

CUYAHOGA COUNTY BOARD OF HEALTH

AGENDA – February 12, 2018

1. Call to Order.
2. Roll Call.
3. Motion to excuse absent Board Members.
4. Public Comments on Agenda Resolutions Only (three minute maximum).
5. Motion to adjourn to Executive Session to discuss purchase or lease of property.
6. Approval of Resolutions/Motions:

REGULAR ACTIONS OF THE BOARD:

- A. RESOLUTION (2017-160) To approve and authorize a ground lease and lease-purchase agreement and related documents providing for constructing, renovating, furnishing and equipping improvements to the Board of Health building facilities and authorizing and approving other related matters (ref. enclosed) (Tabled-December 20, 2017).

7. Public and Staff Comments (three minute maximum).
8. Miscellaneous Business.
9. Motion to adjourn the meeting.

CUYAHOGA COUNTY
BOARD OF HEALTH
YOUR TRUSTED SOURCE FOR PUBLIC HEALTH INFORMATION

RESOLUTION 2017-160

A RESOLUTION APPROVING AND AUTHORIZING A GROUND LEASE AND LEASE-PURCHASE AGREEMENT AND RELATED DOCUMENTS PROVIDING FOR CONSTRUCTING, RENOVATING, FURNISHING AND EQUIPPING IMPROVEMENTS TO THE BOARD OF HEALTH BUILDING FACILITIES AND AUTHORIZING AND APPROVING OTHER RELATED MATTERS.

WHEREAS, this Board has determined to provide for financing to pay costs of constructing, renovating, furnishing and equipping improvements to its building facilities (the “Improvements”); and

WHEREAS, it will be necessary for the Board to enter into one or more ground leases, lease-purchase agreements and other agreements in order to finance the cost of the Improvements, all in accordance with the laws of the State of Ohio (the “State”), including, but not limited to, Section 3707.55 of the Revised Code; and

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

A. Sign and deliver a ground lease (the “Ground Lease”) under which the Board will convey to an entity as determined by an authorized officer of the Board (which may include the Chief Financial Officer of the Board, the President of the Board, the President Pro Tempore of the Board or the Health Commissioner, and each such officer herein referred to as an “Authorized Officer”) to be appropriate and in the best interest of the Board to serve in that role (the “Lessor”), a leasehold interest in the real property and improvements thereon (the “Project Site”) for a term of not more than five years longer than the term of the related Facilities Lease described below;

B. Sign and deliver a lease-purchase agreement (the “Facilities Lease”) under which the Board (a) will sublease the Project Site and lease the Improvements located on the Project Site (collectively, with the Project Site, the “Leased Property”) from the Lessor for an Initial Term and for Renewal Terms (each a “Lease Term”), as defined in the Facilities Lease, upon appropriations being made by this Board of funds sufficient to enable the Board to pay the Base Rent, as defined in the Facilities Lease, during the Renewal Terms and (b) will have an obligation, which will constitute a “public obligation” as defined in Section 133.01 of the Revised Code, to pay Base Rent during each Lease Term subject to such appropriations;

C. Approve, if necessary, an assignment of leases (the “Assignment”) between the Lessor and the Trustee, pursuant to which the Lessor shall assign its interests in a Ground Lease and the related Facilities Lease to the Trustee;

D. Approve, if necessary, a trust agreement (the “Trust Agreement”) between the Lessor and a bank or trust company determined by an Authorized Officer to be in the best

interest and financial advantages of the Board to act in such capacity (the “Trustee”), pursuant to which (a) the Lessor will direct the Trustee to and the Trustee will issue and sell Certificates of Participation (the “Certificates”) in the payments of Base Rent to be made by the Board under a Facilities Lease, which Certificates will constitute “fractionalized interests in public obligations”, as defined in Section 133.01 of the Revised Code, and (b) proceeds of the sale of the Certificates will be used to pay the costs of Improvements;

E. Sign, if necessary, a certificate purchase agreement (the “Purchase Agreement”) among the original purchaser of the Certificates (the “Original Purchaser”), the Board, and the Trustee setting forth the purchase price and other terms upon which the Original Purchaser will purchase the Certificates from the Trustee; and

F. Sign, if necessary, a placement agent agreement (the “Placement Agreement”) between the Board and an investment bank or other company determined by an Authorized Officer to be in the best interest and financial advantages of the Board to act in such capacity (the “Placement Agent”);

NOW, THEREFORE, BE IT RESOLVED by the members of the Cuyahoga County District Board of Health, that:

Section 1. Ground Lease, Facilities Lease and Trust Agreement. The Authorized Officers identified in Recital A above are each authorized to sign and deliver the Ground Lease and the Facilities Lease and to signify approval of the Assignment and the Trust Agreement in form and substance not inconsistent with this Resolution and deemed advisable by such Authorized Officers such to be conclusively evidenced and determined by the execution thereof. The Ground Lease, the Facilities Lease, the Assignment and the Trust Agreement are hereby approved in form and substance not inconsistent with this Resolution and deemed advisable the Authorized Officer or Officers executing them as shall be conclusively evidenced and determined by the execution thereof.

