outstanding Series 2010C Bonds as set forth in the Final

Terms Certificate authorized herein (the “Refunded Bonds”) and to take other actions as necessary in connection therewith; and

WHEREAS, the Series 2020C Bonds shall be issued pursuant to the Master Indenture dated as of September 15, 1992 (the Original Indenture), as supplemented and amended from time to time, including a Sixth Supplemental Trust Indenture (the “Sixth Supplemental Trust Indenture”) in form and substance consistent with the terms of this Resolution as shall be conclusively evidenced by the execution thereof by the officials authorized herein to execute such document; and

WHEREAS, the County, as 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, Ohio Revised Code and, specifically Section 165.07 thereof, (a) to issue its revenue bonds for the purpose of refunding revenue bonds it previously issued to provide moneys to construct, improve, furnish or equip a “project,” as defined in Section 165.01, Ohio Revised Code, located within the boundaries of the County, when the refunding bonds will bear interest at a lower rate than the bonds to be refunded, when the interest cost of the refunding bonds computed to the absolute maturity will be less than the interest cost of the bonds to be refunded, or when the average life of the refunding bonds will be greater than the remaining average life of the bonds to be refunded, and (b) to adopt this Resolution and to enter into the Sixth Supplemental Trust Indenture, and related agreements, all as defined and provided herein, upon the terms and conditions provided herein and therein; and

WHEREAS, it is necessary that this Resolution become immediately effective in order that the usual daily operation of the County be continued and the public peace, health or safety of the County be preserved and for the further reason that funds be made available in a timely manner to achieve the benefits of refunding the Refunded Bonds.

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

Section 1. Definitions. Except as otherwise provided herein, words and terms used but not defined in this Resolution shall have the meanings given in the Indenture defined below. The following words and terms shall have the following

“Bond Counsel” means McDonald Hopkins LLC.

“Brownfield Indenture” means the Trust Indenture dated as of October 1, 1998, as amended by the First Supplemental Trust Indenture dated as of February 1, 2004, the Second Supplemental Trust Indenture dated as of September 1, 2010, and the Third Supplemental Trust Indenture authorized to be dated as of February 1, 2020, between the Issuer and the Brownfield Trustee and as further amended and supplemental from time to time.

“*Brownfield Revenues*” means the Net Project Revenues as defined in the Brownfield Indenture.

“*Brownfield Trustee*” means The Huntington National Bank, as trustee under the Brownfield Indenture, and its successors and assigns.

“*Book Entry Form*” or “*Book Entry System*” means, with respect to the Series 2020C Bonds, a form or system, as applicable, under which (i) physical Bond certificates in fully registered form are issued only to a Depository or its nominee as Holder, with the physical Bond certificates “immobilized” in the custody of the Depository and (ii) the ownership of book entry interests in Series 2020C Bonds and Bond Service Charges thereon may be transferred only through a book entry made by others than the County or the Trustee. The records maintained by others than the County or the Trustee constitute the written record that identifies the owners, and records the transfer, of book entry interests in the Series 2020C Bonds and Bond Service Charges thereon.

“*Closing Date*” means the date of original delivery of and payment of the purchase price for the Series 2020C Bonds.

“*Commercial Redevelopment Indenture*” means the Trust Indenture dated as of September 1, 2010, as amended and supplemented by the First Supplemental Trust Indenture authorized to be dated February 1, 2020, between the Issuer and the Commercial Redevelopment Trustee, as may be amended and supplemented from time to time.

“*Commercial Redevelopment Revenues*” means the Pledged Nontax Revenues as defined in the Commercial Redevelopment Indenture.

“*Commercial Redevelopment Trustee*” means the Huntington National Bank as trustee under the Commercial Redevelopment Indenture.

“*Continuing Disclosure Certificate*” means the certificate authorized by Section 6(c) hereof which, together with the agreements of the County set forth in that section, shall constitute the continuing disclosure agreement made by the County for the benefit of the holders and beneficial owners of the Series 2020C Bonds in accordance with the Rule.

