

STATE OF GEORGIA  
COUNTY OF CLAYTON

RESOLUTION NO. 2011 - 91

A RESOLUTION OF THE CLAYTON COUNTY BOARD OF COMMISSIONERS AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF A PERFORMANCE AGREEMENT FOR COMFORT FROM TRANE WITH TRANE U.S. INC. FOR PURPOSES OF PROVIDING ENERGY SAVINGS AND CONSERVATION MEASURES FOR VARIOUS FACILITIES WITHIN THE COUNTY; AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF A MASTER EQUIPMENT LEASE AND A LEASE ADDENDUM TO PROVIDE FOR THE FINANCING OF THE PURCHASE OF EQUIPMENT AND SERVICES AND THE LEASING OF SUCH EQUIPMENT TO THE COUNTY; AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF AN ESCROW AGREEMENT; 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, desires to enter into a Performance Agreement for Comfort from Trane, dated as of April 12, 2011 (the "**Performance Contract**"), by and between the County and Trane U.S. Inc. ("**Trane**") and attached hereto as Exhibit A, under the terms of which Trane agrees (i) to furnish certain services to the County designed to reduce energy consumption and operational costs at certain sites within the County, including particularly the construction and installation of two electric power generators that will utilize methane gas from a County landfill through a methane extraction system, the redesign of certain boilers and the installation of a new hot water pump and two new water heaters at the H.R. Banke Justice Center site, and in each case, the acquisition and installation of associated energy savings and performance equipment (collectively, the "**Equipment**"); (ii) to perform specified maintenance on such Equipment and facilities; and (iii) to guarantee a specified minimum level of energy savings, and the County agrees to pay Trane a fixed sum for such services to be specified in the Performance Contract (the "**Contract Price**") and additional sums for maintenance throughout the term of the Performance Contract; and

WHEREAS, it has been determined that the most efficient and effective means of financing the collective cost of the Equipment and the services specified in the Performance Contract is for the County to enter into (i) the Master Lease-Purchase Agreement, to be dated as of June 28, 2011 (together with all addenda, schedule, exhibits, attachments, and supplements thereto, the "**Master Lease Agreement**"), between the County, as lessee, and Clayton County Governmental Finance Corporation (the "**Finance**

Corp.”), as lessor, attached hereto as Exhibit B and providing certain terms and conditions of a master leasing program, and (ii) a Lease Schedule together with its Payment Schedule, to be dated as of June 28, 2011 (together, the “**Lease Addendum**”), attached hereto as Exhibit C and governing the acquisition of the specific items of Equipment on the terms and conditions therein provided; and

**WHEREAS**, pursuant to the Master Lease Agreement and the Lease Addendum, the Finance Corp. agrees (i) to provide funds to acquire the Equipment, (ii) to lease the Equipment to the County pursuant to an annually renewable lease, and (iii) that upon the final payment of rental payments during the initial term and all renewal terms that the County shall, following the payment of a nominal sum, own such Equipment; 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 JPMorgan Chase Bank, N.A. (the “**Bank**”) under the terms of a Purchase and Assignment Agreement, to be dated as of June 28, 2011 (the “**Assignment**”), between the Finance Corp. and the Bank, attached hereto as Exhibit D; and

**WHEREAS**, in order to facilitate the transactions described herein, the County desires to enter into an Escrow Agreement, to be dated as of June 28, 2011 (the “**Escrow Agreement**”), between the County, the Finance Corp. and JPMorgan Chase Bank, N.A., in its capacity as escrow agent thereunder, attached hereto as Exhibit E;

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

**Section 1.** Authorization of Performance Contract. In order to provide energy savings and conservation measures to the County, the performance, execution and delivery of the Performance Contract by the County, in the form attached hereto as Exhibit A, is hereby authorized, subject to such changes, insertions or omissions as may be approved by a duly Authorized Representative of the County and as approved to form by the County Attorney; and the execution of the Performance Contract by the Chairman as hereby authorized shall be conclusive evidence of any such approval.

**Section 2.** Authorization of Master Lease Agreement and Lease Addendum.

(a) The execution, delivery, and performance of the Master Lease Agreement, in 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.

(b) The execution, delivery, and performance of the Lease Addendum, in the form attached hereto as Exhibit C, 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.** Authorization of Escrow Agreement. The execution, delivery, and performance of the Escrow Agreement, in the form attached hereto as Exhibit E, 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 4.** 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 Performance Contract, the Master Lease Agreement, the Lease Addendum, and the Escrow Agreement 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 Performance Contract, the Master Lease Agreement, the Lease Addendum, and the Escrow Agreement) and to take all action necessary in conformity therewith.

**Section 5.** 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.

**Section 6.** No General Liability. Nothing contained in this Resolution, the Performance Contract, the Master Lease Agreement, the Lease Addendum, the Escrow Agreement, 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 Performance Contract, the Master Lease Agreement, the Lease Addendum, the Escrow 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 Master Lease Agreement and Lease Addendum are special limited obligations of the County as provided in the Master Lease Agreement and Lease Addendum.

**Section 7.** 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 Performance Contract, the Master Lease Agreement, the Lease Addendum, and the Escrow Agreement, until such time as the governing body of the County shall designate any other or different authorized representative for purposes of the Performance Contract, the Master Lease Agreement, each Lease Addendum, and the Escrow Agreement.

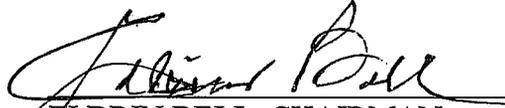
**Section 8.** Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

**Section 9.** 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 10.** Effective Date. This Resolution shall be effective immediately upon its approval and adoption.

ADOPTED AND APPROVED by the CLAYTON COUNTY BOARD OF COMMISSIONERS THIS 21<sup>st</sup> DAY OF JUNE, 2011.

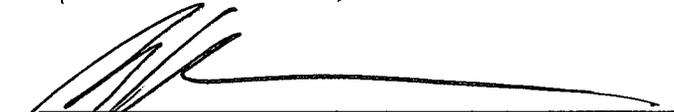
CLAYTON COUNTY BOARD OF COMMISSIONERS

  
ELDRIN BELL, CHAIRMAN

  
WOLE RALPH, COMMISSIONER

  
GAIL B. HAMBRICK, COMMISSIONER

  
SONNA SINGLETON, COMMISSIONER

  
MICHAEL EDMONSON, COMMISSIONER

ATTEST:

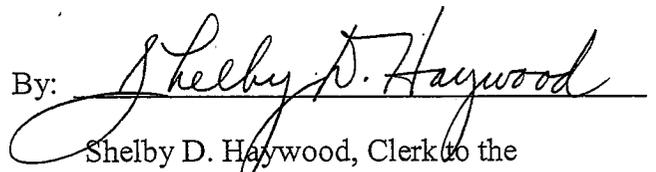
  
SHELBY D. HAYWOOD, CLERK

**CLERK'S CERTIFICATE**

I, the undersigned Clerk of the Clayton County Board of Commissioners (the "Board of Commissioners"), DO HEREBY CERTIFY that the foregoing pages of typewritten manner constitute a true and correct copy of the Resolution adopted on June 21, 2011 by the Board of Commissioners in a meeting duly called and assembled, which was open to the public and at which a quorum was present and acting throughout, and that the original of said Resolution appears of record in the Minute Book of the Board of Commissioners which is in my custody and control.

**CLAYTON COUNTY, GEORGIA**

By:

  
Shelby D. Haywood, Clerk to the  
Clayton County Board of Commissioners

(SEAL)