

EXTRACTS FROM MINUTES OF CITY COUNCIL

\* \* \*

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 5:00 p.m. on August 22, 2022:

Members Present:

Members Absent:

\* \* \* \* \*  
\* \* \*

Councilmember \_\_\_\_\_ introduced the following 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:

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHARLOTTE, NORTH CAROLINA, FOR THE APPROVAL, EXECUTION AND DELIVERY OF CITY OF CHARLOTTE, NORTH CAROLINA STORM WATER FEE REVENUE BOND ANTICIPATION NOTE, SERIES 2022**

*WHEREAS*, the City of Charlotte, North Carolina (the “City”) is authorized by The State and Local Government Revenue Bond Act, General Statutes of North Carolina, Section 159-80 *et seq.*, as amended (the “Act”), to issue, subject to the approval of the Local Government Commission of North Carolina (the “LGC”), at one time or from time to time revenue bond anticipation notes of the City for the purposes specified in the Act;

*WHEREAS*, the City has previously issued Storm Water Fee Revenue Bonds under the terms of a General Trust Indenture dated as of May 15, 2000 (the “General Indenture”) between the City and First Union National Bank of North Carolina, the successor to which is U.S. Bank Trust Company, National Association, as trustee (the “Trustee”);

*WHEREAS*, the City Council (the “City Council”) of the City has determined that it is in the best interest of the City to issue its Storm Water Fee Revenue Bond Anticipation Note, Series 2022 (the “Bond Anticipation Note”) in an aggregate principal amount not to exceed \$125,000,000 to finance 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 the storm water facilities located within the jurisdiction of the City (collectively, the “Projects”);

*WHEREAS*, the City will issue the Bond Anticipation Note under the General Indenture and a Series Indenture, Number 10 (the “Series Indenture”) between the City and the Trustee;

*WHEREAS*, Truist Commercial Equity, Inc. (the “Purchaser”) will purchase the Bond Anticipation Note and provide the City with the funding for the Projects on a draw-down basis under the terms of the Series Indenture and a Note Purchase and Advance Agreement (the “Purchase Agreement”) among the City, the Purchaser and the LGC;

*WHEREAS*, the City Council has considered and recognized that variable interest rate debt

instruments may subject the City to the risk of higher interest rates in the future;

*WHEREAS*, the City Council believes that a draw-down program as contemplated in the Series Indenture and the Purchase Agreement is superior to a fixed rate financing because it will lower the City's overall cost of capital;

*WHEREAS*, the City Council wants to (A) retain Parker Poe Adams & Bernstein LLP, as bond counsel ("*Bond Counsel*"); (B) approve the Purchaser as the purchaser of the Bond Anticipation Note; (C) retain DEC Associates, Inc., as the financial advisor, and First Tryon Securities, LLC, as the financial consultant; (D) retain U.S. Bank Trust Company, National Association, as trustee and paying agent for the Bond Anticipation Note; and (E) retain such other professionals as the City's Chief Financial Officer determines necessary to carry out the financing contemplated in this Resolution (collectively, the "*Financing Team*");

*WHEREAS*, the City Council desires to ratify the filing by the City's Chief Financial Officer, or her designee, of an application with the LGC for its approval of the Bond Anticipation Note, on a form prescribed by the LGC, (1) requesting in such application that the LGC approve (a) the negotiation of the sale of the Bond Anticipation Note to the Purchaser and (b) the City's use of the Financing Team and (2) stating in such application such facts and attaching thereto such exhibits in regard to the Bond Anticipation Note and to the City and its financial condition, as required by the LGC, and taking all other action necessary to the issuance of the Bond Anticipation Note;

*WHEREAS*, copies of the Series Indenture and the Purchase Agreement have been filed with the City and are available for review by the City Council; and

*WHEREAS*, the City Council has previously determined it is in its best interest to amend the General Indenture to modernize and clarify its provisions and provide appropriate operating flexibility of the storm water system in the future (the "*Amended and Restated General Indenture*") and the City intends to continue to obtain over time the written consent of the owners of not less than a majority in aggregate principal amount of the Bonds Outstanding (as defined in the General Indenture) required under the General Indenture in order to execute and deliver amendments to the General Indenture for certain purposes provided therein and in accordance with the terms and conditions thereof as previously approved by the City Council;

*NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF CHARLOTTE, NORTH CAROLINA DOES RESOLVE AS FOLLOWS:*

**Section 1.** The issuance of the Bond Anticipation Note by the City in the principal amount not to exceed \$125,000,000, in substantially the form and content set forth in the Series Indenture, subject to appropriate insertions and revisions in order to comply with the provisions of the General Indenture and the Series Indenture, is in all respects approved and confirmed. The form and content of the Bond Anticipation Note set forth in the Series Indenture are in all respects approved and confirmed. The provisions of the General Indenture and the Series Indenture with respect to the Bond Anticipation Note (including without limitation the maturities and rate setting mechanisms) are in all respects approved and confirmed and are incorporated herein by reference.

The Bond Anticipation Note will be issued by the City for the purpose of providing funds (1) to finance the costs of the Projects and (2) to pay the costs of issuing the Bond Anticipation Note, all as set out in the documents attached to the City's application to the LGC. The use of the proceeds of the Bond Anticipation Note, as described, is necessary in order to meet the expanding needs of the users of the storm water system and to assure that the storm water system remains in full compliance with all state and federal requirements for the provision of storm water services.

**Section 2.** The filing by the City's Chief Financial Officer, or her designee, of an application with the LGC requesting its approval of the issuance of the Bond Anticipation Note is in all respects ratified, approved and confirmed. The Financing Team for the Bond Anticipation Note is approved and confirmed.

