

Resolution #19-0665
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**RESOLUTION OF THE CITY OF WINSTON-SALEM, NORTH CAROLINA,
APPROVING AN AMENDMENT TO AN INSTALLMENT PURCHASE
CONTRACT WITH THE NORTH CAROLINA MUNICIPAL LEASING
CORPORATION TO REFINANCE CERTAIN FACILITIES
AND CAPITAL ASSETS AND RELATED MATTERS**

WHEREAS, the City of Winston-Salem, North Carolina (the “*City*”), is a duly and regularly created, organized and existing municipal corporation validly existing as such under and by virtue of the Constitution, statutes and laws of the State of North Carolina (the “*State*”); and

WHEREAS, the City has the power, pursuant to North Carolina General Statutes, to (1) purchase real and personal property, (2) enter into installment purchase contracts in order to finance or refinance the purchase 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 to secure repayment of the purchase price; and

WHEREAS, the City has previously issued (1) its Taxable Special Obligation Bond, Series 2009 (the “*2009 Bond*”) pursuant to a General Trust Indenture dated as of July 1, 2005 (the “*General Trust Indenture*”) with The Bank of New York Mellon Trust Company, N.A. (“*BONY*”), as trustee, and pursuant to Series Indenture, Number 2 dated as of August 1, 2009 between the City and BONY and (2) its Special Obligation Bond, Series 2011A (the “*2011A Bond*” and together with the 2009 Bond, the “*Prior Bonds*”) under the General Trust Indenture and Series Indenture, Number 3 dated as of May 1, 2011 between the City and BONY; and

WHEREAS, the City has also previously entered into

(1) an Installment Purchase Contract dated as of December 1, 1996 (the “*1996 Contract*”) with the North Carolina Municipal Leasing Corporation (the “*Corporation*”), which, in addition to other amendments, the City has amended pursuant to Amendment Number One to the 1996 Contract dated as of April 15, 2004 (the “*2004 Contract Amendment*”) and Amendment Number Three to the 1996 Contract, dated as of April 15, 2006 (the “*2006 Contract Amendment*”), each between the City and the Corporation;

(2) an Installment Financing Contract dated as of September 1, 2011 (the “*2011 Contract*”) with SunTrust Equipment Finance & Leasing Corp.; and

(3) an Installment Purchase Contract dated as of August 15, 2001 (the “*2001 Contract*”) with the Corporation, which the City has amended by Amendment Number One to the 2001 Contract dated as of April 15, 2006 (the “*First Contract Amendment*”); Amendment Number Two to the 2001 Contract dated as of August

15, 2006 (the “*Second Contract Amendment*”); Amendment Number Three to the 2001 Contract dated as of February 1, 2010 (the “*Third Contract Amendment*,”); Amendment Number Four to the 2001 Contract dated as of July 1, 2013 (the “*Fourth Contract Amendment*”); Amendment Number Five to the 2001 Contract dated as of September 15, 2014 (the “*Fifth Contract Amendment*”); and Amendment Number Six to the 2001 Contract dated as of June 28, 2018 (the “*Sixth Contract Amendment*”), each between the City and the Corporation; and

WHEREAS, the proceeds of the (1) 2009 Bond were used to finance various improvements associated with a downtown minor league baseball stadium, including related parking facilities (the “*2009 Bond Projects*”); (2) 2011A Bond were used to finance various improvements to the City’s solid waste facilities (the “*2011A Bond Projects*”); (3) 2004 Contract Amendment were used to refinance two parking facilities and certain improvements to the Benton Convention Center, originally financed in 1994 and 1996 and to finance further improvements to the Benton Convention Center (collectively, the “*2004C Projects*”); (4) 2006 Contract Amendment were used to refinance certain parking facilities, originally financed and refinanced in 2001 (the “*2006B Projects*”); (5) 2011 Contract were used to finance various City projects including, among other things, (a) the acquisition of the Bryce A. Stuart Municipal Building; (b) construction of a police evidence storage and training facility; (c) construction of a City firearms training facility; and (d) the acquisition of land and construction of infrastructure and site improvements associated with a downtown minor league baseball stadium (collectively, the “*2011 Project*”); (6) Fourth Contract Amendment were used to finance (a) the cost of acquisition of certain investment securities to be applied to reduce the unfunded liabilities of a pension trust fund for the City’s Police Officers’ Retirement System (the “*2013A Project*”) and (b) the acquisition of and improvements to property for use as a City field operations facility located on Lowery Street (the “*2013B Project*”); (7) Fifth Contract Amendment were used to finance the acquisition of the remaining ownership interest in BB&T Ballpark that the City did not then own (the “*2014A Project*” and together with the 2009 Bond Projects, the 2011A Bond Projects, the 2004C Projects, the 2006B Projects, the 2011 Projects, the 2013A Project and the 2013B Project, the “*Prior Projects*”); and

