

**AMENDMENT NUMBER ONE  
TO THE INSTALLMENT FINANCING AGREEMENT**

***THIS AMENDMENT NUMBER ONE TO THE INSTALLMENT FINANCING AGREEMENT*** dated as of January 1, 2020, by and between the **DURHAM CAPITAL FINANCING CORPORATION** (the “*Corporation*”), a nonprofit corporation duly created and existing under the laws of the State of North Carolina, and the **COUNTY OF DURHAM, NORTH CAROLINA**, a political subdivision duly organized under the laws of the State of North Carolina (the “*County*”), amending an Installment Financing Agreement dated as of March 1, 2013 (the “*2013 Installment Financing Agreement*”), between the Corporation and the County;

**WITNESSETH:**

**WHEREAS**, the Corporation and the County entered into the 2013 Installment Financing Agreement for the purposes outlined therein;

**WHEREAS**, in connection with the 2013 Installment Financing Agreement, the Corporation executed and delivered Durham Capital Financing Corporation Limited Obligation Bonds (County of Durham, North Carolina), Series 2013 (the “*2013 Bonds*”), evidencing proportionate undivided interests in Installment Payments under the 2013 Installment Financing Agreement pursuant to a Trust Agreement dated as of March 1, 2013 (the “*2013 Trust Agreement*”) between the Corporation and U.S. Bank National Association, as trustee (the “*Trustee*”);

**WHEREAS**, the Corporation may execute and deliver Additional Bonds under the 2013 Trust Agreement for the purposes of providing funds, with any other available funds, for (1) paying the cost of any Improvements and applicable Delivery Costs or (2) refunding all or any portion of any other financing under Section 160A-20 of the General Statutes of North Carolina, as amended, and paying applicable Delivery Costs;

**WHEREAS**, the County has determined to amend the 2013 Installment Financing Agreement as permitted under Section 9.01(b)(3) of the 2013 Trust Agreement in order to obtain funds to (1) (a) refinance the County’s obligations with respect to the 2012 Project, the 2013 Project and the 2017 Project and (b) pay the capital costs of the 2020 Project and (2) pay Delivery Costs in connection with the execution and delivery of Additional Bonds related thereto;

**NOW, THEREFORE, THIS AMENDMENT NUMBER ONE TO THE INSTALLMENT FINANCING AGREEMENT WITNESSETH:**

**Section I. Definitions.** Capitalized, undefined terms used herein have the meaning assigned to them in the 2013 Installment Financing Agreement, the 2013 Trust Agreement, the First Supplement and the Escrow Agreement and are incorporated herein by reference. In addition, the following words and terms used herein have the meanings provided below:

“*First Amendment*” means this Amendment Number One to the Installment Financing Agreement dated as of January 1, 2020 between the Corporation and the County, amending the 2013 Installment Financing Agreement.

*“Installment Financing Agreement”* means the 2013 Installment Financing Agreement and the First Amendment, and any further amendments or supplements adopted in accordance with the terms thereof.

*“Project”* means, collectively, (a) the 2012 Project, (b) the 2013 Project, (c) the 2017 Project and (d) the 2020 Project, as such may be amended or supplemented from time to time in connection with any other Improvements, projects or undertakings financed or refinanced in whole or in part with the proceeds of any Additional Bonds under Section 2.08 of the Trust Agreement.

*“2013 Project”* means the portion of the Project as designated in Exhibit A.

*“2017 Project”* means the portion of the Project as designated in Exhibit A.

*“2012 Project”* means the portion of the Project as designated in Exhibit A.

*“2020 Project”* means the portion of the Project as designated in Exhibit A.

***Section 2. Amendment to the 2013 Installment Financing Agreement.***

(a) The definitions of any terms in 2013 Installment Financing Agreement with a corresponding definition under Section 1 are replaced with such corresponding definition provided in Section 1.

(b) All other defined terms provided in Section 1 are incorporated by reference into the 2013 Installment Financing Agreement.

(c) The definition of *“2010 Project”* is replaced with the definition of *“Project”* as defined in Section 1. Each reference to the term *“2010 Project”* in the 2013 Installment Financing Agreement will be read to mean *“Project”* as defined in Section 1.

(d) The last sentence of Section 4.3(b) of 2013 Installment Financing Agreement is replaced with the following: The Installment Payments will be sufficient as to amounts and times to pay when due the principal and interest represented by the 2013 Bonds, the 2020 Bonds and any Additional Bonds on each Bond Payment Date.

(e) Exhibit A to the 2013 Installment Financing Agreement is replaced with Exhibit A attached hereto.

