



AGENDA
CUYAHOGA COUNTY COMMITTEE OF THE WHOLE MEETING
TUESDAY, APRIL 1, 2014
CUYAHOGA COUNTY JUSTICE CENTER
COUNCIL CHAMBERS – 1ST FLOOR
2:00 PM

1. CALL TO ORDER

2. ROLL CALL

3. PUBLIC COMMENT RELATED TO AGENDA

4. ITEMS REFERRED TO COMMITTEE

- a) R2014-0082: A Resolution confirming the County Executive's appointment of Elise Hara upon her taking the oath of office as Cuyahoga County Director of Human Resources, and declaring the necessity that this Resolution become immediately effective.
- b) R2014-0100: A Resolution extending the term of Interim County Treasurer Jeannet Wright for up to an additional 90 days, or until July 18, 2014; and declaring the necessity that this Resolution become immediately effective.
- c) O2014-0008: A Resolution enacting the Cuyahoga County Voting Rights Law; updating the Cuyahoga County Equity Plan in Chapter 1101 of the Cuyahoga County Code in conformity therewith; and declaring the necessity that this Ordinance become immediately effective.
- d) R2014-0088: A Resolution approving a Qualified Management Agreement with Hilton Management LLC relating to management of a Convention Center Hotel; authorizing the County Executive to execute a Qualified Management Agreement, a Technical Services Agreement, a Pre-Opening Services Agreement, a Room-Block Agreement, and all other documents consistent with this Resolution; authorizing and approving related matters; and declaring the necessity that this Resolution become immediately effective.

- e) R2014-0089: A Resolution authorizing an amendment to the Design-Build Agreement with Turner/Ozanne/VAA A Joint Venture establishing a definitive guaranteed maximum price in the amount not-to-exceed \$_____ for design-build services for the Convention Center Hotel Project for the period 11/13/2013 - 9/1/2016; authorizing the County Executive to execute the contract and all other documents consistent with this Resolution; and declaring the necessity that this Resolution become immediately effective.

- f) R2014-0090: A Resolution providing for the acquisition by lease purchase of real property including a convention center hotel facility; authorizing a Lease Purchase Agreement with respect to the convention center hotel facility; authorizing and approving other documents relating to the convention center hotel facility and financing thereof; and declaring the necessity that this Resolution become immediately effective.

5. MISCELLANEOUS BUSINESS

6. PUBLIC COMMENT UNRELATED TO AGENDA

7. EXECUTIVE SESSION

- a) Imminent and/or pending litigation and Attorney-Client communications.

8. ADJOURNMENT

*In accordance with Section 108.01 of the Cuyahoga County Code, complimentary parking in the Huntington Park Garage will be available for the public on any day when the Council or any of its committees holds meetings. Please see the Clerk to obtain a parking pass.

County Council of Cuyahoga County, Ohio

Resolution No. R2014-0082

Sponsored by: Councilmembers Connally and Conwell	A Resolution confirming the County Executive's appointment of Elise Hara upon her taking the oath of office as Cuyahoga County Director of Human Resources, and declaring the necessity that this Resolution become immediately effective.
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WHEREAS, pursuant to Article IX, Section 9.06 of the Charter of Cuyahoga County, the Director of Human Resources shall be appointed by the County Executive, subject to the confirmation by Council; and,

WHEREAS, Article IX, Section 9.06 of the Charter provides for the powers, duties, and qualifications of the Director of Human Resources; and,

WHEREAS, the County Executive has nominated Elise Hara, Esq. for the appointment to the position of Director of Human Resources; and,

WHEREAS, the Council conducted a confirmation hearing which was noticed to the public and held in an open meeting on _____, 2014.

WHEREAS, the Council elects to confirm the County Executive's appointment of Elise Hara, Esq. to the position of Director of Human Resources; and,

WHEREAS, it is necessary that this Resolution become immediately effective in order that Charter requirements can be complied with and critical services provided by Cuyahoga County can continue, and to provide for the usual, daily operation of County government.

