

RESOLUTION #21-0605  
2021 RESOLUTION BOOK, PAGE 240

**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 FINANCE AND 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 its Special Obligation Bonds, Series 2013 (the “*Prior Bonds*”) 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 4 dated as of May 1, 2013 between the City; 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 Four to the 1996 Contract dated as of October 1, 2014 (the “*Fourth Contract Amendment*”), each between the City and the Corporation; and

(2) an Installment Purchase Contract dated as of August 15, 2001 (the “*2001 Contract*”) with the Corporation, which the City has amended by Amendment Number Four to the 2001 Contract dated as of July 1, 2013 (the “*Fourth 2001 Contract Amendment*”), each between the City and the Corporation; and

**WHEREAS**, the proceeds of the (1) Prior Bonds were used to (a) finance various improvements associated with a municipal service district known as the Wake Forest Innovation Quarter and (b) refinance certain prior special obligation bonds of the City (the “*Prior Bond Projects*”); (2) Fourth Contract Amendment were used to (a) refinance a portion of the principal portion of Installment Payments due under the 1996 Contract related to the 2004 Project (as

defined in the Contract) and (b) finance (i) the acquisition of certain condominium interests in the Bryce A. Stuart Building, (ii) certain additional improvements to the Benton Convention Center, (iii) certain improvements to Union Station, and (d) Business 40 corridor improvements (collectively, the “2014 Project”); (3) Fourth 2001 Contract Amendment were used to finance the acquisition of and improvements to property for use as a City field operations facility known as the Lowery Street Facility (the “2013 Project” and together with the 2014 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 Five to the 1996 Contract dated as of February 1, 2022 (the “Fifth Contract Amendment,” and together with the 1996 Contract and all amendments thereto, the “Contract”) with the Corporation in order to (a) redeem the Prior Bonds; (b) refinance the City’s installment payment obligations related to the Fourth Contract Amendment and the Fourth 2001 Contract Amendment (collectively, the “Prior Contracts”); and (c) finance the acquisition, construction and equipping of various City projects including improvements to Bowman Gray Stadium, the replacement of Belview Recreation Center, the development of Long Creek Park, the acquisition of certain real property, improvements to Liberty Plaza and Kaleideum children’s museum, and various pedestrian safety projects (collectively, the “2022 Project”); and

**WHEREAS**, the City has previously provided a security interest in the Benton Convention Center and the Bryce A. Stuart Building (each as defined in the Contract) through an Amended, Restated and Supplemental Deed of Trust and Security Agreement dated as of February 15, 2001, as amended by a Notice of Extension of Deed of Trust to Additional Property dated as of April 15, 2006, and a Second Notice of Extension of Deed of Trust to Additional Property dated as of October 1, 2014, each from the City to the deed of trust trustee named therein, and a Partial Release dated as of August 15, 2014 from the Trustee and the deed of trust trustee named therein (collectively, the “Deed of Trust”), which will secure the City’s obligations under the Contract; and

**WHEREAS**, the City hereby determines that the cost of (a) redeeming the Prior Bonds, (b) refinancing Prior Contracts and (c) financing the 2022 Project 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 (a) redeeming the Prior Bonds, (b) refinancing the Prior Contracts and (c) financing the 2022 Project pursuant to the Fifth 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 2022 Project and the Prior Projects so as to permit a revenue bond financing; and

**WHEREAS**, the City hereby determines that the estimated cost of (a) redeeming the Prior Bonds, (b) refinancing the Prior Contracts and (c) financing the 2022 Project pursuant to the Fifth 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 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 Fifth Contract Amendment; and

**WHEREAS**, the Corporation will execute and deliver, its Limited Obligation Bonds, Series 2022A (the "*2022A Bonds*") and its Taxable Limited Obligation Refunding Bonds, Series 2022B (the "*2022B Bonds*," and together with the 2022A Bonds, the "*2022 Bonds*"), each evidencing proportionate undivided interest in rights to receive Revenues pursuant to the 1996 Contract, as amended, in an aggregate principal amount not to exceed \$60,000,000 in order to (a) redeem the Prior Bonds, (b) refinance the Prior Contracts and (c) finance the acquisition, construction and equipping of the 2022 Project; and

**WHEREAS**, in the event that changes to the federal tax code are enacted prior to the sale of the 2022B Bonds such that the 2022B Bonds may be issued on a tax-exempt basis, then the 2022B Bonds shall be designated the Limited Obligation Refunding Bonds, Series 2022B; and

**WHEREAS**, in connection with the sale of (1) the 2022A Bonds and the 2022B Bonds by the Corporation to Robert W. Baird & Co. Incorporated (the “*Underwriter*”), the Corporation will enter into a Contract of Purchase to be dated on or about January 27, 2022 (the “*Contract of Purchase*”), and the City will execute a Letter of Representation to the Underwriter with respect to the 2022A Bonds and the 2022B Bonds (the “*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 Fifth Contract Amendment;
- (2) a Supplemental Indenture, Number 5 dated as of February 1, 2022 (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; and
- (4) an Escrow Agreement dated as of February 1, 2022 (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 2022 Bonds, there will be prepared 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

**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 Clerk, 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. Incorporated, 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.* 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 by the Underwriter in connection with the sale of the 2022 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 Fifth 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 Fifth 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 Fifth Contract Amendment and the Escrow Agreement are hereby authorized, approved and confirmed, and the City Manager, the Chief Financial Officer and the City Clerk and their respective designees are hereby authorized, empowered and directed to execute and deliver the Fifth 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 Fifth Contract Amendment and the Escrow Agreement, the City Manager, the Chief Financial Officer and the City Clerk 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.** *Letter of Representation.* The form and content of the 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 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 2022 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 Clerk 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.