

Northwest Local Board of Education
Special Meeting 4:00 p.m. September 7, 2018
Northwest Administrative Office

94-18 **ROLL CALL**

Present: All Present
Absent: -----
Roll Call: Adkins; Jenkins; Lintz; Lute; Taylor

95-18 **LEASE-PURCHASE RESOLUTION**

AUTHORIZING THE BOARD OF EDUCATION OF THE NORTHWEST LOCAL SCHOOL DISTRICT TO ENTER INTO A BASE LEASE OF SCHOOL DISTRICT LAND AND FACILITIES, AND A LEASE OF THE SAME BACK TO THE BOARD OF EDUCATION OF THE SCHOOL DISTRICT, FOR THE PURPOSE OF CONSTRUCTING, IMPROVING, FURNISHING AND EQUIPPING SCHOOL FACILITIES; AND APPROVING THE EXECUTION OF A BASE LEASE AGREEMENT AND LEASE-PURCHASE AGREEMENT AND OTHER DOCUMENTS RELATING THERETO; AND APPROVING RELATED MATTERS

WHEREAS, Ohio Revised Code (the “Revised Code”) Section 3313.375 provides that the board of education of a school district may enter into a lease-purchase agreement providing for the construction, enlarging or other improvement, furnishing, and equipping of facilities or improvements to facilities for any school district purpose, and, in conjunction therewith, may grant a lease for land or facilities under the board’s control for a series of one-year renewable lease terms totaling not more than the number of years equivalent to the useful life of the asset and in no event more than 30 years; and

WHEREAS, Revised Code Section 3313.375 further provides that the obligations of the board of education of the school district under such a lease-purchase transaction shall not be construed as net indebtedness of that school district pursuant to Revised Code Section 133.06; and

WHEREAS, the Board has determined that it is advisable and in the best interest of the School District to construct, improve, furnish and equip school facilities, including constructing new athletic facilities (the “Project”); and

WHEREAS, it will be necessary for the Board to enter into a lease-purchase transaction in accordance with the provisions of Revised Code Section 3313.375 in order to provide financing for the Project, and the Board has determined that it is advisable to enter into a base lease and lease-purchase agreement (the “Lease”) and such other documents as are necessary to effectuate this lease-purchase transaction in accordance with Revised Code Section 3313.375 and the laws of the State of Ohio; and

WHEREAS, the estimated cost of the Project will not exceed \$4,000,000;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF EDUCATION OF THE NORTHWEST LOCAL SCHOOL DISTRICT, SCIOTO COUNTY, OHIO, THAT:

Section 1. It is hereby determined to be necessary and in the best interest of the inhabitants of the School District, and the Board hereby agrees to enter into a lease-purchase arrangement with such Lessor as shall provide the most advantageous terms for financing the Project (the "Lessor") as shall be determined by the Treasurer of the Board (the "Treasurer") on behalf of the Board.

Section 2. The Board shall convey to the Lessor a leasehold interest in the real property and any improvements thereon upon which the Project is to be constructed (the "Project Site") pursuant to the Lease, which conveyance shall conform to the requirements of Revised Code Section 3313.375.

Section 3. The Board shall sublease the Project Site and related grounds, including the Project, from the Lessor pursuant to the Lease. The Lease shall require the Board to acquire or cause to be acquired the Project on the Project Site, and the Lease shall provide, among other things, for payments (the "Base Rent") from the Board to the Lessor.

Base Rent shall be payable in periodic installments over the term of the Lease, in such amounts and at such times as shall be determined by the Treasurer and reported to this Board, provided that the interest component of the actual Base Rent payments shall not exceed in any year the amounts that would be required if the applicable interest rate were 5.50% per annum applied on a principal amount of not to exceed \$4,000,000. The term of the Lease shall be for one initial term and such one-year (or partial-year for the final renewal term) renewal terms as shall be determined by the Treasurer and reported to this Board; provided, however, that the sum of the initial term and all renewal terms may not exceed the number of years equivalent to the useful life of the Project as determined by the Treasurer and in no event more than 30 years. The Lease shall provide for termination in the event the Board fails to appropriate funds adequate to pay rent due with respect to any renewal term.

Section 4. The President of the Board (the "President") and the Treasurer are hereby authorized and directed (i) to take such action (including, but not limited to, hiring such professionals or consultants as may be needed to facilitate the financing of the Project as set forth herein) and (ii) to execute and deliver on behalf of the Board the Lease and such additional instruments, agreements, certificates, and other documents as may be in their discretion necessary or appropriate in order to carry out the intent of this Resolution. Such documents, including the Lease, shall be in a form substantially consistent with the terms of this Resolution, as such officers in their discretion shall deem necessary or appropriate. If required by the Lessor, the leasehold interests described in Sections 2 and 3 of this Resolution may be separately conveyed through two different leases.

Section 5. The Board agrees to execute and perform the Lease in accordance with its terms. The Board agrees to comply with the terms and conditions of any additional instruments, agreements, certificates, and other documents relating to the Lease as shall be deemed, by the Treasurer or the President, in their discretion, necessary or appropriate in connection with the financing described in this Resolution.

Section 6. Nothing in the Lease or any related instruments, agreements, certificates, and other documents shall constitute or be construed or deemed to constitute a debt or bonded indebtedness or a general obligation of the School District, the Board, or any agency of the School District. Neither the taxing power nor the full faith and credit of the School District are pledged or shall be pledged for the payment or security of the Lease or any other related instruments, agreements, certificates, and other documents.