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

SECTION 1. That the Cuyahoga County Council hereby confirms the appointment of Elise Hara, Esq. to serve as the Director of Human Resources upon her taking the oath of office.

SECTION 2. 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 eight members of Council, this Resolution shall become immediately effective.

County Council of Cuyahoga County, Ohio

Resolution No. R2014-0100

Sponsored by: County Executive FitzGerald	A Resolution extending the term of Interim County Treasurer Jeannet Wright for up to an additional 90 days, or until July 18, 2014; and declaring the necessity that this Resolution become immediately effective.
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WHEREAS, pursuant to Article II, Section 2.03(2) of the Charter of Cuyahoga County, the County Executive may appoint interim officers to serve as any departmental director, as Inspector General, or in any position outlined in Article V of this Charter without confirmation by the Council for a period not to exceed 120 days; and,

WHEREAS, Interim County Treasurer Jeannet Wright's term is currently set to expire on April 19, 2014; and

WHEREAS, it is necessary to extend the term of Interim County Treasurer Jeannet Wright for up to an additional 90 days, or until July 18, 2014;

WHEREAS, it is necessary that this Resolution become immediately effective in order that Charter requirements can be complied with and critical services provided by Cuyahoga County can continue, and to provide for the usual, daily operation of County government.

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

SECTION 1. That the Cuyahoga County Council hereby extends the term of Interim County Treasurer Jeannet Wright for up to an additional 90 days, or until July 18, 2014.

SECTION 2. 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 eight members of Council, this Resolution shall become immediately effective.

SECTION 3. 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 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 _____, seconded by _____, the foregoing Resolution was duly adopted.

Yeas:

Nays:

County Council President

Date

Clerk of Council

Date

In accordance with Rule 6B of the Rules of Council, legislation was added to the agenda by parliamentary motion: March 25, 2014

First Reading/Referred to Committee: March 25, 2014

Committee(s) Assigned: Committee of the Whole

Journal _____
_____, 20__

County Council of Cuyahoga County, Ohio

Ordinance No. O2014-0008

Sponsored by: County Executive FitzGerald and Councilmember Simon	An Ordinance enacting the Cuyahoga County Voting Rights Law; updating the Cuyahoga County Equity Plan in Chapter 1101 of the Cuyahoga County Code in conformity therewith; and declaring the necessity that this Ordinance become immediately effective.
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WHEREAS, as recognized by the U.S. Court of Appeals for the 6th Circuit in *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463 (6th Cir. 2008), the citizens of Cuyahoga County experienced substantial problems and long lines trying to exercise their constitutional right to vote during the 2004 general election; and,

WHEREAS, the voting problems experienced by the County's citizens in 2004 are not a mere accident, but are the byproduct of unique conditions and needs of large, urban counties; and,

WHEREAS, Cuyahoga County is Ohio's largest county with a population of 1,280,122 according to the 2010 U.S. Census; and,

WHEREAS, of Ohio's 88 counties, Cuyahoga County is home to approximately 11 percent of Ohio's population of 11,536,502 according to the 2010 U.S. Census; and,

WHEREAS, a significant percentage of the County's citizens often change residential addresses a number of times in between elections. Almost 35 percent of Cuyahoga County's citizenry reside in rental housing. Furthermore, the County's Office of Homeless Services estimates that approximately 5,157 homeless citizens above the age of 18 live in the County who are entitled to cast their ballots in accordance with *Northeast Ohio Coalition for the Homeless v. Husted*, 2012 WL 2711393 (S.D. Ohio July 9, 2012); and,

WHEREAS, 94 percent of the voting precincts in Cuyahoga County are in multi-precinct locations, which significantly raises the possibility of relegating the County's citizens to provisional ballots when they vote on Election Day; and,