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 Amendment Number Seven to the 2001 Contract dated as of January 1, 2020 (the “*Seventh Contract Amendment*,” and together with the 2001 Contract and all amendments thereto, the “*Contract*”) with the Corporation in order to redeem the Prior Bonds and refinance the City’s installment payment obligations related to the 2004 Contract Amendment, the 2006 Contract Amendment, the 2011 Contract, the Fourth Contract Amendment and the Fifth Contract Amendment (collectively, the “*Prior Contracts*”); and

WHEREAS, the City has previously provided a security interest in City Hall, the City’s Public Safety Center, the Lowery Street Facility and the City-owned portion of the BB&T Ballpark and the sites on which they are located through a Deed of Trust and Security Agreement dated as of August 15, 2001 (the “*2001 Deed of Trust*”), as extended by the Notice of Extension of Deed of Trust to Additional Property dated as of April 15, 2006 (the “*First Notice of Extension*”), as further extended by the Notice of Extension of Deed of Trust to Additional Property dated as of July 1, 2013 (the “*Second Notice of Extension*”) and as further extended by the Notice of Extension

of Deed of Trust to Additional Property dated as of September 15, 2014 (the “*Third Notice of Extension,*” and together with the 2001 Deed of Trust, the First Notice of Extension and the Second Notice of Extension, the “*Deed of Trust*”), each from the City to the deed of trust trustee named therein, which will secure the City’s obligations under the Seventh Contract Amendment; and

WHEREAS, the City hereby determines that the cost redeeming the Prior Bonds and refinancing Prior Contracts exceeds the total 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; and

WHEREAS, the City hereby determines that the cost of redeeming the Prior Bonds and refinancing the Prior Contracts pursuant to the Seventh Contract 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 decrease the financial benefits of redeeming the Prior Bonds and refinancing the Prior Contracts; and (3) insufficient revenues are produced by the Prior Projects so as to permit a revenue bond financing; and

WHEREAS, the City hereby determines that the estimated cost of redeeming the Prior Bonds and refinancing the Prior Contracts pursuant to the Seventh Contract 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; and

WHEREAS, the City does not anticipate future property tax increases to pay installment payments falling due under the Contract in any fiscal year during the term of the Contract, and such payments are adequate and not excessive for their purpose; and

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

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; and

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 North Carolina Local Government Commission (the “*LGC*”), external auditors or any other regulatory agencies in connection with such management and contract obligation payment policies; and

WHEREAS, the City Council has previously conducted public hearings to receive public comment on the 2001 Contract and the City Council hereby reaffirms each of the findings it made

with respect to the Contract and the projects financed and refinanced thereby in resolutions previously adopted by the City Council; and

WHEREAS, the City has filed an application with the LGC for approval of the Seventh Contract Amendment; and

WHEREAS, the Corporation will execute and deliver, its Limited Obligation Refunding Bonds, Series 2020A (the “*2020A Bonds*”), its Taxable Limited Obligation Refunding Bonds, Series 2020B (the “*2020B Bonds*,”) and its Limited Obligation Refunding Bonds, Series 2020C (the “*2020C Bonds*,” and together with the 2020A Bonds and the 2020B Bonds, the “*2020 Bonds*”), each evidencing proportionate undivided interest in rights to receive Revenues pursuant to the 2001 Contract, as amended, in an aggregate principal amount not to exceed \$78,000,000 in order to redeem the Prior Bonds and refinance Prior Contracts; and

WHEREAS, in connection with the sale of (1) the 2020A Bonds and the 2020B Bonds by the Corporation to Robert W. Baird & Co. (the “*Underwriter*”), the Corporation will enter into a Contract of Purchase to be dated on or about January 9, 2020 (the “*Contract of Purchase*”), and the City will execute a Letter of Representation to the Underwriter with respect to the 2020A Bonds and the 2020B Bonds (the “*Letter of Representation*”) and (2) the 2020C Bonds by the Corporation to the Underwriter, the Corporation will enter into a Forward Delivery Contract of Purchase to be dated on or about January 9, 2020 (the “*Forward Delivery Contract of Purchase*”), and the City will execute a Letter of Representation to the Underwriter with respect to the 2020C Bonds (the “*Forward Letter of Representation*”); and

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 refinancing:

- (1) the Seventh Contract Amendment;
- (2) a Supplemental Indenture, Number 7 dated as of January 1, 2020 (the “*Supplemental Indenture*”) between the Corporation and The Bank of New York Mellon Trust Company, N.A., as trustee;
- (3) the Contract of Purchase and the related Letter of Representation;
- (4) the Forward Delivery Contract of Purchase and the related Forward Letter of Representation;
- (5) an Escrow Agreement dated as of January 1, 2020 (the “*Escrow Agreement*”) between the City and The Bank of New York Mellon Trust Company, N.A., as escrow agent; and

WHEREAS, to make an offering and sale of the 2020 Bonds, there will be prepared (1) a Preliminary Official Statement (the “*Preliminary Official Statement*”), a draft thereof having been presented to the City Council, and a final Official Statement (the “*Final Official Statement*”) together with the Preliminary Official Statement, the “*Official Statement*”), which Official Statement will contain certain information regarding the City and (2) a supplement to the Final Official Statement provided in connection with the delayed delivery of the 2020C Bonds (the “*Supplement*”), which Supplement will contain certain information regarding the City; and

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.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and the City Council of Winston-Salem, North Carolina, as follows:

Section 1. *Ratification of Actions.* That all actions of the City, the City Manager, the Chief Financial Officer, the City Secretary, the City Attorney and their respective designees, whether previously or hereinafter taken, in effectuating the proposed refinancing are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the Instruments and the Preliminary Official Statement.

Section 2. *Financing Team.* The financing team of Parker Poe Adams & Bernstein LLP, as bond counsel; Wye River Group, Incorporated, as financial advisor; Robert W. Baird & Co., as Underwriter and The Bank of New York Mellon Trust Company, N.A., as trustee and escrow agent is hereby approved. The Underwriter's use of Moore Van Allen LLP, as Underwriter's counsel, is also approved.

Section 3. *Authorization of the Official Statement and the Supplement.* The form, terms and content of the Preliminary Official Statement is in all respects authorized, approved and confirmed, and the use of the Preliminary Official Statement and of the final Official Statement and the Supplement by the Underwriter in connection with the sale of the 2020 Bonds is hereby in all respects authorized, approved and confirmed. The Mayor, the City Manager or the Chief Financial Officer are hereby authorized and directed, individually and collectively, to deliver, on behalf of the City, the Official Statement and the Supplement in substantially such forms, with such changes, insertions and omissions as he or she may approve.

Section 4. *Authorization to Execute the Seventh Contract Amendment and the Escrow Agreement.* That the City approves the redemption of the Prior Bonds and refinancing of the Prior Contracts in accordance with the terms of the Seventh Contract Amendment, which will be a valid, legal and binding obligation of the City in accordance with its terms. The form and content of the Seventh Contract Amendment and the Escrow Agreement are hereby authorized, approved and confirmed, and the City Manager, the Chief Financial Officer and the City Secretary and their respective designees are hereby authorized, empowered and directed to execute and deliver the Seventh Contract Amendment and the Escrow Agreement, 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 deem necessary, desirable or appropriate, their execution thereof to constitute conclusive

evidence of the City's approval of any and all changes, modifications, additions or deletions therein from the form and content presented to the City Council, and that from and after the execution and delivery of the Seventh Contract Amendment and the Escrow Agreement, the City Manager, the Chief Financial Officer and the City Secretary 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 thereof, as executed.

Section 5. *Letters of Representation.* The form and content of the Letter of Representation and the Forward Letter of Representation are hereby in all respects approved, and the Mayor, the City Manager or the Chief Financial Officer is authorized to execute the Letter of Representation and the Forward Letter of Representation for the purposes stated therein.

Section 6. *City Representative.* That the City Manager, the Chief Financial Officer and the Mayor 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 Preliminary Official Statement, and each is authorized to proceed with redeeming the Prior Bonds and refinancing the Prior Contracts in accordance with the Instruments and to seek opinions as a matter of law from the City Attorney, which the City Attorney is authorized to furnish on behalf of the City, and opinions of law from such other attorneys for all documents contemplated hereby. The City's Representative and/or designee or designees are in all respects authorized on behalf of the City to supply all information pertaining to the City to the Underwriters of the 2020 Bonds for use in the Official Statement and the Supplement and the transactions contemplated by the Instruments and the Preliminary Official Statement, and the Mayor, the City Manager, the City Secretary and the Chief Financial Officer 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 the Instruments and the Preliminary Official Statement or as they deem necessary or appropriate in order to implement and carry out the intent and purposes of this Resolution.

Section 7. *Severability.* That if any section, phrase or provision of this Resolution is for any reason declared invalid, such declaration will not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

Section 8. *Repealer.* That all motions, orders, resolutions and parts thereof, in conflict herewith are hereby repealed.

Section 9. *Effective Date.* This Resolution is effective immediately on its adoption.

**Winston-Salem City Council
APPROVED
December 2, 2019**