



**AGENDA**  
**CUYAHOGA COUNTY ECONOMIC DEVELOPMENT & PLANNING COMMITTEE MEETING**  
**MONDAY, AUGUST 22, 2011**  
**CUYAHOGA COUNTY JUSTICE CENTER**  
**COUNCIL CHAMBERS – 1<sup>ST</sup> FLOOR**  
**3:00 PM**

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF MINUTES FROM AUGUST 8, 2011 MEETING
4. PUBLIC COMMENT RELATED TO THE AGENDA
5. MATTERS REFERRED TO COMMITTEE
  - a) **R2011-0256**: A Resolution authorizing the issuance and sale of self-supporting housing revenue bonds in an amount not-to-exceed \$6,000,000.00 for Puritas Avenue Associates, L.P. for the purpose of rehabilitating, improving and equipping a housing facility for low and moderate income families; authorizing the execution and delivery of a loan agreement, bond purchase agreement, trust indenture and tax regulatory agreement; authorizing and approving the use and distribution of a disclosure document; approving related matters; and declaring the necessity that this Resolution become immediately effective.
  - b) **R2011-0257**: A Resolution authorizing the issuance and sale of self-supporting housing revenue bonds in an amount not-to-exceed \$5,000,000.00 for Helen S. Brown Apartments, L.P. for the purpose of rehabilitating, improving and equipping a senior housing facility for low and moderate income seniors; authorizing the execution and delivery of a loan agreement, bond purchase agreement, trust indenture and tax regulatory agreement; authorizing and approving the use and distribution of a disclosure document; approving related matters; and declaring the necessity that this Resolution become immediately effective.
  - c) **R2011-0258**: A Resolution authorizing an award on RQ20109 to Tri Mor Corporation in the amount of \$820,360.00 for the Year Two Pavement Maintenance Program: Apron A1, B reconstruction and Apron A2, C, D1

rehabilitation for the period 8/9/2011 - 6/6/2012; authorizing the County Executive to enter into a contract consistent with said award; and declaring the necessity that this Resolution become immediately effective.

- d) O2011-0039: An Ordinance establishing procedures governing the use by the County of alternate construction project delivery methods, including construction manager-at-risk, design-build and general contracting project delivery methods for public construction projects; and declaring the necessity that this Ordinance become immediately effective.

6. MISCELLANEOUS BUSINESS

7. OTHER PUBLIC COMMENT

8. ADJOURNMENT

In accordance with Ordinance No. O2011-0020, complimentary parking for the public will be available **beginning at 4:00 p.m.** on any day when the Council or any of its committees holds evening meetings. Please see the Clerk to obtain a parking pass.



## MINUTES

CUYAHOGA COUNTY ECONOMIC DEVELOPMENT & PLANNING COMMITTEE MEETING  
MONDAY, AUGUST 8, 2011  
CUYAHOGA COUNTY JUSTICE CENTER  
COUNCIL CHAMBERS – 1<sup>ST</sup> FLOOR  
3:00 PM

1. CALL TO ORDER

**The meeting was called to order by Chairman Schron at 3:01 p.m.**

2. ROLL CALL

**The Clerk called the roll. Committee members Schron, Gallagher, Greenspan and Rogers were in attendance and a quorum was determined. Councilmember Miller was also in attendance. Ms. Connally entered the meeting shortly after the roll call was taken. Mr. Brady and Mr. Germana were absent from the meeting.**

3. APPROVAL OF MINUTES FROM JULY 25, 2011 MEETING

**A motion was made by Ms. Connally, seconded by Mr. Greenspan and approved by unanimous vote to approve the minutes of the July 25, 2011 meeting.**

4. PUBLIC COMMENT RELATED TO THE AGENDA

**There was no public comment.**

5. MISCELLANEOUS BUSINESS

- a) Construction Reform Legislation Discussion – Mr. Jeff Appelbaum

**Mr. Jeff Appelbaum addressed the Committee regarding construction reform legislation that will be introduced at the next Council meeting as Ordinance No. O2011-0039.**

6. MATTERS REFERRED TO COMMITTEE

- a) R2011-0238: A Resolution authorizing the County Executive to enter into an agreement with City of Cleveland Heights in the amount not-to-exceed \$512,500.00 for lead hazard remediation for the period 7/1/2011 – 7/31/2014, and declaring the necessity that this resolution become immediately effective.

**Mr. Paul Herdeg, Housing Manager for the Department of Development, addressed the Committee regarding Resolution No. R2011-0238. Discussion ensued.**

**On a motion by Mr. Greenspan with a second by Mr. Rogers, Resolution No. R2011-0238 was considered and approved by unanimous vote to be referred to the full Council agenda under second reading suspension of rules.**

b) R2011-0239: A Resolution authorizing awards to various municipalities, in the total amount of \$1,150,000.00, for various municipal grant projects for the Neighborhood Stabilization Program for the period 7/12/2011 - 1/11/2013; authorizing the County Executive to enter into agreements consistent with said awards:

- 1) City of Bedford in the amount of \$150,000.00
- 2) City of Cleveland Heights in the amount of \$250,000.00
- 3) City of Lakewood in the amount of \$250,000.00
- 4) City of Shaker Heights in the amount of \$250,000.00
- 5) Village of Newburgh Heights in the amount of \$250,000.00

**Mr. Herdeg addressed the Committee regarding Resolution No. R2011-0239. Discussion ensued. Mr. Rogers requested further information to be forwarded to the Committee regarding this item.**

**On a motion by Chairman Schron with a second by Mr. Rogers, Resolution No. R2011-0239 was considered and approved by unanimous vote to be referred to the full Council agenda under second reading suspension of rules.**

c) R2011-0240: A Resolution authorizing awards to various municipalities, in the total amount of \$2,109,532.00, for various municipal grant projects for the Community Development Block Grant Program for the period 7/1/2011 - 12/31/2012; authorizing the County Executive to enter into agreements consistent with said awards:

- 1) City of Maple Heights for the Broadway Avenue Reconstruction Project in the amount of \$500,000.00
- 2) City of North Olmsted for the County Club Boulevard Streetscape Project in the amount of \$350,000.00
- 3) Village of Oakwood for the Richmond-Broadway Intersection Realignment Project in the amount of \$350,000.00
- 4) City of Parma Heights for the Ackley Boulevard Reconstruction Project Phase 2 in the amount of \$150,000.00
- 5) City of Bedford for the Historic Bedford Automobile Enhancement Project in the amount of \$150,000.00
- 6) City of Shaker Heights for the Gridley Triangle Park Improvements Project in the amount of \$120,000.00
- 7) City of Bay Village for the Senior Center ADA Improvements Project in the amount of \$49,900.00
- 8) City of Brooklyn for the Removing Barriers to Limited Mobility Seniors and Handicapped Individuals Project in the amount of \$93,312.00

- 9) City of Berea for the Polish Village Neighborhood Improvement Project Phase 2 in the amount of \$150,000.00
- 10) Village of Woodmere for the Police and Fire Department Building and Site Improvement Project in the amount of \$136,320.00
- 11) Village of Newburgh Heights for a Comprehensive Community Development Plan Update in the amount of \$30,000.00
- 12) City of Fairview Park for a Master Plan Update in the amount of \$30,000.00

**On a motion by Mr. Rogers with a second by Mr. Greenspan, Resolution No. R2011-0240 was considered and approved by unanimous vote to be referred to the full Council agenda under second reading suspension of rules.**

- d) R2011-0241: A Resolution authorizing the County Executive to enter into an amendment to Contract No. CE1000585-01 with United Labor Agency, Inc. for Employment Connection employer services for the period 7/1/2010 – 6/31/2011 to extend the time period to 6/30/2012 and for additional funds in the amount \$1,272,000.00; and declaring the necessity that this resolution become immediately effective.

**On a motion by Mr. Rogers with a second by Mr. Greenspan, Resolution No. R2011-0241 was considered and approved by unanimous vote to be referred to the full Council agenda under second reading suspension of rules.**

- e) R2011-0242: A Resolution authorizing the County Executive to enter into amendments to contracts with various providers for Employment Connection One-Stop operation and services to adult job seekers for the period 7/1/2010 - 6/30/2011 to extend the time period to 6/30/2012; and declaring the necessity that this resolution become immediately effective.
  - 1) Contract No. CE1000589-01 with Mature Services, Incorporated in the amount not-to-exceed \$101,825.00
  - 2) Contract No. CE1000590-01 with Towards Employment, Incorporated in the amount not-to-exceed \$250,000.00
  - 3) Contract No. CE1000591-01 United Labor Agency, Inc. in the amount not-to-exceed \$2,028,000.00

**On a motion by Mr. Greenspan with a second by Mr. Rogers, Resolution No R2011-0242 was considered and approved by unanimous vote to be referred to the full Council agenda under second reading suspension of rules.**

#### 7. OTHER PUBLIC COMMENT

**There was no public comment.**

#### 8. ADJOURNMENT

**With no further business to discuss the meeting was adjourned by Chairman Schron at 4:03 p.m., without objection.**

# County Council of Cuyahoga County, Ohio

## Resolution No. R2011-0256

Sponsored by: <b>County Executive FitzGerald/ Department of Development</b>	<b>A Resolution</b> authorizing the issuance and sale of self-supporting housing revenue bonds in an amount not-to-exceed \$6,000,000.00 for Puritas Avenue Associates, L.P. for the purpose of rehabilitating, improving and equipping a housing facility for low and moderate income families; authorizing the execution and delivery of a loan agreement, bond purchase agreement, trust indenture and tax regulatory agreement; authorizing and approving the use and distribution of a disclosure document; approving related matters; and declaring the necessity that this Resolution become immediately effective.
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**WHEREAS**, the County of Cuyahoga, Ohio (the “*County*”), a county and political subdivision in and of the State of Ohio (the “*State*”), is authorized and empowered by virtue of the laws of the State, including without limitation, Article VIII, Section 16 of the Ohio Constitution and Section 133.51 of the Ohio Revised Code (collectively, the “*Act*”), among other things, to: (i) acquire, finance, refinance, construct, renovate, improve and equip real and personal property to provide for senior housing and multifamily housing; (ii) issue its revenue bonds for the purpose of paying the costs thereof; (iii) enter into a loan agreement to provide for the loan of the proceeds of and revenues to pay the principal of and interest and any premium on those revenue bonds; (iv) secure those revenue bonds by the pledge and assignment of payments made to it under the loan agreement, and (v) adopt this Resolution, to enter into the Issuer Documents (as hereinafter defined), and to execute and deliver certain other statements, documents and instruments upon the terms and conditions provided in this Resolution and those documents and instruments; and

