

EXTRACTS FROM MINUTES OF CITY COUNCIL

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A Regular Meeting of the City Council of the City of Charlotte, North Carolina was duly held in the Meeting Chamber at the Charlotte-Mecklenburg Government Center in Charlotte, North Carolina, the regular place of meeting, at 7:00 p.m. on September 10, 2018:

Members Present:

Members Absent:

* * * * *
* * *

Councilmember _____ introduced the following resolution (the “*Resolution*”), a summary of which had been provided to each Councilmember, copy of which was available with the City Clerk and which was read by title:

RESOLUTION OF THE CITY OF CHARLOTTE, NORTH CAROLINA AUTHORIZING AND APPROVING AN INSTALLMENT FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO

WHEREAS, the City of Charlotte, North Carolina (the “*City*”) is a municipal corporation duly created and validly existing under and by virtue of the constitution, statutes and laws of the State of North Carolina (the “*State*”);

WHEREAS, the City has the power pursuant to the General Statutes of North Carolina to (1) purchase real and personal property, (2) enter into installment contracts in order to finance the purchase or improvement of real and personal property used, or to be used, for public purposes, and (3) grant a security interest in some or all of the property purchased or improved to secure repayment of the purchase price;

WHEREAS, the City Council of the City (the “*City Council*”) hereby determines that it is in the best interest of the City to enter into an installment financing contract (the “*Contract*”) with New Charlotte Corporation (the “*Corporation*”) (1) in order to provide funds to finance (a) the acquisition and installation of equipment for, and improvements to, the Spectrum Center Arena (b) the acquisition, construction, furnishing, equipping and/or improvement of various governmental and public facilities, including the Bojangles’ Coliseum/Ovens Auditorium Complex and various police stations and facilities and (c) the acquisition and installation of governmental equipment (the “*Equipment*”), all in accordance

with the City's Capital Improvement Plan (collectively, the "*Projects*") and (2) to pay certain costs incurred in connection with the execution and delivery of the Contract;

WHEREAS, in connection with the execution and delivery of the Contract, and to secure its obligations thereunder, the City Council hereby further determines that it is in the best interest of the City to authorize the City to (1) enter into a deed of trust, security agreement and fixture filing (the "*Deed of Trust*") related to all or a portion of the City's fee simple interest in certain of the real property on which the *Projects* are or will be located (the "*Sites*," and together with the improvements thereon, the "*Mortgaged Property*") and (2) grant to the Corporation and its assignee under the Contract a security interest in the Equipment acquired with the proceeds of the Contract, all as may be required for the benefit of the entity, or its assigns, providing the funds to the City under the Contract, including any future amendments thereto;

WHEREAS, City hereby determines that the acquisition, construction, furnishing and equipping of the *Projects* and/or the improvement thereof is essential to the City's proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the *Projects* will provide an essential use and will permit the City to carry out public functions that it is authorized by law to perform; and that entering into the Contract and Deed of Trust is necessary and expedient for the City by virtue of the findings presented herein;

WHEREAS, the City hereby determines that the Contract allows the City to finance the *Projects* and to take title thereto at a favorable interest rate currently available in the financial marketplace and on terms advantageous to the City;

WHEREAS, the City hereby determines that the estimated cost of financing the *Projects* is an amount not to exceed \$83,160,000, and that such cost of financing the *Projects* 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 City in the current fiscal year pursuant to Article V, Section 4 of the constitution of the State;

WHEREAS, although the cost of financing the *Projects* pursuant to the Contract is expected to exceed the cost thereof pursuant to a bond financing for the same undertaking, the City hereby determines that the cost of financing the *Projects* pursuant to the Contract and Deed of Trust and the obligations of the City 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 *Projects*; and (3) insufficient revenues are produced by the *Projects* so as to permit a revenue bond financing;

WHEREAS, the City has determined and hereby determines that the estimated cost of financing the *Projects* pursuant to the Contract reasonably compares with an estimate of similar costs under a bond financing for the same undertaking as a result of the findings delineated in the above preambles;

