



**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE TOWN OF NAGS HEAD, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO**

**WHEREAS**, the Town of Nags Head, North Carolina (the "*Town*") is a validly existing municipal corporation of the State of North Carolina (the "*State*"), existing as such under and by virtue of the Constitution, statutes and laws of 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 of the Town (the "*Board*") hereby determines that it is in the best interest of the Town to (1) enter into an Installment Financing Contract (the "*Contract*") with Nags Head Leasing Corporation (the "*Corporation*") in order to finance (a) the construction, equipping, and furnishing of public services facilities, (b) the conversion of the Town's residential and commercial water meters to an Advanced Metering Infrastructure (AMI) system (collectively, the "*2023 Projects*"), and (c) certain costs incurred in connection with financing the 2023 Projects; and (2) enter into a deed of trust, security agreement and fixture filing (the "*Deed of Trust*") related to the Town's fee simple interest in certain real property on which all or a portion of the 2023 Projects will be located (the "*Mortgaged Property*"), that will provide security for the Town's obligations under the Contract;

**WHEREAS**, the Corporation will assist the Town by the issuance of Limited Obligation Bonds in one or more series to finance the 2023 Projects;

**WHEREAS**, the Town hereby determines that the 2023 Projects are essential to the Town's proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the 2023 Projects will provide an essential use and will permit the Town 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 Town by virtue of the findings presented herein;

**WHEREAS**, the Town hereby determines that the Contract allows the Town to finance the 2023 Projects and take title thereto at a favorable interest rate currently available in the financial marketplace and on terms advantageous to the Town;

**WHEREAS**, the Town hereby determines that the estimated cost of financing the 2023 Projects is an amount not to exceed \$19,900,000, and that such cost of the 2023 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 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 2023 Projects pursuant to the Contract is expected to exceed the cost of financing the 2023 Projects pursuant to a bond financing for the same undertaking, the Town hereby determines that the cost of financing the 2023 Projects pursuant to the Contract and the Deed of Trust 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 which would thereby decrease the financial benefits of the 2023 Projects; and (3) insufficient revenues are produced by the 2023 Projects so as to permit a revenue bond financing;

**WHEREAS**, the Town has determined and hereby determines that the estimated cost of financing the 2023 Projects 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 Town anticipates that any property tax increase, if necessary, to pay 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 strict compliance with the law, and the Town 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**, a public hearing on the Contract after publication of a notice with respect to such public hearing was held on the date of the adoption of this Resolution and approval of the LGC with respect to entering the Contract must be received.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF NAGS HEAD, NORTH CAROLINA, AS FOLLOWS:**

Section 1. **Authorization to Negotiate the Contract.** That the Mayor, the Town Manager and the Finance Director, individually and collectively, with advice from Hornthal, Riley, Ellis & Maland LLP, as town attorney, and Parker Poe Adams & Bernstein LLP, as bond counsel, are hereby authorized and directed to proceed and negotiate on behalf of the Town for the financing of the 2023 Projects for a principal amount not to exceed \$19,900,000 under the Contract to be entered into in accordance with the provisions of Section 160A-20 of the General Statutes of North Carolina and to provide in connection with the Contract, as security for the Town's obligations thereunder, a Deed of Trust conveying a lien and interest in the Mortgaged Property, including the improvements thereon, as may be required by the entity, or its assigns, providing the funds to the Town under the Contract.

Section 2. **Application to LGC.** That the Finance Director, or her 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 3. **Direction to Retain Professionals.** That the Town Manager and Finance Director are hereby authorized and directed to retain the assistance of Parker Poe Adams & Bernstein LLP, as bond counsel; DEC Associates, Inc., as financial advisor; The Bank of New York Mellon Trust Company, N.A., as trustee, and PNC Capital Markets LLC, as underwriter. The Town Manager and Finance Director are hereby authorized to retain such other professionals as they deems necessary in their judgment to carry out the transaction contemplated in this Resolution.

Section 4. **Repealer.** That all motions, orders, resolutions and parts thereof in conflict herewith are hereby repealed.

Section 5. **Effective Date.** That this Resolution is effective on the date of its adoption.

Approved and adopted this 4th day of January, 2023.



Benjamin Cahoon, Mayor  
Town of Nags Head, North Carolina

I, *Carolyn F. Morris*, Town Clerk of the Town of Nags Head, North Carolina, **DO HEREBY CERTIFY** that the foregoing is a true and exact copy of a resolution entitled "**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE TOWN OF NAGS HEAD, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO**" duly adopted by the Board of Commissioners of the Town of Nags Head, North Carolina at a meeting held on the 4<sup>th</sup> day of January, 2023.

**WITNESS** my hand and the corporate seal of the Town of Nags Head, North Carolina, this the 4<sup>th</sup> day of January, 2023.

(SEAL)



Carolyn F. Morris  
Town Clerk  
Town of Nags Head, North Carolina