WHEREAS, the County found a real solution to these voting problems through a combination of mechanisms working together, including (1) the ability of its citizens, especially citizens who change residential addresses multiple times in between elections, to register to vote or update their voting registration and cast

their vote on the same day during early in person voting at the Board of Elections; (2) early in person voting at the Board of Elections during after hours, the weekends, especially Sundays, and the Monday before the election; and (3) mailing the vote by mail applications to its citizens with postage-prepaid return envelopes to promote early voting and voting by mail; and,

WHEREAS, the citizens of Cuyahoga County have come to expect and rely on the fact that they automatically receive their requests for ballots to vote by mail, with postage-prepaid return envelopes, for every election; and,

WHEREAS, these solutions proved successful, and the County reduced the number of voting precincts available on Election Day; and,

WHEREAS, by the adoption of Ohio Senate Bills 205, 216, and 238, and Secretary of State Directive 2014-06, the State has jettisoned the very solutions that proved successful in resolving elections problems in Cuyahoga County; and,

WHEREAS, Cuyahoga County has a substantial interest in ensuring that its citizens have adequate opportunities to cast their ballots in every election; and,

WHEREAS, Cuyahoga County also has a substantial interest in protecting the integrity of its own elections, including elections for its elected offices and issues that it places on the ballot by ensuring that the County's citizens have adequate opportunities to cast their ballot in elections that can be very close and impacted by the citizenry's ability to have adequate access to the ballot. For instance, in the 2010 primary election for County Council, the Republican primary for County Council District 1 was decided by just 96 votes, and the Democratic primary for County Council District 3 was decided by 201 votes; and,

WHEREAS, Cuyahoga County also has a substantial monetary interest in protecting the integrity of elections in Cuyahoga County through early in person voting and voting by mail. The County is the budgetary authority for the County's Board of Elections. The County appropriates the funds, and the County's Treasury pays the Board's expenses pursuant to R.C. 3501.17. If the State were to succeed in eliminating the solutions that proved very successful in Cuyahoga County and it results in voting problems as happened in 2004, such problems will trigger the need for investing additional financial resources, including potentially having to purchase additional voting machines and to spend money maintaining these additional machines, to avoid the problems in the future; and,

WHEREAS, In August 2012, Cuyahoga County adopted an Equity Plan, which is codified in Chapter 1101 of the Cuyahoga County Code; and,

WHEREAS, Section 1101.02(A) of the Cuyahoga County Code expressly provides that the County's objective is to remove barriers that stand in the way of the County's citizens:

Cuyahoga County embraces the ideal of one united community, committed to equality of opportunity for all of our citizens. As part of our equity plan, the county's objective is to remove barriers and enable all citizens in our community to have equal opportunities to fulfill their potential. The county will do so by ensuring that best practices in equity are being implemented by all county departments and agencies and by measuring progress on an ongoing basis. In addition, the county will work with community partners to influence other important domains that reinforce the economic, educational, health and social progress of Cuyahoga County and its citizens.

WHEREAS, the restrictions imposed by the State have a disparate impact on working men and women in Cuyahoga County; and,

WHEREAS, the County should do everything possible to remove barriers in the way of its citizens' right to vote to further its equity objectives; and,

WHEREAS, as federal courts have recognized, the establishment of so-called "uniform" procedures across the State that fail to take into account the unique needs of individual counties results in inequity and hurts the ability of citizens in large counties to vote. See, e.g., *Vanzant v. Brunner*, S.D.Ohio Case No. 1:10-cv-596; and,

WHEREAS, the right to vote is a constitutional right expressly stated in the 14th Amendment to the United States Constitution and strengthened with additional amendments thereafter: (a) the 15th Amendment to the United States Constitution provides that the "right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude;" (b) the 19th Amendment to the U.S. Constitution provides that the "right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex;" (c) the 24th Amendment to the United States Constitution provides that the "right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax;" and (d) the 26th Amendment to the United States Constitution provides that the "right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age;" and,

WHEREAS, Cuyahoga County provides many services to its citizens, including health and human services programs, homeless services programs, economic development programs, and educational programs; and,