**WHEREAS**, this Council of the County of Cuyahoga, Ohio (the “*Council*”), pursuant to the foregoing authority and at the request of, and based upon the representations of, Puritas Avenue Associates Limited Partnership, an Ohio limited partnership (the “*Borrower*”), has determined that it is willing to authorize the issuance and sale of the County’s Housing Revenue Bonds, Series 2011 in the maximum principal amount of \$6,000,000 to finance costs of rehabilitating, improving and equipping real and personal property located in the City of Cleveland to be used as an affordable multifamily housing facility containing approximately 150 units, to be owned by the Borrower (the “*Project*”), and in connection with that issuance and sale, to adopt this Resolution, to enter into the

Issuer Documents and to execute and deliver certain other statements, documents and instruments upon the terms set forth in this Resolution and those documents and instruments; and

**WHEREAS**, the Bonds will be issued pursuant to the provisions of the Act and a Trust Indenture (the “*Indenture*”), by and between the County and The Huntington National Bank, as trustee (the “*Trustee*”); and

**WHEREAS**, the operation of the Project will be subject to the provisions of a Regulatory Agreement and Declaration of Restrictive Covenants by and among the County, the Trustee, and the Borrower (the “*Regulatory Agreement*”) and other tax-related agreements which are intended to ensure the excludability of interest on the Bonds from the gross income of the owners of the Bonds for federal income tax purposes; and

**WHEREAS**, the Bonds shall not represent or constitute a general obligation, debt or bonded indebtedness, or a pledge of moneys raised by taxation or the faith and credit of the County, the State or any political subdivision thereof, and the holders of the Bonds shall not be given and shall not have any right to have excises or taxes levied by this Council or the County, or the State or the taxing authority of any political subdivision thereof, for the payment of bond service charges or any other costs of the Project, and the Bonds will be payable solely from revenues of the Project and other monies available to the Borrower; and

**WHEREAS**, providing for the financing of the Project will confer a public benefit and serve the public interest by lowering the cost of maintaining, and expanding available housing opportunities for low and moderate income senior residents in the County, all in accordance with, and in furtherance of, the purposes of the Act.

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

**SECTION 1. Definitions and Interpretations.** All words and terms used herein as defined words and terms but not otherwise defined herein shall have the respective meanings given to them in the Indenture unless the context or use clearly indicates another or different meaning or intent:

“*Authorized Denominations*” means a denomination of \$5,000 or any whole multiple thereof.

“*Bond Counsel*” means the firm of Squire, Sanders & Dempsey (US) LLP or another firm of attorneys nationally recognized as having expertise with respect to the validity of obligations of states, political subdivisions and other public bodies and the treatment for federal income taxation of interest on those obligations.

“*Bond Purchase Agreement*” means the Bond Purchase Agreement among the Issuer, the Borrower and the Original Purchaser in connection with the sale and delivery of the Bonds.

“*Code*” means the Internal Revenue Code of 1986, the Treasury Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a section of the Code includes any applicable successor section or provision and the applicable Treasury Regulations, rulings, announcements, notices, procedures and determinations pertinent to that section.

“*County Executive*” means the County Executive of the County.

“*Depository*” means any 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 Bonds, and to effect transfers of book entry interests in the Bonds, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

“*Fiscal Officer*” means the Fiscal Officer of the County.

“*Issuer Documents*” means the Indenture, the Loan Agreement, the Regulatory Agreement and the Bond Purchase Agreement.

“*Loan Agreement*” means the Loan Agreement, dated as of the date of the Indenture, between the County and the Borrower.

“*Original Purchaser*” means The Sturges Company, Dublin, Ohio.

Any reference to this Council, the County or to its members or officers, or to other public officers, boards, commissions, departments, institutions, agencies, bodies or entities, shall include those which succeed to their functions, duties or responsibilities by operation of law and also those who at the time may legally act in their place.

Any reference to a section or provision of the Ohio Constitution or the Ohio Revised Code or other laws of the State shall include such section, provision and laws as may from time to time be amended, modified, revised or superseded, provided that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision if it constitutes in any way an impairment of the rights or obligations of the County, the Holders, the Trustee, this Resolution, the Bonds, or any other instrument or document entered into in connection with any of the foregoing.



**SECTION 2. Authorization of the Bonds.** Based upon the representations of the Borrower, this Council finds and determines that (A) it is necessary to, and the County shall, issue, sell and deliver, as provided and authorized herein and pursuant to the Act, self-supporting housing revenue bonds (the “Bonds”) of the County in an aggregate principal amount not to exceed \$6,000,000, for the purpose of paying (i) costs of rehabilitating, improving and equipping the Project, (ii) interest to accrue on the Bonds from their date and during the estimated construction and renovation period of the Project, and (iii) certain costs associated with the issuance of the Bonds; and (B) the Project and the financing thereof by the issuance of the Bonds will further the public purpose of better providing adequate housing in this County and the State and improving the economic and general well-being of the people of the County and the State. The Bonds shall be designated “County of Cuyahoga, Ohio Multifamily Housing Revenue Bonds, Series 2011 (Hawks Landing Apartments Project),” or such other designation as is set forth in the Indenture.

**SECTION 3. Terms and Provisions of the Bonds**

(a) Bond Terms. The Bonds shall (i) be issuable only in fully registered form and substantially as set forth in the Indenture; (ii) be exchangeable only for Bonds of the same series in Authorized Denominations, as provided in the Indenture; (iii) be numbered in a manner determined by the Trustee which will distinguish each Bond of a series from each other Bond of that series; (iv) be dated as set forth in the Indenture, provided that such date shall not be later than December 31, 2011; (v) bear interest from the most recent date to which interest has been paid or duly provided for, or if no interest has been paid or duly provided for, from their date of delivery, at the rates set forth in the Indenture, provided that the rates for the Bonds shall not exceed 7% per year (computed on a 360-day per year basis); (vi) payable on the interest payment dates set forth in the Indenture and the Indenture; (vii) be subject to optional redemption, extraordinary optional redemption and mandatory redemption, including mandatory sinking fund redemption, in accordance with the Indenture; and (viii) mature, subject to prior redemption as set forth above, on the dates set forth in the Indenture, the final maturity date of which shall not exceed 30 years from their date of delivery.

(b) Method of Payment; Paying Agents. The principal of and any premium and interest on the Bonds (the “*Bond Service Charges*”) shall be payable as provided in the Indenture without deduction for the services of any paying agent. The Trustee initially shall be paying agent for the Bonds and may designate additional paying agents as provided in the Indenture.

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

valid and sufficient for all purposes, the same as if he or she had remained in office until after that time.

(d) Book-Entry System. The Bonds are permitted, but not required, to be issued to the Depository for holding in a book-entry system as provided in the Indenture, as the official(s) or member(s) executing and delivering the Indenture shall approve in the manner described in and under authority of Section 8 hereof.

#### **SECTION 4. Sale of the Bonds.**

(a) Generally. The Bonds are sold and awarded to the Original Purchaser on such terms that are in accordance with the Act, are authorized or not inconsistent with this Resolution, are not materially adverse to the County, and as are provided for or specified in the Bond Purchase Agreement. The purchase price for the Bonds may not be less than 98% of the aggregate principal amount of the Bonds (or, if the Bonds are sold at any original issue discount, 98% of the amount resulting from the subtraction of the aggregate net original issue discount from the aggregate original principal amount of the Bonds), plus any interest accrued on Bonds from their date to their delivery date. The original issue discount, if any, shall not exceed in the aggregate 5%. The County Executive, or the Fiscal Officer at the direction of the County Executive, are authorized and directed to execute the Bond Purchase Agreement, in order to provide for the definitive terms and terms of sale and award to the Original Purchaser of the Bonds as provided in this Resolution, but in any event not later than December 31, 2011. The Bond Purchase Agreement shall not be inconsistent with this Resolution, and shall be approved by the County Executive, or the Fiscal Officer at the direction of the County Executive, their execution of the Bond Purchase Agreement to constitute conclusive approval, and a finding that the terms are not materially adverse to the County, on behalf of the County.

The County Executive, the Clerk of this Council and the Fiscal Officer are authorized and directed, alone or together, to make the necessary arrangements, as directed by the Trustee and upon the advice of Bond Counsel, with the Original Purchaser to establish the date, location, procedure and conditions for the delivery of the Bonds to the Original Purchaser. The County Executive is further authorized and directed to make the necessary arrangements for the printing of the Bonds and the execution, authentication and delivery of the Bonds to the Original Purchaser under the terms of this Resolution, the Indenture and the Bond Purchase Agreement.

(b) Official Statement. The County hereby consents to the use and distribution by the Original Purchaser of an offering document, in its preliminary and final forms, relating to the original issuance of the each series of Bonds. Except to the extent described in the Bond Purchase Agreement, the County has not confirmed, and assumes no responsibility for, the truthfulness, accuracy, completeness, sufficiency or fairness of any statements in the offering document, in its preliminary and final forms, or any amendments thereof or supplements

thereto, or in any reports, financial information, offering or disclosure documents or other information relating to the Original Purchaser, the Lender, the Trustee, the Project, the Borrower or the history, businesses, properties, organization, management, financial condition, market area or any other matter relating to the Borrower or contained otherwise in the offering document, or with respect to the Depository, any federally insured mortgage loan program, any investment agreements and the providers thereof, or the Original Purchaser.

**SECTION 5. Loan and Terms Thereof.** This Council authorizes and approves the loan of the Bond proceeds by the County to the Borrower pursuant to the terms of the Indenture, the Loan Agreement and the Regulatory Agreement, each substantially in the form now on file with the Clerk of this Council, to assist in financing the Project.

**SECTION 6. Security for the Bonds.** The Bonds shall be special, limited obligations of the County and the principal of and any premium and the interest on the Bonds shall be (i) payable solely from the revenues pledged therefor in the Indenture and (ii) secured by the trust estate identified in the Indenture.

Anything in this Resolution or the Bonds to the contrary notwithstanding, the Bonds do not and shall not represent or constitute a general obligation, debt or bonded indebtedness, or a pledge of moneys raised by taxation or the faith and credit of the County, the State or any political subdivision thereof, and the holders of the Bonds shall not be given and shall not have any right to have excises or taxes levied by this Council or the County, or the State or the taxing authority of any political subdivision thereof, for the payment of bond service charges or any other costs of the Project, and the Bonds will be payable solely from revenues of the Project and other monies available to the Borrower. The Bonds shall contain a statement to that effect and to the effect that the Bonds are payable solely from the sources specified in the Indenture and any amounts received by the Trustee pursuant to the Indenture and the Assignment, if any, and from any other moneys paid by the Borrower or obtained by the Trustee upon the exercise of rights and remedies under the Loan Agreement or Indenture.