“*County Executive*” means the County Executive of the County or his designee for the purposes of signing documents.

“*County Fiscal Officer*” means the Fiscal Officer including an interim or acting Fiscal Officer of the County or designee for purposes of signing documents.

“*Depository*” means The Depository Trust Company (a limited purpose trust company), New York, New York until a successor Depository shall have become such pursuant to the applicable provisions of the Fifth Supplemental Trust Indenture and, thereafter, Depository shall mean the successor Depository. Any Depository shall be a securities depository that is a clearing agency under federal law operating and

maintaining, with its participants or otherwise, a Book Entry System to record ownership of book entry interests in the Series 2020C Bonds or Bond Service Charges thereon, and to effect transfers of book entry interests in the Series 2020C Bonds.

“*Escrow Agreement*” means the Escrow Agreement established pursuant to this Resolution.

“*Escrow Trustee*” means the Escrow Trustee appointed in the Escrow Agreement.

“*Final Terms Certificate*” means, with respect to the Series 2020C Bonds, the certificate or certificates authorized by Section 6 of this Resolution to be signed by the County Executive or County Fiscal Officer, setting forth and determining those terms or other matters pertaining to the Series 2020C Bonds and their issuance, sale and delivery as this Resolution provides may or shall be set forth or determined therein.

“*Flats Indenture*” means the Trust Indenture dated as of April 1, 2014 between the County and the Flats Trustee.

“*Flats Revenues*” means the Project Revenues as defined in the Flats Indenture.

“*Flats Trustee*” means The Huntington National Bank, as trustee under the Flats Indenture, and its successors and assigns.

“*Indenture*” means, collectively, the Master Indenture dated as of September 15, 1992, as amended and supplemented by the First Supplemental Trust Indenture, the Second Supplemental Trust Indenture, the Third Supplemental Trust Indenture, the Fourth Supplemental Trust Indenture, the Fifth Supplemental Trust Indenture, and the Sixth Supplemental Trust Indenture, and as the same may be further amended or supplemented from time to time.

“*Medical Mart/Convention Center Indenture*” means the Trust Indenture dated as of December 1, 2010 between the County and the Medical Mart/Convention Center Trustee.

“*Medical Mart/Convention Center Revenues*” means the Project Revenues as defined in the Medical Mart/Convention Center Indenture.

“*Medical Mart/Convention Center Trustee*” means U.S. Bank National Association as trustee under the Medical Mart/Convention Center Indenture, and its successors and assigns.

“*MetroHealth Payments*” means the payments received by the County pursuant to that certain Payment Agreement dated April 26, 2017 between the County and the Board of Trustees of the MetroHealth System.

“*Nontax Revenues*” means all moneys of the County that are not raised by taxation, to the extent available for the payment of bond service charges on the Bonds, including,

but not limited to, the following: (a) charges for services and payments received in reimbursement for services; (b) payments in lieu of taxes now or hereafter authorized by State statute; (c) fines and forfeitures; (d) fees from properly imposed licenses and permits; (e) investment earnings on any funds of the County that are credited to the County's General Fund; (f) proceeds from the sale of assets; (g) rental income; (h) grants from the United States of America and the State; (i) gifts and donations; and (j) the Revenues; provided that Nontax Revenues do not include Brownfield Revenues, the Commercial Redevelopment Revenues, the Medical Mart/Convention Center Revenues, the Westin Revenues, the Steelyard Revenues, the MetroHealth Payments or the Flats Revenues.

“Original Purchaser” means those purchasers of the Series 2020C Bonds identified in the Purchase Agreement for the Series 2020C Bonds.

“Purchase Agreement” means with respect to the Series 2020C Bonds, one or more Bond Purchase Agreements between the County and the Original Purchaser.

“Refunded Bonds” means, the portion of the County of Cuyahoga, Ohio, Taxable Economic Development Revenue Refunding Bonds, Series 2010C (Gateway Arena Project) as set forth in the Final Terms Certificate.

