

STATE OF GEORGIA  
COUNTY OF CLAYTON

RESOLUTION NO. 2011 - 104

A RESOLUTION OF THE CLAYTON COUNTY BOARD OF COMMISSIONERS AUTHORIZING THE REFINANCING OF A CERTAIN EQUIPMENT LEASE/PURCHASE AGREEMENT ENTERED INTO IN 2009 WITH RESPECT TO THE ACQUISITION, PURCHASE, FINANCING, AND LEASING OF CERTAIN ENERGY SAVINGS AND CONSERVATION EQUIPMENT; AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF A LEASE ADDENDUM TO PROVIDE FOR SUCH REFINANCING OF THE PURCHASE OF EQUIPMENT AND THE LEASING OF SUCH EQUIPMENT TO THE COUNTY; AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN OTHER RELATED DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION; AND FOR OTHER PURPOSES

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

WHEREAS, in order to finance the collective cost of the equipment and services (the "**Equipment**") specified in the Trane Performance Contract and the Siemens Performance Contract (together, the "**Performance Contracts**"), the County heretofore entered into a multi-year Equipment Lease/Purchase Agreement, dated December 17, 2009 (the "**2009 Lease**"), by and between the County, as lessee, and Clayton County Governmental Finance Corporation (the "**Finance Corp.**"), as lessor, pursuant to the terms of which the Finance Corp. agreed to provide funds to acquire the Equipment, to lease such Equipment to the County pursuant to an annually renewable lease, and to deem that upon the payment of the final contract payment thereunder the County shall have exercised its purchase option and shall own such Equipment; and

WHEREAS, certain of the Finance Corp.'s rights and obligations under the 2009 Lease were assigned and transferred to Bank of America, N.A. (the "**2009 Bank**") under the terms of an Assignment and Transfer Agreement, dated as of December 17, 2009 (the "**2009 Assignment**"), between the Finance Corp. and the 2009 Bank; and

WHEREAS, pursuant to Section 10.01(a) of the 2009 Lease, the County has the option to purchase all (but not less than all) of the Equipment on any of the rental payment

dates specified in the Payment Schedule attached to such 2009 Lease, upon not less than 30 days' prior written notice and upon payment in full of the rental payments then due, of all other amounts then owing under such 2009 Lease, and of the applicable Termination Value; and

**WHEREAS**, the County has requested and received from the 2009 Bank a payoff letter detailing the payoff amount with respect to the 2009 Lease assuming the exercise of the Purchase Option by the County on July 17, 2011; and

**WHEREAS**, the County has heretofore entered into a separate Master Lease Purchase Agreement, dated June 28, 2011 (together with all addenda, supplements, schedules, exhibits, and attachments thereto, the "**Master Lease Agreement**"), between the County, as lessee, and the Finance Corp., as lessor, as assigned to JPMorgan Chase Bank, N.A. (the "**2011 Bank**"), all in respect of the lease-purchase financing of equipment for the County and its various departments and agencies; and

**WHEREAS**, after careful study and consideration, the County has determined that the most efficient and effective means of financing the collective cost of the Equipment is (i) to exercise its Purchase Option under the 2009 Lease, and (ii) to enter into a Lease Addendum to the Master Lease Agreement (together with the Payment Schedule attached thereto and all additional addenda, supplements, schedules, exhibits, and attachments thereto, the "**Lease Addendum**"), governing the terms pursuant to which the Finance Corp. will provide funds to acquire the Equipment and lease the Equipment to the County pursuant to an annually renewable lease; and

**WHEREAS**, the Finance Corp. will assign certain of its rights and obligations as lessor under the Master Lease Agreement and the Lease Addendum to the 2011 Bank pursuant to a Purchase and Assignment Agreement (together with all addenda, supplements, schedules, exhibits, and attachments thereto, the "**2011 Assignment**"), between the Finance Corp. and the 2011 Bank;