**SECTION 7. Covenants and Agreement of County.** In addition to the other covenants of the County set forth in this Resolution and the Issuer Documents, the County further covenants and agrees as follows:

(a) Authority and Actions. The County is, and upon delivery of the Bonds will be, duly authorized by the laws of the State, particularly and without limitation the Act, to issue the Bonds, to execute and deliver the Issuer Documents and other instruments and documents to which it is a party, to provide the security for payment of the principal of and any premium or interest on the Bonds solely in the manner and from the sources and to the extent set forth herein, all as authorized by this Council and upon the advice of Bond Counsel. All actions on the part of the County for the issuance of the Bonds and the execution

and delivery of the Issuer Documents and such other instruments and documents have been or will be duly and effectively taken. The Bonds will be valid and enforceable special obligations of the County according to the terms thereof. Each duty of the County and of its officers and employees undertaken pursuant to the Bonds and the Issuer Documents, is a duty specifically enjoined by law upon the County and each of those officers and employees having authority thereunder or by provision of law to perform the duty, resulting from an office, trust or station, within the meaning of Section 2731.01, Ohio Revised Code, providing for enforcement by writ of mandamus.

(b) Arbitrage and Tax Compliance Provisions; Transcript. Upon the advice of Bond Counsel and to the extent within its authority and control, the County will restrict the use of the proceeds of the Bonds in such manner and to such extent as is necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code. The members of this Council, the County Executive, the Fiscal Officer or the Clerk of this Council or any other officer of the County having responsibility for the issuance of the Bonds, alone or in conjunction with the Borrower or any officer, employee or agent of or consultant to the Borrower, shall give an appropriate certificate of the County for inclusion in the transcript of proceedings for the Bonds setting forth the reasonable expectations of the County regarding the amount and use of all of the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on the Bonds.

Upon the advice of Bond Counsel, and to the extent within its authority and control, the County (i) will take, or require to be taken, all actions that are required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and (ii) will not knowingly take or authorize to be taken any actions that would adversely affect that exclusion under the provisions of the Code. The members of this Council, the County Executive, the Fiscal Officer and the Clerk of this Council and any other appropriate officers are hereby authorized and directed to take any and all actions and make or give such reports and certifications, as may be appropriate to assure such exclusions of that interest.

In its performance of these covenants, and other covenants of the County pertaining to federal income tax laws, the County may rely upon the advice of Bond Counsel.

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

(c) Further Assurances. To the extent within its authority and control, the County shall do all things and take all actions on its part necessary to comply with the obligations, duties and responsibilities on its part under the Issuer Documents.

Nothing herein or in the Issuer Documents shall be construed as requiring the County to operate the Project or to use any moneys from any source other than those provided in the Indenture and the Loan Agreement.

**SECTION 8. Issuer Documents.** To provide for the issuance and sale of the Bonds and the consummation of the transactions contemplated herein, the County Executive and the Fiscal Officer at the direction of the County Executive, alone or in conjunction with any of the foregoing, are authorized and directed to execute, acknowledge and deliver, for and in the name and on behalf of the County, each Issuer Document, in substantially the respective forms thereof submitted to and approved by this Council and the County's legal officer. The Issuer Documents are approved with any changes therein which are not inconsistent with this Resolution, are not adverse to the County, are permitted by the Act, and are approved by the member or members or officer or officers executing the respective Issuer Documents and by the County's legal officer. The approval of those changes by such member or members or officer or officers, and the character of those changes as not being adverse to the County, shall be evidenced conclusively by the execution and delivery of the respective Issuer Documents by such member or members or officer or officers. The Fiscal Officer is authorized to give any certifications that may be required under Ohio Revised Code Sections 5705.41 and 5705.44 with respect to any of the Issuer Documents.

**SECTION 9. Other Documents.** The County Executive, the President of the Council, the Fiscal Officer, the Clerk of the Council or any other officer of the County, alone or in conjunction with any of the foregoing, are authorized and directed to execute, deliver and, if applicable, file, for and in the name and on behalf of the County, any certifications, financing statements, assignments and other instruments and documents which are, in the opinion of the County's legal officer and Bond Counsel to the County, necessary or appropriate to perfect the assignments contemplated in the Indenture or the Loan Agreement and to consummate the transactions contemplated in the Issuer Documents, including the issuance of the Bonds. Those certifications and other instruments and documents include, without limitation, one or more reports on IRS Form 8038 (including Forms 8038-R and 8038-T), any other certifications and forms necessary or advisable under the Code and a certification by the Clerk of this Council of the transcript of proceedings relating to the issuance of the Bonds. The Borrower is hereby authorized and directed, upon the request or direction of the County, to file any such certifications or instruments that require filing.

**SECTION 10. Prevailing Wage Rates.** All laborers and mechanics employed on the Project shall, in accordance with policies heretofore established by the County, be paid at the residential prevailing rates of wages of laborers and mechanics for the classes of work called for by the Project, which wages shall be determined in accordance with the requirements of Section 176.05 and Chapter 4115, Ohio Revised Code, for determination of prevailing wage rates.

The Borrower shall comply, and shall require compliance by all contractors or subcontractors working on the installation of the Project, with all applicable requirements of Section 176.05 and Sections 4115.03 through 4115.16, Revised Code, including, without limitation obtaining or causing to be obtained, from the State its determination of the prevailing rates of wages to be paid for the class of work called for by the Project, and ensuring that all contractors and subcontractors receive notification of changes in prevailing wage rates as required under Section 4115.05, Revised Code. Concurrently with issuance of the Bonds and at such times as the County requests, the Borrower shall be required to provide the County with evidence, satisfactory to the County, that there has been compliance with the foregoing agreements. None of the requirements of this Section shall be applicable to the Borrower unless the Bonds are issued. The requirements of this Section are subject to preemption by any controlling federal law.

**SECTION 11. Tax Credit Allocation.** This Council hereby preliminarily finds and determines that the amount of tax credits to be allocated to the Project under Section 42 of the Code does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project. In making the foregoing determination, this Council has relied exclusively upon representations of the Borrower. The foregoing determinations shall not be construed to be a representation or warranty by this Council or the Issuer as to the feasibility or viability of the Project. This Council hereby authorizes and directs any member of this Council to make the foregoing determination again for and on behalf of this Council at the request of the Borrower, following receipt of supporting materials submitted by the Borrower to the Ohio Housing Finance Agency (“OHFA”) and either written representations of the Borrower or of the OHFA to the effect that (i) the amount of tax credits to be allocated to the Project under Section 42 of the Code does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project and (ii) the Project satisfies the requirements for the allocation of a housing credit dollar amount under OHFA’s qualified allocation plan. In reliance upon the representations of the Borrower, it is hereby found and determined that the Project satisfies the requirements for the allocation of a housing credit dollar amount under OHFA’s qualified allocation plan.

**SECTION 12. No Personal Liability.** No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Resolution, or in the Bonds, or in the Issuer Documents, or under any judgment obtained against the County or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be had against any officer or employee as such, past, present, or future, of the County, including any member of the Council, either directly or through the County, or otherwise, for the payment for or to the County or any receiver thereof, or for or to the Holder, or otherwise, of any sum that may be due and unpaid by the County upon any of the Bonds. Any and all personal liability of

every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer or employee, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to the County or any receiver thereof, or for or to the Borrower or the Holder, or otherwise, of any sum that may remain due and unpaid upon any Bond, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of the Issuer Documents and the issuance of the Bonds.

**SECTION 13.** A public hearing of this Council shall be held at a time and place to be properly noticed, for the purpose of hearing objections and/or public comment on the issuance said bonds.

**SECTION 14. Open Meeting.** This Council hereby finds and determines that all formal actions of this Council and its committees concerning and relating to the adoption of this resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including Section 121.22, Ohio Revised Code.

**SECTION 15. Effective Date.** This Resolution shall be in full force and effect immediately upon the signature of the County Executive, provided this Resolution receives the affirmative vote of eight members of Council. It is hereby determined to be necessary that this Resolution become immediately effective in order that the project may proceed in a timely manner.

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: August 9, 2011  
Committee(s) Assigned: Economic Development & Planning

Journal \_\_\_\_\_  
\_\_\_\_\_, 2011



# County Council of Cuyahoga County, Ohio

## Resolution No. R2011-0257

<p>Sponsored by: <b>County Executive FitzGerald/ Department of Development and Councilmember Rogers</b></p>	<p><b>A Resolution</b> authorizing the issuance and sale of self-supporting housing revenue bonds in an amount not-to-exceed \$5,000,000.00 for Helen S. Brown Apartments, L.P. for the purpose of rehabilitating, improving and equipping a senior housing facility for low and moderate income seniors; authorizing the execution and delivery of a loan agreement, bond purchase agreement, trust indenture and tax regulatory agreement; authorizing and approving the use and distribution of a disclosure document; approving related matters; and declaring the necessity that this Resolution become immediately effective.</p>
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**WHEREAS**, the County of Cuyahoga, Ohio (the “County”), a county and political subdivision in and of the State of Ohio (the “State”), is authorized and empowered by virtue of the laws of the State, including without limitation, Article VIII, Section 16 of the Ohio Constitution and Section 133.51 of the Ohio Revised Code (collectively, the “Act”), among other things, to: (i) acquire, finance, refinance, construct, renovate, improve and equip real and personal property to provide for senior housing and multifamily housing; (ii) issue its revenue bonds for the purpose of paying the costs thereof; (iii) enter into a loan or financing agreement to provide for the loan of the proceeds of and revenues to pay the principal of and interest and any premium on those revenue bonds; (iv) secure those revenue bonds by the pledge and assignment of payments made to it under the loan agreement, and (v) adopt this Resolution, to enter into the Issuer Documents (as hereinafter defined), and to execute and deliver certain other statements, documents and instruments upon the terms and conditions provided in this Resolution and those documents and instruments; and

**WHEREAS**, this Council of the County of Cuyahoga, Ohio (the “Council”), pursuant to the foregoing authority and at the request of, and based upon the representations of, Helen S. Brown Apartments, L.P., an Ohio limited partnership (the “Borrower”), has determined that it is willing to authorize the issuance and sale of the County's Housing Revenue Bonds, Series 2011 (Helen S. Brown Apartments Project) in the maximum principal amount of \$5,000,000 to finance costs of rehabilitating, improving and equipping real and personal property located in the City of Cleveland to be used as an affordable senior housing facility containing approximately 65 units, to be owned by the Borrower (the “Project”), and in connection with that issuance and sale, to adopt this Resolution, to enter into the Issuer Documents and to execute and deliver certain other statements, documents and instruments upon the terms set forth in this Resolution and those documents and instruments; and