WHEREAS, as a chartered county with home rule powers, County Council finds it necessary for the County to provide services to its citizens to facilitate their ability to vote; and,

WHEREAS, as a chartered county, Cuyahoga County is constitutionally entitled to rights and privileges, including a First Amendment right to communicate with its citizens and share information with them on how to vote and what forms to use when they want to apply to receive their ballots by mail; and,

WHEREAS, Senate Bill 205 restricts speech based on the identity of the speaker by not prohibiting individuals and private corporations from exercising their First Amendment right to communicate through sending applications to vote by mail, including postage-prepaid return envelopes, while attempting to restrict the ability of home rule entities from exercising the very same speech; and,

WHEREAS, the County Council finds it necessary to invoke the County's home rule powers and its constitutional First Amendment rights to establish a program to assist its citizens in exercising their right to vote through voter registration as well as mailing applications for voting by mail to its citizens, with postage-prepaid return envelopes.

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

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

SECTION 1. Title 12 of the Cuyahoga County Code is hereby enacted, and it shall read as follows:

Title 12: Voting Rights

Chapter 1201: Voting Rights Program

Section 1201.01. Establishment

There is hereby established the Cuyahoga County Voting Rights Program, which shall be administered by the County Executive through any appropriate departments, offices, and other agencies of county government.

Section 1201.02. Program Benefits

Notwithstanding any State law, regulation, or other directive to the contrary, the Cuyahoga County Executive is hereby expressly authorized to undertake all acts

necessary to promote voter participation and access to the ballot in Cuyahoga County by all citizens, including, but not limited to the following:

- a. Promoting and implementing voter registration at all levels of citizen interaction with County government, including through services provided by any division in the Department of Health and Human Services; and
- b. Promoting early voting and maximizing voter participation through voting by mail in Cuyahoga County, including, but not limited to, mailing applications to vote by mail, with postage-prepaid return envelopes, to all registered voters in Cuyahoga County.

SECTION 2. Section 1101.03 of the Cuyahoga County Code is hereby amended to add Section 1101.03(K) as follows:

J. Voting Rights and Access to the Ballot. Cuyahoga County will act to protect its citizens' right to vote. The County will promote voter registration at all levels of citizen interaction with County Government. The County will also promote early voting programs, including voting by mail programs. When deemed necessary and appropriate, the County's Department of Law will seek court intervention to protect access to the ballot by the County's citizens.

SECTION 3. It is necessary that this Ordinance become immediately effective for the usual daily operation of the County and the reasons set forth in the preamble. Provided that this Ordinance 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 4. It is found and determined that all formal actions of this Council relating to the adoption of this Ordinance 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 actions 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 _____, seconded by _____, the foregoing Ordinance was duly enacted.

Yeas:

Nays:

County Council President

Date

County Executive

Date

Clerk of Council

Date

First Reading/Referred to Committee: March 11, 2014

Committee(s) Assigned: Committee of the Whole

Journal _____
_____, 20__

County Council of Cuyahoga County, Ohio

Resolution No. R2014-0088

Sponsored by: County Executive FitzGerald/Department of Public Works	A Resolution approving a Qualified Management Agreement with Hilton Management LLC relating to management of a Convention Center Hotel; authorizing the County Executive to execute a Qualified Management Agreement, a Technical Services Agreement, a Pre-Opening Services Agreement, a Room-Block Agreement, and all other documents consistent with this Resolution; authorizing and approving related matters; and declaring the necessity that this Resolution become immediately effective.
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WHEREAS, the County intends to develop an approximately 600-room Convention Center Hotel on property immediately adjacent to and in support of the Cleveland Convention Center and Global Center for Health Innovation (“Hotel”); and

WHEREAS, because the County intends to finance the construction of the Hotel through bonds or other obligations the interest on which will be exempt from federal income taxes (“Obligations”), the management agreement for the Hotel must meet the requirements of the Internal Revenue Service for a Qualified Management Agreement (“QMA”); and

