

**RESOLUTION #21-0606  
2021 RESOLUTION BOOK, PAGE 241**

**RESOLUTION OF THE CITY OF WINSTON-SALEM, NORTH CAROLINA  
APPROVING AN INSTALLMENT PURCHASE CONTRACT 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*”);

**WHEREAS**, the City has the power, pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended, to (a) purchase real and personal property, (b) enter into installment purchase contracts in order to finance the purchase of real and personal property used, or to be used, for public purposes, and (c) grant a security interest in some or all of the property purchased 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 interests of the City to receive an advance of funds in an aggregate principal amount of not more than \$20,000,000 by (a) entering into an installment purchase contract (the “*Contract*”) with TD Equipment Finance, Inc. (the “*Bank*”) in order to finance the acquisition of various equipment for use by the City (collectively, the “*Equipment*”) and create a security interest therein;

**WHEREAS**, the Equipment will be owned and operated by the City to serve the citizens of the City;

**WHEREAS**, the City hereby determines that the acquisition of the Equipment is essential to the City’s proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the acquisition of the Equipment 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 is necessary and expedient for the City by virtue of the findings presented herein;

**WHEREAS**, the City hereby determines that the estimated cost of the acquisition of the Equipment is an amount not to exceed \$20,000,000 and that such cost of the Equipment 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;

**WHEREAS**, although the cost of acquiring the Equipment pursuant to the Contract is expected to exceed the cost of acquiring the Equipment pursuant to a bond financing for the same undertaking, the City hereby determines that the cost of acquiring the Equipment pursuant to the Contract 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: (a) 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; (b) the time required for a general obligation bond election would cause an unnecessary delay which would thereby decrease the financial benefits of acquiring the Equipment; and (c) insufficient revenues are produced by the operation of the Equipment so as to permit a revenue bond financing;

**WHEREAS**, the City hereby determines that the estimated cost of acquiring the Equipment 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 obligation of the City to make Installment Payments under the Contract is a limited obligation of the City payable solely from currently budgeted appropriations of the City and does not constitute a pledge of the faith and credit of the City within the meaning of any constitutional debt limitation;

**WHEREAS**, the City does not anticipate future property tax increases solely to pay installment payments falling due under the Contract in any fiscal year during the term of the Contract;

**WHEREAS**, Parker Poe Adams & Bernstein LLP, as special counsel (“*Special Counsel*”), will render an opinion to the effect that entering into the Contract and the transactions contemplated thereby are authorized by law and constitute a purpose for which public funds may be expended pursuant to the Constitution and laws of the State;

**WHEREAS**, no deficiency judgment may be rendered against the City in any action for its breach of the Contract, 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 moneys due under 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 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 North Carolina Local Government Commission (the “*LGC*”), external auditors or any other regulatory agencies in connection with such debt management and contract obligation payment policies;

**WHEREAS**, there has been presented to the City Council the form of the Contract, a copy of which is attached hereto, which the City proposes to approve, enter into and deliver, as applicable, to effectuate the proposed financing at the Interest Rate (as defined in the Contract) and for a maximum principal amount of \$20,000,000 as specified in the Contract; and

**WHEREAS**, it appears that the Contract is in appropriate form and is an appropriate instrument for the purpose intended;

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

**Section 1.**     Ratification of Instruments. 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 financing are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the Contract.

**Section 2.**     Authorization to Execute Contract. That the City shall provide for the acquisition, installation and equipping of the Equipment pursuant to the Contract, and the form and content of the Contract shall be and the same hereby are in all respects authorized, approved, ratified and confirmed, and the City Manager of the City and the City Clerk shall be and they hereby are 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 may to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all changes, modifications, additions or deletions therein from the form and content of the Contract presented to the City Council and that from and after the execution and delivery of the Instruments, the City Manager of the City 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 of the Contract, as executed.

**Section 3.**     City Representative. That the Mayor, the City Manager, the City Clerk and the Chief Financial Officer of the City are hereby authorized, empowered and directed to do any and all other acts necessary to execute any and all other documents, which they, in their discretion, may deem necessary and appropriate in order to consummate the transactions contemplated by (1) this Resolution, (2) the Contract and (3) the documents presented to this meeting; except that none of the above shall be authorized or empowered to do anything or execute any document

which is in contravention, in any way, of (a) the specific provisions of this Resolution, (b) the specific provisions of the Contract, (c) any agreement to which the City is bound, (d) any rule or regulation of the City or (e) any applicable law, statute, ordinance, rule or regulation of the United States of America or the State.

**Section 4.** General Authority. That from and after the execution and delivery of the documents hereinabove authorized, the Mayor, the City Manager, the City Clerk and the Chief Financial Officer of the City 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 said documents to be executed, and are further authorized to take any and all further actions to execute and deliver any and all other documents as may be necessary in the execution and delivery of the Contract. The Mayor, the City Manager, the City Clerk and the Chief Financial Officer of the City are authorized and directed to execute and deliver for and on behalf of the City any and all additional certificates, documents, opinions, or other papers and perform all other acts as may be required by the documents contemplated hereinabove or as he or she may deem necessary or appropriate in order to implement and carry out the intent and purposes of this Resolution.

**Section 5.** 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 6.** Repealer. That all motions, orders, resolutions and parts thereof, in conflict herewith are hereby repealed.

**Section 7.** Effective Date. This Resolution will take effect immediately on its adoption.