

The Town Council of the Town of Apex, North Carolina met in a regular meeting in the Council Chambers of the Town Hall located at 73 Hunter Street in Apex, North Carolina, the regular place of meeting, at 6:00 p.m. on October 6, 2020.

Present: Mayor Jacques Gilbert, presiding, and Council Members

Absent: Council Members

Also present: _____

* * * * *

_____ introduced the following resolution, the title of which was read and copies of which had been distributed to each Council Member:

**RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF
A FIRST AMENDMENT TO THE 2014 INSTALLMENT FINANCING
AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH
THE REFINANCING OF THE OUTSTANDING 2014 INSTALLMENT
FINANCING AGREEMENT**

BE IT RESOLVED by the Town Council (the “Town Council”) of the Town of Apex, North Carolina (the “Town”):

Section 1. The Town Council does hereby find and determine as follows:

(a) The Town has heretofore entered into an Installment Financing Agreement, dated as of July 9, 2014 (the “2014 Agreement”), between the Town and the Bank of North Carolina, the successor to which is Pinnacle Bank (the “Lender”), pursuant to which the Lender advanced to the Town funds in the amount of \$14,469,000 for the purpose of (a) refinancing a prior installment financing agreement which financed the (i) expansion and renovation of an existing police station and (ii) acquisition, construction and equipping of a new fire and emergency medical services facility for the Town (collectively, the “Prior Project”), (b) financing the costs of constructing and equipping various improvements to the Town’s water treatment plant and (c) paying the financing costs related thereto.

(b) The outstanding principal balance under the 2014 Agreement is currently \$8,418,848.05.

(c) As security for the performance by the Town of its obligations under the 2014 Agreement, the Town has executed and delivered a Deed of Trust, dated as of July 9, 2014, in favor of the Lender granting a lien on a portion of the Prior Project as further described therein.

(d) The Town desires to refinance its payment obligations under the 2014 Agreement by entering into a First Amendment to Installment Financing Agreement, to be dated as of October 15, 2020 (the "2014 Amendment"), between the Town and the Lender, in order to reduce the interest rate payable under the 2014 Agreement from 2.70% to 1.85%, effective October 15, 2020.

(e) The final maturity of the 2014 Agreement of June 1, 2028 shall not be extended in connection with the proposed refinancing.

(f) There has been presented to the Town Council at this meeting a draft of the 2014 Amendment.

Section 2. In order to provide for the refinancing of the 2014 Agreement, the Town is hereby authorized to enter into the 2014 Amendment. The Town shall repay the aggregate amounts advanced under the 2014 Agreement, as amended by the 2014 Amendment, in installments due in the amounts and at the times set forth in the 2014 Amendment. The payments of the Installment Payments shall be designated as principal and interest as provided in the 2014 Amendment.

Section 3. The Town Council hereby approves the 2014 Amendment in substantially the form presented at this meeting. The Mayor, the Town Manager and the Finance Director of the Town are each hereby authorized to execute and deliver on behalf of the Town the 2014 Amendment in substantially the form presented at this meeting, containing such modifications as the person executing such document shall approve, such execution to be conclusive evidence of approval by the Town Council of any such changes. The Town Clerk or any Deputy or Assistant Town Clerk is hereby authorized and directed to affix the official seal of the Town to said document and to attest the same.

Section 4. No deficiency judgment may be rendered against the Town in any action for breach of any contractual obligation authorized pursuant to the 2014 Agreement or the 2014 Amendment, and the taxing power of the Town is not and may not be pledged directly or indirectly to secure any moneys due under the 2014 Agreement or the 2014 Amendment.

Section 5. The Mayor, the Town Manager, the Finance Director and the Town Clerk of the Town, and any other officers, agents and employees of the Town, are hereby authorized and directed to execute and deliver such other documents, instruments, closing certificates, opinions and other items of evidence as shall be deemed necessary to consummate the transactions contemplated by this resolution.

Section 6. This resolution shall take effect immediately upon its adoption.

