



**AGENDA**  
**CUYAHOGA COUNTY COMMITTEE OF THE WHOLE MEETING**  
**TUESDAY, NOVEMBER 29, 2016**  
**CUYAHOGA COUNTY ADMINISTRATIVE HEADQUARTERS**  
**C. ELLEN CONNALLY COUNCIL CHAMBERS – 4<sup>TH</sup> FLOOR**  
**2:30 PM**

**1. CALL TO ORDER**

**2. ROLL CALL**

**3. PUBLIC COMMENT RELATED TO AGENDA**

**4. ITEMS REFERRED TO COMMITTEE:**

- a) R2015-0218: A Resolution authorizing the issuance and sale of County sales tax revenue bonds, in an aggregate principal amount not-to-exceed \$22,000,000.00, for the purpose of paying or reimbursing the costs of constructing, reconstructing, refurbishing, renovating, upgrading, improving and equipping the Huntington Park Garage, together with connectors and other appurtenances and work incidental thereto, and for the purpose of paying any capitalized interest on the bonds and paying the costs of issuance in connection therewith; authorizing the preparation and use of a preliminary official statement; authorizing the preparation, execution and use of an official statement; approving and authorizing the execution of a trust indenture and a continuing disclosure agreement; authorizing other actions related to the issuance of the bonds; and declaring the necessity that this Resolution become immediately effective. (See Page 3)
  
- b) R2016-0206: A Resolution approving an agreement with City of Cleveland for the period 8/1/2015 - 7/31/2035 for the purpose of distributing alcohol and cigarette excise tax proceeds; authorizing the County Executive to execute the agreement and all other documents consistent with this Resolution; and declaring the necessity that this Resolution become immediately effective. (See Page 26)

**5. MISCELLANEOUS BUSINESS**

**6. PUBLIC COMMENT UNRELATED TO AGENDA**

**7. ADJOURNMENT**

*\*Complimentary parking for the public is available in the attached garage at 900 Prospect. A skywalk extends from the garage to provide additional entry to the Council Chambers from the 5th floor parking level of the garage. Please see the Clerk to obtain a complimentary parking pass.*

*\*\*Council Chambers is equipped with a hearing assistance system. If needed, please see the Clerk to obtain a receiver.*

# County Council of Cuyahoga County, Ohio

## Resolution No. R2015-0218

<p>Sponsored by: <b>County Executive Budish/Fiscal Officer/Office of Budget &amp; Management</b></p>	<p><b>A Resolution</b> authorizing the issuance and sale of County sales tax revenue bonds, in an aggregate principal amount not-to-exceed \$22,000,000.00, for the purpose of paying or reimbursing the costs of constructing, reconstructing, refurbishing, renovating, upgrading, improving and equipping the Huntington Park Garage, together with connectors and other appurtenances and work incidental thereto, and for the purpose of paying any capitalized interest on the bonds and paying the costs of issuance in connection therewith; authorizing the preparation and use of a preliminary official statement; authorizing the preparation, execution and use of an official statement; approving and authorizing the execution of a trust indenture and a continuing disclosure agreement; authorizing other actions related to the issuance of the bonds; and declaring the necessity that this Resolution become immediately effective.</p>
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WHEREAS, the County of Cuyahoga, Ohio owns and operates the Huntington Park Garage (the “Garage”) located on West Third Street in downtown Cleveland; and

WHEREAS, the Garage is used by the general public, via self-parking, reserved parking and monthly parking and services the Cuyahoga County Courthouse, Cuyahoga County Justice Center, the convention center and other nearby locations and the Garage is also used for special events; and

WHEREAS, the County has determined that the Garage is in need of repair and renovation; and

WHEREAS, the County desires to address the needed repair and renovation of the Garage in a manner that improves the appearance and function of the Garage for its existing customers and also for additional customers to be added upon the completion of the convention center hotel; and

WHEREAS, this Council has determined that it is necessary and in the best interest of the County for the County to issue sales tax revenue bonds for the purpose of paying or reimbursing the costs of constructing, reconstructing, refurbishing, renovating, upgrading, improving and equipping the Huntington Park Garage, together with connectors and other appurtenances and work incidental thereto, and for the purpose of paying any capitalized interest on the bonds and paying the costs of issuance in connection therewith; and

WHEREAS, this Council has determined that sales tax revenue bonds shall be issued in an aggregate principal amount not to exceed \$22,000,000 for the purposes herein stated and that the County should secure such bonds by a trust indenture, as provided herein; and

WHEREAS, pursuant to a resolution adopted July 6, 1987 (the "1987 County Sales Tax Resolution"), the Board of County Commissioners of the County (the "Board"), as the predecessor legislative authority to this Council, authorized the continuing levy and collection of sales and use taxes, authorized under Sections 5739.021 and 5741.021 of the Ohio Revised Code, at the rate of one percent (1%), and pursuant to a resolution adopted July 26, 2007 (the "2007 County Sales Tax Resolution" and, together with the 1987 County Sales Tax Resolution, the "County Sales Tax Resolutions"), the Board authorized an increase in the sales and use taxes to a rate of one and one-quarter percent (1-1/4%) (the "County Sales Tax"), each for the purpose of providing additional general revenues for the County; and

WHEREAS, this Council has determined to issue sales tax revenue bonds supported by the County Sales Tax for the Project described in Section 2; and

WHEREAS, the Fiscal Officer has certified that the estimated life of the Project is at least five (5) years, and that the estimated maximum maturity of the bonds described in Section 2 is at least [twenty (20) years]; and

WHEREAS, the Fiscal Officer has further certified to this Council that the maximum aggregate amount of sales tax revenue bonds, including the Bonds described in Section 2, that will be outstanding at any time will not exceed an amount which requires or is estimated by him, as Fiscal Officer, to require payments from sales tax receipts of debt charges on the sales tax revenue bonds, including the Bonds, in any calendar year in an amount exceeding the average of the amount received by the County for 2013 and 2014; and

WHEREAS, it is necessary that this Resolution become immediately effective in order that the usual daily operation of the County be continued and the public peace, health or safety of the County be preserved and for the further

reason that funds be made available in a timely manner for the construction of the Project.

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

1. Definitions and Interpretation. As used herein, the following terms shall be defined as follows:

“Act” means Chapter 133, Ohio Revised Code, as enacted and amended from time to time.

“Book entry form” or “book entry system” means a form or system under which (a) the ownership of book entry interests in Bonds and the principal of and interest on the Bonds may be transferred only through a book entry, and (b) physical Bond certificates in fully registered form are issued by the County only to a Depository or its nominee as registered owner, with the Bonds deposited with and retained in the custody of the Depository or its agent. The book entry maintained by others than the County is the record that identifies the owners of book entry interests in those Bonds and that principal and interest.

“Certificate of Award” means the certificate authorized to be signed by the Fiscal Officer pursuant to Section 6, specifying and determining those terms or other matters pertaining to the Bonds and their issuance, sale and delivery as this Resolution requires or authorizes to be set forth or determined therein.

“Code” means the Internal Revenue Code of 1986, the 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 such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

“County Executive” means the County Executive of the County; provided, for purposes of the signing of documents, certificates and other instruments other than the Bonds and the Official Statement, County Executive includes the County Executive’s Chief of Staff as the County Executive’s designee pursuant to Executive Order No. 02011-0002 and any other person duly designated by the County Executive.

“County Sales Tax Bond Fund” means the County Sales Tax Bond Fund created by the Indenture.

“County Sales Tax Receipts” means the monies received by the County from the County Sales Tax.

“County Sales Tax Revenue Fund” means the County Sales Tax Revenue Fund created by the Indenture.

“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 Bonds or the principal of and interest on Bonds, and to effect transfers of Bonds, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

“Director of Law” means the Director of Law of the County, including an interim or acting Director of Law.

“Fiscal Officer” means the Fiscal Officer of the County, including an interim or acting Fiscal Officer.

“Indenture” means the Trust Indenture dated as of December 1, 2014 between the County and the Trustee, as amended or supplemented from time to time, including by Supplemental Indenture No. 3.

