

EXTRACTS FROM MINUTES OF BOARD OF COMMISSIONERS

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A regular meeting of the Board of Commissioners (the “*Board*”) of the County of Durham, North Carolina (the “*County*”) was held via electronic means at 7:00 P.M., on March 8, 2021.

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, AUTHORIZING THE NEGOTIATION OF AN AMENDMENT TO AN INSTALLMENT FINANCING AGREEMENT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO

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, (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), and (4) a Third Supplemental Installment Financing Agreement (the “*Third Amendment*”), dated as of June 1, 2020, a portion of the proceeds of which were used to finance (a) (i) 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; (ii) the construction, equipping and furnishing of certain public school facilities and equipment; (iii) 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; and (iv) the acquisition of land for use by Durham Technical Community College (collectively, the “*2020C Projects*”); and (b) the

capital costs of the acquisition, construction, and equipping of parking facilities (the “2020D Project” and together with the 2020C Projects, the “2020 Projects”);

WHEREAS, the Board of Commissioners of the County (the “Board”) hereby determines that it is in the best interest of the County to execute and deliver a Fourth Supplemental Installment Financing Agreement, dated as of April 1, 2021 (the “*Fourth Amendment*” and together with the 2009 Agreement, the First Amendment, the Second Amendment, and the Third Amendment the “*Agreement*”) in order to (1) finance (a) the construction, equipping and furnishing of certain public school facilities and equipment, including, among other school facilities, Northern High School located in the County, (b) 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 storm water facilities located within the County’s jurisdiction, (c) the renovation, improvement and expansion of the County’s Public Safety Service Center, including renovation of the County Sheriff Department’s firing range, (d) construction, equipping and furnishing of a new youth home located in the County, and (e) acquisition, construction, and development of a consolidated solid waste and recycling convenience site located in the County (collectively, the “2021 Projects”) and (2) refinance the 2020 Projects;

WHEREAS, to secure its obligations under the Agreement, the County has executed and delivered a Deed of Trust, Security Agreement and Fixture Filing dated as of April 1, 2009 (as 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 Board hereby determines that it is in the best interest of the County to execute and deliver a Fourth Modification and Notice of Extension of Deed of Trust (the “*Fourth Modification*”), extending the lien of the Deed of Trust to the site of Northern High School and the real estate improvements thereon and appurtenances thereto;

WHEREAS, the Board hereby determines that financing the 2021 Projects and refinancing the 2020 Projects as described above is essential to the County’s proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the 2021 Projects and the 2020 Projects have or will provide an essential use and will permit the County to carry out public functions that it is authorized by law to perform; and that entering into the Fourth Amendment and the Fourth Modification is necessary and expedient for the County by virtue of the findings presented herein;

WHEREAS, the Board hereby determines that the Fourth Amendment allows the County to finance the 2021 Projects and refinance the 2020 Projects and take title thereto at a favorable interest rate and on terms advantageous to the County;

WHEREAS, the Board hereby determines that the estimated cost of providing a portion of the funding for financing the 2021 Projects and refinancing the 2020 Projects under the Fourth Amendment is an amount not to exceed \$225,000,000, and that such cost exceeds the amount that can be prudently raised from currently available appropriations, unappropriated fund balances and non-voted bonds that could be issued by the County in the current fiscal year under Article V, Section 4 of the Constitution of the State;

WHEREAS, although the cost of financing the 2021 Projects and refinancing the 2020 Projects under the Fourth Amendment is expected to exceed the cost of financing and refinancing the same under a general obligation bond financing or revenue bond financing, the Board hereby determines that the cost of financing the 2021 Projects and refinancing the 2020 Projects under the Fourth Amendment and the Fourth Modification and the obligations of the County thereunder are preferable to a general obligation bond financing or revenue bond financing for several reasons, including but not limited to the following: (1) the cost of a special election necessary to approve a general obligation bond financing, as required by the laws

of the State, would result in the expenditure of significant funds; (2) the time required for a general obligation bond election would cause an unnecessary delay which would thereby decrease the financial benefits of financing the 2021 Projects and refinancing the 2020 Projects; and (3) insufficient revenues are produced by the 2021 Projects and the 2020 Projects to permit a revenue bond financing;