“Revenues” means Revenues as defined in the Indenture and further described in Section 8 hereof.

“Rule” means Rule 15c2-12 prescribed by the SEC pursuant to the Securities Exchange Act of 1934, as the same may be amended from time to time.

“Series 2020C Bonds” means the County of Cuyahoga, Ohio, Taxable Economic Development Revenue Refunding Bonds, Series 2020C (Gateway Arena Project), issued by the County pursuant to this Resolution and the Indenture.

“Sixth Supplemental Trust Indenture” means the Sixth Supplemental Trust Indenture dated as determined by the authorized official executing such document, between the County and the Trustee, as may be amended or supplemented from time to time.

“Steelyard Resolutions” means Resolution No. 2013-0199 adopted by the Council on September 24, 2013.

“Steelyard Revenues” means the Project Revenues as defined in the Steelyard Resolution.

“Trustee” means Bank of New York Mellon Trust Company, N.A., a national banking association organized and existing under the laws of the United States of America and duly qualified to exercise corporate trust powers in the State of Ohio, until a successor Trustee shall have become such pursuant to the applicable provisions of the Indenture, and thereafter “Trustee” shall mean the successor Trustee.

“*Westin Resolution*” means the Resolution No. R2013-0224 adopted by the Council on December 10, 2013.

“*Westin Revenues*” means the Project Revenues as defined in the Westin Resolution.

The captions and headings in this Resolution are solely for convenience of reference and do not define, limit or describe the scope or intent of any provisions or sections of this Resolution.

Section 2. Determinations by Council. This Council determines that: (i) the issuance of the Series 2020C Bonds for the purpose of refunding the Refunded Bonds to achieve economic savings is consistent with the requirements of Section 165.07 of the Act; and (ii) the issuance of the Series 2020C Bonds for that purpose is in furtherance of the purposes of the Act and will benefit the people of the County and of the State. Consistent with Section 165.031, in the resolution authorizing the Refunded Bonds, the County required that all wages paid to laborers and mechanics employed on the project financed by the Refunded Bonds be paid at prevailing rates of wages for the class of work called for, determined in accordance with the requirements of Ohio Revised Code Chapter 4115.

Section 3. Authorization of Series 2020C Bonds. It is necessary and proper and in the best interest of the County to, and the County shall issue the Series 2020C Bonds in an aggregate principal amount not to exceed \$16,000,000 for the purpose of providing moneys to refund the Refunded Bonds and pay costs and expenses relating to the issuance of the Series 2020C Bonds. The Series 2020C Bonds are to be designated “Taxable Economic Development Revenue Refunding Bonds, Series 2020C (Gateway Arena Project)”, or such other designation as specified in the Final Terms Certificate. The Series 2020C Bonds shall be payable and secured as provided herein.

The Series 2020C Bonds may be issued in one or more separate series, each bearing a distinctive designation, provided that the Series 2020C Bonds of each series satisfy the requirements of this Resolution and the Indenture. Separate series of Series 2020C Bonds may be issued at the same or different times. The Series 2020C Bonds of each series shall be designated as provided in the applicable Final Terms Certificate. A separate Final Terms Certificate may be delivered for each series. In each case there shall be included in the costs funded the costs of issuance of the Series 2020C Bonds and any required deposits to the Special Funds.

Section 4. Terms and Provisions of Series 2020C Bonds.

(a) General. The actual principal amount of Series 2020C Bonds to be issued shall be specified in the Final Terms Certificate. The actual interest rates to be borne by Series 2020C Bonds shall be determined in the Final Terms Certificate, provided that the weighted average fixed interest rate shall not exceed 6% per year.