**WHEREAS**, on October 7, 2010, the County held a public hearing and adopted an inducement resolution expressing its intent to issue tax exempt bonds to provide funding for the Project; and

**WHEREAS**, the Bonds will be issued pursuant to the provisions of the Act and a Trust Indenture (the “Indenture”), by and between the County and The Huntington National Bank, as trustee (the “Trustee”); and

**WHEREAS**, the operation of the Project will be subject to the provisions of a Tax Regulatory Agreement by and among the County, the Trustee, and the Borrower (the “Regulatory Agreement”) and other tax-related agreements which are intended to ensure the excludability of interest on the Bonds from the gross income of the owners of the Bonds for federal income tax purposes; and

**WHEREAS**, the Bonds shall not represent or constitute a general obligation, debt or bonded indebtedness, or a pledge of moneys raised by taxation or the faith and credit of the County, the State or any political subdivision thereof, and the holders of the Bonds shall not be given and shall not have any right to have excises or taxes levied by this Council or the County, or the State or the taxing authority of any political subdivision thereof, for the payment of bond service charges or any other costs of the Project, and the Bonds will be payable solely from revenues of the Project and other monies available to the Borrower; and

**WHEREAS**, providing for the financing of the Project will confer a public benefit and serve the public interest by lowering the cost of maintaining, and expanding available housing opportunities for low and moderate income senior residents in the County, all in accordance with, and in furtherance of, the purposes of the Act.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the County of Cuyahoga, Ohio, that:

**Section 1. Definitions and Interpretations.** All words and terms used herein as defined words and terms but not otherwise defined herein shall have the respective meanings given to them in the Indenture unless the context or use clearly indicates another or different meaning or intent:

“*Authorized Denominations*” means a denomination of \$5,000 or any whole multiple thereof.

“*Bond Counsel*” means Roetzel & Andress, A Legal Professional Association, Cleveland, Ohio.

“*Bond Purchase Agreement*” means the Bond Purchase Agreement between the County, the Original Purchaser and the Borrower.

“*Certificate of Award*” means the Certificate of Award to be executed in connection with the sale of the Bonds.

“*Code*” means the Internal Revenue Code of 1986, the Treasury Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a section of the Code includes any applicable successor section or provision and the applicable Treasury Regulations, rulings, announcements, notices, procedures and determinations pertinent to that section.

“*Continuing Disclosure Agreement*” means the Continuing Disclosure Agreement between the Borrower and the Trustee pursuant to which the Borrower agrees 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 by the Rule.

“*County Executive*” means the County Executive of the County.

“*Depository*” means any 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 Bonds, and to effect transfers of book entry interests in the Bonds, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

“*Financing Agreement*” means the Financing Agreement, dated as of the date of the Indenture, between the County and the Borrower.

“*Fiscal Officer*” means the Fiscal Officer of the County.

“*Issuer Documents*” means the Indenture, the Financing Agreement, the Regulatory Agreement, the Assignment, if any, and the Bond Purchase Agreement.

“*Original Purchaser*” means The Sturges Company, Dublin, Ohio.

“*Rule*” means Rule 15c2-12 prescribed by the SEC pursuant to the Securities Exchange Act of 1934, as amended.

Any reference to this Council, the County or to its members or officers, or to other public officers, boards, commissions, departments, institutions, agencies, bodies or entities, shall include those which succeed to their functions, duties or responsibilities by operation of law and also those who at the time may legally act in their place.

Any reference to a section or provision of the Ohio Constitution or the Ohio Revised Code or other laws of the State shall include such section, provision and laws as may from time to time be amended, modified, revised or superseded, provided that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision if it constitutes in any way an impairment of the rights or obligations of the County, the Holders, the Trustee, this Resolution, the Bonds, or any other instrument or document entered into in connection with any of the foregoing.

**Section 2. Authorization of the Bonds, Public Hearing.** Based upon the representations of the Borrower, this Council finds and determines that (A) it is necessary to, and the County shall, issue, sell and deliver, as provided and authorized herein and pursuant to the Act, self-supporting housing revenue bonds (the “Bonds”) of the County in an aggregate principal amount not to exceed \$5,000,000, for the purpose of paying (i) costs of rehabilitating, improving and equipping the Project, (ii) interest to accrue on the Bonds from their date and during the estimated construction and renovation period of the Project, and (iii) certain costs associated with the issuance of the Bonds; and (B) the Project and the financing thereof by the issuance of the Bonds will further the public purpose of better providing adequate housing in this County and the State and improving the economic and general well-being of the people of the County and the State. The Bonds shall be designated “County of Cuyahoga, Ohio Housing Revenue Bonds, Series 2011 (Helen S. Brown Apartments Project).”

**Section 3. Terms and Provisions of the Bonds**

(a) **Bond Terms.** The Bonds shall (i) be issuable only in fully registered form and substantially as set forth in the Indenture; (ii) be exchangeable only for Bonds of the same series in Authorized Denominations, as provided in the Indenture; (iii) be numbered in a manner determined by the Trustee which will distinguish each Bond of a series from each other Bond of that series; (iv) be dated as set forth in the Certificate of Award, provided that such date shall not be later than December 31, 2011; (v) bear interest from the most recent date to which interest has been paid or duly provided for, or if no interest has been paid or duly provided for, from their date or their date of delivery as set forth in the Certificate of Award, at the rates set forth in the Certificate of Award, provided that the rates for the Bonds shall not exceed 7% per year (computed on a 360-day per year basis); (vi) payable on the interest payment dates set forth in the Certificate of Award and the Indenture; (vii) be subject to optional redemption, extraordinary optional redemption and mandatory redemption, including mandatory sinking fund redemption, in accordance with the Certificate of Award and the Indenture, provided that the redemption price (not including accrued interest) shall not exceed 105% of the principal amount of the Bonds to be redeemed; and (viii) mature, subject to prior redemption as set forth above, on the dates set forth in the Certificate of Award and the Indenture, the final maturity date of which shall not exceed 45 years from their date of delivery.

(b) **Method of Payment; Paying Agents.** The principal of and any premium and interest on the Bonds (the “*Bond Service Charges*”) shall be payable as provided in the Indenture without deduction for the services of any paying agent. The Trustee initially shall be paying agent for the Bonds and may designate additional paying agents as provided in the Indenture.

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

nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in office until after that time.

(d) **Book-Entry System.** The Bonds are permitted, but not required, to be issued to the Depository for holding in a book-entry system as provided in the Indenture, as the official(s) or member(s) executing and delivering the Indenture shall approve in the manner described in and under authority of Section 8 hereof.

**Section 4. Sale of the Bonds.Generally.** The Bonds are sold and awarded to the Original Purchaser on such terms that are in accordance with the Act, are authorized or not inconsistent with this Resolution, are not materially adverse to the County, and as are provided for or specified in the Certificate of Award and the Bond Purchase Agreement. The purchase price for the Bonds may not be less than 98% of the aggregate principal amount of the Bonds (or, if the Bonds are sold at any original issue discount, 98% of the amount resulting from the subtraction of the aggregate net original issue discount from the aggregate original principal amount of the Bonds), plus any interest accrued on Bonds from their date to their delivery date. The original issue discount, if any, shall not exceed in the aggregate 5%. The County Executive or the Fiscal Officer, as designee of the County Executive, are authorized and directed to execute the Certificate of Award and the Bond Purchase Agreement, in order to provide for the definitive terms and terms of sale and award to the Original Purchaser of the Bonds as provided in this Resolution, but in any event not later than March 31, 2012. The Certificate of Award and the Bond Purchase Agreement shall not be inconsistent with this Resolution, and shall be approved by the County Executive or the Fiscal Officer, as designee of the County Executive, their execution of the Certificate of Award and the Bond Purchase Agreement to constitute conclusive approval, and a finding that the terms are not materially adverse to the County, on behalf of the County.

The County Executive and the Fiscal Officer, as designee of the County Executive, are authorized and directed, alone or together, to make the necessary arrangements, as directed by the Trustee and upon the advice of Bond Counsel, with the Original Purchaser to establish the date, location, procedure and conditions for the delivery of the Bonds to the Original Purchaser. The County Executive is further authorized and directed to make the necessary arrangements for the printing of the Bonds and the execution, authentication and delivery of the Bonds to the Original Purchaser under the terms of this Resolution, the Indenture and the Bond Purchase Agreement.

(a) **Official Statement.** The County hereby consents to the use and distribution by the Original Purchaser of an offering document, in its preliminary and final forms, relating to the original issuance of the Bonds. Except to the extent described in the Bond Purchase Agreement, the County has not confirmed, and assumes no responsibility for, the truthfulness, accuracy, completeness, sufficiency or fairness of any statements in the offering document, in its preliminary and final forms, or any amendments thereof or supplements thereto, or in any reports, financial information, offering or disclosure documents or other information relating to the Original Purchaser, the Trustee, the Project, the Borrower or the history, businesses, properties, organization, management,

financial condition, market area or any other matter relating to the Borrower or contained otherwise in the offering document, or with respect to the Depository, any federally insured mortgage loan program, any investment agreements and the providers thereof, or the Original Purchaser.

**Section 5. Loan and Terms Thereof** This Council authorizes and approves the loan of the Bond proceeds by the County to the Borrower pursuant to the terms of the Indenture, the Financing Agreement and the Regulatory Agreement, each substantially in the form now on file with the Clerk of this Council, to assist in financing the Project.

**Section 6. Security for the Bonds** The Bonds shall be special, limited obligations of the County and the principal of and any premium and the interest on the Bonds shall be (i) payable solely from the revenues pledged therefor in the Indenture and (ii) secured by the trust estate identified in the Indenture.

Anything in this Resolution or the Bonds to the contrary notwithstanding, the Bonds do not and shall not represent or constitute a general obligation, debt or bonded indebtedness, or a pledge of moneys raised by taxation or the faith and credit of the County, the State or any political subdivision thereof, and the holders of the Bonds shall not be given and shall not have any right to have excises or taxes levied by this Council or the County, or the State or the taxing authority of any political subdivision thereof, for the payment of bond service charges or any other costs of the Project, and the Bonds will be payable solely from revenues of the Project and other monies available to the Borrower. The Bonds shall contain a statement to that effect and to the effect that the Bonds are payable solely from the sources specified in the Indenture and any amounts received by the Trustee pursuant to the Indenture and the Assignment, if any, and from any other moneys paid by the Borrower or obtained by the Trustee upon the exercise of rights and remedies under the Financing Agreement or Indenture.

