

EXTRACTS FROM MINUTES OF BOARD OF COMMISSIONERS

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A meeting of the Board of Commissioners (the “*Board*”) of the County of Durham, North Carolina (the “*County*”) was held via electronic means at 9:00 A.M., on June 1, 2020.

Present: Chair Wendy Jacobs, presiding, and Commissioners: _____

_____.

Absent: _____.

* * * * *

Commissioner _____ introduced the following resolution, a copy of which had been made available to each Commissioner:

RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF DURHAM, NORTH CAROLINA, APPROVING AN AMENDMENT TO AN INSTALLMENT FINANCING AGREEMENT AND THE DELIVERY THEREOF AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS

WHEREAS, the County of Durham, North Carolina (the “*County*”) is a validly existing political subdivision of the State of North Carolina, existing as such under and by virtue of the constitution, statutes and laws of the State of North Carolina (the “*State*”);

WHEREAS, the County has the power under the General Statutes of North Carolina to (1) enter into installment contracts in order to purchase, or finance or refinance the purchase of, real or personal property and to finance or refinance the construction or repair of fixtures or improvements on real property and (2) create a security interest in some or all of the property financed or refinanced to secure repayment of the purchase price;

WHEREAS, the County has previously executed and delivered (1) an Installment Financing Agreement dated April 1, 2009 (the “*2009 Agreement*”) between Durham Capital Financing Corporation (the “*Corporation*”) and the County, a portion of the proceeds of which were used to finance the Health and Human Services Complex (the “*Health and Human Services Complex*”), among other projects, (2) a First Supplemental Installment Financing Agreement dated as of March 1, 2012 (the “*First Amendment*”) between the Corporation and the County, a portion of the proceeds of which were used to (a) refinance the Health and Human Services Complex, (b) upgrade the County’s financial system computer software, (c) acquire replacement personal computers, servers and other IT equipment and (d) replace various County vehicles, and (3) a Second Supplemental Installment Financing Agreement dated as of April 1, 2016 (the “*Second Amendment*”), a portion of the proceeds of which were used to refinance certain maturities of the Corporation’s Certificates of Participation (2009A Durham County);

WHEREAS, the Board of Commissioners previously determined that it is in the best interest of the County to execute and deliver a Third Supplemental Installment Financing Agreement (the “*Third Amendment*”) and together with the 2009 Agreement, the First Amendment, and the Second Amendment, the “*Agreement*”) in order to finance the 2020 Projects (as defined herein);

WHEREAS, to secure its obligations under the Agreement, the County has previously executed and delivered a Deed of Trust, Security Agreement and Fixture Filing dated as of April 1, 2009 (as previously modified, the “*Deed of Trust*”), granting a lien of record on the site of the Health and Human Services Complex and the real estate improvements thereon and appurtenances thereto;

WHEREAS, the Corporation will execute and deliver its (a) Durham Capital Financing Corporation (County of Durham, North Carolina) Limited Obligation Bond, Series 2020C in a principal amount not to exceed \$60,000,000 (the “*2020C Bond*”) and (b) Durham Capital Financing Corporation (County of Durham, North Carolina) Taxable Limited Obligation Bond, Series 2020D in a principal amount not to exceed \$15,000,000 (the “*2020D Bond*” and together with the 2020C Bond, the “*2020 Bonds*”), each evidencing the proportionate undivided interests of the Owners in Installment Payments to be made by the County under the Agreement;

WHEREAS, the Corporation will make available to the County proceeds from the sale of the 2020C Bond to enable the County to finance (1) the costs of additions and capital improvements to, or the acquisition, renewal or replacement of capital assets of, or purchasing and installing new equipment relating to, the operation and maintenance of sewer facilities located within the County’s jurisdiction; (2) the construction, equipping and furnishing of certain public school facilities and equipment; (3) a portion of the cost of the redevelopment of Park Center in the Research Triangle Park pursuant to an agreement between the Research Triangle Foundation of North Carolina and the County; (4) the acquisition of land for use by Durham Technical Community College; (5) such additional projects as may be identified by the Chief Financial Officer of the County (collectively, the “*2020C Projects*”); and (6) the costs incurred in connection with the execution and delivery of the 2020C Bond;

WHEREAS, the Corporation will make available to the County proceeds from the sale of the 2020D Bond to enable the County to finance (1) the capital costs of the acquisition, construction, and equipping of parking facilities (the “*2020D Project*” and together with the 2020C Projects, the “*2020 Projects*”); and (2) the costs incurred in connection with the execution and delivery of the 2020D Bond;