(f) Exhibit B to the 2013 Installment Financing Agreement is replaced with Exhibit B attached hereto. The County agrees to make all Installment Payments in the amounts and at the times shown in Exhibit B attached hereto.

(g) Section 10.2 of the 2013 Installment Financing Agreement is hereby amended to add the following after the first paragraph thereof:

The County may prepay, in whole or in part, the principal components of Installment Payments relating to the 2020 Bonds maturing in the years specified in Section 3.1 of the First Supplement, on the dates and at the prepayment prices and as provided therein. The County will execute said option by giving written notice to the Trustee thereof at least forty-five (45) days (or such lesser period of time as agreed to by the Trustee) prior to the date of prepayment and depositing with the Trustee, not later than the date of prepayment, cash or Defeasance Obligations which are, together with the interest to accrue thereon, in an

amount sufficient to provide for such prepayment, including accrued interest with respect to the principal components of the Installment Payments related to the 2020 Bonds to be prepaid to the date of prepayment and any prepayment premium described in Section 3.1 of the First Supplement, plus any Installment Payments related thereto then due and unpaid. The County may rescind such notice of prepayment on any day prior to and including the date of prepayment. Upon any prepayment pursuant to this Section 10.2, the interest components of the remaining Installment Payments related to the 2020 Bonds and Exhibit B hereto will be adjusted accordingly. Any such prepayment in part will be credited toward the County's obligations hereunder in such order as the County elects.

**Section 3. Application of Funds.** The County and the Corporation will cause the proceeds of the 2020 Bonds to be deposited and applied as provided in Section 4.2 of the First Supplement.

**Section 4. Representations, Warranties and Covenants of the County and the Corporation.**

(a) The County represents and warrants that the representations, warranties and covenants in Section 2.1(a) through 2.1(f), inclusive, and Section 2.1(i) of the 2013 Installment Financing Agreement are true and correct as of the date of the execution and delivery of this First Amendment as if made on the date of the execution and delivery of this First Amendment and as if applicable to the 2020 Bonds.

(b) The Corporation hereby represents and warrants that the representations and warranties in Section 2.2 of the 2013 Installment Financing Agreement are true and correct as of the date of the execution and delivery of this First Amendment as if made on the date of the execution and delivery of this First Amendment and as if applicable to the 2020 Bonds.

**Section 5. Tax Covenants.**

(a) The County covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income for federal income tax purposes of the portion of the Installment Payments designated as interest and intended to be excluded from the gross income of the Beneficial Owners thereof for federal income tax purposes under Section 103 of the Code related to the 2020A Bonds. The County will not directly or indirectly use or permit the use of any proceeds of any fund created under the Trust Agreement or any funds of the County, or take or omit to take any action that would cause the obligation created by the Installment Financing Agreement related to the 2020A Bonds to be an "*arbitrage bond*" within the meaning of Section 148(a) of the Code. To that end, the County has executed and delivered the Tax Certificate and will comply with all requirements of Section 148 of the Code to the extent applicable. The County further represents and covenants that the Installment Payments created by the Installment Financing Agreement related to the 2020A Bonds are not and will not constitute a "*private activity bond*" as defined in Section 141 of the Code.

(b) Without limiting the generality of the foregoing, the County agrees that there will be paid from time to time all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code and any temporary, proposed or final Treasury Regulations as may be applicable to the obligation created by the Installment Financing Agreement from time to time. This covenant will survive the payment in full of all Installment Payments under the Installment Financing Agreement.

(c) Notwithstanding any provision of this Section, if the County provides to the Trustee an opinion of nationally recognized bond counsel to the effect that any action required under this Section or the Tax Certificate is no longer required, or to the effect that some further action is required to maintain the exclusion from gross income for federal income tax purposes of the portion of the Installment

Payments designated as interest and intended to be excluded from the gross income of the Beneficial Owners thereof for federal income tax purposes under Section 103 of the Code related to the 2020A Bonds, the County and the Trustee may rely conclusively on such opinion in complying with the provisions hereof.

