

RESOLUTION 23-11

RESOLUTION OF THE TOWN OF HOLDEN BEACH, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO

WHEREAS, the Town of Holden Beach, North Carolina (the “*Town*”) is a municipal corporation duly created and validly existing under the Constitution, statutes and laws of the State (the “*State*”);

WHEREAS, the Town 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 Board of Commissioners (the “*Board*”) of the Town hereby determines that it is in the best interest of the Town to (1) enter into an installment financing contract (the “*Contract*”) with a financial institution to be determined to finance the upfit of the Town’s Sewer Lift Station #2 for the Town’s utilities systems (the “*Project*”), and (2) in order to provide security for the Town’s obligations under the Contract, grant to such financial institution a security interest under a deed of trust on the real property on which the Project is located and the improvements thereon, as the financial institution providing the funds to the Town under the Contract may require;

WHEREAS, the Town staff has retained (1) Parker Poe Adams & Bernstein LLP, as special counsel (“*Special Counsel*”) and (2) DEC Associates Inc., as financial advisor, in connection with the proposed installment financing;

WHEREAS, the Board hereby determines that the Project is important to the general health and welfare of the Town’s inhabitants; that the Project will permit the Town 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 Town by virtue of the findings presented herein;

WHEREAS, the Board hereby determines that such cost of the Project 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 Town in the current fiscal year pursuant to Article V, Section 4 of the Constitution of the State;

WHEREAS, although the cost of financing the Project pursuant to the Contract is expected to exceed the cost of financing the Project pursuant to a bond financing for the same undertaking, the Town hereby determines that the cost of financing the Project pursuant to the Contract and the obligations of the Town 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 in the ability to finance the Project; and (3) insufficient revenues are produced by the Project so as to permit a revenue bond financing;

WHEREAS, the Board hereby determines that the estimated cost of financing the Project pursuant to the Contract allows the Town to finance the Project at a favorable interest rate currently available in the financial marketplace and on terms advantageous to the Town 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 Town does not anticipate an increase in taxes to pay the installment payments under the Contract, but the increase in taxes, if any, necessary to service the installment payments falling due under the Contract will not be excessive;

WHEREAS, no deficiency judgment may be rendered against the Town in any action for its breach of the Contract, and the taxing power of the Town 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 Town is not in default under any of its debt service obligations;

WHEREAS, the Town'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 Town has conformed with generally accepted accounting principles as applied to governmental units in preparing its Annual Budget Ordinance;

WHEREAS, past audit reports of the Town indicate that its debt management and contract obligation payment policies have been carried out in compliance with the law, and the Town 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, after publication of a notice with respect to such public hearing, must be held and approval of the LGC with respect to entering the Contract must be received; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF HOLDEN BEACH, NORTH CAROLINA, AS FOLLOWS:

Section 1. The Mayor and the Town Manager, and their respective designees, individually and collectively, with advice from the Town Attorney and the Town's financial advisor and Special Counsel, are hereby authorized and directed to negotiate on behalf of the Town (1) the financing of the Project for a principal amount not to exceed \$5,000,000 under the Contract, to be entered into 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 under a deed of trust in the Town's fee simple interest in the real property on which the Project is located, together with all improvements thereon, as may be required by the financial institution providing the funds to the Town under the Contract to secure the Town's obligations thereunder.

Section 2. The Board finds and determines that:

- (1) The proposed Contract is necessary or expedient;
- (2) The Contract, under the circumstances, is preferable to a bond issue for the same purpose;
- (3) The sums to fall due under the Contract are adequate and not excessive for its proposed purpose;
- (4) The Town's debt management procedures and policies are good;
- (5) The increase in taxes, if any, necessary to meet the sums to fall due under the Contract will not be excessive; and

(6) The Town is not in default in any of its debt service obligations.

Section 3. The Town Manager 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 Town and its financial condition as may be required by the LGC.

Section 4. Parker Poe Adams & Bernstein LLP has been retained by the Town to serve as special counsel for the installment financing and DEC Associates Inc. has been retained to serve as financial advisor for the installment financing. The Town Manager, with advice from the Town Attorney, is hereby authorized to retain the assistance of other professionals as he deems necessary and desirable to carry out the intention of this Resolution.

Section 5. A public hearing shall be conducted by the Board on September 19, 2023 (the “*Public Hearing*”) concerning the approval of the execution and delivery of the Contract for the financing of the Project. The Town Clerk is hereby directed to cause a notice of the Public Hearing, a form of which is attached hereto as Exhibit A, to be published at least once in a qualified newspaper of general circulation within the Town no fewer than 10 days prior to the Public Hearing.

Section 6. All actions of the Town and its officials, whether previously or hereafter taken in effectuating the proposed installment financing as described herein, are hereby ratified, authorized and approved.

Section 7. All motions, orders, resolutions and parts thereof in conflict herewith are hereby repealed.

Section 8. This Resolution is effective on the date of its adoption.

This the 15th day of August, 2023.

J. Alan Holden Mayor

ATTEST:

Heather Finnell, Town Clerk

STATE OF NORTH CAROLINA)
)
COUNTY OF BRUNSWICK) SS:

I, *Heather Finnell*, Town Clerk of the Town of Holden Beach, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of a resolution entitled “**RESOLUTION OF THE TOWN OF HOLDEN BEACH, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO**” adopted by the Board of Commissioners of the Town of Holden Beach, North Carolina, at a meeting held on the 15th day of August, 2023.

WITNESS my hand and the corporate seal of the Town of Holden Beach, North Carolina, this the ___ day of August, 2023.

[Seal]

Heather Finnell
Town Clerk
Town of Holden Beach, North Carolina

EXHIBIT A

NOTICE OF PUBLIC HEARING

The Board of Commissioners (the “*Board*”) of the Town of Holden Beach, North Carolina (the “*Town*”) is considering entering into an installment financing contract (the “*Contract*”), in a principal amount not to exceed \$5,000,000, under which the Town will make certain installment payments, to finance the upfit of the Town’s Sewer Lift Station #2 for the Town’s utilities systems (the “*Project*”), and (b) pay the costs associated with entering into the Contract. The Project is located at 484 Ocean Boulevard West, Holden Beach, NC 28462.

In connection with the Contract, the Town will secure its obligations under the Contract by a deed of trust (the “*Deed of Trust*”) that grants a security interest on the site of the Project and the improvements thereon (the “*Mortgaged Property*”) for the benefit of the financial institution providing the funds to the Town under the Contract. The Contract and the Deed of Trust permit the Town to enter into amendments to finance additional projects and refinance projects using the Mortgaged Property as collateral and the Town may grant additional collateral in connection with such amendments. On the Town’s payment of all installment payments due under the Contract, including any future amendments to finance or refinance projects, the lien created in the Project will terminate and any security interest granted to the financial institution providing the funds to the Town under the Contract will be released.

NOTICE IS HEREBY GIVEN, pursuant to Sections 160A-20 of the General Statutes of North Carolina, that on September 19, 2023 at 5:00 p.m., or as soon thereafter as practicable, at the Town Hall Public Assembly, 110 Rothschild Street, Holden Beach, NC 28462, the Board will conduct a public hearing concerning the approval of the execution and delivery of the Contract as described above. All interested parties are invited to present comments at the public hearing on the Contract. Any person wishing to comment in writing should do so by submitting comments to Town Hall, 110 Rothschild Street, Holden Beach, NC 28462, Attention: Town Clerk, or heather@hbtownhall.com. Written comments must be submitted between the date of publication of this notice and 24 hours before the public hearing.

/s/ Heather Finnell
Town Clerk
Town of Holden Beach, North Carolina