WHEREAS, the Board does not anticipate a future property tax increase to pay installment payments falling due under the Agreement;

WHEREAS, Parker Poe Adams & Bernstein LLP, as special counsel ("*Special Counsel*"), will render an opinion to the effect that entering into the Fourth Amendment and the Fourth Modification, and the transactions contemplated thereby, are authorized by law;

WHEREAS, no deficiency judgment may be rendered against the County in any action for its breach of the Agreement, and the taxing power of the County is not and may not be pledged in any way directly or indirectly or contingently to secure any money due under the Agreement;

WHEREAS, the County is not in default under any of its debt service obligations;

WHEREAS, the County's budget process and Annual Budget Ordinance are in compliance with the Local Government Budget and Fiscal Control Act;

WHEREAS, the Board believes, to the best of its knowledge, that the County's debt management and contract obligation payment policies have been carried out in strict compliance with the law, and the County has not been censured by the Local Government Commission of North Carolina (the "*LGC*"), external auditors or any other regulatory agencies in connection with such debt management and contract obligation payment policies;

WHEREAS, a public hearing on the Fourth Amendment after publication of a notice with respect to such public hearing must be held, and approval of the LGC with respect to entering into the Fourth Amendment and the Fourth Modification must be received; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF DURHAM, NORTH CAROLINA, AS FOLLOWS:

Section 1. Authorization to Negotiate the Fourth Amendment and Fourth Modification. The County Manager, the Chief Financial Officer and the Deputy Chief Financial Officer, including anyone serving as such in an interim capacity, or their respective designees, individually and collectively (the "*Authorized Officers*"), with advice from the County Attorney and Special Counsel, are hereby authorized and directed to (1) proceed and negotiate on behalf of the County for financing the 2021 Projects and refinancing of the 2020 Projects under the Fourth Amendment in a principal amount not to exceed \$225,000,000 to be entered into in accordance with the provisions of Section 160A-20 of the General Statutes of North Carolina, as amended, and (2) provide in connection with the Fourth Amendment, as security for the County's obligations thereunder, the Fourth Modification, conveying a lien and interest in the site of Northern High School and the improvements thereon, as may be required by the entity, or its assigns, providing the funds to the County under the Fourth Amendment.

Section 2. Application to LGC. The Chief Financial Officer or her designee is hereby directed to file with the LGC an application for its approval of the Fourth Amendment and all relevant transactions contemplated thereby on a form prescribed by the LGC and to state in such application such facts and to attach thereto such exhibits regarding the County and its financial condition as may be required by the LGC.

Section 3. *Direction to Retain Special Counsel and Financial Advisor.* The Authorized Officers, with advice from the County Attorney, are hereby authorized and directed to retain the assistance of Parker Poe Adams & Bernstein LLP, as Special Counsel and DEC & Associates, Inc., as financial advisor.

Section 4. *Public Hearing.* The Board shall conduct a public hearing (the “*Public Hearing*”) during the March 22, 2021 regular session to be held at 7:00 p.m. via electronic means concerning the Fourth Amendment, the Fourth Modification, the proposed financing of the 2021 Projects and refinancing of the 2020 Projects, and any other transactions contemplated therein and associated therewith.

Section 5. *Notice of Public Hearing.* The Clerk to the Board is hereby directed to cause a notice of the Public Hearing, in the form attached hereto as Exhibit A, to be published once in a qualified newspaper of general circulation within the County no fewer than 10 days prior to the Public Hearing.

Section 6. *Actions by the County.* All actions of the Authorized Officers on behalf of the County with respect to the Fourth Amendment, whether previously or hereinafter taken, are hereby approved, ratified and authorized.

Section 7. *Repealer.* All motions, orders, resolutions and parts thereof in conflict herewith are hereby repealed.

Section 8. *Effective Date.* This resolution is effective on the date of its adoption.