“Interest Payment Dates” means, unless otherwise determined by the Fiscal Officer and specified in the Certificate of Award, June 1 and December 1 of each year during which the Bonds are outstanding, commencing December 1, 2016.

“Original Purchaser” means, Stifel, Nicolaus & Company, Incorporated, together with any other purchasers identified in the Certificate of Award.

“Participant” means any participant contracting with a Depository under a book entry system and includes security brokers and dealers, banks and trust companies, and clearing corporations.

“Pledged Funds” means the County Sales Tax Bond Fund and any other funds established under the Indenture and pledged as security for the Bonds.

“Pledged Revenues” means, collectively, (a) the County Sales Tax Receipts and (b) all monies in the Pledged Funds, including revenues related to the cooperative Project that are deposited in the Pledged Funds for the benefit of the Bonds, and all income and profit from the investment of those monies.

“Principal Payment Dates” means, unless otherwise determined by the Fiscal Officer and specified in the Certificate of Award, December 1 in each of the years from and including 2016 to and including 2036.

“Rule” means Rule 15c2-12(b)(5) promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as it may be amended from time to time.

“Supplemental Indenture No. 3” means Supplemental Trust Indenture No. 3, dated as of December 1, 2015, between the County and the Trustee and relating to the issuance of the Bonds, and any amendment or supplement thereto.

“Term Bonds” means those Bonds designated as such in the Certificate of Award, maturing on the date or dates set forth therein, bearing interest payable on each Interest Payment Date and subject to mandatory sinking fund redemption.

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.

The captions and headings in this Resolution are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof. Reference to a Section means a section of this Resolution unless otherwise indicated.

2. Authorized Principal Amount of Bonds and Purpose. It is necessary to issue sales tax revenue bonds of this County in an aggregate principal amount not to exceed \$22,000,000 (the “Bonds”) for the purpose of paying or reimbursing the costs of constructing, reconstructing, refurbishing, renovating, upgrading, improving and equipping the Huntington Park Garage, together with connectors and other appurtenances and work incidental thereto (the “Project”), and for the purpose of paying any capitalized interest on the Bonds and paying the costs of issuance in connection therewith.

3. Bond Terms. The Bonds shall be issued pursuant to the terms of the Indenture. The Bonds may be issued in one or more series, and shall be numbered in such manner as to distinguish each Bond from any other Bond of the same series. The Bonds shall be issued in denominations of \$5,000 or multiples of \$5,000 in excess thereof, but in no case as to a particular maturity date exceeding the principal amount maturing on that date. The Bonds shall be dated as determined by the Fiscal Officer, with the true interest cost on the Bonds not to exceed seven percent (7%) per year (computed on the basis of a 360-day year consisting of twelve 30-day months), provided that if the interest on the Bonds is not to be excluded from gross income for federal income tax purposes, the true interest cost on the Bonds shall not exceed twelve (12%) per year, payable on such semiannual dates or annual dates as determined by the Fiscal Officer in the Certificate of Award until the principal amount is paid, and shall mature on such semiannual dates or annual dates as determined by the Fiscal Officer in the Certificate of Award, provided that the final

maturity shall not be later than [December 1, 2036], in accordance with Section 133.21 of the Ohio Revised Code and as set forth in the Certificate of Award and the Indenture.

4. Redemption Provisions. The Bonds shall mature serially on such dates and in such principal amounts as are fixed by the Fiscal Officer in the Certificate of Award and the Indenture, provided that the Bonds stated to mature in any year may be issued as Term Bonds payable pursuant to Mandatory Sinking Fund Redemption Requirements as hereinafter defined and further described below and as provided for in the Indenture. The Fiscal Officer shall determine in the Certificate of Award whether any of the Bonds shall be issued as Term Bonds and any dates (the "Mandatory Redemption Dates") on which the principal amount stated above shall be payable pursuant to Mandatory Sinking Fund Redemption Requirements rather than at stated maturity (the "Mandatory Sinking Fund Redemption Requirements").

The Bonds shall be subject to redemption prior to stated maturity as follows:

(a) *Mandatory Sinking Fund Redemption.* If any of the Bonds are issued as Term Bonds, the Term Bonds shall be subject to mandatory sinking fund redemption and be redeemed pursuant to Mandatory Sinking Fund Redemption Requirements, at a redemption price of 100% of the principal amount redeemed, plus interest accrued to the redemption date, on the Mandatory Redemption Dates.

(b) *Optional Redemption.* The Bonds shall be subject to redemption prior to maturity by or at the option of the County, at par, in whole or in part on any date on the dates, in the years and for the prices specified in the Certificate of Award, provided, however, that the Fiscal Officer may determine in the Certificate of Award that it is in the best interest of the County that the Bonds not be subject to redemption prior to maturity. If the Bonds are subject to redemption, the maximum redemption price shall be no greater than 100% of the principal amount redeemed, plus accrued interest to the redemption date.

5. Execution of Bonds. The Bonds shall be designated "Cuyahoga County Sales Tax Revenue Bonds, Series 2015B (Huntington Park Garage Project)" or such other name as may be designated in the Certificate of Award. The Bonds shall contain a summary statement of the purposes for which they are issued; shall state that they are issued pursuant to this Resolution; shall be executed by the County Executive and the Fiscal Officer, in the name and on behalf of the County and in their official capacities, provided that either or both of those signatures may be a facsimile; shall be issued only in fully registered form; and shall be registered as to both principal and interest at the corporate trust office of the Trustee. The Bonds shall be issued in the denominations and numbers as requested by the Original Purchaser and approved by the Fiscal Officer, and shall be numbered as determined by the Fiscal Officer.



The principal of the Bonds shall be payable at maturity of the Bonds upon presentation and surrender to the Trustee. Interest on any Bond shall be paid on each Interest Payment Date as defined in and as further provided in the Indenture. The principal and interest on the Bonds is payable in lawful money of the United States of America without deduction for the services of the Trustee.

No Bond shall be valid or become obligatory for any purpose unless and until an authentication certificate appearing on the Bond shall have been duly endorsed by the Trustee.

6. Book-Entry System. The entire principal amount may be represented by a single bond and may be issued as fully registered securities and in book entry or other uncertificated form in accordance with Section 9.96, Chapter 133 of the Ohio Revised Code, and the Indenture if it is determined by the Fiscal Officer that issuance of fully registered securities in that form will facilitate the sale and delivery of the Bonds. The Bonds shall not have coupons attached, shall be numbered as determined by the Fiscal Officer and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this Resolution.

The Fiscal Officer is also hereby authorized and directed, to the extent necessary or required, to enter into any agreements determined necessary in connection with the book entry system for the Bonds, after determining that the signing thereof will not endanger the funds or securities of the County.

7. Award and Sale of Bonds. The Bonds shall be sold to the Original Purchaser at a purchase price and bearing interest at a rate or rates determined by the County Executive or the Fiscal Officer to be in the best interest of the County and as designated by the County Executive or the Fiscal Officer in the Certificate of Award in accordance with law, the provisions of this Resolution, and the Indenture. The Fiscal Officer shall sign the Certificate of Award evidencing that sale to the Original Purchaser, with the final purchase price, interest rate or rates, aggregate principal amount, and principal amounts payable at stated maturity being set forth in the Certificate of Award and the Indenture, at a purchase price not less than 97% of par plus any accrued interest to their date of delivery. The Fiscal Officer may specify in the Certificate of Award whether any reserve fund shall be established for the Bonds and, if so, the applicable reserve requirement (subject to any applicable federal tax law restrictions) and source of funding. The Fiscal Officer may also specify in the Certificate of Award that the interest on any or all of the Bonds shall not be excluded from gross income for purposes of federal income taxation. The Fiscal Officer shall cause the Bonds to be prepared, and have the Bonds signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Bonds if requested by the Original Purchaser, to the Original Purchaser upon payment of the purchase price. The Fiscal Officer, the County Executive, the Director of Law, the Clerk of this Council and other County officials, as appropriate, are each authorized

and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Resolution.