The Series 2020C Bonds shall be issued pursuant to the terms of the Indenture. The Series 2020C Bonds (i) shall be issued in Authorized Denominations, as defined in the Indenture; (ii) shall be dated as provided in the Final Terms Certificate, but not more than 60 days prior to the Closing Date; (iii) shall bear interest payable on the dates provided in the Final Terms Certificate; (iv) shall be executed and delivered only in fully registered form, substantially as set forth in the Sixth Supplemental Trust Indenture; (v) shall be numbered in a manner determined by the Trustee which will distinguish each Series 2020C Bond from each other Series 2020C Bond; and (vi) shall be transferable and exchangeable for fully registered Series 2020C Bonds of the same series in Authorized Denominations as provided in the Indenture, subject to the limitations with respect to Series 2020C Bonds in Book Entry Form set forth in the Sixth Supplemental Trust Indenture.

(b) Maturity Dates. The Series 2020C Bonds shall mature serially or as term bonds subject to mandatory sinking fund redemption on such dates in the years and the respective principal amounts set forth in the Final Terms Certificate. The first principal payment date (whether by mandatory sinking fund redemption or stated maturity) as set forth in the Final Terms Certificate and determined to be necessary and advisable to the issuance and sale of the Series 2020C Bonds once in the best interests and financial advantages of the County, and the last principal payment date shall not be later than the latest maturity of the Refunded Bonds.

(c) Redemption Provisions. (i) The Series 2020C Bonds that may be issued as term bonds shall be subject to mandatory redemption prior to maturity, pursuant to the mandatory sinking fund redemption requirements of the Indenture, on such dates in the years and principal amounts to be specified in the Final Terms Certificate and to be consistent with the requirements of paragraph (b) of this Section, and (ii) if agreed to be the Original Purchaser, the Series 2020C Bonds may also be subject to redemption at the option of the County in accordance with the terms and conditions set forth in the Final Terms Certificate and in the Indenture; provided that the redemption price for the earliest optional redemption date shall not be greater than 102%; provided, however, that the Final Terms Certificate and the Indenture may provide that the Series 2020C Bonds are not optionally redeemable prior to maturity if it is determined in the Final Terms Certificate that such optional redemption would adversely affect the ability of the County to sell the Series 2020C Bonds at rates of interest acceptable to the County based on current market conditions for taxable, fixed-interest rate obligations such as the Series 2020C Bonds. If so designated in the Final Terms Certificate, the Series 2020C Bonds shall also be subject to redemption at the option of the County prior to their stated maturities at any time in whole or in part on any date, at a redemption price that will make the holders of such Series 2020C Bonds whole for the early redemption; if so, then the Final Terms Certificate shall specify the method by which the “make whole” redemption price shall be determined and shall condition the future exercise of a “make whole” redemption upon approval by Council after receiving a certification of the cost of such redemption from the Fiscal Officer. The Series 2020C Bonds shall be subject to extraordinary redemption prior to maturity, at the option of the County, in the event of damage or destruction of the Project or other extraordinary events as set forth in Article III of the Master Indenture.

(d) Execution. The Series 2020C Bonds shall be signed by the County Executive and County Fiscal Officer in the name of the County and in their official capacities, provided that any or all of those signatures may be facsimiles.

(e) Other Provisions. The representative of the County signing the Final Terms Certificate may determine and approve additional provisions with respect to the Series 2020C Bonds that are not inconsistent with this Resolution and the Indenture and that are set forth in the Final Terms Certificate or other duly executed certificate, including without limitation: whether the Series 2020C Bonds shall be secured by the Bond Reserve Fund and, if so, provisions for funding any additional deposit required to be made to the Bond Reserve Fund; provisions for credit enhancement or liquidity support from a municipal bond insurance company or bank or other organization.