WHEREAS, the County has arranged for PNC Bank, National Association (the “*Purchaser*”) to purchase the 2020 Bonds and advance funds to finance the 2020 Projects under the terms of a Bond Purchase Agreement to be dated on or about June 16, 2020, (the “*Purchase Agreement*”);

WHEREAS, there have been described to the Board the forms of the following documents (the “*Instruments*”), copies of which have been made available to the Board, which the Board proposes to approve or execute and deliver, as applicable, to effectuate the proposed installment financing:

- (1) the Third Amendment;
- (2) a Third Supplemental Trust Agreement, to be dated of even date with the Third Amendment (the “*Third Supplement*”), between the Corporation and U.S. Bank National Association, as trustee, including the forms of the 2020 Bonds;
- (3) the Purchase Agreement; and
- (4) a Third Modification of Deed of Trust to be dated of even date with the Third Amendment (the “*Third Modification*” and together with the Third Amendment and the Purchase Agreement, the “*County Documents*”) by and among the County, the Corporation, and the deed of trust trustee named therein;

WHEREAS, it appears that each of the Instruments is an appropriate instrument and in an appropriate form for the purposes intended;

WHEREAS, the Board conducted a public hearing on May 26, 2020 to receive public comment on the execution and delivery of the County Documents, the proposed 2020 Projects, and any other transactions contemplated therein and associated therewith;

WHEREAS, the County has filed an application to the LGC for approval of the County Documents and will receive the approval of the LGC before executing and delivering the County Documents;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the County of Durham, North Carolina, as follows:

Section 1. Ratification. All actions of the Chair of the Board, the Clerk to the Board, the County Manager, the Chief Financial Officer, the Deputy Chief Financial Officer and the County Attorney, including anyone serving as such in an interim capacity, or their respective designees (collectively, the “*Authorized Officers*”) whether previously or hereinafter taken in effectuating the proposed financing are approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the Instruments.

Section 2. Authorization to Execute the County Documents. The financing of the 2020 Projects in accordance with the terms of the County Documents, which will be valid, legal and binding obligations of the County in accordance with their terms, is in all respects authorized, approved and confirmed. The form and content of the County Documents are in all respects authorized, approved and confirmed. The execution by the Corporation of the Third Supplement is in all respects authorized, approved and confirmed. The Authorized Officers are authorized, empowered and directed to execute and deliver the County Documents, including necessary counterparts, in substantially the form and content presented to the Board, but with such changes, modifications, additions or deletions therein as they deem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of the Board’s approval of any and all changes, modifications, additions or deletions therein from the form and content presented to the Board. From and after the execution and delivery of the County Documents, the Authorized Officers are authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the County Documents as executed.

Section 3. County Representative. The Authorized Officers are each designated as the County’s representatives to act on behalf of the County in connection with the transactions contemplated by the Instruments and this Resolution. The Authorized Officers are authorized to proceed with the financing in accordance with the Instruments and to seek opinions as a matter of law from the County Attorney, which the County Attorney is authorized to furnish on behalf of the County, and opinions of law from such other attorneys for all documents contemplated as required by law. The Authorized Officers are in all respects authorized on behalf of the County to supply all information pertaining to the County for use in the transactions contemplated by the Instruments. The Authorized Officers are authorized, empowered and directed to do any and all other acts and to execute any and all other documents, which they, in their discretion, deem necessary and appropriate to consummate the transactions contemplated by the Instruments or as they deem necessary or appropriate to implement and carry out the intent and purposes of this Resolution and the on-going administration of the Instruments. Any provision in this Resolution that authorizes more than one Authorized Officer to take certain actions will apply to the respective designees of the Authorized Officers, including any person serving in an interim capacity, and will be read to permit such persons to take the authorized actions either individually or collectively.

Section 4. Severability. If any section, phrase or provision of this Resolution is for any reason declared to be invalid, such declaration will not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

Section 5. Repealer. All motions, orders, resolutions and parts thereof, in conflict herewith are repealed.

Section 6. Effective Date. This Resolution is effective on the date of its adoption.

STATE OF NORTH CAROLINA)
) ss:
COUNTY OF DURHAM)

I, MONICA W. TOOMER, Clerk to the Board of Commissioners of the County of Durham, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of a resolution entitled “**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF DURHAM, NORTH CAROLINA, APPROVING AN AMENDMENT TO AN INSTALLMENT FINANCING AGREEMENT AND THE DELIVERY THEREOF AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS**” adopted by the Board of Commissioners of the County of Durham, North Carolina, at a meeting held on the 1st day of June, 2020.

WITNESS my hand and the corporate seal of the County of Durham, North Carolina, this the ____ day of June, 2020.

MONICA W. TOOMER
Clerk to the Board
County of Durham, North Carolina