

RESOLUTION NO. 2009-205

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF CLAYTON COUNTY, GEORGIA AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF AN EQUIPMENT LEASE/PURCHASE AGREEMENT WITH RESPECT TO THE ACQUISITION, PURCHASE, FINANCING AND LEASING OF CERTAIN ENERGY SAVINGS AND CONSERVATION EQUIPMENT AND SERVICES FOR ESSENTIAL PUBLIC PURPOSES; AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN OTHER RELATED DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION; AND FOR OTHER PURPOSES.

WHEREAS, in order to provide energy savings and conservation measures in Clayton, County, Georgia the Board of Commissioners of Clayton County (the "County") entered into a Performance Agreement for Comfort from Trane, dated as of October 20, 2009 (the "Trane Performance Contract") between the County and Trane Comfort Solutions, Inc. ("Trane") and a Performance Contracting Agreement, dated November 24, 2009 (the "Siemens Performance Contract") between the County and Siemens Industry, Inc. ("Siemens"); and

WHEREAS, in order to finance the collective cost (the "Rental Payments") of the equipment and services (the "Equipment") specified in the Trane Performance Contract and the Siemens Performance Contract (together, the "Performance Contracts"), the County desires to enter into a multi-year Equipment Lease/Purchase Agreement (the "Lease Agreement") by and between the County and Clayton County Government Finance Corporation (the "Lessor") under the terms of which the Lessor, agrees to (i) provide funds to acquire the equipment specified in the Performance Contracts, (ii) to lease the equipment to the County pursuant to an annually renewable lease and (iii) to deem that upon the payment of the Final Contract Payment that the County shall have exercised its purchase option and shall own such equipment; and

WHEREAS, certain of the Lessor's rights and obligations under the Lease Agreement have been assigned and transferred to Bank of America, N.A.(the "Bank") under the terms of an Assignment and Transfer between the Lessor and the Bank; and

WHEREAS, O.C.G.A. § 36-60-13, authorizes each county and municipality in the State of Georgia to enter into multi-year lease purchase agreements for the acquisition of goods, materials, real and personal property, services, and supplies; and

WHEREAS, the Equipment being delivered in connection with the Performance Contracts constitute personal property necessary for the County to perform essential governmental functions; and

WHEREAS, the principal component of the Rental Payments payable under the Lease Agreement equals \$10,624,451 and the interest rate used to determine the interest component of the Rental Payments is 4.19% per annum; and

WHEREAS, the governing body of the County deems it for the benefit of the County and for the efficient and effective administration thereof to enter into the Lease Agreement and the other documentation related to the financing of the Equipment for the purchase, acquisition and leasing of the equipment described in the Lease Agreement and Performance Contracts on the terms and conditions therein provided;

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the Board of Commissioners of Clayton County as follows:

Section 1. Approval of Lease Agreement and other Transaction Documents. The execution, delivery and performance of the Lease Agreement by the Chairman of the Board of Commissioners of the County is hereby authorized. The Lease Agreement shall be in substantially the form attached hereto as Exhibit "A", subject to such changes, insertions or omissions as shall be approved by the Chairman of the Board of Commissioners and as approved to form by the County Attorney. The execution, delivery and performance by the County of such other documents reasonably required to carry out, give effect to and consummate the transactions contemplated by the Lease Agreement is hereby authorized. The execution of the Lease Agreement and such other documents contemplated hereby being conclusive evidence of such approval. The Chairman of the Board of Commissioners is hereby authorized and directed to execute, and the Clerk of the Board of Commissioners is hereby authorized and directed to attest and countersign, the Lease Agreement and any related Exhibits, as needed, attached thereto and to deliver the Lease Agreement (including such Exhibits) to the respective parties thereto, and the Clerk of the Board of Commissioners is hereby authorized to affix the seal of the County to such documents.

Section 2. Other Actions Authorized. The officers and employees of the County shall take all action necessary or reasonably required by the parties to the Lease Agreement to carry out, give effect to and consummate the transactions contemplated thereby (including the execution and delivery of Acceptance Certificates and any tax certificate and agreement, as contemplated in the Agreement) and to take all action necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement.

Section 3. No General Liability. Nothing contained in this Resolution, the Lease Agreement nor any other instrument shall be construed with respect to the County as incurring a pecuniary liability or charge upon the full faith and credit of the County or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Lease Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon the County or any charge upon its general credit or against its taxing power, except to the extent that the Rental Payments payable under the Lease Agreement are special limited obligations of the County as provided in the Lease Agreement.

Section 4. Appointment of Authorized Lessee Representatives. The Chairman of the Board of Commissioners, the Director of Finance and Director of Policy and Planning of the County are each hereby designated to act as authorized representatives of the County for purposes of the Lease Agreement until such time as the governing body of the County shall

designate any other or different authorized representative for purposes of the Lease Agreement and each Lease Schedule.

Section 5. Bank Qualification. The County hereby designates the Rental Payments as “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

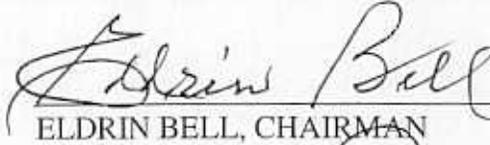
Section 6. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 7. Repealer. All bylaws, orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance or part thereof.

Section 8. Effective Date. This Resolution shall be effective immediately upon its approval and adoption.

ADOPTED AND APPROVED by the BOARD OF COMMISSIONERS OF CLAYTON COUNTY, GEORGIA THIS 15th DAY OF DECEMBER, 2009.

CLAYTON COUNTY BOARD OF COMMISSIONERS



ELDRIN BELL, CHAIRMAN



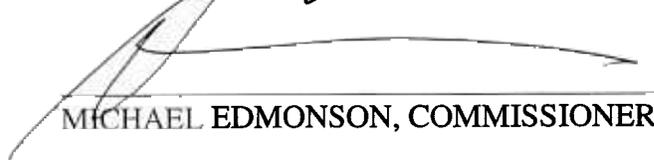
SONNA SINGLETON, COMMISSIONER



GAIL HAMBRICK, COMMISSIONER

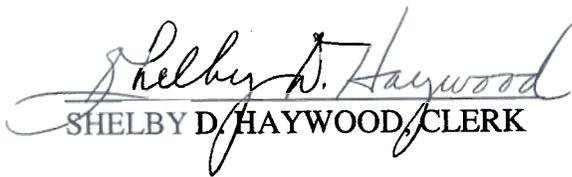


WOLE RALPH, VICE-CHAIRMAN



MICHAEL EDMONSON, COMMISSIONER

ATTEST:



SHELBY D. HAYWOOD, CLERK