If, in the judgment of the Fiscal Officer, the filing of an application for (i) a rating on the Bonds by one or more nationally-recognized rating agencies, or (ii) a policy of insurance or other credit enhancement facility from a company or companies to better assure the payment of principal of and interest on the Bonds, or (iii) a surety bond or other credit enhancement facility from a company or other companies to satisfy any reserve requirement for the Bonds is in the best interest of and financially advantageous to the County, the Fiscal Officer is authorized to prepare and submit those applications, to provide to each such agency, company or other credit enhancement facility provider such information as may be required for the purpose. The cost of obtaining each such rating, policy, bond or credit enhancement facility, except to the extent paid by the Original Purchaser, shall be paid from the proceeds of the Bonds.

8. Application of Bond Proceeds. The proceeds of the sale of the Bonds shall be allocated and deposited as provided in the Indenture.

9. Appointment of Bond Trustee; Indenture. This Council hereby appoints The Huntington National Bank to act as the trustee (such trustee, or a successor trustee pursuant to the applicable provisions of the Indenture, the "Trustee") for the Bonds. The Fiscal Officer shall provide for the payment of the services rendered and for reimbursement of expenses incurred by the Trustee pursuant to the Indenture from the proceeds of the Bonds to the extent available and then from other moneys lawfully available and appropriated or to be appropriated for that purpose.

In order to secure the Bonds, the County Executive is hereby authorized to execute and deliver, in the name and on behalf of the County, Supplemental Trust Indenture No. 3, in substantially the form as is now on file with the Clerk, except that the same may be dated as of such date other than December 1, 2015 as may be specified in the Certificate of Award, together with any changes or amendments that are not inconsistent with this Resolution and not substantially adverse to the County that are approved by the County Executive and the Director of Law on behalf of the County, all of which shall be conclusively evidenced by the signing of Supplemental Trust Indenture No. 3 or amendments thereto by those officials.

10. Bonds are Special Obligations; Provisions for Levy and Collection of County Sales Tax. The Bonds are special obligations of the County, and the principal of and interest (and any premium) on the Bonds are payable solely from the Pledged Revenues and the Pledged Funds, together with other available funds of the County, and such payment is secured by a pledge of and a lien on the Pledged Revenues and the Pledged Funds as provided by the Act and this Resolution.

The County has heretofore levied and covenants that it shall continue to collect the County Sales Taxes for so long as the Bonds are outstanding. The County hereby covenants and agrees that, so long as the Bonds are outstanding, it shall not suffer the repeal, amendment or any other change in this Resolution or the County Sales Tax Resolutions that in any way materially and adversely affects or impairs (a) the sufficiency of the County Sales Tax Receipts levied and collected or otherwise available for the payment of the Bonds or (b) the pledge or the application of the County Sales Tax Receipts to the payment of the Bonds.

The Bonds do not constitute a general obligation debt, or a pledge of the full faith and credit, of the State, the County, or any other political subdivision of the State, and the holders or owners of the Bonds have no right to have taxes levied by the general assembly or property taxes levied by the taxing authority of any political subdivision of the State, including the taxing authority of the County, for the payment of principal of and interest (and any premium) on the Bonds. Nothing herein shall be construed as requiring the County to use or apply to the payment of principal of and interest (and any premium) on the Bonds any funds or revenues from any source other than County Sales Tax Receipts. Nothing herein, however, shall be deemed to prohibit the County, of its own volition, from using, to the extent that it is authorized by law to do so, any other resources for the fulfillment of any of the terms, conditions or obligations of this Resolution or of the Bonds.

11. Federal Tax Considerations. The County covenants that it will use, and will restrict the use and investment of, the proceeds of the Bonds in such manner and to such extent as may be necessary so that (a) the Bonds will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Code or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest on the Bonds will not be treated as an item of tax preference under Section 57 of the Code.

The County further covenants that (a) it will take or cause to be taken such actions that may be required of it for the interest on the Bonds to be and to remain excluded from gross income for federal income tax purposes, and (b) it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The County Executive, the Fiscal Officer, or any other officer of the County having responsibility for issuance of the Bonds is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or

waiver on behalf of the County with respect to the Bonds as the County is permitted to or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in Section 148(f)(4)(C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Bonds or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the County, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Bonds, and (c) to give one or more appropriate certificates 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 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 and the tax status of the Bonds. Notwithstanding the foregoing or any other provisions of this Resolution to the contrary, if the Fiscal Officer determines in the Certificate of Award that it is necessary and appropriate and in the best interests of the County for the interest on the Bonds not to be excluded from gross income for federal income tax purposes, the County shall not be bound by the covenants of this Section.

12. Primary Offering Disclosure; Official Statement. The County Executive and the Fiscal Officer, in the name and on behalf of the County and in their official capacities, are authorized and directed to (i) prepare or cause to be prepared, and to make or authorize modifications, completions or changes of or supplements to, a disclosure document in the form of an official statement in connection with the original issuance of the Bonds, (ii) determine, and to certify or otherwise represent, when the official statement is to be “deemed final” (except for permitted omissions) by the County as of its date or is a final official statement for purposes of Rule 15c2-12 prescribed by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934 (the “Rule”), (iii) use and distribute, or authorize the use and distribution of, the “deemed final” and final official statements and any supplements thereto in connection with the original issuance of the Bonds, and (iv) complete and sign the final official statement as so approved, together with such certificates, statements or other documents in connection with the finality, accuracy and completeness of the “deemed final” and final official statements as they deem necessary and appropriate.

13. Continuing Disclosure. For the benefit of the holders and beneficial owners from time to time of the Bonds, the County agrees to provide or cause to be provided such financial information and operating data, audited financial statements and notices of the occurrence of certain events, in such manner as may be required

for purposes of the Rule. The County Executive and the Fiscal Officer are authorized and directed to sign and deliver a continuing disclosure agreement (the “Continuing Disclosure Agreement”), setting forth the County’s undertaking to provide such information and notices dated the date of delivery of the Bonds and delivered to the Original Purchaser of the Bonds. The Continuing Disclosure Agreement is approved, in substantially the form as is now on file with the Clerk of Council, together with any changes or amendments that are not inconsistent with this Resolution and not substantially adverse to the County and that are approved by the County Executive and the Fiscal Officer on behalf of the County, all of which shall be conclusively evidenced by the signing of the Continuing Disclosure Agreement.

14. Certification and Delivery of Resolution. The Clerk of this Council is directed to deliver or cause to be delivered a certified copy of this Resolution to the Fiscal Officer.

15. Satisfaction of Conditions for Bond Issuance. This Council determines that all acts and conditions necessary to be done or performed by the County or to have been met precedent to and in the issuing of the Bonds in order to make them legal, valid and binding obligations of the County have been performed and have been met, or will at the time of delivery of the Bonds have been performed and have been met, in regular and due form as required by law.

16. Other Documents. The County Executive, the Fiscal Officer, the Director of Law and the Clerk of Council are each hereby authorized and directed to take any and all other actions and to execute any and all other instruments, certificates and documents as may in their judgment be necessary, desirable, advisable or appropriate in connection with the issuance of the Bonds in order to give effect to the transactions contemplated to be performed on the part of the County under this Resolution, including, but not limited to, any management agreement or operating agreement with respect to the Garage necessary that may be necessary in connection with the issuance and delivery of the Bonds. To the extent an exemption is required for anything contemplated herein, it is hereby granted.

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

18. Captions and Headings. The captions and headings in this Resolution are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof. References to a Section means a section of this Resolution.