Upon motion of Council Member _____, seconded by Council Member _____, the foregoing resolution entitled "RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO THE 2014 INSTALLMENT

FINANCING AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH THE REFINANCING OF THE OUTSTANDING 2014 INSTALLMENT FINANCING AGREEMENT” was adopted by the following vote:

Ayes: _____

Noes: _____

Thereupon _____ introduced the following resolution, the title of which was read and copies of which had been distributed to each Council Member:

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO THE 2015 INSTALLMENT FINANCING AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH THE REFINANCING OF THE OUTSTANDING 2015 INSTALLMENT FINANCING AGREEMENT

BE IT RESOLVED by the Town Council (the “Town Council”) of the Town of Apex, North Carolina (the “Town”):

Section 1. The Town Council does hereby find and determine as follows:

(a) The Town has heretofore entered into an Installment Financing Agreement, dated as of September 16, 2015 (the “2015 Agreement”), between the Town and the Bank of North Carolina, the successor to which is Pinnacle Bank (the “Lender”), pursuant to which the Lender advanced to the Town funds in the amount of \$4,500,000 for the purpose of (a) financing the cost of acquiring, constructing and equipping a public safety station to house police and fire department functions (the “Project”) and (b) paying the financing costs related thereto.

(b) The outstanding principal balance under the 2015 Agreement is currently \$3,740,000.

(c) As security for the performance by the Town of its obligations under the 2015 Agreement, the Town has executed and delivered a Deed of Trust, dated as of September 16, 2015, in favor of the Lender granting a lien on the site of the Project as further described in Exhibit A thereto.

(d) The Town desires to refinance its payment obligations under the 2015 Agreement by entering into a First Amendment to Installment Financing Agreement, to be dated as of October 15, 2020 (the “2015 Amendment”), between the Town and the Lender, in order to reduce the interest rate payable under the 2015 Agreement from 2.72% to 1.85% effective October 15, 2020.

(e) The final maturity of the 2015 Agreement of February 1, 2031 shall not be extended in connection with the proposed refinancing.

(f) There has been presented to the Town Council at this meeting a draft of the 2015 Amendment.

Section 2. In order to provide for the refinancing of the 2015 Agreement, the Town is hereby authorized to enter into the 2015 Amendment. The Town shall repay the aggregate amounts advanced under the 2015 Agreement, as amended by the 2015 Amendment, in installments due in the amounts and at the times set forth in the 2015 Amendment. The payments of the Installment Payments shall be designated as principal and interest as provided in the 2015 Amendment.

Section 3. The Town Council hereby approves the 2015 Amendment in substantially the form presented at this meeting. The Mayor, the Town Manager and the Finance Director of the Town are each hereby authorized to execute and deliver on behalf of the Town the 2015 Amendment in substantially the form presented at this meeting, containing such insertions, deletions and modifications as the person executing such document shall approve, such execution to be conclusive evidence of approval by the Town Council of any such changes. The Town Clerk or any Deputy or Assistant Town Clerk is hereby authorized and directed to affix the official seal of the Town to said document and to attest the same.

Section 4. No deficiency judgment may be rendered against the Town in any action for breach of any contractual obligation authorized pursuant to the 2015 Agreement or the 2015 Amendment, and the taxing power of the Town is not and may not be pledged directly or indirectly to secure any moneys due under the 2015 Agreement or the 2015 Amendment.

Section 5. The Mayor, the Town Manager, the Finance Director and the Town Clerk of the Town, and any other officers, agents and employees of the Town, are hereby authorized and directed to execute and deliver such other documents, instruments, closing certificates, opinions and other items of evidence as shall be deemed necessary to consummate the transactions contemplated by this resolution.

Section 6. This resolution shall take effect immediately upon its adoption.

Upon motion of Council Member _____, seconded by Council Member _____, the foregoing resolution entitled "RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO THE 2015 INSTALLMENT FINANCING AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH THE REFINANCING OF THE OUTSTANDING 2015 INSTALLMENT FINANCING AGREEMENT" was adopted by the following vote:

Ayes: _____

Noes: _____

* * * * *

I, Donna B. Hosch, MMC, NCCMC, Town Clerk of the Town of Apex, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of the Town Council of said Town at a regular meeting held on October 6, 2020, as it relates in any way to the adoption of the foregoing resolutions and that said proceedings are to be recorded in the minutes of said Town Council.

I DO HEREBY FURTHER CERTIFY that proper notice of such regular meeting was given as required by North Carolina law.

WITNESS my hand and official seal of said Town this 6th day of October, 2020.

Town Clerk

[SEAL]