**Section 7. Covenants and Agreement of County**. In addition to the other covenants of the County set forth in this Resolution and the Issuer Documents, the County further covenants and agrees as follows:

(a) **Authority and Actions**. The County is, and upon delivery of the Bonds will be, duly authorized by the laws of the State, particularly and without limitation the Act, to issue the Bonds, to execute and deliver the Issuer Documents and other instruments and documents to which it is a party, to provide the security for payment of the principal of and any premium or interest on the Bonds solely in the manner and from the sources and to the extent set forth herein, all as authorized by this Council and upon the advice of Bond Counsel. All actions on the part of the County for the issuance of the Bonds and the execution and delivery of the Issuer Documents and such other instruments and documents have been or will be duly and effectively taken. The Bonds will be valid and enforceable special obligations of the County according to the terms thereof. Each duty of the County and of its officers and employees undertaken pursuant to the Bonds and the Issuer Documents, is a duty specifically enjoined by law upon the County and each of those officers and employees having authority thereunder or by provision of law to perform the duty, resulting from an office, trust or station,

within the meaning of Section 2731.01, Ohio Revised Code, providing for enforcement by writ of mandamus.

**(b) Arbitrage and Tax Compliance Provisions; Transcript.**

Upon the advice of Bond Counsel and to the extent within its authority and control, the County will restrict the use of the proceeds of the Bonds in such manner and to such extent as is necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code. The members of this Council, the County Executive, the Fiscal Officer or the Clerk of this Council or any other officer of the County having responsibility for the issuance of the Bonds, alone or in conjunction with the Borrower or any officer, employee or agent of or consultant to the Borrower, shall give an appropriate certificate of the County for inclusion in the transcript of proceedings for the Bonds setting forth the reasonable expectations of the County regarding the amount and use of all of the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on the Bonds.

Upon the advice of Bond Counsel, the County (i) will take, or require to be taken, all actions that are required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and (ii) will not knowingly take or authorize to be taken any actions that would adversely affect that exclusion under the provisions of the Code. The members of this Council, the County Executive, the Fiscal Officer and the Clerk of this Council and any other appropriate officers are hereby authorized and directed to take any and all actions and make or give such reports and certifications, as may be appropriate to assure such exclusions of that interest.

In its performance of these covenants, and other covenants of the County pertaining to federal income tax laws, the County may rely upon the advice of Bond Counsel.

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

**(c) Further Assurances.** To the extent within its authority and control, the County shall do all things and take all actions on its part necessary to comply with the obligations, duties and responsibilities on its part under the Issuer Documents. Nothing herein or in the Issuer Documents shall be construed as requiring the County to operate the Project or to use any moneys from any source other than those provided in the Indenture and the Financing Agreement.

**Section 8. Issuer Documents.** To provide for the issuance and sale of the Bonds and the consummation of the transactions contemplated herein, the County

Executive and the Fiscal Officer, as designee of the County Executive, are authorized and directed to execute, acknowledge and deliver, for and in the name and on behalf of the County, each Issuer Document, in substantially the respective forms thereof submitted to and approved by this Council and the County's legal officer. The Issuer Documents are approved with any changes therein which are not inconsistent with this Resolution, are not adverse to the County, are permitted by the Act, and are approved by the member or members or officer or officers executing the respective Issuer Documents and by the County's legal officer. The approval of those changes by such member or members or officer or officers, and the character of those changes as not being adverse to the County, shall be evidenced conclusively by the execution of the respective Issuer Documents by such member or members or officer or officers. The Fiscal Officer is authorized to give any certifications that may be required under Ohio Revised Sections 5705.41 and 5705.44 with respect to any of the Issuer Documents.

**Section 9. Other Documents.** The County Executive and the Fiscal Officer, as designee of the County Executive, are authorized and directed to execute, deliver and, if applicable, file, for and in the name and on behalf of the County, any certifications, financing statements, assignments and other instruments and documents which are, in the opinion of the County's legal officer and bond counsel to the County, necessary or appropriate to perfect the assignments contemplated in the Indenture or the Financing Agreement and to consummate the transactions contemplated in the Issuer Documents, including the issuance of the Bonds. Those certifications and other instruments and documents include, without limitation, one or more reports on IRS Form 8038 (including Forms 8038-R and 8038-T), any other certifications and forms necessary or advisable under the Code and a certification by the Clerk of this Council of the transcript of proceedings relating to the issuance of the Bonds. The Borrower is hereby authorized and directed, upon the request or direction of the County, to file any such certifications or instruments that require filing.

**Section 10. Acknowledgement of Assignment.** The County acknowledges that pursuant to the Assignment, the County will assign without recourse its rights under the Indenture and Financing Agreement to the Trustee, except for Unassigned Issuer's Rights (as defined in the Financing Agreement).

**Section 11. Prevailing Wage Rates.** All laborers and mechanics employed on the Project shall, in accordance with policies heretofore established by the County, be paid at the residential prevailing rates of wages of laborers and mechanics for the classes of work called for by the Project, which wages shall be determined in accordance with the requirements of Section 176.05 and Chapter 4115, Ohio Revised Code, for determination of prevailing wage rates.

The Borrower shall comply, and shall require compliance by all contractors or subcontractors working on the installation of the Project, with all applicable requirements of Section 176.05 and Sections 4115.03 through 4115.16, Revised Code, including, without limitation obtaining or causing to be obtained, from the State its determination of the prevailing rates of wages to be paid for the class of work called for by the Project, and ensuring that all contractors and subcontractors receive notification of changes in prevailing wage rates as required under Section 4115.05, Revised Code. Concurrently



with issuance of the Bonds and at such times as the County requests, the Borrower shall be required to provide the County with evidence, satisfactory to the County, that there has been compliance with the foregoing agreements. None of the requirements of this Section shall be applicable to the Borrower unless the Bonds are issued. The requirements of this Section are subject to preemption by any controlling federal law.

**Section 12. Tax Credit Allocation.** This Council hereby preliminarily finds and determines that the amount of tax credits to be allocated to the Project under Section 42 of the Code does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project. In making the foregoing determination, this Council has relied exclusively upon representations of the Borrower. The foregoing determinations shall not be construed to be a representation or warranty by this Council or the Issuer as to the feasibility or viability of the Project. This Council hereby authorizes and directs any member of this Council to make the foregoing determination again for and on behalf of this Council at the request of the Borrower, following receipt of supporting materials submitted by the Borrower to the Ohio Housing Finance Agency (“OHFA”) and either written representations of the Borrower or of the OHFA to the effect that (i) the amount of tax credits to be allocated to the Project under Section 42 of the Code does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project and (ii) the Project satisfies the requirements for the allocation of a housing credit dollar amount under OHFA’s qualified allocation plan. In reliance upon the representations of the Borrower, it is hereby found and determined that the Project satisfies the requirements for the allocation of a housing credit dollar amount under OHFA’s qualified allocation plan.

**Section 13. No Personal Liability.** No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Resolution, or in the Bonds, or in the Issuer Documents, or under any judgment obtained against the County or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be had against any officer or employee as such, past, present, or future, of the County, including any member of the Council, either directly or through the County, or otherwise, for the payment for or to the County or any receiver thereof, or for or to the Holder, or otherwise, of any sum that may be due and unpaid by the County upon any of the Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer or employee, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to the County or any receiver thereof, or for or to the Borrower or the Holder, or otherwise, of any sum that may remain due and unpaid upon any Bond, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of the Issuer Documents and the issuance of the Bonds.

**Section 14. Open Meeting** This Council hereby finds and determines that all formal actions of this Council and its committees concerning and relating to the adoption of this resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal



# County Council of Cuyahoga County, Ohio

## Resolution No. R2011-0258

Sponsored by: <b>County Executive FitzGerald/Department of Development/Airport Division</b>	<b>A Resolution</b> authorizing an award on RQ20109 to Tri Mor Corporation in the amount of \$820,360.00 for the Year Two Pavement Maintenance Program: Apron A1, B reconstruction and Apron A2, C, D1 rehabilitation for the period 8/9/2011-6/6/2012; authorizing the County Executive to enter into a contract consistent with said award; and declaring the necessity that this Resolution become immediately effective.
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WHEREAS, the Department of Development, Airport Division has recommended an award to Tri Mor Corporation in the amount of \$820,360.00 for the for the Year Two Pavement Maintenance Program for Reconstruction of Aprons A1 & B and Rehabilitation of Aprons A2, C, D1 and Runway 6-24; and

WHEREAS, the pavement in the aforementioned areas have been identified to be in poor/failing condition and are in need of improvement or reconstruction; and

WHEREAS, pursuant to Resolution No. R2011-0174, the County Council had previously authorized the authority to seek proposals for said project, and said proposals have come in, been evaluated and the Department of Development has recommended that the contract be awarded to the entity above; and

WHEREAS, the award will allow the airport to move forward with the contracting process and solidify the use of grants received through the Federal Aviation Administration and Ohio Department of Transportation.

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

**SECTION 1.** The County Executive is hereby authorized to award on RQ20109 to Tri Mor Corporation in the amount not-to-exceed \$820,360.00 for the Year Two Pavement Maintenance Program: Aprons A1 & B Reconstruction, Aprons A2, C, D1 and Runway 6 - 24 Rehabilitation for the period 8/9/2011 – 6/6/2012; and further that the County Executive is hereby authorized to execute a contract with the Tri Mor Corporation in the amount of \$820,360.00 consistent with said award.

**SECTION 2.** It is necessary that this Resolution become immediately effective to assure that road work can commence and conclude during the prime construction season. Otherwise, any delay in commencement of the repair and resurfacing early on may cause work into the winter months and result in significant cost increases due to adverse weather conditions. Provided that this Resolution receive the affirmative vote of eight members of



# County Council of Cuyahoga County, Ohio

## Ordinance No. O2011-0039

Sponsored by: <b>Councilmembers Schron and Miller and County Executive FitzGerald</b>	<b>An Ordinance</b> establishing procedures governing the use by the County of alternate construction project delivery methods, including construction manager-at-risk, design-build and general contracting project delivery methods for public construction projects; and declaring the necessity that this Ordinance become immediately effective.
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WHEREAS, Article 3, Section 9, Subsections 4 and 9 of the Cuyahoga County Charter empowers the Cuyahoga County Council to establish procedures governing the making of County contracts and to establish the procedures for making public improvements; and

WHEREAS, procedures used for contracting and procurement should enable Cuyahoga County to be efficient, flexible, and transparent.

