

EXTRACTS FROM MINUTES OF THE CITY COUNCIL

A regular meeting of the City Council of the City of Durham, North Carolina, was duly held on August 19, 2013 at 7:00 p.m. in the Council Chambers at City Hall, 101 City Hall Plaza, Durham, North Carolina. Mayor William V. Bell presiding.

The following members were present:

The following members were absent:

* * * * *

Council Member _____ moved that the following resolution, copies of which having been made available to the City Council, be adopted:

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DURHAM, NORTH CAROLINA,
APPROVING AN AMENDMENT TO THE INSTALLMENT PURCHASE CONTRACT WITH
NEW DURHAM CORPORATION AND RELATED MATTERS**

WHEREAS, the City of Durham, North Carolina (the “*City*”) is a validly existing municipal corporation of the State of North Carolina, 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 the General Statutes of North Carolina to (1) purchase real and personal property, (2) enter into installment purchase contracts to finance 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;

WHEREAS, the City Council of the City of Durham, North Carolina (the “*City Council*”), previously determined that it was in the best interest of the City to enter into (a) an installment purchase contract with New Durham Corporation, a North Carolina nonprofit corporation (the “*Corporation*”), in order to pay the capital costs of (1) renovation of City Hall, (2) acquisition, construction and equipping of a City Maintenance Facility and a new fire station, (3) acquisition of the PSNC Building and (4) acquisition of a new pumper/ladder fire fighting vehicle and eleven garbage trucks (collectively, the “*2001 Project*”) and (5) the refinancing of an Installment Purchase Contract dated as of April 1, 1991 (the “*1991 Contract*”), between the City and the Corporation, which originally financed the Morgan Street Parking Garage and (b) a deed of trust and security agreement (the “*2001 Deed of Trust*”) related to the City’s fee simple interest in the City Maintenance Facility, Fire Station #14 and the former PSNC Building (collectively, the “*2001 Sites*”) and the improvements thereon;

WHEREAS, the City entered into an Installment Purchase Contract dated as of July 1, 2001 between the City and the Corporation with respect to the 2001 Project (the “*2001 Contract*”) after holding a public hearing thereon on April 16, 2001;

WHEREAS, the City Council further previously determined that it would be in the best interest of the City to enter into (1) an amendment to the 2001 Contract (the “*First Contract Amendment*”) between the City and Corporation in order to (a) pay the capital costs of (i) acquiring, constructing and equipping City parking facilities, transportation facilities, solid waste facilities, certain downtown improvements, civic and cultural facilities, housing redevelopment, firefighting facilities including Fire Station #12, City Hall and City Hall Annex (collectively, the “*2010 Project*”) and (ii) acquiring certain governmental equipment (the “*Equipment*”) and (b) refinance its installment payment obligations under (i) an installment purchase contract dated as of July 1, 2001, between the City and the Corporation, (ii) an installment purchase contract dated as of July 1, 1992 between the City and the Corporation and refinanced under an amendment thereto dated as of October 15, 1998 and (iii) an installment financing contract dated as of June 1, 2008 between the City and Branch Banking and Trust Company (collectively, the “*Prior Contracts*”) and (2) an extension of the Deed of Trust (the “*Notice of Extension*” and, collectively with the 2001 Deed of Trust, the “*Deed of Trust*”) related to the City’s fee simple interest in the real property on which City Hall and City Hall Annex are located, (collectively, the “*2010 Sites*,” and together with the 2001 Sites, the “*Sites*”) are located;

WHEREAS, the City entered into the First Contract Amendment as of August 1, 2010 between the City and the Corporation with respect to the 2010 Project and the Equipment after holding a public hearing thereon on June 7, 2010 and delivered the Notice of Extension in connection therewith;

WHEREAS, the City Council has determined that it would be in the best interest of the City to enter into a second amendment to the 2001 Contract (the “*Second Contract Amendment*” and collectively with the 2001 Contract and the First Contract Amendment, the “*Contract*”) between the City and Corporation in order to (1) pay the capital costs of (a) acquiring land for City projects (b) constructing, renovating or improving parks and other facilities, (c) improving streets, sidewalks and other transportation projects, (d) acquiring governmental equipment, (e) completing energy management projects, (f) renovating the Durham Bulls Athletic Park and (g) other public improvements as outlined in the City’s Capital Improvement Plan (collectively, the “*2013 Project*”); and (2) refinance the City’s payment obligations under its Taxable Variable Rate Housing Bonds, Series 2000;

WHEREAS, the Corporation will execute and deliver Limited Obligation Bonds, Series 2013A and Taxable Limited Obligation Bonds, Series 2013B, each Evidencing Proportionate Undivided Interests in Rights to Receive Certain Revenues Pursuant to the Contract (collectively, the “*2013 LOBs*”) to Merrill Lynch, Pierce Fenner & Smith Incorporated and Robert W. Baird & Co. (the “*Underwriters*”);