Section 5. Book Entry. The Series 2020C Bonds shall only be issued to a Depository for use in a Book Entry System and (A) the Series 2020C Bonds shall be registered in the name of the Depository or its nominee, as Bolder, and immobilized in the custody of. the Depository; and (B) the Series 2020C Bonds as such shall not be transferable or exchangeable, except for transfer to another Depository or another nominee of a Depository and except as otherwise provided in the Indenture. If any Depository determines not to continue to act as a Depository for the Series 2020C Bonds for use in a Book Entry System, the County may attempt to have established a securities depository/book entry system relationship with another qualified Depository under the Indenture. If the County does not or is unable to do so, the County and the Trustee, after the Trustee has made provision for notification of the owners of beneficial interests in Series 2020C Bonds by appropriate notice to the then Depository, shall permit withdrawal of the Series 2020C Bonds from the Depository, and authenticate and deliver Bond certificates in fully registered form to the assignees of the Depository or its nominee. Such withdrawal, authentication and delivery shall be at the cost and expense (including costs of printing or otherwise preparing, and delivering, such replacement Series 2020C Bonds) of those persons requesting that authentication and delivery.

Section 6. Sale of the Series 2020C Bonds; Official Statement; Continuing Disclosure.

(a) Sale of the Series 2020C Bonds. The Series 2020C Bonds are awarded and sold to the Original Purchaser in accordance with this Resolution and the Final Terms Certificate. For the purpose of implementing the provisions of this Resolution, the County Executive or County Fiscal Officer, acting alone or together, each is authorized and directed to sign the Final Terms Certificate selling the Series 2020C Bonds to the Original Purchaser at the purchase price established therein; provided that the purchase price for the Series 2020C Bonds shall be not less than 97% of the aggregate original offering price to the public, plus any accrued interest on the Series 2020C Bonds. In the event that the Series 2020C Bonds are issued in more than one Series, the respective Series may be issued at different times, and a separate Final Terms Certificate may be signed and delivered for each Series. To evidence the sale and the terms and provisions thereof, the County Executive or County Fiscal Officer,

acting alone or together, shall sign and deliver the Purchase Agreement for the Series 2020C Bonds in form and substance consistent with the terms of this Resolution which shall be conclusively evidenced by the execution and delivery thereof by the County Executive or County Fiscal Officer.

It is hereby determined by this Council that the terms of the Series 2020C Bonds and the procedures for the sale thereof and the determination of the prices to be paid therefor, all as established in accordance with this Resolution, the Purchase Agreement and the Indenture, are and will be in the best interest of the County and in compliance with all legal requirements, as advised by Bond Counsel.

The County Executive and County Fiscal Officer are directed to make the necessary arrangements on behalf of the County to establish the date, location, procedure and conditions for the delivery of the Series 2020C Bonds to the Original Purchaser and to take all actions necessary to effect due signing, authentication and delivery of the Series 2020C Bonds under the terms of this Resolution, the Purchase Agreement and the Indenture.

(b) Official Statement. The County Executive and County Fiscal Officer, on behalf of the County and in their official capacities, are authorized and directed to (i) prepare or cause to be prepared, and make or authorize modifications, completions or changes of or supplements to, a disclosure document in the form of an official statement relating to the issuance of the Series 2020C Bonds of each series, (ii) determine, and to certify or otherwise represent, when each official statement is to be “deemed final” (except for permitted omissions) by the County as of its date or is a final official statement for purposes of SEC Rule 15c2-12(b)(1), (3) and (4), (iii) use and distribute, or authorize the use and distribution of preliminary and final official statements and any supplements thereto in connection with the original issuance of the Series 2020C Bonds, and (iv) complete and sign those official statements as so approved together with such certificates, statements or other documents in connection with the finality, accuracy and completeness of those official statements as they may deem necessary or appropriate.

(c) Agreement to Provide Continuing Disclosure. If deemed necessary and requested by the Original Purchaser, the County shall agree, as the only obligated person with respect to the Series 2020C Bonds under the Rule, to provide or cause to be provided such financial information and operating data, financial statements and notices, in such manner, as may be required for purposes of paragraph (b)(5) 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 County Executive or County Fiscal Officer is authorized to sign and deliver, in the name and on behalf of the County, the Continuing Disclosure Certificate in form and substance consistent with the terms of the Resolution as shall be conclusively evidenced by the execution and delivery thereof. The agreement formed, collectively, by this paragraph and that Certificate, shall be the County's continuing disclosure agreement for purposes

of the Rule, and its performance shall be subject to the availability of funds and their annual appropriation to meet costs the County would be required to incur to perform it.