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

**SECTION 1:** Notwithstanding the competitive bidding procedures provided for in Chapter 153 and Sections 307.86 through 307.921 of the Ohio Revised Code, the policies and procedures of Cuyahoga County, Ohio relating to construction contracts employing alternate project delivery methods are established as follows:

**Section 1.** As used in Sections 1 to 13, inclusive, the following words shall have the following meanings unless indicated otherwise or unless the context in which they are used requires a different meaning:

"Architect of record" means the professional design firm that serves as the final signatory on the plans and specifications for a design-build project.

"Building project" means the design, construction, reconstruction, improvement, alteration, installation, demolition or repair of any public building or improvement.

"Construction management-at-risk" or "construction management-at-risk services" means a construction method wherein a construction management-at-risk firm provides a range of preconstruction services and construction management services

that may include cost estimating and consultation regarding the design of the building project, scheduling, the preparation and coordination of bid packages, cost control, value engineering, detailing the subcontractor scope of work, prequalifying and evaluating subcontractors, and holding the subcontracts.

"Construction manager-at-risk" or "Construction management-at-risk firm" means an individual, corporation, partnership, sole proprietorship, joint venture, limited liability company or other legal entity that provides construction management-at-risk services.

"Construction manager-at-risk contract" means a contract between the County and a construction manager-at-risk that obligates the construction manager-at-risk to provide construction management-at-risk services for a guaranteed maximum price.

"County's project manager" means an individual, corporation, partnership, sole proprietorship, joint venture, limited liability company or other legal entity engaged to provide project management services on behalf of the County for the design and construction of a building project. The County's project manager may be an employee of the County whose assigned responsibility is the management of design and construction of a building project.

"Criteria architect or engineer" means the professional design firm retained by the County to prepare conceptual plans and specifications, to assist the County in connection with the establishment of the design criteria for a design-build project, and, if requested by the County, to serve as the representative of the County and provide, during the design-build project, other design and construction administration services on behalf of the County, including but not limited to, confirming that the design prepared by the design-build firm reflects the original design intent established in the design criteria package.

"Design-build contract" means a contract between the County and a design-build firm that obligates the design-build firm to provide design-build services for a guaranteed maximum price.

"Design-build firm" means any individual, corporation, partnership, sole proprietorship, joint venture, limited liability company or other legal entity that provides design-build services.

"Design-build services" means services that form an integrated delivery system for which a design-build firm is responsible to the County for both the design and construction, demolition, alteration, repair, or reconstruction of a building project.

"General contracting" means a construction method wherein a general contracting firm is responsible for constructing and managing a building project under the award of a single aggregate lump sum or guaranteed maximum price contract.

"General contracting firm" means a person that provides general contracting services.

"Guaranteed maximum price" or "GMP" means the agreed maximum dollar amount to be paid by the County for the building project, including the cost of the work, the general conditions, agreed construction contingency and the fees charged by the construction management-at-risk firm, design-build firm or general contracting firm.

"Professional design firm" shall have the same meaning as set forth in Section 153.65 of the Ohio Revised Code.

"Subcontractor" means any individual, corporation, partnership, sole proprietorship, joint venture, limited liability company, or other legal entity that undertakes to provide any part of the labor, equipment or material of a building project under a contract with the construction management-at-risk firm, design-build firm or general contracting firm.

"two-phase selection process" means a procurement process in which the first phase consists of creating a short list of prequalified firms as determined by responses to a request for qualifications and the second phase consists of inviting firms prequalified in the first phase to submit responses to a request for proposals or a request for bids.

**Section 2.** For each contract for the construction, reconstruction, improvement, alteration, installation, demolition or repair of any building project estimated to cost not less than [ \$ \_\_\_\_\_ ], the [ **Board of Control/County Executive** ] may elect to use the construction management-at-risk delivery method, pursuant to Sections 3 to 6, inclusive.

**Section 3.** (a) The [ **Board of Control/County Executive** ] shall utilize a two-phase selection process as provided in this section to select a construction management-at-risk firm to provide construction management-at-risk services.

(b) Before issuing a request for qualifications, hereinafter called RFQ, the [ **Board of Control/County Executive** ] shall establish a prequalification committee for the purpose of reviewing and evaluating responses submitted by a construction manager-at-risk to the RFQ. The prequalification committee shall be comprised of one (1) representative of the professional design firm, the County's project manager, and at least two (2) representatives of the County.

(c) The first phase of the two-phase selection process shall begin once the County gives public notice of the building project and solicits responses to an RFQ from construction management-at-risk firms. The public notice and solicitation section shall be advertised in a newspaper of general circulation in the County or on the County's website. The public notice and solicitation shall be given not less than two (2) weeks before the deadline for submitting responses to the RFQ. The public notice and solicitation shall include:

(1) the time and date of the deadline for receipt of responses to the RFQ and the address of the office to which the responses are to be delivered;

- (2) a general description of the project and key factors important to the final selection of the construction management-at-risk firm;
  - (3) a general description of the scope of services expected of the selected construction management-at-risk firm during the design, pre-construction and construction phases of the project;
  - (4) a general description of the anticipated schedule and estimated construction cost for the building project; and
  - (5) **[the criteria for the selection of the construction management-at-risk firm, including minimum experience, requirements for presentations/interviews, and the schedule for the selection process.]**
- (d) The County shall require interested construction management-at-risk firms to submit a statement of qualifications in response to the RFQ. The statement of qualifications shall include the following:
- (1) a cover letter or executive summary detailing the key elements and factors that differentiate the firm from other responders;
  - (2) completion of a statement of qualifications similar in form to AIA Document A305 (latest edition), listing general business information and financial capacity such as organizational structure, licensing, experience, references and financial statement;
  - (3) a list of all convictions or fines assessed against the construction manager-at-risk firm or any of its officers or directors for violations of state or federal law;
  - (4) submission of a project organization chart with specific information on key project personnel or consultants;
  - (5) a letter from a surety company licensed to do business in the State and whose name appears on United States Treasury Department Circular 570 confirming the ability to provide performance and payment bonds for the building project;
  - (6) submission of information on the firm's safety record including its workers' compensation experience modifier for the prior three (3) years;
  - (7) submission of information on and evidence of the firm's compliance record with respect to small business enterprise inclusion goals and workforce inclusion goals, if applicable;
  - (8) submission of information regarding the firm's experience on similar projects including contact information of the architects and owners of the projects;



(9) submission of specific examples of the firm's project management reports or other illustrations of the company's operating philosophy; and

(10) any other relevant information that the County determines desirable.

(e) The prequalification committee established pursuant to Subsection (b) of this section, shall evaluate each statement of qualifications submitted by the construction management-at-risk firms. The evaluation shall take into account the following factors: (i) competence to perform the required construction management-at-risk services as indicated by the technical training, education, and experience of the construction management-at-risk firm's personnel and key consultants, especially the technical training, education, and experience of the employees and consultants of the construction management-at-risk firm who would be assigned to perform the services; (ii) ability of the firm in terms of its workload and the availability of qualified personnel, equipment, and facilities to perform the required preconstruction and construction services competently and expeditiously; (iii) past performance of the firm as reflected by the evaluations of previous clients with respect to such factors as control of costs, quality of work, and meeting of deadlines; and (iv) any other relevant factors as determined by the County. The prequalification committee shall select a minimum of three (3) qualified construction management-at-risk firms to receive the request for proposals, unless less than three (3) firms responded to the RFQ, in which event prequalification committee may select less than three (3) qualified construction management-at-risk firms to receive the request for proposals. The decision of the prequalification committee shall be final and shall not be subject to appeal except on grounds of fraud or collusion.

**Section 4.** (a) Before issuing a request for proposals, hereinafter referred to as RFP, the [Board of Control/County Executive] shall establish a selection committee for the purpose of reviewing and evaluating responses submitted to the RFP. The selection committee shall be comprised of one (1) representative of the professional design firm, the County's project manager, and at least two (2) representatives of the County. Nothing herein shall prohibit the County from appointing the same individuals who served as the prequalification committee to serve as the selection committee.

(b) The County shall issue an RFP to each construction management-at-risk firm selected to receive an RFP pursuant to Section 3. The RFP shall include:

(1) the date, time and place for submission of proposals;

(2) a clear description of the submission requirements including separate price and technical components;

(3) the small business enterprise inclusion goals and workforce inclusion goals for the building project, if applicable;

- (4) the form of construction management-at-risk contract; and
  - (5) any other relevant information that the County determines desirable.
- (c) The RFP shall require the submission of separate price and technical components as part of the proposal submitted in response to the RFP.
- (1) The price component shall include: (i) the fee for preconstruction services with appropriate detail, (ii) the fee for construction services with explanation of the basis, (iii) the estimated cost of general conditions with appropriate detail, and (iv) the estimated construction contingency requirements regarding development of the GMP.
  - (2) The technical component shall include: (i) a detailed project approach, including preconstruction services, (ii) supplemental relevant project references, (iii) the project team members with position descriptions and relevant time commitments and billing rates of said team members during the project, and (iv) the construction management plan indicating their approach to controlling cost, schedule, quality, documents and claims.
- (d) Upon receipt of the responses to the RFP, the selection committee shall evaluate all proposals and rank firms based on the selection committee's evaluation of each firm's pricing proposal and qualifications. If the selection committee elects to conduct an interview with a construction management-at-risk firm who submits a proposal in response to the RFP, then the selection committee shall conduct interviews with each construction management-at-risk firm that submits a proposal to the RFP. The decision of the selection committee shall be final and not subject to appeal except on the grounds of fraud or collusion.
- (e) The selection committee shall commence negotiations with the highest ranked construction management-at-risk firm. If the selection committee determines that negotiations with the highest ranked construction management-at-risk firm will not result in a contract acceptable to the County, then the selection committee shall terminate negotiations with the highest ranked construction management-at-risk firm and shall commence negotiations with the next highest ranked construction management-at-risk firm. The process shall continue until the selection committee has reached an acceptable contract with one of the prequalified construction management-at-risk firms. **[The list and ranking of proposed construction management-at-risk firms shall be certified by the County's project manager and made available as a public record after the contract award.]**

**Section 5.** (a) Each contract for a building project procured pursuant to Sections 3 to 6, inclusive, shall utilize a cost-plus, not-to-exceed guaranteed maximum price form of contract in which the County shall be entitled to monitor and audit all project costs.