Section 2. Leased Properties. This Board hereby determines that the Leased Properties are essential to the Board including but not limited to its proper, efficient and economic operation and the public welfare.

Section 3. Determination of Facilities Lease Terms and Sale of the Certificates.

(a) Facilities Lease Terms. Any Authorized Officer is hereby authorized to determine, having due regard for the best interest of and financial advantages to the Board, (i) the buildings to be leased pursuant to the Ground Lease and Facilities Lease, (ii) the Lease Term for the Facilities Lease, the final Renewal Term for which shall end not more than 30 years after the Commencement Date (as defined in the Facilities Lease) of the Initial Term, (iii) the term for the Ground Lease, which shall be five years longer than the Lease Term for the related Facilities Lease, (iv) the prepayment terms for the Facilities Lease, provided that any prepayment premium shall not exceed 2% of the principal component of the amount prepaid, and (vi) the Base Rent (as defined in the Facilities Leases) for the Facilities Lease, provided, that: the aggregate principal components of the Base Rent for the Initial Term and all Renewal Terms for the Facilities Lease

shall not exceed \$4,800,000; and the weighted average of the aggregate interest components of the Base Rent for the Initial Term and all Renewal Terms for the Facilities Lease shall not exceed 6.0% per year.

The Board acknowledges that the principal component of the Facilities Lease shall be equal to the principal amount of the Certificates (net of any original issue discount) if issued under the related Trust Agreement and that the principal component of the Facilities Lease shall be that amount that, together with other funds to be made available for the purpose, shall be sufficient to pay the cost of the Improvements, including without limitation, the cost of providing any reserves that the Authorized Officer determines are necessary and appropriate for the Certificates to be issued on the terms most favorable to the Board as the payor on the public obligations in which the Certificates constitute fractionalized interests (which determination shall be confirmed by the Authorized Officer by the signing of the Purchase Agreement and/or Placement Agreement), and the costs of issuance of the Certificates, and which the Authorized Officer determines are necessary and reasonable in light of the character of the Certificates (which determination shall be confirmed by the Authorized Officer by the signing of the Purchase Agreement and/or the Placement Agreement). The Board further acknowledges that the payment schedules for any Certificates shall include interest components on the principal amount thereof that shall be based upon the interest components of the Base Rent payable under the related Facilities Lease. The Certificates issued under the Trust Agreement may be issued in one or more series that may differ as to interest rate components, credit enhancement, priority of payment and other terms. The Base Rent to be payable under and in accordance with the Facilities Lease during the Initial Term of that Facilities Lease and any Renewal Terms, shall be an amount sufficient to cover the amount of principal component and interest component of the outstanding related Certificates of any series that are due and payable during that Initial Term or Renewal Term, and such Base Rent shall be specified or determined in an exhibit to the related Facilities Lease; provided, however, that the Board's payment of Base Rent under the Facilities Lease is subject to appropriation and certification as provided in the Facilities Lease and nothing in the Facilities Lease, the related Certificates or the related Trust Agreement constitutes a debt of the Lessee or a pledge by the Lessee, or an obligation of the Lessee, of any taxes or other money to the payments due thereunder.

(b) Purchase Agreement and Placement Agreement. Any Authorized Officer is authorized to sign and deliver, in the name and on behalf of the Board, a Purchase Agreement and/or a Placement Agreement, if necessary, in form and substance consistent with this Resolution, setting forth, with respect to the Facilities Lease, the schedule of Base Rent and the principal components and interest components thereof, and the costs of issuance of the Certificates and any reserves for the Certificates. The Purchase Agreement and Placement Agreement are approved in such forms that are not inconsistent with this Resolution and not substantially adverse to the Board and as approved by the Authorized Officer signing on behalf of the Board, all of which shall be conclusively evidenced by the signing thereof or amendments thereto.

Section 4. Other Instruments.