Section 7. Allocation of Proceeds of the Series 2020C Bonds. The proceeds from the sale of the Series 2020C Bonds (including without limitation any accrued interest thereon) shall be allocated, deposited and credited to the appropriate funds and accounts therein as set forth in the Final Terms Certificate.

Section 8. Security for the Series 2020C Bonds. The Series 2020C Bonds shall be special obligations of the County, and the Bond Service Charges thereon, together with the Bond Service Charges on any other Series of Bonds issued under the Indenture, shall be payable equally and ratably solely from the Revenues as defined in the Indenture (the "Revenues") being (all captioned terms as defined in the Indenture): (i) Gateway's Net Revenues, (ii) the Loan Payments, including Primary Loan Payments and Coverage Loan Payments, (iii) proceeds of any Series of Bonds to be available to pay Bond Service Charges to the extent set forth in the Supplemental Indenture for that Series; (iv) Nontax Revenues of the County deposited in the County Pledge Fund, (v) all money and investments held by the Trustee in the Special Funds to the extent set forth in the Sixth Supplemental Trust Indenture, (vi) the Arena Bonds PILOT, (vii) payments made to the County or the Trustee by the City from its non-tax revenues pursuant to Section 4 of the Two-Party Agreement and deposited in the Auxiliary Pledge Fund, and (viii) all income and profit from the investment of the foregoing moneys. The payment of Bond Service Charges on the Series 2020C Bonds, together with the Bond Service Charges on any other Series of Bonds issued under the Master Indenture, shall be secured by the Indenture, by the pledge and assignment by the County to the Trustee under the Indenture of the Revenues and the pledge by the County under the Indenture of its Nontax Revenues.

The Series 2020C Bonds shall not represent or constitute a general obligation debt, or pledge of the faith and credit or the taxing power of the County or of the State or of any political subdivision, county, municipality or other local agency thereof. The Holders of the Series 2020C Bonds shall not have the right to have excises, ad valorem taxes or other taxes levied by the Council or the County, or by the State or the taxing authority of any other political subdivision, for the payment of Bond Service Charges on the Series 2020C Bonds.

The County has pledged its Nontax Revenues for the payment of Bond Service Charges on the Bonds, including any other Series of Bonds issued under the Indenture. In furtherance of that pledge, the County covenants that it shall appropriate in its annual appropriation measure for each calendar year and shall deposit in the County Pledge Fund held by the Trustee under the Indenture, Nontax Revenues in an amount sufficient to pay Bond Service Charges due and payable on the Bonds that year, less any amounts remaining in the County Pledge Fund after all Bond Service Charges for the prior calendar year have been paid. The County acknowledges that such covenant is enforceable by the courts by mandamus pursuant to Revised Code Chapter 165 and the Indenture.

Section 9. Covenant and Agreement of County Regarding Transcript.

In addition to the other covenants and agreements of the County in this Resolution and the Indenture, the County covenants and agrees that the Clerk, or other appropriate officer of the County, shall furnish to the Original Purchaser a true transcript of proceedings, certified by the Clerk or other officer, of (i) all proceedings had with reference to the issuance of the Series 2020C Bonds and (ii) any other information from the records of the County which may be necessary or appropriate to determine the regularity and validity of the issuance of the Series 2020C Bonds.