WHEREAS, there has been described to the City Council the following documents (collectively, the “*Instruments*”), copies of which have been made available to the City Council, which the City proposes to approve, enter into and deliver, as applicable, to effectuate the proposed installment purchase financing described in the Second Contract Amendment:

- (1) the form of the Second Contract Amendment;
- (2) the form of the Letter of Representations to the Underwriters;

WHEREAS, to make an offering and sale of the 2013 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*” and, collectively with the Preliminary Official Statement, the “*Official Statement*”) with respect to the 2013 Bonds, which Official Statement will contain certain information regarding the City;

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;

WHEREAS, Parker Poe Adams & Bernstein LLP and The Banks Law Firm, P.A., as co-bond counsel (“*Co-Bond Counsel*”), will render an opinion to the effect that entering into the Second Contract Amendment and the transactions contemplated thereby are authorized by law;

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;

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; and

WHEREAS, the City has filed an application to the LGC for approval of the Second Contract Amendment;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DURHAM, NORTH CAROLINA, as follows:

Section 1. Ratification of Instruments. That all actions of the City, the City Manager, the City Finance Director, 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 Instruments.

Section 2. Authorization to Execute the Second Contract Amendment. That the City approves the terms of the Second 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 Second Contract Amendment shall be and the same hereby are in all respects authorized, approved and confirmed, and the City Manager and the City Clerk and their respective designees shall be and they hereby are authorized, empowered and directed to execute and deliver the Second Contract Amendment, including necessary counterparts, in substantially the form and content presented to the City Council, but with such changes, modifications, additions or deletions therein as 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 Second Contract Amendment presented to the City Council, and that from and after the execution and delivery of the Second Contract Amendment, the City Manager, the Finance Director 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 Second Contract Amendment as executed.

Section 3. Letter of Representations. That the form and content of the Letter of Representations shall be and the same hereby is in all respects approved and confirmed, and the City Manager and his designee be and they hereby are authorized, empowered and directed to execute and deliver the Letter of Representations for and on behalf of the City, including necessary counterparts, in substantially the form and content presented to the City Council, but with such changes, modifications, additions or deletions therein as shall to him seem necessary, desirable or appropriate, his execution thereof to constitute conclusive evidence of his approval of any and all changes, modifications, additions or deletions therein from the form and content of the Letter of Representations presented to the City Council, and that from and after the execution and delivery of the Letters of Representations, the City Manager is 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 Letters of Representation as executed.

Section 4. Application to LGC. That the action of the Finance Director or his designee in filing with the LGC an application for its approval of the Second Contract Amendment and all relevant transactions contemplated thereby on a form prescribed by the LGC and stating in such application such facts and attaching thereto such exhibits regarding the City and its financial condition as required by the LGC is ratified.

Section 5. Direction to Retain Professionals. That the City Manager or the Finance Director, with advice from the City Attorney, are hereby authorized and directed to retain the assistance of Parker Poe Adams & Bernstein LLP, Raleigh, North Carolina, and The Banks Law Firm, P.A,

Research Triangle Park, North Carolina, as co-bond counsel, the City Manager or the Finance Director are authorized to retain Stephens Inc., Charlotte, North Carolina, as financial advisor; and the Corporation's use of the Underwriters and Robinson, Bradshaw & Hinson, P.A., as counsel to the Underwriters is approved.

Section 6. City Representative. That the City Manager and Finance Director of the City 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 City's Representatives are authorized to seek opinions as a matter of law from the City Attorney, which the City Attorney is hereby authorized to furnish on behalf of the City, and opinions of law from such other attorneys for all documents contemplated hereby as required by law. The City Manager, the City Clerk and the Finance Director of the City 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 to consummate the transactions contemplated by the Instruments or as they deem necessary or appropriate 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 to be invalid, such declaration shall 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. That this Resolution is effective on the date of its adoption.

STATE OF NORTH CAROLINA)
)
CITY OF DURHAM) SS:

I, *D. Ann Gray*, duly appointed City Clerk of the City of Durham, North Carolina, *DO HEREBY CERTIFY*, as follows:

1. A regular meeting of the City Council of the City of Durham, a municipal corporation of the State of North Carolina, was duly held on Monday, August 19, 2013, proper notice of such meeting having been given as required by North Carolina statute, and minutes of said meeting have been duly recorded in the Minute Book kept by me in accordance with law for the purpose of recording the minutes of said City Council.

2. I have compared the attached extract with said minutes so recorded and said extract is a true copy of said minutes and of the whole thereof insofar as said minutes relate to matters referred to in said extract.

3. Said minutes correctly state the time when said meeting was convened and the place where such meeting was held and the members of said City Council who attended said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and have hereunto affixed the corporate seal of said City, this ____ day of August, 2013.

(SEAL)

D. Ann Gray
City Clerk of the
City of Durham, North Carolina