

RESOLUTION

To Authorize the Mayor to Sign an Amendment to the Funding Agreement between the Alexander City Schools and the City of Alexander City

THIS SECOND AMENDMENT TO FUNDING AGREEMENT (this “Amendment”) dated effective as of September 1, 2023 (the “Effective Date”), is entered into by the **CITY OF ALEXANDER CITY**, a municipal corporation organized under the laws of the State of Alabama (the “City”), and the **CITY BOARD OF EDUCATION OF THE CITY OF ALEXANDER CITY**, an agency and instrumentality of the State of Alabama (the “Board”).

RECITALS:

WHEREAS, the Board has undertaken the responsibility to provide for the proper management of public schools within the City and to educate the City’s school children.

WHEREAS, pursuant to Article 14 of Chapter 13 of Title 16 of the Code of Alabama (1975), as amended (the “Enabling Law”), on June 24, 2020, the Board issued its School Tax Warrants (Special Local Taxes), Series 2020-A, outstanding in the aggregate principal amount of \$47,950,000, and Taxable School Tax Warrants (Special Local Taxes), Series 2020-B, outstanding in the aggregate principal amount of \$5,395,000 (collectively, the “2020 School Board Warrants”), for the purpose of (a) financing a portion of the costs of the construction and equipping of a new high school in the City and renovations of the existing middle school and high school in the City for consolidation of middle school and upper elementary school grades (collectively, the “School Construction Projects”), (b) redeeming and retiring certain indebtedness of the City incurred for school purposes, as more particularly described in the Funding Agreement referred to below (the “City School Warrants”), and (c) paying the costs of issuing the 2020 School Board Warrants.

WHEREAS, in order to facilitate the Board’s issuance of the 2020 School Board Warrants, the City and the Board entered into that certain Funding Agreement dated as

of March 1, 2020 (the “Base Funding Agreement”), as amended by an Amendment to Funding Agreement dated February 1, 2022 (the “First Amendment” and, together with the Base Funding Agreement, the “Funding Agreement”), pursuant to which (a) the Board agreed to refund and cause to be defeased and paid, contemporaneously with the issuance of the 2020 School Board Warrants, the outstanding City School Warrants, and (b) the City agreed to continue to levy, and to commit to pay to the Board, certain of the proceeds received by the City from the Special Ad Valorem Tax and the Applicable Portion of the City Sales Tax, all as defined and more particularly described in the Funding Agreement (any capitalized term used but not defined herein shall have the meaning specified in the Funding Agreement).

WHEREAS, in 2022, the Board determined that additional funds were necessary in order to finance additional costs of the School Construction Projects, and for such purpose, the Board issued, pursuant to the Enabling Law, its School Tax Warrants (Special Local Taxes), Series 2022, outstanding in the aggregate principal amount of \$23,950,000 (the “2022 School Board Warrants”).

WHEREAS, in connection with the issuance of the 2022 School Board Warrants, the City and the Board amended the Base Funding Agreement pursuant to the First Amendment.

WHEREAS, the Board has pledged for security and payment of the 2022 School Board Warrants and 2020 School Board Warrants various funds of the Board, including without limitation proceeds from certain taxes levied by Tallapoosa County pursuant to Section 40-12-4 of the Code of Alabama 1975, as amended, for the benefit of the Board (the “County Sales Taxes”), and proceeds from the Special Ad Valorem Tax and the Applicable Portion of the City Sales Tax.

WHEREAS, the Board has determined that additional funds are necessary in

order to finance the increased costs of completion of the School Construction Projects, and for such purpose, the Board has proposed to issue, pursuant to the Enabling Law, its School Tax Warrants (Special Local Taxes), Series 2023-A, in an aggregate principal amount not to exceed \$20,000,000 (the “2023 School Board Warrants”).

WHEREAS, the Board proposes to pledge for security and payment of the 2023 School Board Warrants proceeds from the County Sales Taxes and proceeds from the Special Ad Valorem Tax and the Applicable Portion of the City Sales Tax.

WHEREAS, the Board has requested that the City agree to further amend the Funding Agreement in order to facilitate the Board’s issuance of the 2023 School Board Warrants, and the City has agreed to such request provided that the Board and the City enter into this Amendment.

WHEREAS, pursuant to the Enabling Law, the Board has the power to enter into this Amendment with the City and to issue the 2023 School Board Warrants for the purposes stated herein, and the City has the power to enter into this Amendment with the Board.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and of the respective agreements and undertakings of the City and the Board contained in this Amendment, said parties agree as follows:

SECTION 1. Incorporation of Recitals; Definitions.

The Recitals to this Amendment are incorporated herein for all purposes and shall be considered a part of this Amendment. Unless otherwise defined herein, all capitalized terms used herein shall have the meaning given to such term in the Funding Amendment.

SECTION 2. Amendments to Funding Agreement.

Effective as of the Effective Date, the Funding Agreement is hereby amended as follows:

(a) Section 2(a)(7) of the Base Funding Agreement is hereby amended and restated as follows:

“(7) that, except as expressly permitted in this Agreement, it will not pledge, encumber, hypothecate or convey the Special Ad Valorem Tax or the Applicable Portion of the City Sales Tax, or any portion thereof, on any basis for so long as any 2023 School Board Warrants, 2022 School Board Warrants, any 2020 School Board Warrants, and any Refunding Warrants, are outstanding.”