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

On a motion by \_\_\_\_\_, 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: October 27, 2015

Committee(s) Assigned: Committee of the Whole

Journal \_\_\_\_\_  
\_\_\_\_\_, 2015

[PROPOSED SUBSTITUTE]

County Council of Cuyahoga County, Ohio

Resolution No. R2015-0218

<p>Sponsored by: <b>County Executive Budish/Fiscal Officer/Office of Budget and Management</b></p>	<p><b>A Resolution</b> authorizing the issuance and sale of County sales tax revenue bonds, in an aggregate principal amount not-to-exceed \$21,030,000, for the purpose of paying or reimbursing the costs of constructing, reconstructing, refurbishing, renovating, upgrading, improving and equipping the Huntington Park Garage, together with connectors and other appurtenances and work incidental thereto, and for the purpose of paying any capitalized interest on the bonds and paying the costs of issuance in connection therewith; authorizing the execution of a trust indenture; authorizing other actions related to the issuance of the bonds; and declaring the necessity that this Resolution become immediately effective.</p>
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WHEREAS, the County of Cuyahoga, Ohio owns and operates the Huntington Park Garage (the “Garage”) located on West Third Street in downtown Cleveland; and

WHEREAS, the Garage is used by the general public, via self-parking, reserved parking and monthly parking and services the Cuyahoga County Courthouse, Cuyahoga County Justice Center, the convention center and other nearby locations and the Garage is also used for special events; and

WHEREAS, the County has determined that the Garage is in need of repair and renovation; and

WHEREAS, the County desires to address the needed repair and renovation of the Garage in a manner that improves the appearance and function of the Garage for its existing customers and also for additional customers to be added upon the completion of the convention center hotel; and

WHEREAS, this Council has determined that it is necessary and in the best interest of the County for the County to issue sales tax revenue bonds for the purpose of paying or reimbursing the costs of constructing, reconstructing, refurbishing, renovating, upgrading, improving and equipping the Huntington

Park Garage, together with connectors and other appurtenances and work incidental thereto, and for the purpose of paying any capitalized interest on the bonds and paying the costs of issuance in connection therewith; and

WHEREAS, this Council has determined that sales tax revenue bonds shall be issued in an aggregate principal amount not to exceed \$21,030,000 for the purposes herein stated and that the County should secure such bonds by a trust indenture, as provided herein; and

WHEREAS, pursuant to a resolution adopted July 6, 1987 (the “1987 County Sales Tax Resolution”), the Board of County Commissioners of the County (the “Board”), as the predecessor legislative authority to this Council, authorized the continuing levy and collection of sales and use taxes, authorized under Sections 5739.021 and 5741.021 of the Ohio Revised Code, at the rate of one percent (1%), and pursuant to a resolution adopted July 26, 2007 (the “2007 County Sales Tax Resolution” and, together with the 1987 County Sales Tax Resolution, the “County Sales Tax Resolutions”), the Board authorized an increase in the sales and use taxes to a rate of one and one-quarter percent (1-1/4%) (the “County Sales Tax”), each for the purpose of providing additional general revenues for the County; and

WHEREAS, this Council has determined to issue sales tax revenue bonds supported by the County Sales Tax for the Project described in Section 2; and

WHEREAS, the Fiscal Officer has certified that the estimated life of the Project is at least five (5) years, and that the estimated maximum maturity of the bonds described in Section 2 is at least twenty (20) years; and

WHEREAS, the Fiscal Officer has further certified to this Council that the maximum aggregate amount of sales tax revenue bonds, including the Bonds described in Section 2, that will be outstanding at any time will not exceed an amount which requires or is estimated by him, as Fiscal Officer, to require payments from sales tax receipts of debt charges on the sales tax revenue bonds, including the Bonds, in any calendar year in an amount exceeding the average of the amount received by the County for 2014 and 2015; and

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

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



1. Definitions and Interpretation. As used herein, the following terms shall be defined as follows:

“Act” means Chapter 133, Ohio Revised Code, as enacted and amended from time to time.

“Certificate of Award” means the certificate authorized to be signed by the Fiscal Officer pursuant to Section 6, specifying and determining those terms or other matters pertaining to the Bonds and their issuance, sale and delivery as this Resolution requires or authorizes to be set forth or determined therein.

“Code” means the Internal Revenue Code of 1986, the 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 such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

“County Executive” means the County Executive of the County; provided, for purposes of the signing of documents, certificates and other instruments other than the Bonds and the Official Statement, County Executive includes the County Executive’s Chief of Staff as the County Executive’s designee pursuant to Executive Order No. 02011-0002 and any other person duly designated by the County Executive.

“County Sales Tax Bond Fund” means the County Sales Tax Bond Fund created by the Indenture.

“County Sales Tax Receipts” means the monies received by the County from the County Sales Tax.

“County Sales Tax Revenue Fund” means the County Sales Tax Revenue Fund created by the Indenture.

“Director of Law” means the Director of Law of the County, including an interim or acting Director of Law.

“Fiscal Officer” means the Fiscal Officer of the County, including an interim or acting Fiscal Officer.

“Indenture” means the Trust Indenture dated as of December 1, 2014 between the County and the Trustee, as amended or supplemented from time to time, including by Supplemental Indenture No. 3.

“Interest Payment Dates” means, unless otherwise determined by the Fiscal Officer and specified in the Certificate of Award, June 1 and December 1 of each year during which the Bonds are outstanding, commencing June 1, 2017.

“Original Purchaser” means, Cuyahoga County.

“Pledged Funds” means the County Sales Tax Bond Fund and any other funds established under the Indenture and pledged as security for the Bonds.

“Pledged Revenues” means, collectively, (a) the County Sales Tax Receipts and (b) all monies in the Pledged Funds, including revenues related to the cooperative Project that are deposited in the Pledged Funds for the benefit of the Bonds, and all income and profit from the investment of those monies.

“Principal Payment Dates” means, unless otherwise determined by the Fiscal Officer and specified in the Certificate of Award, December 1 in each of the years from and including 2017 to and including 2036.

“Supplemental Indenture No. 3” means Supplemental Trust Indenture No. 3, dated as of December 1, 2016, between the County and the Trustee and relating to the issuance of the Bonds, and any amendment or supplement thereto.

“Term Bonds” means those Bonds designated as such in the Certificate of Award, maturing on the date or dates set forth therein, bearing interest payable on each Interest Payment Date and subject to mandatory sinking fund redemption.

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.

The captions and headings in this Resolution are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof. Reference to a Section means a section of this Resolution unless otherwise indicated.

2. Authorized Principal Amount of Bonds and Purpose. It is necessary to issue sales tax revenue bonds of this County in an aggregate principal amount not to exceed \$21,030,000 (the “Bonds”) for the purpose of paying or reimbursing the costs of constructing, reconstructing, refurbishing, renovating, upgrading, improving and equipping the Huntington Park Garage, together with connectors and other appurtenances and work incidental thereto (the “Project”), and for the purpose of paying any capitalized interest on the Bonds and paying the costs of issuance in connection therewith.

3. Bond Terms. The Bonds shall be issued pursuant to the terms of the Indenture. The Bonds may be issued in one or more series, and shall be numbered in such manner as to distinguish each Bond from any other Bond of the same series. The Bonds shall be issued in denominations of \$5,000 or multiples of \$5,000 in excess thereof, but in no case as to a particular maturity date exceeding the principal amount maturing on that date. The Bonds shall be dated as determined by the Fiscal Officer, with the true interest cost on the Bonds not to exceed seven percent (7%) per year (computed on the basis of a 360-day year consisting of twelve 30-day months), provided that if the interest on the Bonds is not to be excluded from gross income for federal income tax purposes, the true interest cost on the Bonds shall not exceed twelve (12%) per year, payable on such semiannual dates or annual dates as determined by the Fiscal Officer in the Certificate of Award until the principal amount is paid, and shall mature on such semiannual dates or annual dates as determined by the Fiscal Officer in the Certificate of Award, provided that the final maturity shall not be later than December 1, 2036, in accordance with Section 133.21 of the Ohio Revised Code and as set forth in the Certificate of Award and the Indenture.

4. Redemption Provisions. The Bonds shall mature serially on such dates and in such principal amounts as are fixed by the Fiscal Officer in the Certificate of Award and the Indenture, provided that the Bonds stated to mature in any year may be issued as Term Bonds payable pursuant to Mandatory Sinking Fund Redemption Requirements as hereinafter defined and further described below and as provided for in the Indenture. The Fiscal Officer shall determine in the Certificate of Award whether any of the Bonds shall be issued as Term Bonds and any dates (the “Mandatory Redemption Dates”) on which the principal amount stated above shall be payable pursuant to Mandatory Sinking Fund Redemption Requirements rather than at stated maturity (the “Mandatory Sinking Fund Redemption Requirements”).