Section 10. Bond Documents. To provide for the issuance and sale of the Series 2020C Bonds and the consummation of the transactions contemplated therein and in this Resolution, the County Executive and County Fiscal Officer are authorized and directed, for and in the name and on behalf of the County, to execute, acknowledge and deliver, the Sixth Supplemental Trust Indenture in form and substance consistent with the terms of this Resolution which shall be conclusively evidenced by the execution and delivery thereof. The County Executive and County Fiscal Officer are authorized to enter into any amendments or supplements of the Revolving Loan Agreement, the Three-Party Agreement, the Two-Party Agreement, the Bed-Tax Agreement, the Intercreditor and Bailment Agreement or such other agreement or instrument that may be necessary or appropriate in connection with the issuance of the Series 2020C Bonds, the refunding of the Refunded Bonds and the securing of the Series 2020C Bonds as provided in the Indenture and that have been approved by the County's legal counsel and the officers executing those documents.

This Council determines that it is in the best interest of the County to refund the Refunded Bonds and to establish an escrow fund to pay principal of and interest on the Refunded Bonds through their first optional redemption date, and to pay the redemption price of the Refunded Bonds on such redemption date. The County Fiscal Officer is authorized and directed to give to the authenticating agent, bond registrar, transfer agent and paying agent for the Refunded Bonds, on or promptly after the Closing Date, written notice of the refunding, and the Refunded Bonds shall be defeased in accordance with the provisions of this Resolution, the Indenture, the Series 2010C Bonds, the bond legislation authorizing the Series 2010C Bonds and the Escrow Agreement.

The County Executive and the County Fiscal Officer shall sign and deliver, in the name and on behalf of the County and in their official capacities, the Escrow Agreement, in form and substance consistent with the Resolution as shall be conclusively evidenced by the execution and delivery thereof. The County Fiscal Officer shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Escrow Agreement, except to the extent paid by the Original Purchasers in accordance with the Purchase Agreement, from the proceeds of the Bonds to the extent available and otherwise from other funds lawfully available and that are appropriated or shall be appropriated for that purpose.

There is created under the Escrow Agreement a trust fund designated the "County of Cuyahoga Refunded 2010C Bonds Escrow Fund" that shall be held and

maintained by the Escrow Trustee in trust for the registered owners of the Refunded Bonds and is pledged for the payment of principal of and interest on the Refunded Bonds, all in accordance with the provisions of the Escrow Agreement. The County Fiscal Officer is hereby authorized and directed to pay to the Escrow Trustee for deposit in the Escrow Fund (i) any available funds on deposit in the Bond Retirement Fund for the payment of debt charges on the Refunded Bonds determined by the County Fiscal Officer to be applied for that purpose, (ii) any funds available for such payment in the Bond Reserve Fund or other funds or accounts established in connection with the issuance of the Refunded Bonds pursuant to the Indenture, and (iii) proceeds from the sale of the Series 2020C Bonds, except any accrued interest and any proceeds to be used for the payment of any expenses properly allocable to the refunding of the Refunded Bonds or the issuance of the Series 2020C Bonds as determined by the County Fiscal Officer, in the amount required, together with the funds referred to in (i), to provide for the defeasance of the Refunded Bonds. The funds and proceeds so paid to the Escrow Trustee are appropriated and shall be applied to pay principal of and interest on the Refunded Bonds, as provided in the Escrow Agreement.

The funds so deposited in the Escrow Fund shall be (a) held in cash to the extent that they are not needed to make the investments hereinafter described and (b) invested in direct obligations of, or obligations guaranteed as to payment by, the United States of America (within the meaning of Section 133.34(D) of the Revised Code) that mature or are subject to redemption by and at the option of the holder, in amounts sufficient, together with any uninvested cash in the Escrow Fund but without further investment or reinvestment, for the payment of (i) interest when due on the Refunded Bonds following the date of issuance of the Series 2020C Bonds through and including their call for redemption, and (ii) the principal of the Refunded Bonds upon their redemption by optional redemption as provided in the Escrow Agreement.