The proceeds from the sale of any Certificates or proceeds from the Facilities Lease, except any premium and accrued interest, shall be paid into the proper fund or funds and those proceeds are appropriated and shall be used for the purpose for which the Certificates are being issued or Facilities Lease executed. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

The Authorized Officers are each hereby authorized to take any and all other actions and to sign and deliver any and all other instruments, agreements, certificates and documents as may in their judgment be necessary, desirable, advisable or appropriate in connection with the signing and delivery of the Ground Lease and the Facilities Lease, the signing and delivery of the Certificates by the Trustee and the purchase of the Certificates by the Original Purchaser in order to give effect to the transactions contemplated to be performed on the part of the Board under the Ground Lease, the Facilities Lease and the Placement Agreement and Purchase Agreement, if any.

The expenditure of the amounts necessary to pay the financing costs (as defined in Section 133.01 of the Revised Code) in connection with the Certificates and the Facilities Lease, to the extent not paid by in accordance with the Purchase Agreement or Placement Agreement, is authorized and approved, and the Chief Financial Officer or other Authorized Officer is authorized to provide for the payment of any such amounts and costs from the proceeds of the Certificates to the extent available and otherwise from any other funds lawfully available that are appropriated or shall be appropriated for that purpose.

Section 5. Tax Covenants. Any Authorized Officer having responsibility for signing the Facilities Lease, is, alone or in conjunction with any of the foregoing or with any other officer or employee of the Board, authorized to cooperate with the Original Purchaser and the Trustee by making, on behalf of the Board, such covenants and representations in the Facilities Lease as are appropriate and necessary so that (a) the Facilities Lease and any related Certificates will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the “Code”) or (ii) be treated other than as obligations to which Section 103 of the Code applies, (b) the interest components of Base Rent payable under the Facilities Lease and interest on any related Certificates will not be treated as an item of tax preference for purposes of the federal alternative minimum tax imposed on certain individuals and corporation, (c) the Board will take or cause to be taken such actions that may be required of it for the interest components of Base Rent payable under the Facilities Lease and interest on any related Certificates to be and to remain excluded from gross income for federal income tax purposes, (d) the Board will not take or authorize to be taken any actions that would adversely affect that exclusion, and (e) the Board, or persons acting for it, will, among other acts of compliance, (i) apply or cause the application of the proceeds of the Certificates or Facilities Lease 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.

Any Authorized Officer of the Board having responsibility for signing of the Facilities Lease is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the Board with respect to the Facilities Lease and the related Certificates as the Board 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 Facilities Lease and any Certificates or the interest components thereof or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the Board, as may be appropriate to assure the Base Rent payable under the exclusion of interest from gross income and the intended tax status of the interest components of the Facilities Lease and interest on any related Certificates, and (c) to give one or more appropriate certificates of the Board, for inclusion in the transcript for the Certificates, setting forth the reasonable expectations of the Board regarding the amount and use of all the proceeds from the sale of the Certificates, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest component of Base Rent payable under the Facilities Lease and the tax status of the related Certificates.

Section 6. Severability. Each section of this Resolution and each part of each section hereof is hereby declared to be independent, and the finding or holding of any section or part of any section hereof to be invalid or void shall not be deemed or held to affect the validity of any other section or part of any section of this Resolution.

Section 7. Retention of Bond Counsel. The legal services of Roetzel & Andress, LPA, as bond counsel, are hereby retained. The legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the issuance and sale of the Certificates and the rendering of the necessary legal opinions upon the delivery of the Certificates. In rendering those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of the Board in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the Board or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those legal services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those legal services. The Chief Financial Officer or other appropriate Authorized Officer is authorized and directed, to the extent they are not paid by the Original Purchaser in accordance with the Purchase Agreement, to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm.

Section 8. Compliance with Open Meeting Law. This Board finds and determines that all formal actions of this Board and of any of its committees concerning and relating to the adoption of this Resolution were taken in open meetings of this Board or of its committees, and that all deliberations of this Board and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 9. Effective Date. This Resolution shall be in full force and effect immediately upon its adoption.

Section 10. Emergency Clause. This Resolution is declared to be an emergency measure necessary to provide for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the Cuyahoga County District Board of Health jurisdictional area, and for the orderly and timely operation of the Board and for the immediate need for arranging financing for the Board's space planning and building renovation project and provided it receives the affirmative vote of two-thirds (2/3) of all members elected to Board, it shall take effect and be in force immediately upon its passage, otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2018.

First Reading: _____ Second Reading: _____ Third Reading: _____

Vote: Moss ___ yea ___ nay Gatt ___ yea ___ nay Hall ___ yea ___ nay
Wang ___ yea ___ nay Williams ___ yea ___ nay

Debbie L. Moss
President of Board

Attested by: _____
Terrence M. Allan, RS, MPH
Health Commissioner
Secretary to Board