The Bonds shall be subject to redemption prior to stated maturity as follows:

(a) *Mandatory Sinking Fund Redemption.* If any of the Bonds are issued as Term Bonds, the Term Bonds shall be subject to mandatory sinking fund redemption and be redeemed pursuant to Mandatory Sinking Fund Redemption Requirements, at a redemption price of 100% of the principal amount redeemed, plus interest accrued to the redemption date, on the Mandatory Redemption Dates.

(b) *Optional Redemption.* The Bonds shall be subject to redemption prior to maturity by or at the option of the County, at par, in whole or in part on any date on the dates, in the years and for the prices specified in the Certificate of Award, provided, however, that the Fiscal Officer may determine in the Certificate of Award that it is in the best interest of the County that the Bonds not be subject to redemption prior to maturity. If the Bonds are subject to redemption, the maximum

redemption price shall be no greater than 100% of the principal amount redeemed, plus accrued interest to the redemption date.

5. Execution of Bonds. The Bonds shall be designated “Cuyahoga County Sales Tax Revenue Bonds, Series 2016 (Huntington Park Garage Project)” or such other name as may be designated in the Certificate of Award. The Bonds shall contain a summary statement of the purposes for which they are issued; shall state that they are issued pursuant to this Resolution; shall be executed by the County Executive and the Fiscal Officer, in the name and on behalf of the County and in their official capacities, provided that either or both of those signatures may be a facsimile; shall be issued only in fully registered form; and shall be registered as to both principal and interest at the corporate trust office of the Trustee. The Bonds shall be issued in the denominations and numbers as requested by the Original Purchaser and approved by the Fiscal Officer, and shall be numbered as determined by the Fiscal Officer.

The principal of the Bonds shall be payable at maturity of the Bonds upon presentation and surrender to the Trustee. Interest on any Bond shall be paid on each Interest Payment Date as defined in and as further provided in the Indenture. The principal and interest on the Bonds is payable in lawful money of the United States of America without deduction for the services of the Trustee.

No Bond shall be valid or become obligatory for any purpose unless and until an authentication certificate appearing on the Bond shall have been duly endorsed by the Trustee.

6. Award and Sale of Bonds. The Bonds shall be sold to the Original Purchaser at a purchase price and bearing interest at a rate or rates determined by the County Executive or the Fiscal Officer to be in the best interest of the County and as designated by the County Executive or the Fiscal Officer in the Certificate of Award in accordance with law, the provisions of this Resolution, and the Indenture. The Fiscal Officer shall sign the Certificate of Award evidencing that sale to the Original Purchaser, with the final purchase price, interest rate or rates, aggregate principal amount, and principal amounts payable at stated maturity being set forth in the Certificate of Award and the Indenture, at a purchase price not less than 97% of par plus any accrued interest to their date of delivery. The Fiscal Officer may specify in the Certificate of Award whether any reserve fund shall be established for the Bonds and, if so, the applicable reserve requirement (subject to any applicable federal tax law restrictions) and source of funding. The Fiscal Officer may also specify in the Certificate of Award that the interest on any or all of the Bonds shall not be excluded from gross income for purposes of federal income taxation. The Fiscal Officer shall cause the Bonds to be prepared, and have the Bonds signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Bonds if requested by the Original Purchaser, to the Original Purchaser upon payment of the purchase price. The Fiscal Officer, the County Executive, the Director of Law, the Clerk of this Council and other County officials, as appropriate, are each authorized

and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Resolution.

If, in the judgment of the Fiscal Officer, the filing of an application for (i) a rating on the Bonds by one or more nationally-recognized rating agencies, or (ii) a policy of insurance or other credit enhancement facility from a company or companies to better assure the payment of principal of and interest on the Bonds, or (iii) a surety bond or other credit enhancement facility from a company or other companies to satisfy any reserve requirement for the Bonds is in the best interest of and financially advantageous to the County, the Fiscal Officer is authorized to prepare and submit those applications, to provide to each such agency, company or other credit enhancement facility provider such information as may be required for the purpose. The cost of obtaining each such rating, policy, bond or credit enhancement facility, except to the extent paid by the Original Purchaser, shall be paid from the proceeds of the Bonds.

7. Application of Bond Proceeds. The proceeds of the sale of the Bonds shall be allocated and deposited as provided in the Indenture.

8. Appointment of Bond Trustee; Indenture. This Council hereby appoints The Huntington National Bank or such trustee appointed in the Certificate of Award to act as the trustee (such trustee, or a successor trustee pursuant to the applicable provisions of the Indenture, the "Trustee") for the Bonds. The Fiscal Officer shall provide for the payment of the services rendered and for reimbursement of expenses incurred by the Trustee pursuant to the Indenture from the proceeds of the Bonds to the extent available and then from other moneys lawfully available and appropriated or to be appropriated for that purpose.

In order to secure the Bonds, the County Executive is hereby authorized to execute and deliver, in the name and on behalf of the County, Supplemental Trust Indenture No. 3, except that the same may be dated as of such date other than December 1, 2016 as may be specified in the Certificate of Award, together with any changes or amendments that are not inconsistent with this Resolution and not substantially adverse to the County that are approved by the County Executive and the Director of Law on behalf of the County, all of which shall be conclusively evidenced by the signing of Supplemental Trust Indenture No. 3 or amendments thereto by those officials.

9. Bonds are Special Obligations; Provisions for Levy and Collection of County Sales Tax. The Bonds are special obligations of the County, and the principal of and interest (and any premium) on the Bonds are payable solely from the Pledged Revenues and the Pledged Funds, together with other available funds of the County, and such payment is secured by a pledge of and a lien on the Pledged Revenues and the Pledged Funds as provided by the Act and this Resolution.

The County has heretofore levied and covenants that it shall continue to collect the County Sales Taxes for so long as the Bonds are outstanding. The County hereby covenants and agrees that, so long as the Bonds are outstanding, it shall not suffer the repeal, amendment or any other change in this Resolution or the County Sales Tax Resolutions that in any way materially and adversely affects or impairs (a) the sufficiency of the County Sales Tax Receipts levied and collected or otherwise available for the payment of the Bonds or (b) the pledge or the application of the County Sales Tax Receipts to the payment of the Bonds.

The Bonds do not constitute a general obligation debt, or a pledge of the full faith and credit, of the State, the County, or any other political subdivision of the State, and the holders or owners of the Bonds have no right to have taxes levied by the general assembly or property taxes levied by the taxing authority of any political subdivision of the State, including the taxing authority of the County, for the payment of principal of and interest (and any premium) on the Bonds. Nothing herein shall be construed as requiring the County to use or apply to the payment of principal of and interest (and any premium) on the Bonds any funds or revenues from any source other than County Sales Tax Receipts. Nothing herein, however, shall be deemed to prohibit the County, of its own volition, from using, to the extent that it is authorized by law to do so, any other resources for the fulfillment of any of the terms, conditions or obligations of this Resolution or of the Bonds.

10. Federal Tax Considerations. The County covenants that it will use, and will restrict the use and investment of, the proceeds of the Bonds in such manner and to such extent as may be necessary so that (a) the Bonds will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Code or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest on the Bonds will not be treated as an item of tax preference under Section 57 of the Code.

The County further covenants that (a) it will take or cause to be taken such actions that may be required of it for the interest on the Bonds to be and to remain excluded from gross income for federal income tax purposes, and (b) it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The County Executive, the Fiscal Officer, or any other officer of the County having responsibility for issuance of the Bonds is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or

waiver on behalf of the County with respect to the Bonds as the County is permitted to or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in Section 148(f)(4)(C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Bonds or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the County, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Bonds, and (c) to give one or more appropriate certificates 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 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 and the tax status of the Bonds. Notwithstanding the foregoing or any other provisions of this Resolution to the contrary, if the Fiscal Officer determines in the Certificate of Award that it is necessary and appropriate and in the best interests of the County for the interest on the Bonds not to be excluded from gross income for federal income tax purposes, the County shall not be bound by the covenants of this Section.