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

WHEREAS, the sums to fall due under the Contract will be adequate but not excessive for its proposed purpose;

WHEREAS, Parker Poe Adams & Bernstein LLP, as special counsel, will render an opinion to the effect that entering into the Contract and the transactions contemplated thereby are authorized by law;

WHEREAS, the obligation of the City to make installment payments under the Contract does not constitute a pledge of the faith and credit of the City within the meaning of any constitutional debt limitation and the taxing power of the City is not and may not be pledged in any way directly or indirectly or contingently to secure any money due under the Contract;

WHEREAS, no deficiency judgment may be rendered against the City in any action for its breach of the Contract;

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

WHEREAS, the City's budget process and Annual Budget Ordinance are in compliance with the Local Government Budget and Fiscal Control Act, and external auditors have determined that the City has conformed with generally accepted accounting principles as applied to governmental units in preparing its Annual Budget ordinance;

WHEREAS, past audit reports of the City indicate that its debt management and contract obligation payment policies have been carried out in strict compliance with the law, and the City 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, to assist the City in financing the Projects, the Corporation will execute and deliver one or more series of certificates of participation to evidence proportionate undivided interests in rights to receive certain payments pursuant to the Contract (collectively, the "*2018 Certificates*");

WHEREAS, in connection with the sale of the 2018 Certificates by the Corporation to Merrill Lynch, Pierce, Fenner & Smith Incorporated and Wells Fargo Bank, National Association (collectively, the "*Underwriters*"), the Corporation will enter into the Contract of Purchase (as defined below) and the City will execute a Letter of Representation to the Underwriters (the "*Letter of Representation*");

WHEREAS, there have been described to the City Council the forms of the following documents (collectively, the "*Instruments*"), copies of which have been made available to the City Council, which the City Council proposes to approve, enter into and deliver, as applicable, to effectuate the proposed installment financing:

- (1) the Contract;
- (2) the Deed of Trust;
- (3) an Indenture of Trust dated as of November 1, 2018 (the "*Indenture*") between the Corporation and U.S. Bank National Association;
- (4) a Contract of Purchase to be dated on or about October 25, 2018 (the "*Contract of Purchase*") between the Corporation and the Underwriters; and
- (5) the Letter of Representation;

WHEREAS, to make an offering and sale of the 2018 Certificates, there will be prepared a Preliminary Official Statement (the “*Preliminary Official Statement*”), a draft thereof having been made available to the City Council, and a final Official Statement (collectively with the Preliminary Official Statement, the “*Official Statement*”) with respect to the 2018 Certificates, which Official Statement will contain certain information regarding the City;

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

WHEREAS, the City Council conducted a public hearing on September 10, 2018 to receive public comment concerning the approval of the execution and delivery of the Contract and the Deed of Trust and the City’s acquisition, construction, furnishing, equipping and/or improvement of the Projects; and

WHEREAS, the City has filed with the LGC an application with respect to the Contract and expects to receive approval of the Contract by the LGC at its October meeting;

WHEREAS, with respect to the 2018 Certificates, Parker Poe Adams & Bernstein LLP will serve as special counsel and Corporation’s counsel, DEC Associates, Inc. will serve as financial advisor, Merrill Lynch, Pierce, Fenner & Smith Incorporated and Wells Fargo Bank, National Association will serve as underwriters, U.S. Bank National Association will serve as trustee and McGuireWoods LLP will serve as underwriters’ counsel, (collectively, the “*Financing Team*”);

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHARLOTTE, NORTH CAROLINA, AS FOLLOWS:

Section 1. Ratification of Instruments. All actions of the City, the Mayor, the City Manager, the Deputy City Manager, the Finance Officer (as defined in §159-24 of the General Statutes of North Carolina, as amended), the City Treasurer, the City Debt Manager, the City Clerk, the Deputy City Clerk and the City Attorney, including anyone serving as such in an interim capacity, or their respective designees (the “*Authorized Officers*”), whether previously or hereinafter taken, in effectuating the proposed financing are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the Instruments.