(b) In establishing the schedule and process for determining a guaranteed maximum price, the contract between the County and the construction management-at-risk firm shall comply with the following:

(1) The guaranteed maximum price shall be based on design documents that are no less developed than [40/50/60?] percent construction documents;

(2) The guaranteed maximum price shall be agreed to as an amendment to the contract between the County and the construction management-at-risk firm;

(3) The guaranteed maximum price amendment shall be executed before the commencement of any construction work; except that the County, before the execution of the guaranteed maximum price amendment, may commence construction, so long as the County executes a separate amendment to the contract with the construction manager-at-risk detailing the scope of work selected to commence before execution of the guaranteed price amendment, and provided that each subcontractor performing work shall provide a payment and performance bond in the amount of its subcontract, which bond shall name the County and the construction manager-at-risk as co-obligees. The separate amendment shall state the sum for the scope of work, which shall include the cost of the work, the general conditions and additional fee, if any, for the construction manager-at-risk; but, any class of work included in the scope of work selected to commence before the execution of the guaranteed maximum price amendment shall be subject to the subcontractor selection process set forth in Section 6. If a guaranteed maximum price cannot be successfully negotiated between the County and the construction manager-at-risk, then any subcontractor agreement between the construction manager-at-risk and a subcontractor for work selected to commence before execution of the guaranteed maximum price amendment may be assigned to the County or to another construction manager-at-risk designated by the County, without the assent of the subcontractor, and the County or the designated construction manager-at-risk and the subcontractor shall be bound by the terms of the subcontractor agreement; and

(4) The guaranteed maximum price amendment to the contract between the County and the construction management-at-risk firm shall include a detailed line item cost breakdown by trade, including any cost for work selected to commence before the execution of the guaranteed maximum price amendment; dollar amounts for the construction management-at-risk firm's construction contingency; dollar amounts for the general conditions and fees, including any amounts related to work selected to commence before the execution of the guaranteed maximum price amendment; a list of all the drawings, specifications and other information on which the guaranteed maximum price is based; a list of allowances and statement of their basis; a list of any assumptions or clarifications on which the guaranteed maximum price is based; the dates for substantial and final completion on which the guaranteed maximum price is based; and a schedule of applicable alternates and unit prices.

(5) The construction management-at-risk firm shall provide all required performance and payment bonds in the amount of the guaranteed maximum price within five (5) business days after the execution of the guaranteed maximum price amendment.

(c) If a guaranteed maximum price cannot be successfully negotiated between the County and the construction management-at-risk firm, then the selection committee may commence negotiations with an additional proposer starting with the next highest ranked proposer. If a contract and guaranteed maximum price amendment cannot be successfully negotiated between the selection committee and the next highest ranked proposer, then the County shall terminate the procurement process and may instead procure the building project under any other project delivery method permitted by law.

**Section 6.** (a) Each construction manager-at-risk with a construction manager-at-risk shall include terms that require the following procedures to be observed in connection with the award of subcontracts under the construction manager-at-risk:

(1) Prior to the award of any subcontract with an estimated subcontract value of \$\_\_\_\_\_ or more, the construction manager-at-risk shall submit to the County for approval the qualifications that a subcontractor must have in order to perform the work of the subcontract and a list of at least three (3) subcontracting firms that the construction manager-at-risk believes meets the qualifications. The County may eliminate from the list persons or firms that the County believes are not qualified and it may add to the list any person or firm it believes to be reasonably qualified. The construction manager-at-risk shall revise the list unless the construction manager-at-risk has reasonable objections to the person or firms eliminated or added by the County. The County shall inform the construction manager-at-risk of any additions to the list, or of its objection to any persons or firms proposed by the construction manager-at-risk, within ten (10) days after the County's receipt of the list. If the County disapproves of a proposed bidder, then the written notice to the construction manager-at-risk shall set forth the County's reasonable objections supporting its disapproval. The construction manager-at-risk shall not solicit bids or proposals from any person or firm to whom the County has made reasonable objections.

(2) After the construction manager-at-risk and the County have agreed upon an acceptable list of potential subcontractors, the construction manager-at-risk shall solicit at least three (3) competitive bids or proposals (including design-assist bids or proposals) from subcontractors on the list of approved subcontractors. All bids or proposals submitted shall be sealed and shall not be opened before the bid opening date set forth in the solicitation.

(3) On the date set forth in the solicitation, the construction manager-at-risk shall open, in the presence of the County, all bids or proposals. The County shall have the right to be present at all post-opening scope review meetings of the construction manager-at-risk and the proposed subcontractors.

(4) Giving consideration to the price and the qualifications of each person or firm submitting a bid or proposal, the construction manager-at-risk shall recommend for award the subcontractor whose bid or proposal represents the best value, and such recommendation shall be submitted to the County with a written report setting forth the reasons supporting the recommendation. The County shall have the right to object to the proposed award if it determines that the person or firm proposed does not represent the best value. If the County objects to the proposed award, it shall do so by sending written notice of such objection within ten (10) days after the County's receipt of the construction manager-at-risk's recommendation report, and such written notice shall set forth the County's reasons for objecting. If the County does not disapprove the bidder recommended by the construction manager at risk, then the construction manager-at-risk shall award the subcontract to the recommended bidder.

(5) Notwithstanding the foregoing, subcontracts with an award value that does not exceed the threshold sum as identified in Subsection (a)(1) of this section, may be awarded by the construction manager-at-risk using any selection method selected by the construction manager-at-risk with the approval of the County.

**Section 7.** (a) For each contract for the construction, reconstruction, improvement, alteration, installation, demolition or repair of any building project estimated to cost not less than [ \$ \_\_\_\_\_ ], the [ **Board of Control/County Executive** ] may elect to use the design-build delivery method, pursuant to Sections 7 to 12, inclusive.

(b) For every design-build contract, the County shall first obtain the services of a criteria architect or engineer by either contracting for the services consistent with Sections 153.65 to 153.70 of the Ohio Revised Code or by obtaining the services through a design professional who is an employee of the County. After the County has retained a criteria architect or engineer, the County shall develop with the assistance of the criteria architect or engineer a scope of work statement that defines the building project and provides prospective design-build firms with sufficient information regarding the County's objectives and requirements. The scope of work statement shall include criteria and preliminary design, general budget parameters, and general schedule requirements to enable prospective design-build firms to submit proposals in response to the RFP issued under Section 9. The criteria architect or engineer retained by the County for a building project shall not be eligible to participate in any way as a member of the design-build team competing for the award of the design-build contract for the building project.

**Section 8.** (a) The [ **Board of Control/County Executive** ] shall utilize a two-phase selection process as provided in this section to select a design-build firm to provide design-build services.

(b) Before issuing a request for qualifications, hereinafter called RFQ, the [ **Board of Control/County Executive** ] shall establish a prequalification committee for the

purpose of reviewing and evaluating responses submitted by a design-build firm to the RFQ. The prequalification committee shall be comprised of one (1) representative of the criteria architect or engineer, the County's project manager, and at least two (2) representatives of the County.

(c) The first phase of the two-phase selection process shall begin once the County gives public notice of the building project and solicits responses to an RFQ from design-build firms. The public notice and solicitation required shall be advertised in a newspaper of general circulation in the County or on the County's website. The public notice and solicitation shall be given not less than two (2) weeks before the deadline for submitting responses to the RFQ. The public notice and solicitation shall include:

- (1) the time and date of the deadline for receipt of responses to the RFQ and the address of the office to which the responses are to be delivered;
- (2) a general description of the project and key factors important to the final selection of the design-build firm;
- (3) a general description of the scope of services expected of the selected design-build firm during the design, pre-construction and construction phases of the project;
- (4) a general description of the anticipated schedule and estimated construction cost for the building project; and
- (5) **[the criteria for the selection of the design-build firm, including minimum experience, requirements for presentations/interviews, and the schedule for the selection process.]**

(d) The County shall require interested design-build firms to submit a statement of qualifications in response to the RFQ. The statement of qualifications shall include the following:

- (1) a cover letter or executive summary detailing the key elements and factors that differentiate the firm from other responders;
- (2) completion of a statement of qualifications similar in form to AIA Document A305 (latest edition), listing general business information and financial capacity such as organizational structure, licensing, experience, references and financial statement;
- (3) a list of all convictions or fines assessed against the design-build firm or any of its officers or directors for violations of state or federal law;
- (4) submission of a project organization chart with specific information on key project personnel or consultants, including the architect of record;

- (5) a letter from a surety company licensed to do business in the State and whose name appears on United States Treasury Department Circular 570 confirming the ability to provide performance and payment bonds for the building project;
  - (6) submission of information on the firm's safety record including its workers' compensation experience modifier for the prior three (3) years;
  - (7) submission of information on and evidence of the firm's compliance record with respect to small business enterprise inclusion goals and workforce inclusion goals, if applicable;
  - (8) submission of information regarding the experience of the design-build firm and the architect of record on similar projects, including contact information of owners of the projects;
  - (9) submission of specific examples of the firm's project management reports or other illustrations of the company's operating philosophy; and
  - (10) any other relevant information that the County determines desirable.
- (e) The prequalification committee established pursuant to Subsection (b) of this section shall evaluate each statement of qualifications submitted by design-build firms. The evaluation shall take into account the following factors: (i) competence to perform the required design-build services as indicated by the technical training, education, and experience of the design-build firm's personnel and key consultants, especially the technical training, education, and experience of the employees and consultants of the design-build firm who would be assigned to perform the services, including the proposed architect of record; (ii) ability of the firm in terms of its workload and the availability of qualified personnel, equipment, and facilities to perform the required professional design services or design-build services competently and expeditiously; (iii) past performance of the firm as reflected by the evaluations of previous clients with respect to such factors as control of costs, quality of work, and meeting of deadlines; and (iv) any other relevant factors as determined by the County. The prequalification committee shall select a minimum of three (3) qualified design-build firms to receive the request for proposals, unless less than three (3) firms responded to the RFQ, in which event prequalification committee may select less than three (3) qualified design-build firms to receive the request for proposals. The decision of the prequalification committee shall be final and shall not be subject to appeal except on grounds of fraud or collusion.

**Section 9.** (a) Before issuing a request for proposals, hereinafter referred to as RFP, the **[Board of Control/County Executive]** shall establish a selection committee for the purpose of reviewing and evaluating responses submitted to the RFP issued pursuant to Subsection (b) of this section. The selection committee shall be comprised of one (1) representative of the criteria architect or engineer, the County's project manager, and at least two (2) representatives of the County. Nothing herein

shall prohibit the County from appointing the same individuals who served as the prequalification committee to serve as the selection committee.