11. Certification and Delivery of Resolution. The Clerk of this Council is directed to deliver or cause to be delivered a certified copy of this Resolution to the Fiscal Officer.

12. Satisfaction of Conditions for Bond Issuance. This Council determines that all acts and conditions necessary to be done or performed by the County or to have been met precedent to and in the issuing of the Bonds in order to make them legal, valid and binding obligations of the County have been performed and have been met, or will at the time of delivery of the Bonds have been performed and have been met, in regular and due form as required by law.

13. Other Documents. The County Executive, the Fiscal Officer, the Director of Law and the Clerk of Council are each hereby authorized and directed to take any and all other actions and to execute any and all other instruments, certificates and documents as may in their judgment be necessary, desirable, advisable or appropriate in connection with the issuance of the Bonds in order to give effect to the transactions contemplated to be performed on the part of the County under this Resolution, including, but not limited to, any management agreement or operating agreement with respect to the Garage necessary that may be necessary in connection with the issuance and delivery of the Bonds. To the extent an exemption is required for anything contemplated herein, it is hereby granted.

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

15. Captions and Headings. The captions and headings in this Resolution are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof. References to a Section means a section of this Resolution.

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

On a motion by \_\_\_\_\_, 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: October 27, 2015  
Committee(s) Assigned: Committee of the Whole

Legislation Substituted on the Floor: November 29, 2016

Journal \_\_\_\_\_  
\_\_\_\_\_, 20\_\_

# County Council of Cuyahoga County, Ohio

## Resolution No. R2016-0206

Sponsored by: <b>County Executive Budish</b>	<b>A Resolution</b> approving an agreement with City of Cleveland for the period 8/1/2015 - 7/31/2035 for the purpose of distributing alcohol and cigarette excise tax proceeds; authorizing the County Executive to execute the agreement and all other documents consistent with this Resolution; and declaring the necessity that this Resolution become immediately effective.
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WHEREAS, pursuant to Resolution No. R2014-0002 adopted by this Council on January 28, 2014, this Council caused to be submitted to the electors of Cuyahoga County at the special election on May 6, 2014 the question of whether to extend an excise tax on alcohol and cigarette sales for the purpose of paying the costs of constructing, renovating, improving, or repairing sports facilities and reimbursing the county for costs incurred by the county in the construction of sports facilities; and,

WHEREAS, that ballot measure received a majority affirmative vote of the electors of Cuyahoga County and, consequently, the taxes thereby levied (the "County Excise Tax") went into effect beginning August 1, 2015; and,

WHEREAS, pursuant to Resolution No. R2015-0210 adopted by this Council, Cuyahoga County issued County Excise Tax revenue bonds in the aggregate principal amount of \$60,485,000 pursuant to Ohio Revised Code Chapters 133 and 307 for the purpose of paying the costs of constructing, renovating, improving or repairing sports facilities and for the purpose of paying any capitalized interest on the Bonds; and,

WHEREAS, the County Executive desires to enter into an agreement with the City of Cleveland for the purpose of equitably distributing the County Excise Tax; and,

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

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

**SECTION 1.** That the Cuyahoga County Council hereby approves the attached agreement with City of Cleveland for the period 8/1/2015 - 7/31/2035 for the purpose

of distributing the County Excise Tax proceeds to pay the costs of constructing, renovating, improving or repairing sports facilities.

**SECTION 2.** That the County Executive is authorized to execute the attached agreement and all other documents consistent with this Resolution.

**SECTION 3.** To the extent an exemption from competitive bidding is needed, it is hereby granted.

**SECTION 4.** It is necessary that this Resolution become immediately effective for the usual daily operation of the County; the preservation of public peace, health, or safety in the County; and any additional reasons set forth in the preamble. Provided that this Resolution receives the affirmative vote of at least eight members of Council, it shall take effect and be in force immediately upon the earliest occurrence of any of the following: (1) its approval by the County Executive through signature, (2) the expiration of the time during which it may be disapproved by the County Executive under Section 3.10(6) of the Cuyahoga County Charter, or (3) its passage by at least eight members of Council after disapproval pursuant to Section 3.10(7) of the Cuyahoga County Charter. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

**SECTION 5.** It is found and determined that all formal actions of this Council relating to the adoption of this Resolution were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

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

Yeas:

Nays:

\_\_\_\_\_  
County Council President

\_\_\_\_\_  
Date

\_\_\_\_\_  
County Executive

\_\_\_\_\_  
Date

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Date

First Reading/Referred to Committee: November 15, 2016  
Committee(s) Assigned: Committee of the Whole

Journal \_\_\_\_\_  
\_\_\_\_\_, 20\_\_

**ALLOCATION AGREEMENT**

THIS ALLOCATION AGREEMENT (this “Agreement”), is made and entered into as of November \_\_, 2016 (the “Effective Date”), by and among the COUNTY OF CUYAHOGA, OHIO (the “County”), a county and political subdivision in and of the State of Ohio (the “State”) and duly organized and validly existing under and by virtue of the Constitution and laws of the State and its Charter, and the CITY OF CLEVELAND, OHIO (the “City”), a political subdivision of the State duly organized and validly existing under and by virtue of the Constitution and laws of the State and its Charter.

**RECITALS**

1. Pursuant to Resolution No. R2014-0002, adopted by the Council of the County on January 28, 2014 (the “County Excise Tax Resolution”), the Council of the County caused to be submitted to the electors of the County at the special election on May 6, 2014, the question of whether excise taxes shall continue to be levied by the County on spirituous liquor, beer, wine and other beverages and cigarettes sold in the County for 20 years beginning August 1, 2015, for the purpose of paying the cost of constructing, renovating, improving or repairing sports facilities and reimbursing the County for costs incurred by the County in the construction of sports facilities.

2. Prior to that special election, officials of the County sought the endorsement and support of officials of the City for the passage of the continuation of the levee of the excise taxes, and officials of the City, including the Mayor and the President of the Council of the City, provided that endorsement and support, based in part on the assurance from officials of the County that the proceeds of the extended excise taxes would be allocated equally to fund improvements to First Energy Stadium, Progressive Field and Quicken Arena, each as more fully defined below (the “Sports Facilities”).

3. That ballot measure received a majority affirmative vote of the electors of the County at that special election, and, consequently, the taxes thereby levied (as more fully defined below, the “County Excise Taxes”) went into effect beginning August 1, 2015.

4. The County and the City now desire to memorialize and elaborate upon their agreement on the equal, three-way split of the proceeds of the County Excise Taxes.

**TERMS OF AGREEMENT**

In consideration of the foregoing Recitals and other good and valuable consideration received to the full satisfaction of each of them, the parties, intending to be legally bound, hereby agree as follows:

Section 1. Defined Terms. Unless otherwise defined herein or unless the context indicates a different intent, the following capitalized words and terms used in this Agreement shall have the following meanings:

“Additional Bonds” means any Bonds issued on a parity with the Series 2015 Bonds upon the terms and conditions set forth in the Indenture.

“Allocable Excise Taxes Proceeds” means all County Excise Taxes received by, or on behalf of, the County, less any tax collection costs deducted by the State of Ohio.

“Bond Fund” means the Bond Fund established under the Indenture.

“Bond Reserve Fund” means the Bond Reserve Fund established under the Indenture.

“City’s FES Account” means the account designated as the “COPs Improvement Account of the County Contribution Fund” held by U.S. Bank as Trustee (Account No. 12-1632G).

“City’s Share” means the Allocable Excise Tax Proceeds allocable to First Energy Stadium under this Agreement.

“County Excise Tax Bonds” means the Series 2015 Excise Tax Bonds and any Additional Bonds.

