

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 5:00 p.m. on April 26, 2021:

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:

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHARLOTTE, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN AMENDMENT TO INSTALLMENT FINANCING 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) 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 City previously executed and delivered an Installment Purchase Contract dated as of December 1, 2003 and amendments thereto (as previously amended, the “*2003 Contract*”) between the City and New Charlotte Corporation (the “*Corporation*”) in order to finance and refinance mass transit facilities and equipment;

WHEREAS, to secure its obligations under the 2003 Contract, the City (1) executed and delivered a Deed of Trust and Security Agreement dated as of December 1, 2003 from the City to the deed of trust trustee named therein for the benefit of the Corporation, as modified by (a) a Notice of Extension of Deed of Trust dated as of August 15, 2005 and (b) a Notice of Extension and Amendment to Deed of Trust dated as of May 1, 2013, each among the City, the Trustee and the deed of trust trustee named therein (collectively, the “*Deed of Trust*”), granting the Corporation and its assigns a security interest in certain transit facilities acquired with the proceeds of the 2003 Contract, and (2) granted the Corporation under the 2003 Contract a security interest in certain personal property acquired with the proceeds of the 2003 Contract;

WHEREAS, in connection with the 2003 Contract, the Corporation previously executed and delivered under an Indenture of Trust dated as of December 1, 2003 (as previously amended and

supplemented, the “2003 Indenture”) between the Corporation and Wachovia Bank, National Association, the successor to which is U.S. Bank National Association, as trustee (the “Trustee”), under which the Corporation has executed and delivered several series of certificates of participation, each evidencing proportionate undivided interests in rights to receive certain revenues pursuant to the 2003 Contract, to finance and refinance mass transit facilities and equipment;

WHEREAS, the City has been advised that it can achieve debt service savings by refinancing the principal component of its installment payment obligations under the 2003 Contract corresponding to certain of the certificates of participation outstanding under the 2003 Indenture, including the Refunding Certificates of Participation (Transit Projects/Phase II), Series 2008A (the “2008A Certificates”) and Certificate of Participation (Transit Projects/Phase III), Series 2015D (the “2015D Certificate”);

WHEREAS, consistent with the City’s financial policies for the Charlotte Area Transit System, the City Council of the City (the “City Council”) has determined that it is in the best interests of the City to enter into Amendment Number Six to the 2003 Contract (the “Sixth Amendment,” and together with the 2003 Contract, the “Contract”) to (1) refinance the City’s installment payment obligations under the 2003 Contract corresponding to all or a portion of the 2008A Certificates and the 2015D Certificates (collectively, the “Refunded Certificates”) to achieve debt service savings and (2) pay the costs of executing and delivering the Sixth Amendment;

WHEREAS, the City hereby determines that refinancing the Refunded Certificates is essential to the City’s proper, efficient and economic operation and to the general health and welfare of its inhabitants; that refinancing the Refunded Certificates will enable the City to achieve debt service savings; and that entering into the Sixth Amendment is necessary and expedient for the City by virtue of the findings presented herein;

WHEREAS, the City hereby determines that entering into the Sixth Amendment allows the City to refinance the Refunded Certificates 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 refinancing the Refunded Certificates is an amount not to exceed \$200,000,000, 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 City in the current fiscal year pursuant to Article V, Section 4 of the Constitution of the State;

WHEREAS, although the cost of refinancing the Refunded Certificates pursuant to the Sixth Amendment is expected to exceed the cost of refinancing the Refunded Certificates pursuant to a bond financing for the same undertaking, the City hereby determines that the cost of refinancing the Refunded Certificates pursuant to the Sixth Amendment 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 completing the refinancing the Refunded Certificates; and (3) insufficient revenues are produced by the projects to be refinanced so as to permit a revenue bond financing;

WHEREAS, the City has determined and hereby determines that the estimated cost of refinancing the Refunded Certificates pursuant to the Sixth Amendment 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 related to the Sixth Amendment;

WHEREAS, the sums to fall due related to the Sixth Amendment will be adequate but not excessive for its proposed purpose;

WHEREAS, the obligation of the City to make installment payments for the 2003 Contract and the Sixth Amendment 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 2003 Contract and the Sixth Amendment;

WHEREAS, no deficiency judgment may be rendered against the City in any action for breach of an obligation under the 2003 Contract and the Sixth Amendment;

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, a public hearing on entering into the Sixth Amendment after publication of a notice with respect to such public hearing will be held by the City Council and approval of the LGC with respect to entering into Sixth Amendment must be received;

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

Section 1. **Authorization to Negotiate Sixth Amendment.** The Mayor, the City Manager and the Chief Financial Officer, or their respective designees, are hereby authorized and directed to proceed and negotiate on behalf of the City for the refinancing of the Refunded Certificates for a principal amount not to exceed \$200,000,000 in accordance with the provisions of Section 160A-20 of the General Statutes of North Carolina, as amended.

Section 2. **Application to LGC.** The Chief Financial Officer, or her designees, are hereby directed to file with the LGC an application for its approval of the Sixth 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 City and its financial condition as may be required by the LGC.

Section 3. **Financing Team.** The financing team of Parker Poe Adams & Bernstein LLP, as special counsel, DEC Associates, Inc. and Davenport & Company LLC, as financial advisors, Goldman Sachs & Co. LLC, as managing underwriter, U.S. Bank National Association, as trustee, and McGuireWoods LLP, as underwriters' counsel, is approved. The Chief Financial Officer, or her designees, are hereby authorized to retain co-managing underwriters and any other professionals she deems necessary to complete the transaction contemplated by this Resolution.

Section 4. ***Public Hearing.*** A public hearing shall be conducted by the City Council on May 10, 2021 (the “*Public Hearing*”) concerning the approval of the execution and delivery of the Sixth Amendment for the refinancing of the Refunded Certificates. The City Clerk is hereby directed to cause a notice of the Public Hearing to be published at least once in a qualified newspaper of general circulation within the City no fewer than 10 days prior to the Public Hearing.

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

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

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

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 “**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHARLOTTE, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN AMENDMENT TO INSTALLMENT FINANCING 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 26th day of April, 2021, 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 _____, 2021.

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