EXHIBIT A

NOTICE OF PUBLIC HEARING

The County of Durham, North Carolina (the “*County*”) has previously entered into (1) an Installment Financing Agreement dated as of April 1, 2009 (the “*2009 Agreement*”), as amended by a First Supplemental Installment Financing Agreement dated as of March 1, 2012 (the “*First Amendment*”), a Second Supplemental Installment Financing Agreement dated as of April 1, 2016 (the “*Second Amendment*”), and a Third Supplemental Installment Financing Agreement dated as of June 1, 2020 (the “*Third Amendment*”), each between the County and Durham Capital Financing Corporation, a North Carolina nonprofit corporation (the “*Corporation*”), to finance and refinance the projects described therein and (2) to secure its obligations under the 2009 Agreement, as amended, a Deed of Trust, Security Agreement and Fixture Filing dated as of April 1, 2009 (as modified, the “*Deed of Trust*”), granting a security interest in the site of the Health and Human Services Complex (as defined in the 2009 Agreement) and the real estate improvements thereon and appurtenances thereto;

At its March 8, 2021 meeting, the Board of Commissioners of the County (the “*Board*”) adopted a resolution which:

Authorized the Board to (1) finance (a) the construction, equipping and furnishing of certain public school facilities and equipment, including, among other school facilities, Northern High School located in the County, (b) 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 storm water facilities located within the County’s jurisdiction, (c) the renovation, improvement and expansion of the County’s Public Safety Service Center, including renovation of the County Sheriff Department’s firing range, (d) construction, equipping and furnishing of a new youth home located in the County, and (e) acquisition, construction, and development of a consolidated solid waste and recycling convenience site located in the County (collectively, the “*2021 Projects*”) and (2) refinance the 2020 Projects (as defined in the Third Amendment), pursuant to a Fourth Supplemental Installment Financing Agreement dated as of April 1, 2021 (the “*Fourth Amendment*” and together with the 2009 Agreement, the First Amendment, the Second Amendment, and the Third Amendment, the “*Agreement*”) in a principal amount not to exceed \$225,000,000, under which the County will make certain installment payments in order to make the 2021 Projects and the 2020 Projects available to the County; and

Authorized the County to proceed to provide, in connection with the Fourth Amendment, as grantor, a Fourth Modification and Notice of Extension of Deed of Trust (the “*Fourth Modification*”) extending the lien created by the Deed of Trust to the real property on which Northern High School is located and the improvements thereon. The County will mortgage Northern High School, along with properties already subject to the lien (collectively, the “*Sites*”), to create a lien thereon for the benefit of the Corporation, or its assigns, the counterparty under the Agreement. On payment by the County of all installment payments due under the Agreement, the lien created by the Deed of Trust will terminate and the County’s title to the Sites will be unencumbered. Northern High School is located at 117 Tom Wilkinson Rd, Durham, North Carolina.

NOTICE IS HEREBY GIVEN, pursuant to Sections 160A-20 of the General Statutes of North Carolina, that on March 22, 2021 at 7:00 p.m. a public hearing will be conducted, via electronic meeting, concerning the approval of the execution and delivery of the Fourth Amendment and the Fourth Modification and the County’s financing of the 2021 Projects and refinancing of the 2020 Projects. Any person wishing to submit written comments regarding the execution and delivery of the Fourth Amendment,

the Fourth Modification, the 2021 Projects and the 2020 Projects to be financed and refinanced thereby, and other related matters should do so by submitting comments no later than March 9, 2021 to the Clerk to the Board via email at mtoomer@dconc.gov.

Monica W. Toomer
Clerk to the Board
County of Durham, North Carolina

Published: March ___, 2021

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, AUTHORIZING THE NEGOTIATION OF AN AMENDMENT TO AN INSTALLMENT FINANCING AGREEMENT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO”** adopted by the Board of Commissioners of the County of Durham, North Carolina, at a meeting held on the 8th day of March, 2021.

WITNESS my hand and the corporate seal of the County of Durham, North Carolina, this the ____ day of March, 2021.

Monica W. Toomer
Clerk to the Board
County of Durham, North Carolina