WHEREAS, the County desires to enter into a QMA for the Hotel with Hilton Management LLC, a Delaware limited liability company (“Hilton”), for an initial term commencing on the opening date of the Hotel, which is expected to be June 1, 2016 (the “Projected Opening Date”), and ending 15 years thereafter (the “QMA Term”); and

WHEREAS, under the QMA, Hilton is authorized to enter into contracts and agreements necessary to the operation of the Hotel in the name of and on behalf of the County; and

WHEREAS, under the QMA, revenues from the Hotel will be directed to payment of operating costs and expenses of the Hotel, including taxes, insurance, and certain services provided exclusively by Hilton, and to the Base Management Fee (defined below), all in accordance with a budget to be reviewed and approved periodically by the County; and

WHEREAS, excess revenues from the Hotel will be transferred, at least quarterly, by Hilton to the trustee of the Obligations, for deposit in the manner set forth in the trust agreement authorizing issuance of the Obligations; and

WHEREAS, the Base Management Fee paid to Hilton during the first five full-operating years of the QMA will be fixed at: \$639,000 for year one, \$823,000 for year two, \$1,066,000 for year three, \$1,201,000 for year four, and \$1,231,000 for year five; the Base Management Fee during any period prior to the first full-operating year will be prorated based on the Base Management Fee for the first full-operating year; after the fifth full-operating year, the Base Management Fee will be adjusted annually by the previous calendar year's CPI for the Cleveland MSA; the Base Management Fee will be paid monthly, in arrears; and

WHEREAS, the Owner's Priority Payment will be \$8,000,000 per year during the first three full-operating years of the QMA (which amount shall be prorated for the period beginning on the Projected Opening Date through December 31, 2016) and \$9,000,000 per year of the QMA thereafter; the Owner's Priority Payment will be directed to paying debt service on the Obligations; and

WHEREAS, provided that the Hotel meets certain criteria regarding revenue-per-available-rooms and the generation of net revenues sufficient to meet the Owner's Priority Payment, Hilton will be paid a Subordinate Management Fee; during the first five full-operating years of the QMA, the Subordinate Management Fee will be fixed at zero dollars for the period beginning on the opening date of the Hotel through the end of the second full-operating year and a total of \$1,484,000 for years three through five; after the fifth full-operating year, the Subordinate Management Fee will be adjusted annually by the previous calendar year's CPI for the Cleveland MSA; and

WHEREAS, the County reserves the right to terminate the QMA after the sixth full-operating year thereof in the event the Hotel does not meet certain performance tests and Hilton does not exercise its cure rights under the QMA; and

WHEREAS, prior to opening the Hotel, Hilton will provide certain technical services related to the architecture, engineering, and interior design of the Hotel under a Technical Services Agreement for the period beginning on the date of execution thereof through the Projected Opening Date (the "TSA Term"); and

WHEREAS, prior to opening the Hotel, Hilton will provide certain pre-opening services related to marketing, staffing, and other services necessary to opening-day operations of the Hotel under a Pre-Opening Services Agreement for the period beginning on the date of execution thereof through the Projected Opening Date (the "POSA Term"); and

WHEREAS, the County intends to enter into an agreement with Hilton to assure that, throughout the QMA Term, sufficient Hotel accommodations will be available to

attendees, participants, and planners of events being held in the Cleveland Convention Center and Global Center for Health Innovation (the “Room-Block Agreement”); and

WHEREAS, it is necessary that this Resolution become immediately effective in order that the time-sensitive project can continue proceeding on schedule and that critical services provided by Cuyahoga County can continue and to provide for the usual, daily operation of a County entity.