**Section 6. Continuing Disclosure Obligation.** The County agrees, in accordance with Rule 15c2-12 (the “Rule”) promulgated by the Securities and Exchange Commission (the “SEC”), to provide to the Municipal Securities Rulemaking Board (the “MSRB”):

(1) by not later than seven months after the end of each Fiscal Year, beginning with the Fiscal Year ending June 30, 2020, to the MSRB, the audited financial statements of the County for the preceding Fiscal Year, if available, prepared in accordance with Section 159-34 of the General Statutes of North Carolina, as it may be amended from time to time, or any successor statute, or if such audited financial statements are not then available, unaudited financial statements of the County for such Fiscal Year to be replaced subsequently by audited financial statements of the County to be delivered within 15 days after such audited financial statements become available for distribution;

(2) by not later than seven months after the end of each Fiscal Year, beginning with the Fiscal Year ending June 30, 2020, to the MSRB, the financial and statistical data as of a date not earlier than the end of the preceding Fiscal Year for the type of information included under the captions “**DEBT INFORMATION**” and “**TAX INFORMATION**” (including subheadings thereunder) in Appendix A to the Official Statement related to the 2020 Bonds (excluding any information on underlying units) to the extent such items are not included in the audited financial statements referred to in paragraph (1) above;

(3) in a timely manner not in excess of 10 Business Days after the occurrence of the event, to the MSRB notice of any of the following events with respect to the 2020 Bonds:

(A) principal and interest payment delinquencies;

(B) non-payment related defaults, if material;

(C) unscheduled draws on the debt service reserves reflecting financial difficulties;

(D) unscheduled draws on any credit enhancements reflecting financial difficulties;

(E) substitution of any credit or liquidity providers, or their failure to perform;

(F) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the 2020A Bonds, or other material events affecting the tax status of the 2020A Bonds;

(G) modification of the rights of the Beneficial Owners of the 2020 Bonds, if material;

(H) call of any of the 2020 Bonds, if material, and tender offers;

(I) defeasance of any of the 2020 Bonds;

(J) release, substitution or sale of any property securing repayment of the 2020 Bonds, if material;

(K) rating changes;

(L) bankruptcy, insolvency, receivership or similar event of the County;

(M) the consummation of a merger, consolidation, or acquisition involving the County or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to such actions, other than pursuant to its terms, if material;

(N) appointment of a successor or additional trustee or the change of name of a trustee, if material;

(O) incurrence of a financial obligation of the County, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the County, any of which affect security holders, if material; and

(P) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the County, any of which reflect financial difficulties; and

(4) in a timely manner, to the MSRB, notice of a failure of the County to provide required annual financial information described in (1) or (2) above on or before the date specified.

For purposes of this Section, “*financial obligation*” means (a) a debt obligation, (b) a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation, or (c) a guarantee of either clause (a) or (b) above. The term “financial obligation” will not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

All documents provided to the MSRB as described above are to be provided in an electronic format as prescribed by the MSRB and accompanied by identifying information as prescribed by the MSRB. The County may discharge its undertaking described above by transmitting those documents or notices in a manner subsequently required by the U.S. Securities and Exchange Commission in lieu of the manner described above.

The County agrees that its undertaking under this paragraph is intended to be for the benefit of the Owners and the beneficial owners of the 2020 Bonds and is enforceable by the

Trustee or by any of them, including an action for specific performance of the County's obligations under this paragraph, but a failure to comply will not be an Event of Default under the Installment Financing Agreement and will not result in acceleration of the principal component of Installment Payments. An action must be instituted, had and maintained in the manner provided in this paragraph for the benefit of all of the Owners and beneficial owners of the 2020 Bonds.

The County may modify from time to time, consistent with the Rule, the information provided or the format of the presentation of such information, to the extent necessary or appropriate in the judgment of the County, but:

(1) any such modification may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law or change in the identity, nature or status of the County;

(2) the information to be provided, as modified, would have complied with the requirements of the Rule as of the date of the Official Statement, after taking into account any amendments or interpretations of the Rule as well as any changes in circumstances;

(3) any such modification does not materially impair the interest of the Owners or the beneficial owners, as determined by nationally recognized bond counsel or by the approving vote of the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding pursuant to the Trust Agreement as may be amended from time to time.

Any annual financial information containing modified operating data or financial information will explain, in narrative form, the reasons for the modification and the impact of the change in the type of operating data or financial information being provided.

The provisions of this paragraph terminate on payment, or provision having been made for payment in a manner consistent with the Rule, in full of the principal of and interest with respect to the 2020 Bonds.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

*IN WITNESS WHEREOF*, the Corporation and the County have caused this Amendment Number One to the Installment Financing Agreement to be executed in their respective names, all as of the date first above written.