Section 2. Authorization of the Official Statement. The form, terms and content of the Official Statement are in all respects authorized, approved and confirmed, and the use of the Official Statement by the Underwriters in connection with the sale of the 2018 Certificates is hereby in all respects authorized, approved and confirmed.

Section 3. Authorization to Execute the Contract. The City approves the financing of the Projects pursuant to the Contract, which will be a valid, legal and binding obligation of the City in accordance with its terms. The form and content of the Contract are hereby authorized, approved and confirmed in all respects, and the Authorized Officers are hereby authorized, empowered and directed to execute and deliver the Contract, including necessary counterparts, in substantially the form and content presented to the City Council, but with such changes, modifications, additions or deletions therein as they may deem necessary, desirable or appropriate. Execution by the Authorized Officers of the Contract will constitute conclusive evidence of the City’s approval of any and all changes, modifications, additions or deletions therein from the form and content of the Contract presented to the City Council. From and after the execution and delivery of the Contract, the Authorized Officers are hereby 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 Contract as executed.

Section 4. Authorization to Execute the Deed of Trust. The City approves the form and content of the Deed of Trust and the Deed of Trust is hereby authorized, approved and confirmed in all respects. The Authorized Officers are hereby authorized, empowered and directed to execute and deliver the Deed of Trust, including necessary counterparts, in substantially the form and content presented to the City Council, but with such changes, modifications, additions or deletions therein as they may deem necessary, desirable or appropriate. Execution by the Authorized Officers of the Deed of Trust will constitute conclusive evidence of the City's approval of any and all such changes, modifications, additions or deletions therein from the form and content of the Deed of Trust presented to the City Council. From and after the execution and delivery of the Deed of Trust, the Authorized Officers are hereby 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 Deed of Trust as executed.

Section 5. Letter of Representation. The form and content of the Contract of Purchase are hereby approved in all respects. The City Manager, the Deputy City Manager, the Finance Officer, or their respective designees, are authorized to execute the Letter of Representation for the purposes stated therein.

Section 6. City Representative. The Authorized Officers are hereby designated as the City's representatives to act on behalf of the City in connection with the transaction contemplated by the Instruments and the Official Statement. Each Authorized Officer is authorized to proceed with the financing of the Projects in accordance with the Instruments and to seek opinions as a matter of law from the City Attorney, which City Attorney is authorized to furnish on behalf of the City, and opinions of law from such other attorneys for all documents contemplated hereby as required by law. The City's representatives or designees are in all respects authorized on behalf of the City to supply all information pertaining to the City as purchaser under the Contract for use in the Official Statement and the transactions contemplated by the Instruments or the Official Statement. The Authorized Officers are hereby 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 or appropriate to consummate the transactions contemplated by the Instruments or the Official Statement or as they deem necessary or appropriate to implement and carry out the intent and purposes of this Resolution. Any and all acts of the Authorized Officers may be done individually or collectively.

Section 7. Financing Team. The Financing Team for the 2018 Certificates is hereby approved.

Section 8. 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 9. Repealer. All motions, orders, resolutions and parts thereof in conflict with this Resolution are hereby repealed.

Section 10. Effective Date. This Resolution is effective on the date of its adoption.

STATE OF NORTH CAROLINA)
)
CITY OF CHARLOTTE) ss:

I, _____, the _____ of the City of Charlotte, North Carolina, **DO HEREBY CERTIFY** that the foregoing is a true and exact copy of a resolution entitled “**RESOLUTION OF THE CITY OF CHARLOTTE, NORTH CAROLINA AUTHORIZING AND APPROVING AN INSTALLMENT FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO**” adopted by the City Council of the City of Charlotte, North Carolina, at a meeting held on the 10th day of September, 2018, the reference having been made in Minute Book _____, and recorded in full in Resolution Book _____, Page(s) _____.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the ____ day of _____, 2018.

[Seal]

Stephanie C. Kelly
City Clerk
City of Charlotte, North Carolina