If U.S. Treasury Securities -- State and Local Government Securities are to be purchased for the Escrow Fund, the County Fiscal Officer, the Escrow Trustee and the Financial Advisor, or any of them individually, are hereby specifically authorized to file, on behalf of the County, subscriptions for the purchase and issuance of those U.S. Treasury Securities - State and Local Government Securities. If, in the judgment of the County Fiscal Officer, an open-market purchase of obligations described in (b) in the preceding paragraph for the Escrow Fund is in the best interest of and financially advantageous to this County, the County Fiscal Officer or any other officer of the County, on behalf of the County and in his official capacity, may purchase and deliver such obligations, engage the services of a financial advisor, bidding agent or similar entity for the purpose of facilitating the bidding, purchase and delivery of such obligations for, and any related structuring of, the Escrow Fund, execute such instruments as are deemed necessary to engage such services for such purpose, and provide further for the payment of the cost of obtaining such services, except to the extent paid by the Original Purchasers in accordance with the Purchase Agreement, from the proceeds of the Series 2020C Bonds to the extent available and otherwise from any other funds lawfully available and that are appropriated or shall be appropriated

for that purpose. Any actions heretofore taken by any of those officers in connection with the foregoing are hereby ratified and approved.

This Council further authorizes and directs the County Fiscal Officer to retain, on behalf of the County, the services of an independent public accounting firm to perform a verification of the sufficiency of amounts in the Escrow Fund to cause the Refunded Bonds to be deemed defeased as described in the Indenture.

Section 11. Authorization of Bond Rating; Credit Enhancement. If, in the judgment of the County Executive or County Fiscal Officer, the filing of an application for (i) a rating on the Series 2020C Bonds 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 the Series 2020C Bonds is in the best interest of and financially advantageous to the County, such determination shall be set forth in the Final Terms Certificate, and the County Executive or County Fiscal Officer is hereby authorized to prepare and submit any or all of those applications, to provide such information as may be required in support thereof and to provide further for the payment of the cost of such a rating or policy from funds to be appropriated for the purpose if and to the extent that such payment shall not be made by the Original Purchaser from the proceeds of the Series 2020C Bonds.

Section 12. Bond Counsel. This Council hereby retains the legal services of McDonald Hopkins LLC, as Bond Counsel to the County, in connection with the authorization, sale, issuance and delivery of the Series 2020C Bonds and the refunding of the Refunded Bonds, pursuant to the authority in Ohio Revised Code Section 165.02. In providing those legal services, as an independent contractor and in an attorney-client relationship, Bond Counsel shall not exercise any administrative discretion on behalf of the County in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, or of the County, or of any other political subdivision of the State, or the execution of public trusts.

Section 13. Other Documents. The County Executive, the County Fiscal Officer, the Director of Law, County Prosecutor, the Clerk, or such other officials of the County, as appropriate, are authorized and directed to (i) execute any documents, agreements (including an intercreditor agreement or amendment if necessary), certifications, financing statements, assignments and instruments which are necessary or appropriate to perfect the assignments set forth in the Indenture and to carry out the transactions contemplated in this Resolution, the Indenture, the Purchase Agreement, the Revolving Loan Agreement, the Three-Party Agreement, the Two-Party Agreement, the Bed Tax Agreement, and the Intercreditor and Bailment Agreement.

Section 14. Severability. Each section of this Resolution and each subdivision or paragraph of any section thereof is declared to be independent and the finding or holding of any section or any subdivision or paragraph of any section thereof to be invalid or void shall not be deemed or held to affect the validity of any other section, subdivision or paragraph of this Bond Legislation.

Section 15. Compliance with Open Meeting Requirements. It is found and determined that all formal actions of this Council 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 those formal actions, were in meetings open to the public in compliance with the law.

Section 16. 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: (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 Mr. Miller, the foregoing Resolution was duly adopted.

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

Nays: None

County Council President

Date

County Executive

Date

Clerk of Council

Date

First Reading/Referred to Committee: November 26, 2019

Committee(s) Assigned: Finance & Budgeting

Bond Counsel: McDonald Hopkins LLC

Legislation Substituted in Committee: December 9, 2019

Journal CC036
December 10, 2019