**DURHAM CAPITAL FINANCING CORPORATION**

By: \_\_\_\_\_  
Deborah G. Giles  
President

[SIGNATURES CONTINUED ON FOLLOWING PAGES]

**COUNTY OF DURHAM, NORTH CAROLINA**

By: \_\_\_\_\_  
Wendell Davis  
County Manager

[SIGNATURES CONTINUED ON FOLLOWING PAGES]

COUNTERPART SIGNATURE PAGE TO  
AMENDMENT NUMBER ONE TO THE INSTALLMENT FINANCING AGREEMENT  
DATED AS OF JANUARY 1, 2020

BETWEEN

THE COUNTY OF DURHAM, NORTH CAROLINA

AND

DURHAM CAPITAL FACILITIES FINANCING CORPORATION



Consented to and Accepted:

**U.S. BANK NATIONAL ASSOCIATION,**  
as Trustee

By: \_\_\_\_\_  
Shawna L. Hale  
Vice President

[SIGNATURES CONTINUED ON FOLLOWING PAGES]

COUNTERPART SIGNATURE PAGE TO  
AMENDMENT NUMBER ONE TO THE INSTALLMENT FINANCING AGREEMENT  
DATED AS OF JANUARY 1, 2020

BETWEEN

THE COUNTY OF DURHAM, NORTH CAROLINA

AND

DURHAM CAPITAL FACILITIES FINANCING CORPORATION

**THIS AGREEMENT AMENDMENT HAS BEEN  
APPROVED UNDER THE PROVISIONS  
OF THE NORTH CAROLINA GENERAL  
STATUTES, § 159-152, AS AMENDED.**

By: \_\_\_\_\_  
Greg C. Gaskins  
Secretary of the Local Government Commission

COUNTERPART SIGNATURE PAGE TO  
AMENDMENT NUMBER ONE TO THE INSTALLMENT FINANCING AGREEMENT  
DATED AS OF JANUARY 1, 2020

BETWEEN

THE COUNTY OF DURHAM, NORTH CAROLINA

AND

DURHAM CAPITAL FACILITIES FINANCING CORPORATION

## **EXHIBIT A**

### **DESCRIPTION OF THE PROJECTS**

“*2012 Project*” means (a) the refinancing of the construction of the Health and Human Services Complex, (b) upgrades the County’s financial system computer software, (c) the acquisition of replacement personal computers, servers and other IT equipment and (d) the replacement of various County vehicles under the Installment Financing Agreement dated as of March 1, 2012 between the Corporation and the County.

“*2013 Project*” means the refinancing of the (a) construction of the Durham County Detention Facility and additional improvements, (b) construction of the Durham County Courthouse and parking deck, including the construction of a building to house courtrooms, court-related offices and various other facilities for justice-related departments of the County, the construction of a related parking deck and the acquisition of associated land, furnishings and equipment, (c) renovation of an existing building and construction other facilities to provide for the storage of County property, including the acquisition of associated land, furnishings and equipment, (d) renovation of the existing Durham County Judicial Building to accommodate other administrative needs of the County, including the acquisition of associated furnishings and equipment and (e) installation of fiber optic lines and related equipment to connect various County buildings and other buildings in order to eliminate significant network costs and improve voice, data and other application transmission capabilities among such facilities under the 2013 Installment Financing Agreement.

“*2017 Project*” means (a) reconstruction and renovation of the existing Judicial Annex of the County, (b) reconstruction and renovation of certain facilities used by Durham County Emergency Medical Services and (c) certain preliminary costs related to the redevelopment of Park Center in the Research Triangle Park pursuant to an Agreement for Park Center Phase I Public - Private Projects, dated October 12, 2015, as amended, between the Research Triangle Foundation of North Carolina and the County under an Installment Financing Contract dated as of March 31, 2017 between the County and PNC Bank, National Association.

“*2020 Project*” means improvements to the County’s historic administration building, now known as Admin Building I.

**EXHIBIT B**

**SCHEDULE OF INSTALLMENT PAYMENTS  
RELATED TO THE 2013 BONDS**

<b>INSTALLMENT PAYMENT DATE*</b>	<b>PRINCIPAL COMPONENT</b>	<b>INTEREST COMPONENT</b>	<b>TOTAL INSTALLMENT PAYMENT RELATED TO 2013 BONDS</b>
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\* Under the Installment Financing Agreement, the County is required to pay Installment Payments directly to the Trustee at least five Business Days prior to each Bond Payment Date. "Business Day" means any day of the year on which banks in New York, New York, or the city in which the Principal Office of the Trustee is located are not authorized or obligated by law or executive order to remain closed and on which the New York Stock exchange is not closed.

**EXHIBIT B**  
**(continued)**

**SCHEDULE OF INSTALLMENT PAYMENTS**  
**RELATED TO THE 2020 BONDS**

<b>INSTALLMENT PAYMENT DATE*</b>	<b>PRINCIPAL COMPONENT</b>	<b>INTEREST COMPONENT</b>	<b>TOTAL INSTALLMENT PAYMENT RELATED TO 2020 BONDS</b>
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