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

SECTION 1. That County Council hereby authorizes, and the County Executive is hereby authorized to conclude negotiations of, the following agreements with Hilton in relation to the Convention Center Hotel: a Technical Services Agreement, for an amount not to exceed \$350,000, including fees of approximately \$250,000 and the balance for reimbursable expenses, for the TSA Term; a Pre-Opening Services Agreement, for an amount not to exceed \$6,370,000, including fees of approximately \$300,000 and the balance for reimbursable expenses, for the POSA Term; a Room Block Agreement for the QMA Term; and a Qualified Management Agreement, for the QMA Term. To the extent that any exemptions are necessary under the County Code and contracting procedures, they shall be deemed approved by the adoption of this Resolution. The final negotiated terms of the agreements, including the actual maximum not to exceed amount and risk management protections, shall be subject to the approval of the Director of Law, but in no event shall the finally negotiated maximum amounts under the Technical Services Agreement and Pre-Opening Services Agreement exceed the herein authorized aggregate maximum of \$6,720,000.

SECTION 2. That the County Executive or his authorized designee is authorized to (a) take all actions, and to execute, acknowledge, deliver and/or file for record (as and where appropriate) (i) all documents and instruments necessary or desirable to facilitate and/or consummate the transactions contemplated hereby, including, but not limited to, the Technical Services Agreement, the Pre-Opening Services Agreement, the Qualified Management Agreement, and the Room-Block Agreement, and all documents to be executed by the County thereunder, and all financing-related documents (including but not limited to subordination, non-disturbance and attornment agreements, pledges, and security agreements), (ii) all other and further documents, instruments, certificates, agreements, amendments, assignments, subleases, consents, affidavits, certifications, disbursement authorizations, settlement statements, closing statements, proration statements, escrow agreements, escrow instructions, and notices, and (iii) amendments, modifications and supplements to any of the foregoing, that the County Executive may deem necessary or advisable in connection with the consummation of the transactions contemplated hereby, in all cases containing such terms and conditions not adverse to the County and approved by the County’s Director of Law or his authorized designee, (b) agree to such payments, prorations, credits, deposits, holdbacks, escrows and other

arrangements as may be necessary or advisable in connection therewith to facilitate and/or consummate such transactions, and (c) prosecute and/or defend any actions or proceedings that may be necessary or advisable relative to any of the foregoing matters.

SECTION 3. This Council finds and determines that all formal actions of this Council relating to the adoption of this Resolution were adopted in an open meeting of Council, and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements, including Ohio Revised Code Section 121.22.

SECTION 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: (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 _____, seconded by _____, the foregoing Resolution was duly adopted.

Yeas:

Nays:

County Council President

Date

County Executive

Date

Clerk of Council

Date

First Reading/Referred to Committee: March 25, 2014
Committee(s) Assigned: Committee of the Whole

Journal _____
_____, 2014

County Council of Cuyahoga County, Ohio

Resolution No. R2014-0089

Sponsored by: County Executive FitzGerald/Department of Public Works	A Resolution authorizing an amendment to the Design-Build Agreement with Turner/Ozanne/VAA A Joint Venture establishing a definitive guaranteed maximum price in the amount not-to-exceed \$_____ for design-build services for the Convention Center Hotel Project for the period 11/13/2013 - 9/1/2016; authorizing the County Executive to execute the contract and all other documents consistent with this Resolution; and declaring the necessity that this Resolution become immediately effective.
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WHEREAS, in Resolution No. R2013-0234, County Council made an award on RQ28353 to Turner/Ozanne/VAA A Joint Venture (“Design Builder”) and authorized the County Executive to negotiate, enter into, and execute an initial contract with the Design Builder in an amount not-to-exceed \$10,000,000.00; and,

WHEREAS, Council resolved in Resolution No. R2013-0234 that the final definitive contract/GMP amendment with Design Builder pursuant to RQ28353 shall be subject to Council’s approval; and,

WHEREAS, the GMP amendment with Design Builder provides for the design and construction of the new Convention Center Hotel for a total price that will not exceed \$_____ (the guaranteed maximum price or “GMP”), and it incorporates all services performed in connection with the Design-Build Agreement between the County and Design Builder dated November 13, 2013, authorized by County Council under Resolution No. R2013-0234;

WHEREAS, it is necessary that this Resolution become immediately effective in order that the time-sensitive project can continue proceeding on schedule and that critical services provided by Cuyahoga County can continue and to provide for the usual, daily operation of a County entity.

