

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA,
AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT AND PROVIDING
FOR CERTAIN OTHER RELATED MATTERS THERETO**

WHEREAS, the City of Hendersonville, North Carolina (the “*City*”) is a municipal corporation 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) enter into installment contracts in order to purchase, or finance or refinance the purchase of, real or personal property and to finance or refinance the construction or repair of fixtures or improvements on real property and (2) create a security interest in some or all of the property financed or refinanced 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 interest of the City to (1) enter into an installment financing contract (the “*Contract*”) with a financial institution to be determined (the “*Bank*”) in order to pay the costs of (a) constructing and improving fire and emergency services facilities, including (i) demolishing, clearing and grading the existing fire station site of Fire Station 1 and constructing and furnishing a new fire station on the site and (ii) renovating a facility to relocate the fire department staff and administration to serve as temporary space for emergency service use (the “*Fire Facilities Projects*”), (b) relocating the Laura-Corn mini-golf course to Edwards Park, including constructing the new mini-golf course and upgrading public restrooms, concession and playground facilities and installing public art (the “*Parks and Recreation Project*” and collectively with the Fire Facilities Projects, the “*Projects*”) and (c) the acquisition of new fire fighting vehicles and equipment, including new fire ladder and fire engine vehicles (the “*Vehicles*” and together with the Projects, the “*2022 Projects*”) and (2) in order to provide security for the City’s obligations under the Contract, grant to the Bank a security interest under a deed of trust, security agreement and fixture filing (the “*Deed of Trust*”) on all or a portion of the sites of the Projects and improvements thereon and a security interest in the Vehicles as may be required by the Bank;

WHEREAS, the City staff has retained (1) Parker Poe Adams & Bernstein LLP, as special counsel (“*Special Counsel*”) and (2) First Tryon Advisors, as financial advisor, in connection with the proposed installment financing;

WHEREAS, the City Council hereby determines that the 2022 Projects are essential to the City’s proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the 2022 Projects 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 and Deed of Trust is necessary and expedient for the City by virtue of the findings presented herein;

WHEREAS, the City Council hereby determines that such cost of the 2022 Projects exceeds the 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 financing the 2022 Projects pursuant to the Contract and the Deed of Trust is expected to exceed the cost of financing the 2022 Projects pursuant to a bond financing for the same undertaking, the City hereby determines that the cost of financing the 2022 Projects pursuant to the Contract and Deed of Trust 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 thereby decrease the financial benefits of the 2022 Projects; and (3) insufficient revenues are produced by the 2022 Projects so as to permit a revenue bond financing;

WHEREAS, the City Council hereby determines that the estimated cost of financing the 2022 Projects pursuant to the Contract and the Deed of Trust allows the City to finance the 2022 Projects at a favorable interest rate currently available in the financial marketplace and on terms advantageous to the City and 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 City does not anticipate a future property tax increase to pay installment payments falling due under the Contract but an increase in taxes, if any, necessary to meet the sums to fall due under the Contract will not be excessive.

WHEREAS, Special Counsel will render an opinion to the effect that entering into the Contract 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 money 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 as applied to governmental units 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 Local Government Commission of North Carolina (the "*LGC*"), external auditors or any other regulatory agencies in connection with such debt management and contract obligation payment policies;

WHEREAS, a public hearing on the Contract, the Deed of Trust and the 2022 Projects, after publication of a notice with respect to such public hearing, was held on August 4, 2022 and approval of the LGC with respect to entering the Contract must be received; and

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina that:

Section 1. ***Authorization to Negotiate the Contract and the Deed of Trust.*** That the City Manager, the Assistant City Manager and the Finance Director (the “*Authorized Officers*”), individually or collectively, with advice from the City Attorney, Special Counsel and the City’s financial advisor, are hereby authorized and directed to negotiate on behalf of the City (1) the financing of the 2022 Projects for a principal amount of approximately \$18,500,000.00 under the Contract to be entered into with the Bank in accordance with the provisions of Section 160A-20 of the General Statutes of North Carolina, as amended, and (2) the provision of a security interest in the Vehicles and/or under the Deed of Trust in the City’s fee simple interest on all or a portion of the sites of the Projects, together with all improvements and fixtures located thereon, as may be required by the Bank providing the funds to the City under the Contract to secure the City’s obligations thereunder.

Section 2. ***Application to LGC.*** The Finance Director or his designee is hereby directed to file with the LGC an application for its approval of the Contract and all relevant transactions contemplated thereby on a form prescribed by the LGC and to state in such application such facts and to attach thereto such exhibits regarding the City and its financial condition as may be required by the LGC.

Section 3. ***Approval of the Financing Team.*** Parker Poe Adams & Bernstein LLP has been retained by the City to serve as special counsel and First Tryon Advisors been retained to serve as financial advisor. The Authorized Officers, with advice from the City Attorney and Special Counsel, are hereby authorized to retain the assistance of other professionals as they deem necessary and desirable to carry out the intention of this Resolution.

Section 4. ***Ratification.*** All actions of the City and its officials, whether previously or hereafter taken in effectuating the proposed financing as described herein, are hereby ratified, authorized and approved.

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

Section 6. ***Effective Date.*** This Resolution is effective on the date of its adoption.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 4th day of August, 2022.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

Approved as to form:_____

Angela S. Beeker, City Attorney