“County Excise Taxes” means the excise taxes on spirituous liquor, beer, wine and other beverages and cigarettes sold in the County, the question of the continuing levy of which for 20 years beginning August 1, 2015, for the purpose of paying the cost of constructing, renovating, improving or repairing sports facilities and reimbursing the County for costs incurred by the County in the construction of sports facilities, the Council, pursuant to the County Excise Tax Resolution, caused to be submitted to the electors of the County at the special election on May 6, 2014, at which special election that ballot measure received a majority affirmative vote of the electors of the County, with the consequence that the taxes thereby levied went into effect beginning August 1, 2015.

“Facilities Improvement Fund” means the Facilities Improvement Fund Established under the Indenture.

“FES Reserve Account” means the account of that name to be established in the Facilities Improvement Fund and funded and drawn upon pursuant to Section 4(a) of this Agreement.

“First Energy Stadium” means the stadium that is known as First Energy Stadium as of the date of this Agreement, as it may be improved from time to time and regardless of any change in its name that may occur during the term of this Agreement, together with all parking facilities, walkways, and other auxiliary facilities, real and personal property, property rights, easements, and interest that may be appropriate for, or used in connection with, the operating of that facility.

“First Energy Stadium Account” means the First Energy Stadium Account to be established in the Facilities Improvement Fund pursuant to the Indenture and this Agreement.

“First Energy Stadium Bonds” means any Additional Bonds issued by the County at the request of the City to fund costs of improvements to First Energy Stadium.

“Indenture” means the Trust Indenture, between the County and Trustee, dated as of December 1, 2015, as the same has been and may be supplemented and amended from time to the time.

“Progressive Field” means the ballpark that is known as Progressive Field as of the date of this Agreement, as it may be improved from time to time and regardless of any change in its name that may occur during the term of this Agreement, together with all walkways, and other auxiliary facilities, real and personal property, property rights, easements, and interest that may be appropriate for, or used in connection with, the operating of that facility.

“Quicken Loans Arena” means the arena that is known as Quicken Loans Arena as of the date of this Agreement, as it may be improved from time to time and regardless of any change in its name that may occur during the term of this Agreement, together with all walkways, and other auxiliary facilities, real and personal property, property rights, easements, and interest that may be appropriate for, or used in connection with, the operating of that facility.

“Series 2015 Excise Tax Bonds” means the County’s \$60,485,000 Excise Tax Revenues Bonds, Series 2015 (Sports Facilities Improvement Project).

“Sports Facilities” means First Energy Stadium, Progressive Field and Quicken Loans Arena.

“Trustee” means U.S. Bank National Association, as trustee under the Indenture.

Section 2. Allocable Excise Taxes Proceeds. The Allocable Excise Taxes Proceeds, from the commencement of their levy and collection on August 1, 2015 and throughout the period of their levy and collection, shall be allocated equally among the Sports Facilities in accordance with this Agreement. Specifically, one-third of all Allocable Excise Taxes Proceeds and of each receipt thereof shall be allocated to First Energy Stadium and disbursed to fund improvements to First Energy Stadium under and in accordance with this Agreement.

(a) Interest Expense. The City’s Share will not be reduced to reflect required payments of interest on County Excise Tax Bonds other than any First Energy Stadium Bonds. To the extent that interest expenses paid on First Energy Stadium Bonds create a required use of Allocable Excise Tax Proceeds, those interest expenses will be allocated to the City’s Share.

(b) Interest Earned. The Allocable Excise Taxes Proceeds will include any interest earned on the County Excise Taxes receipts prior to their disbursement (including interest earned on the County Excise Taxes receipts while on deposit in the Facilities Improvement Fund), other than interest earned on the Bond Fund or the Bond Reserve Fund established under the Indenture. The City’s Share will not include any interest earned on the proceeds of County Excise Tax Bonds (or on moneys in the Bond Fund or the Bond Reserve Fund attributable to such Bonds) except to the extent that such proceeds derive from or relate to First Energy Stadium Bonds.

Section 3. Accounting of Allocable Excise Tax Proceeds.

(a) Initial Accounting. Within ten (10) days of the date hereof, the County will deliver to the City a certification as to (i) the amounts of the Allocable Excise Taxes Proceeds received by or on behalf of the County (including by the Trustee) since August 1, 2015 through and including October 31, 2016; (ii) the dates, amounts, recipients and purposes of disbursements of the Allocable Excise Taxes Proceeds through and including October 31, 2016 (including any disbursements made for payment of debt service charges or for other funding requirements related to the Series 2015 Excise Tax Bonds); and (iii) the balance of the Allocable Excise Taxes Proceeds held by or for the County in the Facilities Improvement Fund or otherwise legally available for disbursement of the City's one-third share of the total amount certified pursuant to (i) above.

(b) Continuing Accounting. Within ten (10) days of the end of each calendar month beginning November 2016 and ending with the calendar month in which the final collection of the County Excise Taxes occurs, the County will deliver to the City a certification as to (i) the amounts of the Allocable Excise Taxes Proceeds received by or on behalf of the County (including by the Trustee) during the preceding calendar month; and (ii) the dates, amounts, recipients and purposes of disbursements of the Allocable Excise Taxes Proceeds during the preceding calendar month (including any disbursements made for payment of debt service charges or for other funding requirements related to the Series 2015 Excise Tax Bonds).

Section 4. Allocation and Disbursement of Allocable Excise Tax Proceeds.

(a) Initial Allocation; establishment and funding of FES Reserve Account. Simultaneously with the execution of this Agreement, the County will cause the Trustee to establish a First Energy Stadium Account in the Facilities Improvement Fund established under the Indenture. Within ten (10) days of the County's delivery of the certification described in Section 3(a)(i) above, the County will cause one-third (1/3) of the amount described in clause (a) of that certification to be deposited in the First Energy Stadium Account and will provide the City with written evidence of that deposit. Pending the full funding of the required deposit to the First Energy Stadium Account, the County shall not authorize, and the Trustee shall not allow, any other deposit or disbursement of Allocable Excise Taxes Proceeds (whether from the Facilities Improvement Fund or any other source) for any purpose (except for deposits to the Bond Fund or the Bond Reserve Fund that are required under the Indenture) other than the full funding of the required deposit to the First Energy Stadium Account.

Simultaneously with the County's initial deposit in the First Energy Stadium Account, the County will cause an additional \$2,000,000 in the Facilities Improvement Fund to be deposited in the FES Reserve Account, which the County shall have established with the Trustee in the Facilities Improvement Fund. After fully funding the Bond Fund and the Bond Reserve Fund and then making all deposits to the First Energy Stadium Account then required to be made under Section 4(b) of this Agreement, and before making any other uses of the moneys in or to be deposited to the Facilities Improvement Fund, the County shall cause an additional \$1,000,000 to be deposited in the FES Reserve Account in each of the years 2017 and 2018. Moneys on deposit in the FES Reserve Account shall be used solely for the purpose of immediately curing any deficiency in any deposit in the First Energy Stadium Account pursuant



to Section 4)(b) of this Agreement. If all required deposits to the First Energy Stadium Account required to be made under this Section 4 shall have been made at the time and in the full amount required without any draws having been made on the FES Reserve Account to fund any portion of any of those deposits, then on June 30 in each of the years 2023, 2024, 2025, and 2026, \$1,000,000 shall be released from the FES Reserve Account and be available for any lawful use of moneys in the Facilities Improvement Fund. Prior to those dates, the City reserves the right to authorize and direct a release of funds from the FES Reserve Account for transfer to the First Energy Stadium Account.(b) Continuing Allocation. Within ten (10) days of the County's delivery of each certification required by Section 3(b)(i) above, the County will cause the City's Share thereof (i.e., one-third of the amount described in clause (i) of that certification) to be deposited in the First Energy Stadium Account if and to the extent not previously so deposited; provided, however, that if at the time of the delivery of any such certification, all then required deposits to the Bond Fund and the Bond Reserve Fund shall not yet have been made, then the City's Share shown on that certification, together with all previously accrued but unfunded City's Share amounts, shall accrue for funding at such time as all then required deposits to the Bond Fund and the Bond Reserve Fund shall have been made, at which point all subsequent deposits to the Facilities Improvement Fund shall be deposited in the First Energy Stadium Account until the full amount of all then accrued City's Share amounts have been funded. Pending the full funding of the required deposit to the First Energy Stadium Account, the County shall not authorize, and the Trustee shall not allow, any other deposit or disbursement of Allocable Excise Taxes Proceeds (whether from the Facilities Improvement Fund or any other source) for any purpose (except for deposits to the Bond Fund or the Bond Reserve Fund that are required under the Indenture) other than the full funding of the required deposit to the First Energy Stadium Account.