Section 7. The Board hereby covenants that it will comply with all existing and future laws applicable to the exemption of interest portion of the rent due on the Lease from federal income taxation. The Board further covenants that it will restrict the use of the proceeds of the Lease in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the Lease is executed, so that it will not constitute an arbitrage bond under Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations prescribed thereunder (the "Regulations").

The Treasurer is hereby authorized and directed (a) to make or effect any election, selection, designation, choice, consent, approval or waiver on behalf of the Board with respect to the Lease as permitted or required to be made or given under the federal income tax laws, for the purpose of assuring, enhancing or protecting favorable tax treatment or the status of the Lease or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing any rebate amount or any payment of penalties, or making any payments of special amounts in lieu of making computations to determine, or paying, any excess earnings as rebate, or obviating those amounts or payments, as determined by the Treasurer, which action shall be in writing and signed by the Treasurer, on behalf of the Board; (b) to take any and all actions, make or obtain calculations, and make or give reports, covenants and certifications of and on behalf of the Board and the School District, as may be appropriate to assure the status of the Lease as tax-exempt obligations; and (c) to give an appropriate certificate on behalf of the Board, for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances, and reasonable expectations of the Board pertaining to Section 148 and the Regulations, and the representations, warranties and covenants of the Board regarding compliance by the Board with Sections 141 through 150 of the Code and the Regulations, as applicable.

The Treasurer shall cause to be kept and maintained adequate records pertaining to investment of all proceeds of the Lease sufficient to permit, to the maximum extent possible and presently foreseeable, the Board and the School District to comply with any federal law or regulation now or hereafter having applicability to the Lease which limits the amount of Lease proceeds which may be invested at an unrestricted yield or requires the Board and the School District to rebate arbitrage profits to the United States Department of the Treasury. The Treasurer is hereby authorized and directed to file such reports with, and rebate arbitrage profits to, the United States Department of the Treasury, to the extent that any federal law or regulation having applicability to the Lease requires any such reports or rebates.

Section 8. The Board hereby approves of the appointment of the law firm of Bricker & Eckler LLP to serve as special counsel to the School District with respect to the lease-purchase transaction described herein. The fees to be paid to Bricker & Eckler LLP shall be subject to review and approval by the Treasurer and shall not exceed the fees customarily charged for such services.

Section 9. All proceeds received by the School District from the Lessor are hereby appropriated for the payment of the costs of the Project and for the payment of fees related to the financing of the Project pursuant to the Lease and as set forth in this Resolution, which fees may include, but are not limited to, the fees of Bricker & Eckler LLP, as special counsel, recording fees, and any fees of the Lessor (including legal fees of counsel to the Lessor).

The Treasurer is further authorized and directed to provide for the payment of the cost of any lease payments due or coming due under the Lease for the initial lease term ending June 30, 2019 from any funds lawfully available that are appropriated or shall be appropriated for that purpose.

Section 10. It is hereby found and determined that all formal actions of this Board concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Board, and that all deliberations of this Board 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 Revised Code Section 121.22.

Motion: Taylor

Second: Lintz

Roll Call: **Adkins**-yes; Jenkins-yes; Lintz-yes; Lute-yes; Taylor-yes

The President declared the motion carried.

96-18 AUTHORIZATION TO SELECT ARCHITECTURAL FIRM AND AUTHORIZING NEGOTIATION AND PREPARATION OF A CONTRACT FOR SAID SERVICES

The Superintendent recommends selection of **TSHD Architects** to provide architectural services for the Northwest Athletic Project and requests authority to request a contract proposal from TSHD Architects and to negotiate and prepare a contract for those services.

Rationale:

1. Qualifications were solicited, as required by the qualifications based selection process outlined in Ohio Revised Code Section 153.65, et seq., for the services of an architectural firm.
2. Three (3) firms submitted qualifications; the qualifications were reviewed and evaluated.
3. Following the review and evaluation of the firms, the firms were ranked as follows, with the first firm being the firm determined most qualified to provide the required services.
 - (1) TSHD Architects
 - (2) SHP
 - (3) Freytag and Associates
4. The Superintendent recommends TSHD Architects as the most qualified firm to provide the architectural services needed for this project.

The Northwest Local Board of Education resolves as follows:

1. Based upon the recommendation of the Superintendent and information provided, the Board selects TSHD Architects as the firm most qualified to provide the architectural services for the Northwest Athletic Project.
2. The Board authorizes the Superintendent and Treasurer, working with the Board's legal counsel, to request a contract proposal from TSHD Architects, to negotiate an agreement with the firm for the project, and to enter into a contract for said services on behalf of the Board.

Motion: Lintz

Second: Taylor

Roll Call: Adkins-yes; **Jenkins**-yes; Lintz-yes; Lute-yes; Taylor-yes

The President declared the motion carried.

97-18 RESOLUTION TO APPROVE PAYMENT OF INVOICE

The Board hereby authorizes payment of the following invoice:

Hillyard (603047305) \$3,354.53

Motion: Adkins

Second: Lintz

Roll Call: Adkins-yes; Jenkins-yes; **Lintz**-yes; Lute-yes; Taylor-yes

The President declared the motion carried.

98-18 RESOLUTION TO ADJOURN

The Board hereby adjourns at 4:15 p.m.

Motion: Lintz

Second: Jenkins

Roll Call: Adkins-yes; Jenkins-yes; Lintz-yes; Lute-yes; **Taylor**-yes

The President declared the motion carried.