(b) Section 2(d) of the Base Funding Agreement is hereby amended and restated as follows:

“(d) The Board hereby agrees that the Special Ad Valorem Tax and the Applicable Portion of the City Sales Tax shall be used to pay debt service on the 2023 School Board Warrants, 2022 School Board Warrants, 2020 School Board Warrants, and on any Refunding Warrants, with any remaining amounts to be used for general purposes of the Board at the Board's discretion. The Board further understands, acknowledges and agrees that any amounts collected during any fiscal year (during which the Applicable Portion Cap is in effect) from the Applicable Portion of the City Sales Tax over the Applicable Portion Cap shall not be subject to payment to the Board under this Agreement, and may be used by the City at its sole discretion and consistent with the terms of the ordinance of the City then in effect under which the City Sales Tax is levied.”

(c) Section 5 of the Base Funding Agreement is hereby amended and restated as follows:

“SECTION 5. Term. This Agreement shall have a term (the “Term”) commencing on the Effective Date and terminating on the first to occur of: (i) if the 2020 School Board Warrants have not been issued and delivered by the Issuance Deadline, the Issuance Deadline, (ii) such date as all of the 2023 School Board Warrants, all of the 2022 School Board Warrants, all of the 2020 School Board Warrants, and all of the Refunding Warrants (if any have been issued), have been paid in full, (iii) such date as all of the 2023 School Board Warrants, all of the 2022 School Board Warrants, all of the 2020 School Board Warrants, and all of the Refunding Warrants (if any have been issued), are deemed no longer outstanding under the instruments pursuant to which they were issued, or (iv) October 1, 2053. Notwithstanding anything in this Agreement to the contrary, neither the City nor the Board shall have the right to terminate this Agreement prior to the expiration of the Term.”

(d) Sections 6(a) and (b) of the Base Funding Agreement are hereby amended and restated as follows:

“SECTION 6. Refunding Warrants. (a) Prior to the issuance of any Refunding Warrants, the Board shall have first notified the City in writing and shall have provided to the City, upon the sale of such Refunding Warrants, such information as shall be reasonably requested by the City to demonstrate satisfaction of the following conditions (the “Refunding Warrants Conditions”): (i) that such obligations were issued solely for the purpose of refunding 2023 School Board Warrants, 2022 School Board Warrants and/or 2020 School Board Warrants, (ii) that such obligations have a term not longer than the final maturity of the 2023 School Board Warrants, 2022 School Board Warrants or 2020 School Board Warrants, as applicable, and (iii) that proceeds or other amounts resulting from the sale of such obligations are being used solely for the redemption and payment of 2023 School Board Warrants, 2022 School Board Warrants and/or 2020 School Board Warrants and payment of the costs of issuing such obligations.

(b) As used in this Agreement, “Refunding Warrants” means any obligations issued by the Board (i) solely for the purpose of refunding 2023 School Board Warrants, 2022 School Board Warrants and/or 2020 School Board Warrants, (ii) having a term not longer than the final maturity of the 2023 School Board Warrants, 2022 School Board Warrants or 2020 School Board Warrants, as applicable, and (iii) the proceeds of which, or other amounts resulting from the sale and issuance thereof, are solely for the purpose of redeeming and retiring 2023 School Board Warrants, 2022 School Board Warrants and/or 2020 School Board Warrants and to pay the costs of issuing such obligations. In no event shall “Refunding Warrants” include obligations the proceeds of which, or other amounts generated from, the issuance and sale thereof are used for payment of capital improvements, operating or other expenses of the Board.”

SECTION 3. Provisions of General Application.

(a) Amendment Scope of Amendment. The Funding Agreement is hereby amended in accordance with the terms and conditions of this Amendment. Except as expressly modified or amended herein, all terms and conditions of the Funding Agreement are hereby ratified and confirmed in all respects and shall remain in full force and effect.

(b) Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Alabama, without regard to principles governing conflicts of law, and all applicable laws of the United States of America.

(c) Counterparts. This Amendment may be executed in one or more counterparts each of which when executed and delivered shall constitute an original. All such counterparts together shall be deemed to be one and the same instrument.

(d) Severability. The provisions of this Amendment shall be severable. In the event any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of the remaining provisions hereof.

(e) Captions. The captions to the sections and paragraphs of this Amendment are for the convenience of the parties only and are not part of this Amendment.

~~ADOPTED THIS 11TH DAY OF SEPTEMBER, 2023.~~

FOR PUBLIC RELEASE

~~By: Audrey "Buffy" Colvin, President~~

Alexander City Council

~~AUTHENTICATED THIS 11TH DAY OF SEPTEMBER, 2023.~~

FOR PUBLIC RELEASE

~~By: Stephanie J. Southerland,~~

City Clerk

~~APPROVED:~~

FOR PUBLIC RELEASE

~~By: Curtis "Woody" Baird,~~
Mayor

Yeas: Tapley, E. Brown, Colvin, Hardy, C. Brown, Tapley

Nays: None

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