**Section 3.** The City Council finds and determines and asks the LGC to find and determine from the City's application and supporting documentation:

- (a) that the issuance of the Bond Anticipation Note is necessary or expedient;
- (b) that the not to exceed stated principal amount of the Bond Anticipation Note is adequate and not excessive for its proposed purpose;
- (c) that the Projects are feasible;
- (d) that the City's debt management procedures and policies are good; and
- (e) that the Bond Anticipation Note can be marketed at a reasonable interest cost to the City.

**Section 4.** The form and content of the Series Indenture and the exhibits thereto are in all respects approved and confirmed. The Mayor, the City Manager and the Chief Financial Officer, or their respective designees (the "*Authorized Officers*"), are authorized, empowered and directed to execute and deliver the Series Indenture for and on behalf of the City, including necessary counterparts, in substantially the form and content presented to the City, but with such changes, modifications, additions or deletions therein as to them seem necessary, desirable or appropriate. Execution by the Authorized Officers of the Series Indenture 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 Series Indenture presented to the City Council. From and after the execution and delivery of the Series Indenture, 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 Series Indenture as executed.

**Section 5.** The City requests that the LGC sell the Bond Anticipation Note at private sale without advertisement through negotiation to the Purchaser at such prices as the LGC determines to be in the best interest of the City and pursuant to the terms of the Purchase Agreement, but at an initial interest rate not exceeding 5.00% and thereafter at an interest rate to be set in accordance with the Series Indenture and Purchase Agreement. The form and content of the Purchase Agreement are in all respects approved and confirmed. The Authorized Officers are hereby authorized, empowered and directed to execute and deliver the Purchase Agreement for and on behalf of the City, including necessary counterparts, in substantially the form and content presented to the City, but with such changes, modifications, additions or deletions therein as to them seem necessary, desirable or appropriate. Execution by the Authorized Officers of the Purchase Agreement 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 Purchase Agreement presented to the City Council. From and after the execution and delivery of the Purchase Agreement, 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 Purchase Agreement as executed.

**Section 6.** The City Manager or the City's Chief Financial Officer, or their designees, are hereby authorized to execute a no-arbitrage certificate in order to comply with Section 148 of the Internal Revenue Code of 1986, as amended, and the applicable regulations promulgated thereunder.

**Section 7.** No stipulation, obligation or agreement herein contained or contained in the Bond Anticipation Note, the General Indenture, the Series Indenture, the Purchase Agreement or any other instrument related to the issuance of the Bond Anticipation Note is deemed to be a stipulation, obligation or agreement of any officer, agent or employee of the City in his or her individual capacity, and no such

officer, agent or employee will be personally liable on the Bond Anticipation Note or be subject to personal liability or accountability by reason of the issuance thereof.

**Section 8.** The Mayor, the City Manager, the Chief Financial Officer, the City Treasurer and the City Debt Manager, or their respective designees, 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 and appropriate in order to consummate the transactions contemplated by (a) this Resolution and the Bond Order, (b) the General Indenture, (c) the Series Indenture and (d) the Purchase Agreement; except that the Authorized Officers are not authorized or empowered to do anything or execute any document which is in contravention, in any way, of (1) the specific provisions of this Resolution or the Bond Order, (2) the specific provisions of the General Indenture, (3) the specific provisions of the Series Indenture, (4) the specific provisions of the Purchase Agreement, (5) any agreement to which the City is bound, (6) any rule or regulation of the City or (7) any applicable law, statute, ordinance, rule or regulation of the United States of America or the State of North Carolina.

**Section 9.** The City Council has previously authorized the Authorized Officers to execute, deliver and enter into the Amended and Restated General Trust Indenture for and on behalf of the City if and when the City obtains the requisite written consent of the owners of not less than a majority in aggregate principal amount of the Bonds Outstanding in accordance with the terms and conditions of the General Indenture without need for further City Council authorization, approval or action. The Authorized Officers are further 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 in order to continue to obtain the aforementioned requisite consents to execute, deliver and enter into the Amended and Restated General Trust Indenture.

**Section 10.** Any and all past acts and doings of the officers of the City that were in conformity with the purposes and intents of this Resolution and in the furtherance of the issuance of the Bond Anticipation Note and the execution, delivery and performance of the Series Indenture, the Purchase Agreement and the Amended and Restated General Trust Indenture are in all respects ratified, approved and confirmed. Any and all future acts and doings of the officers of the City that are in conformity with the purposes and intents of this Resolution and in the furtherance of the issuance of the Bond Anticipation Note and the execution, delivery, performance and on-going administration of the General Indenture, Series Indenture and the Purchase Agreement are in all respects approved and confirmed. Any and all acts of officers of the City authorized by this Resolution may be done individually or collectively.

**Section 11.** If any one or more of the agreements or provisions herein contained is held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or for any reason whatsoever is held invalid, then such covenants, agreements or provisions are null and void and will be deemed separable from the remaining agreements and provisions and in no way affect the validity of any of the other agreements and provisions hereof or of the Bond Anticipation Note authorized hereunder.

**Section 12.** All resolutions or parts thereof of the City Council in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

**Section 13.** This Resolution is effective on its adoption.

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

I, STEPHANIE C. KELLY, the City Clerk of the City of Charlotte, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of a resolution entitled “**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHARLOTTE, NORTH CAROLINA, FOR THE APPROVAL, EXECUTION AND DELIVERY OF CITY OF CHARLOTTE, NORTH CAROLINA STORM WATER FEE REVENUE BOND ANTICIPATION NOTE, SERIES 2022**” adopted by the City Council of the City of Charlotte, North Carolina, at a meeting held on the 22nd day of August, 2022, 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 \_\_\_\_\_, 2022.

\_\_\_\_\_  
STEPHANIE C. KELLY  
City Clerk  
City of Charlotte, North Carolina