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

**Section 1.** Authorization of Exercise of Purchase Option. In order to provide energy savings and conservation measures to the County in the most efficient and cost-effective manner, the County hereby authorizes the exercise of the Purchase Option under Section 10.01(a) of the 2009 Lease and the payment of the Payoff Amount, as such term is defined in the Payoff Letter, dated June 20, 2011, delivered to the County by the 2009 Bank, and attached hereto as Exhibit A. The Board hereby ratifies and approves all actions heretofore taken in connection with the exercise of the Purchase Option, including the delivery of a Notice of Intent to Exercise Purchase Option, dated June 16, 2011 and delivered to the 2009 Bank by the County in accordance with the notice requirements of the 2009 Lease.

**Section 2.** Authorization of Lease Addendum. The execution, delivery, and performance of the Lease Addendum to the Master Lease Agreement, in substantially the form attached hereto as Exhibit B, is hereby authorized, subject to such changes, insertions or omissions as shall be approved by a duly Authorized Representative of the County and

as approved to form by the County Attorney; and the execution thereof by the Chairman as hereby authorized shall be conclusive evidence of such approval.

**Section 3.** Other Actions and Transaction Documents Authorized. The officers and employees of the County shall take all action necessary or reasonably required by the parties to the 2009 Lease and the 2009 Assignment in connection with the exercise of the Purchase Option, and to the Master Lease Agreement and the Lease Addendum to carry out, give effect to and consummate the transactions contemplated thereby (including without limitation the execution and delivery of any information return, tax compliance certificate or other agreement, as contemplated in the Master Lease Agreement and the Lease Addendum) and to take all action necessary in conformity therewith.

**Section 4.** Authorization of Principal Amount and Interest Rate Associated with Rent Payments. The principal and interest component of the rental payments payable under the Master Lease Agreement and the Lease Addendum and the additional terms relating to the payment of rental payments shall be in accordance with the Payment Schedule attached hereto as Exhibit B as a component of the Lease Addendum; provided that, such Payment Schedule may be amended or modified upon the direction and approval of the Director of Finance of the County, the execution thereof by the Chairman or the Director of Finance as hereby authorized being conclusive evidence of such direction and approval.

**Section 5.** No General Liability. Nothing contained in this Resolution, the Master Lease Agreement, the Lease Addendum, or 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 Master Lease Agreement, the Lease Addendum, 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 Master Lease Agreement and Lease Addendum are special limited obligations of the County as provided in the Master Lease Agreement and Lease Addendum.

**Section 6.** Appointment of Authorized Lessee Representatives. The Chairman of the Board and the Director of Finance of the County are each hereby designated to act as authorized representatives of the County (the "**Authorized Representatives**") for purposes of the exercise of the Purchase Option, and with respect to the Lease Addendum, until such time as the governing body of the County shall designate any other or different authorized representative for purposes of the exercise of the Purchase Option, or for the Lease Addendum.

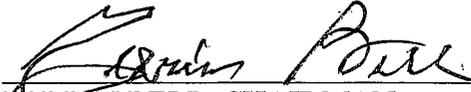
**Section 7.** Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

**Section 8.** Repealer. All bylaws, orders and resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance, or part thereof.

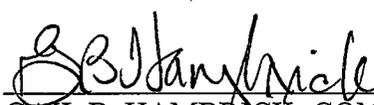
**Section 9.** Effective Date. This Resolution shall be effective immediately upon its approval and adoption.

ADOPTED AND APPROVED by the CLAYTON COUNTY BOARD OF COMMISSIONERS THIS 19<sup>TH</sup> DAY OF JULY, 2011.

CLAYTON COUNTY BOARD OF COMMISSIONERS

  
ELDRIN BELL, CHAIRMAN

  
WOLE RALPH, COMMISSIONER

  
GAIL B. HAMBRICK, COMMISSIONER

  
SONNA SINGLETON, COMMISSIONER

  
MICHAEL EDMONSON, COMMISSIONER

ATTEST:

  
SHELBY D. HAYWOOD, CLERK