

**TOWN OF DERRY, NH**  
**RESOLUTION #2021-071**  
**AUTHORIZING THE ISSUANCE OF REFUNDING BONDS**  
**November 16, 2021**

**WHEREAS:** The Town of Derry, New Hampshire (the "Town") has issued certain \$3,400,000 General Obligation Bonds dated November 15, 2011 with final maturity on November 15, 2031 (the "2011 Bonds") to finance road reconstruction within the Town's Route 28 Corridor Tax Increment Financing District;

**WHEREAS:** The 2011 Bonds maturing on or after November 15, 2022, are subject to redemption at par prior to their stated dates of maturity, at the option of the Town, on or after November 15, 2021 (the "2011 Refunded Bonds"); and

**WHEREAS:** TD Bank, N.A. has offered to purchase a general obligation refunding bond of the Town in principal amount of \$2,110,000 (the "Refunding Bond," the proceeds of which will be used to fully refund the Refunded Bonds on a current basis;

NOW, THEREFORE, BE IT RESOLVED that the Town, acting by and through its Town Council, hereby accepts the Commitment Letter of TD Bank, N.A., dated October 20, 2021, in form presented to this meeting, and the Town Administrator and the Town's Chief Financial Officer, acting singly, are authorized to sign said Commitment Letter in acceptance, and any such prior action is ratified and confirmed;

IT IS FURTHER RESOLVED that the issuance of the Refunding Bond in the name of the Town pursuant to the provisions of RSA 33:3-d is hereby authorized, the proceeds of which shall be utilized to refund the Refunded Bonds on a current basis;

IT IS FURTHER RESOLVED that the Refunding Bond be signed by a majority of the Town Council and countersigned by the Town Treasurer, with the official seal of the Town, if any, affixed thereto, and otherwise be in such form and contain such terms and provisions not inconsistent herewith, as they shall approve, their approval to be conclusively evidenced by their execution thereof, and that any signature thereon may be by facsimile to the extent permitted by law;

IT IS FURTHER RESOLVED that the Refunding Bond be issued in the name of the Town and in registered form transferable only on the registration books of the Town, which registration books may be kept by the Town or its transfer agent, upon surrender thereof with a written instrument of transfer, duly executed by the registered owner or his/her attorney duly authorized in writing;

IT IS FURTHER RESOLVED that the Town Treasurer is authorized, as applicable, to designate the Refunding Bond as a qualified tax-exempt obligation within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code");

IT IS FURTHER RESOLVED that (i) no part of the proceeds of the Refunding Bond shall be used, directly or indirectly, to acquire any securities and obligations, the acquisition of which would cause any portion of the Refunding Bond to be "arbitrage bonds" within the meaning of Section 148 of the Code, and (ii) the proceeds of the Refunding Bond and the project financed by the Refunding Bond shall not be used in a manner that would cause any portion of the Refunding Bond to be "private activity bonds" within the meaning of Section 141 of the Code;

IT IS FURTHER RESOLVED that the Treasurer is authorized to covenant on behalf of the Town to file any information report and pay any rebate due to the United States in connection with the issuance of the Refunding Bond, to take all other lawful actions necessary to ensure the interest on the Refunding Bond will be excludable from the gross income of the owners thereof for purposes of federal income taxation and to refrain from taking any action which would cause interest on the Refunding Bond to become includable in the gross income of the owners thereof;

IT IS FURTHER RESOLVED that the appropriate officials of the Town are authorized to execute and deliver on behalf of the Town such other documents and certificates as may be required in connection with such borrowing and to do or cause to be done all such acts and things, not inconsistent herewith, as may be necessary or desirable in order to effect the issuance, sale and delivery of the Refunding Bond;


IT IS FURTHER RESOLVED that the Treasurer in consultation with Bond Counsel is authorized to implement written procedures with respect to the Refunding Bond for the purpose of: (i) ensuring timely "remedial action" for any portion of the Refunding Bond that may become "non-qualified bonds," as those terms are defined in the Code and regulations thereunder; and (ii) monitoring the Town's compliance following the issuance of the Refunding Bond with the arbitrage, yield restriction and rebate requirements of the Code and regulations thereunder;

IT IS FURTHER RESOLVED that if the Town Treasurer or Town Clerk for any reason are unavailable to, as applicable, approve, execute, or attest the Refunding Bond or any related financing documents, the person or persons then acting in any such capacity, whether as assistant, deputy, or otherwise, is authorized to act for such unavailable official with the same force and effect as if such official had himself/herself performed such act;


IT IS FURTHER RESOLVED that if any of the officers or officials of the Town who have signed, attested, or sealed the Refunding Bond shall cease to be such officers or officials before the Refunding Bond so signed, attested, and sealed shall have been actually authenticated or delivered by the Town, such Refunding Bond nevertheless may be authenticated, delivered, and issued with the same force and effect as though the person or persons who signed, attested, or sealed the Refunding Bond had not ceased to be such officer or official; and also, any such Refunding Bond may be signed, attested, or sealed on behalf of the Town by those persons who, at the actual date of execution of the Refunding Bond, shall be the proper officers or officials of the Town,

although at the nominal date of the Refunding Bond any such person shall not have been such officer or official; and

IT IS FURTHER RESOLVED that an attested copy of this Resolution be filed with the minutes of this meeting.



James Morgan, Chair  
Councilor at Large



Phyllis M. Katsakiores  
Councilor at Large




Joshua R. Bourdon  
Councilor at Large



Charles Foote  
Councilor District #2

Erin Spencer  
Councilor District #1



Neil Wetherbee  
Councilor District #3



Brian Chirichiello, Pro-Tem  
Councilor District #4