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

SECTION 1. County Council hereby authorizes a final definitive GMP amendment with Turner/Ozanne/VAA A Joint Venture for an amount not to exceed

\$ _____ as the design-builder for the Convention Center Hotel Project for the period November 13, 2013, through September 1, 2016, and authorizes the County Executive to conclude the negotiations with Turner/Ozanne/VAA A Joint Venture, and to enter into said contract. To the extent that any exemptions are necessary under the County Code and contracting procedures, they shall be deemed approved by the adoption of this Resolution. The final negotiated terms of the contract, including the actual maximum not-to-exceed amount and risk management protections, shall be subject to the approval of the Director of Law, but in no event shall the finally negotiated amount exceed the herein authorized maximum of \$ _____.

SECTION 2. The County Executive is authorized to execute the contract and all other related documents, as approved to legal form and correctness by the Director of Law or his designee, consistent with this Resolution.

SECTION 3. 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 4. 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 _____, seconded by _____, the foregoing Resolution was duly adopted.

Yeas:

Nays:

County Council President Date

County Executive Date

Clerk of Council Date

First Reading/Referred to Committee: March 25, 2014

Committee(s) Assigned: Committee of the Whole

Journal _____
_____, 2014

County Council of Cuyahoga County, Ohio

Resolution No. R2014-0090

Sponsored by: County Executive FitzGerald/Department of Public Works	A Resolution providing for the acquisition by lease purchase of real property including a convention center hotel facility; authorizing a Lease Purchase Agreement with respect to the convention center hotel facility; authorizing and approving other documents relating to the convention center hotel facility and financing thereof; and declaring the necessity that this Resolution become immediately effective.
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WHEREAS, in order to enhance the ability of the Cleveland Convention Center and Global Center for Health Innovation (the "Convention Center") to attract large meetings to the Convention Center and additional visitors to the region, the County intends to develop an approximately 600-room Convention Center Hotel on property immediately adjacent to and in support of the Convention Center ("Hotel"); and

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

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

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

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

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

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

D. Provide certain information relating to the Hotel project and the County to the Original Purchaser for inclusion in a disclosure document to be used in connection with the initial offering of the Certificates by the Original Purchaser; and

WHEREAS, it is necessary that this Resolution become immediately effective in order that the time-sensitive project can continue proceeding on schedule and that critical services provided by Cuyahoga County can continue and to provide for the usual, daily operation of a County entity.

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

SECTION 1. It is hereby determined that, for the reasons set forth in the preambles to this Resolution, and in furtherance of the cooperative activities identified in the Cooperative Agreement, the acquisition of the Lease Premises and the financing by the County of the convention center hotel facility pursuant to the Lease are in support the Convention Center and in furtherance of the County's interests.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 8. It is necessary that this Resolution become immediately effective for the usual daily operation of the County; the preservation of public peace, health, or safety in the County; and any additional reasons set forth in the preamble. Provided that this Resolution receives the affirmative vote of at least eight members of Council, it shall take effect and be in force immediately upon the earliest occurrence of any of the following: (i) its approval by the County Executive through signature, (ii) the expiration of the time during which it may be disapproved by the County Executive under Section 3.10(6) of the Charter, or (iii) its passage by at least eight members of Council after disapproval pursuant to Section 3.10(7) of the Charter. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

On a motion by _____, seconded by _____, the foregoing Resolution was duly adopted.

Yeas:

Nays:

County Council President Date

County Executive Date

Clerk of Council

Date

First Reading/Referred to Committee: March 25, 2014

Committee(s) Assigned: Committee of the Whole

Journal _____
_____, 2014