(c) Disbursement of Allocable Excise Tax Proceeds. Allocable Excise Taxes Proceeds allocated to and deposited in the First Energy Stadium Account will be disbursed only for the purpose of funding improvements to First Energy Stadium or for the purpose of funding debt service on First Energy Stadium Bonds or other debt obligations that the City may issue or incur for the purpose of funding such improvements. The City represents and warrants that (i) the moneys in the City FES Account may be used only for the purpose of funding improvements to First Energy Stadium that are qualified uses and permitted purposes for the Allocable Excise Taxes Proceeds, and (ii) the City will at all times and throughout the term of this Agreement maintain the City FES Account and the restrictions on the use of the moneys therein to conform to any comply with the preceding clause (i). At the time of the initial deposit or deposits to the First Energy Stadium Account described in Section 4(a) above and at the time of each subsequent deposit or deposits described in Section 4(b) above, the County will cause the Trustee to transfer the full balance in the First Energy Stadium Account to the City FES Account based upon the City's foregoing representations and warranties and without the requirement of subsequent requests or requisitions from the City. Before the end of each month following the month in which the initial such deposit to the City FES Account occurs, the City will provide a written report to the County regarding the amounts in which and purposes for which moneys in the City FES Account were disbursed and applied during the preceding month and the balance in the City FES Account at the end of the preceding month. In the event of the issuance of any First Energy Stadium Bonds as described in Section 5 below, the foregoing requirements for deposits to the First Energy Stadium Account and transfers to the City FES Account will be

adjusted to reflect the requirement of deposits of a portion of the City's Share to the Bond Fund or the Bond Reserve Fund.

Section 5. Issuance of Bonds. The City and the County agree that the City shall have the right to request the County to issue First Energy Stadium Bonds from time to time, subject to the requirements for the issuance of the Additional Bonds in the Indenture. The City acknowledges and agrees that the authority to authorize and issue Bonds resides exclusively with the County. The County agrees that it will not unreasonably withhold or deny its approval of any such request from the City for the issuance of First Energy Stadium Bonds, and that if it does withhold or deny any such approval, the County will deliver to the City a written statement of its reasons for doing so, and will base any decision to withhold or deny any such approval on factors other than the nature of the improvements to First Energy Stadium that the City is proposing to make, provided that they meet the requirements of the Indenture and the laws of the State under which the County Excise Taxes are levied. The County further agrees that it shall not authorize or effect the issuance of Bonds under the Indenture if (i) at the time of any such issuance, any required deposit to the First Energy Stadium Account or the FES Reserve Account under Section 4 hereof shall not have been made at the time and in the full amount required; and (ii) after the date of delivery of such Bonds, the payment of the projected Bond Service Charges on all Bonds then outstanding, would require the allocation of more than one-third of reasonably projected Allocable Excise Tax Receipts to the payment of improvements for any one particular sports facility. The County will provide advance written notice to the City of at least sixty (60) days of any issuance of Additional Bonds, and the City shall have the right to object to any such issuance if the City reasonably demonstrates to the County, at least thirty (30) days prior to any issuance, that the payment of Bond Service Charges on such Additional Bonds would impair the County's ability to effect and achieve the continued allocation of the Excise Tax Proceeds in compliance with this Agreement.

Section 6. Miscellaneous.

(a) Term of the Agreement. Unless otherwise terminated by written instrument of the City and the County, this Agreement shall be and remain in full force and effect from the date of its delivery and throughout the period of time that the County Excise Taxes are collected.

(b) Notices. All notices, certificates, requests or other communications hereunder will be in writing and will be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, and addressed to the appropriate address listed below:

As to the County: County of Cuyahoga, Ohio  
1219 Ontario Street  
Cleveland, Ohio 44113  
Attention: County Executive

With a copy to Director of Law

As to the City: City of Cleveland, Ohio  
601 Lakeside Avenue  
Cleveland, Ohio 44114  
Attention: Director of Finance

With a copy to Director of Law

The County and the City, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications will be sent. Except as otherwise provided herein, the mailing of any notice will be deemed complete upon deposit of that notice in the mail and the giving of any notice by any other means of delivery will be deemed complete upon receipt of the notice by the delivery service.

(c) Extent of Covenants; No Personal Liability. All covenants, obligations and agreements of the County and the City contained in this Agreement will be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement will be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of the County or the City in other than his or her official capacity.

(d) Binding Effect. This Agreement will inure to the benefit of and will be binding in accordance with its terms upon the County, the City, and their respective permitted successors and assigns. This Agreement may be enforced only by the Parties, their assignees and others who may, by law, stand in their respective places.

(e) Amendments and Supplements. This Agreement may be amended only by written agreement of the County and the City duly authorized by their respective governing bodies.

(f) Execution Counterparts. This Agreement may be executed in any number of counterparts as may be convenient or necessary, and it will not be necessary that the signatures of both parties hereto be contained on any one counterpart hereof. Additionally, the parties hereto agree that for purposes of facilitating the execution of this Agreement, (a) the signature pages taken from the separate individually executed counterparts of this Agreement may be combined to form multiple fully executed counterparts and (b) a facsimile transmission will be deemed to be an original signature for all purposes. All executed counterparts of this Agreement will be deemed to be originals, but all such counterparts taken together or collectively, as the case may be, will constitute one and the same agreement.

(g) Severability If any term or condition of this Agreement, or application thereof to either party or in any circumstance, shall be invalid or unenforceable to any extent, then the

remainder of this Agreement and the application of such term or condition to the other party or other circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by applicable laws. That invalidity or unenforceability will not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement will be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

(h) Limitation of Rights With the exception of rights conferred expressly in this Agreement, nothing expressed or mentioned in or to be implied from this Agreement is intended or will be construed to give to any person other than the parties hereto any legal or equitable right, remedy, power or claim under or with respect to this Agreement or any covenants, agreements, conditions and provisions contained herein. This Agreement and all of the covenants, agreements, conditions and provisions hereof are intended to be, and are, for the sole and exclusive benefit of the parties hereto, as provided herein.

(i) Governing Law. This Agreement will be deemed to be a contract made under the laws of the State and for all purposes will be governed by and construed in accordance with the laws of the State.

(j) Facsimile Signatures. Signatures to this Agreement transmitted by facsimile shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver an execution original to this Agreement with its actual signature to the other party, but a failure to do so shall not affect the enforceability of this Agreement, it being expressly agreed that each party shall be bound by its own facsimile signature and shall accept the facsimile signature of the other party.

(k) Electronic Signature. The parties agree that all documents requiring signatures by the County may be executed by electronic means, and that the electronic signatures affixed by the County to this Agreement shall have the same legal effect as if that signature was manually affixed to a paper version of this Agreement. The parties also agree that the County is bound by the provisions of Chapter 304 of the Ohio Revised Code as it pertains to electronic transactions under Chapter 1306 of the Ohio Revised Code, and the County shall comply with its electronic signature policy.

IN WITNESS WHEREOF, the County and the City have caused this Agreement to be duly executed in their respective names, all as of the date first hereinbefore written.

This document approved for legal form and correctness

**COUNTY OF CUYAHOGA, OHIO**

Robert Triozzi, Director of Law

By: \_\_\_\_\_  
Armond Budish, County Executive

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

This document approved for legal form and correctness

**CITY OF CLEVELAND, OHIO**

Barbara A. Langhenry, Director of Law

By: \_\_\_\_\_  
Frank G. Jackson, Mayor

By: \_\_\_\_\_  
Chief Assistant Law Director