(b) The County shall issue an RFP to each design-build firm selected to receive an RFP pursuant to Section 8. The RFP shall include:

- (1) the date, time and place for submission of proposals;
- (2) a clear description of the submission requirements including separate price and technical components;
- (3) the design criteria produced by the criteria architect or engineer;
- (4) the small business enterprise inclusion goals and workforce inclusion goals for the building project, if applicable;
- (5) the form of design-build services contract; and
- (6) any other relevant information that the County determines desirable.

(c) The RFP shall require the submission of separate price and technical components as part of the proposal submitted in response to the RFP.

(1) The price component shall include: (i) the fee for design services, including the fee of the architect of record, with appropriate detail, (ii) the fee for preconstruction services, with appropriate detail, (iii) the fee for design-build services with explanation of the basis, (iv) the estimated cost of general conditions, with appropriate detail, and (v) the estimated design and contingency requirements regarding development of the GMP.

(2) The technical component shall include: (i) a detailed project approach, including preconstruction and design services, (ii) supplemental relevant project references, (iii) the project team members with position descriptions and relevant time commitments and billing rates of said team members during the project, and (iv) the construction management plan indicating their approach to controlling cost, schedule, quality, documents and claims.

(d) Upon receipt of the responses to the RFP issued pursuant to Subsection (c) of this section, the selection committee shall evaluate all proposals and rank firms based on the selection committee's evaluation of each firm's pricing proposal and qualifications. If the selection committee elects to conduct an interview with a design-build firm who submits a proposal in response to the RFP, then the selection committee shall conduct interviews with each design-build firm that submits a proposal to the RFP. The decision of the selection committee shall be final and not subject to appeal except on the grounds of fraud or collusion.



(e) The selection committee shall commence negotiations with the highest ranked design-build firm. If the selection committee determines that negotiations with the highest ranked design-build firm will not result in a contract acceptable to the County, then the selection committee shall terminate negotiations with the highest ranked design-build firm and shall commence negotiations with the next highest ranked design-build firm. The process shall continue until the selection committee has reached an acceptable contract with one of the prequalified design-build firms. **[The list and ranking of proposed design-build firms shall be certified by the County's project manager and made available as a public record after the contract award.]**

**Section 10.** (a) Each contract for a building project procured pursuant to Sections 7 to 12, inclusive, shall utilize a cost-plus, not-to-exceed guaranteed maximum price form of contract in which the County shall be entitled to monitor and audit all project costs.

(b) In establishing the schedule and process for determining a guaranteed maximum price, the contract between the County and the design-build firm shall comply with the following:

(1) The guaranteed maximum price shall be based on design documents that are no less developed than **[40/50/60?]** percent construction documents;

(2) The guaranteed maximum price shall be agreed to as an amendment to the contract between the County and the design-build firm;

(3) The guaranteed maximum price amendment shall be executed before the commencement of any construction work; except that the County, before the execution of the guaranteed maximum price amendment, may commence construction, so long as the County executes a separate amendment to the contract with the design-build firm detailing the scope of work selected to commence before execution of the guaranteed price amendment, and provided that each subcontractor performing work shall provide a payment and performance bond in the amount of its subcontract, which such bond shall name the County and the design-build firm as co-obligees. The separate amendment shall state the sum for the scope of work, which shall include the cost of the work, the general conditions and additional fee, if any, for the design-build firm; but, any class of work included in the scope of work selected to commence before the execution of the guaranteed maximum price amendment shall be subject to the subcontractor selection process set forth in Section 11. If a guaranteed maximum price cannot be successfully negotiated between the County and the design-build firm, then any subcontractor agreement between the design-build firm and a subcontractor for work selected to commence before execution of the guaranteed maximum price amendment may be assigned to the County or to another design-build firm designated by the County, without the assent of the subcontractor, and the County or the designated design-build firm and the subcontractor shall be bound by the terms of the subcontractor agreement; and

(4) The guaranteed maximum price amendment to the contract between the County and the design-build firm shall include a detailed line item cost breakdown by trade, including any cost for work selected to commence before the execution of the guaranteed maximum price amendment; dollar amounts for the design-build firm's design and construction contingencies; dollar amounts for the general conditions and fees, including any amounts related to work selected to commence before the execution of the guaranteed maximum price amendment; a list of all the drawings, specifications and other information on which the guaranteed maximum price is based; a list of allowances and statement of their basis; a list of any assumptions or clarifications on which the guaranteed maximum price is based; the dates for substantial and final completion on which the guaranteed maximum price is based; and a schedule of applicable alternates and unit prices.

(5) The design-build firm shall provide all required performance and payment bonds in the amount of the guaranteed maximum price within five (5) business days after the execution of the guaranteed maximum price amendment.

(c) If a guaranteed maximum price cannot be successfully negotiated between the County and the design-build firm, then the selection committee may commence negotiations with an additional proposer starting with the next highest ranked proposer. If a contract and guaranteed maximum price amendment cannot be successfully negotiated between the selection committee and the next highest ranked proposer, then the County shall terminate the procurement process and may instead procure the building project under any other project delivery method permitted by law.

**Section 11.** (a) Each design-build contract with a design-build firm shall include terms that require the following procedures to be observed in connection with the award of subcontracts under the design-build contract:

(1) Prior to the award of any subcontract with an estimated subcontract value of \$\_\_\_\_\_ or more, the design-build firm shall submit to the County for approval the qualifications that a subcontractor must have in order to perform the work of the subcontract and a list of at least three (3) subcontracting firms that the design-build firm believes meets the qualifications. The County may eliminate from the list persons or firms that the County believes are not qualified and it may add to the list any person or firm it believes to be reasonably qualified. The design-build firm shall revise the list unless the design-build firm has reasonable objections to the person or firms eliminated or added by the County. The County shall inform the design-build firm of any additions to the list, or of its objection to any persons or firms proposed by the design-build firm, within ten (10) days after the County's receipt of the list. If the County disapproves of a proposed bidder, then the written notice to the design-build firm shall set forth the County's reasonable objections supporting its disapproval. The design-build firm shall not solicit bids or proposals from any person or firm to whom the County has made reasonable objections.

(2) After the design-build firm and the County have agreed upon an acceptable list of potential subcontractors, the design-build firm shall solicit at least three (3) competitive bids or proposals (including design-assist bids or proposals) from subcontractors on the list of approved subcontractors. All bids or proposals submitted shall be sealed and shall not be opened before the bid opening date set forth in the solicitation.

(3) On the date set forth in the solicitation, the design-build firm shall open, in the presence of the County, all bids or proposals. The County shall have the right to be present at all post-opening scope review meetings of the design-build firm and the proposed subcontractors.

(4) Giving consideration to the price and the qualifications of each person or firm submitting a bid or proposal, the design-build firm shall recommend for award the subcontractor whose bid or proposal represents the best value, and such recommendation shall be submitted to the County with a written report setting forth the reasons supporting the recommendation. The County shall have the right to object to the proposed award if it determines that the person or firm proposed does not represent the best value. If the County objects to the proposed award, it shall do so by sending written notice of such objection within ten (10) days after the County's receipt of the design-build firm's recommendation report, and such written notice shall set forth the County's reasons for objecting. If the County does not disapprove the bidder recommended by the design-build firm, then the design-build firm shall award the subcontract to the recommended bidder.

(5) Notwithstanding the foregoing, subcontracts with an award value that does not exceed the threshold sum as identified in Subsection (a)(1) of this section, may be awarded by the design-build firm using any selection method selected by the design-build firm with the approval of the County.

**Section 12.** The **[Board of Control/County Executive]** may adopt rules proscribing additional terms and provisions to be included in each construction manager-at-risk or design-build contract, including procedures and criteria for pre-qualification of subcontractors under Sections 6 and 11.

**Section 13.** (a) For each contract for the construction, reconstruction, improvement, alteration, installation, demolition or repair of any building project estimated to cost not more than [ \$ \_\_\_\_\_ ], the **[Board of Control/County Executive]** may elect to use the general contracting method, pursuant to this Section 13.

(b) The County shall give public notice of the building project and shall solicit bids from general contracting firms. The public notice and solicitation shall be advertised in a newspaper of general circulation in the County or on the County's website. The public notice and solicitation shall be given not less than two (2) weeks

before the deadline for submitting bids. The public notice and solicitation shall include the time and date of the deadline for receipt of bids, the address of the office to which the responses are to be delivered, a general description of the project, and a general description of the anticipated schedule and estimated construction cost for the building project.

(c) The County shall require interested general contracting firms to submit a pricing proposal and statement of qualifications in response to the bid request. The statement of qualifications shall include the following:

- (1) a cover letter or executive summary detailing the key elements and factors that differentiate the firm from other responders;
- (2) completion of a statement of qualifications similar in form to AIA Document A305 (latest edition), listing general business information and financial capacity such as organizational structure, licensing, experience, references and financial statement;
- (3) a list of all convictions or fines assessed against the general contraction firm or any of its officers or directors for violations of state or federal law;
- (4) submission of a project organization chart with specific information on key project personnel or consultants;
- (5) a letter from a surety company licensed to do business in the State and whose name appears on United States Treasury Department Circular 570 confirming the ability to provide performance and payment bonds for the building project;
- (6) submission of information on the firm's safety record including its workers' compensation experience modifier for the prior three (3) years;
- (7) submission of information on and evidence of the firm's compliance record with respect to small business enterprise inclusion goals and workforce inclusion goals, if applicable;
- (8) submission of information regarding the firm's experience on similar projects including contact information of the architects and owners of the projects;
- (9) submission of specific examples of the firm's project management reports or other illustrations of the company's operating philosophy;
- (10) submission of either a single aggregate lump sum price or a single aggregate cost-plus, not-to-exceed guaranteed maximum price, as required by the bid documents; and
- (11) any other relevant information that the County determines desirable.

(d) The contract for general contracting services shall be awarded to the firm whose bid is determined by the **[Board of Control/County Executive]** to be the lowest and best.

**SECTION 2.** It is found and determined that all formal actions of this County Council meeting relating to the adoption of this ordinance were adopted in an open meeting of the County Council and that all deliberations of this County Council and any of its committees that resulted in such formal actions took place in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

**SECTION 3. Effective Date.** This ordinance, provided that it receives the affirmative vote of at least eight (8) members of County Council, shall become effective immediately upon enactment; otherwise, it shall be in full force and effect from and immediately after the earliest time permitted by law.

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: August 9, 2011  
Committee(s) Assigned: Economic Development & Planning

Additional Sponsorship Requested on the Floor: August 9, 2011

Journal \_\_\_\_\_  
\_\_\_\_\_, 2011