

IN THE SUPERIOR COURT OF COWETA COUNTY

STATE OF GEORGIA

STATE OF GEORGIA,)	
)	
Plaintiff,)	CIVIL ACTION
)	FILE NO. _____
v.)	
)	BOND VALIDATION
COWETA COUNTY DEVELOPMENT)	
AUTHORITY and)	
HITACHI CONSTRUCTION MACHINERY)	
AMERICAS INC.)	
)	
Defendants.)	

ACKNOWLEDGMENT OF SERVICE
BY THE COWETA COUNTY DEVELOPMENT AUTHORITY

Due and legal service of the (i) petition and complaint for Bond Validation with exhibits and order dated August ____, 2023, and (ii) answer by Hitachi Construction Machinery Americas Inc. is hereby acknowledged; copy received; process and any and all other notice and service waived this _____ day of August, 2023.

Nathan Lee, Esq.
Counsel for the Coweta County Development
Authority

Address:
Glover & Davis, P.A.
10 Brown Street
Newnan, GA 30263
(770) 683-6000
Georgia Bar No. 443770

IN THE SUPERIOR COURT OF COWETA COUNTY

STATE OF GEORGIA

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Plaintiff,)	CIVIL ACTION
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AUTHORITY and)	
HITACHI CONSTRUCTION MACHINERY)	
AMERICAS INC.)	
)	
Defendants.)	

ANSWER OF THE COWETA COUNTY DEVELOPMENT AUTHORITY

COMES NOW the defendant, the Coweta County Development Authority (the “Issuer”), having been duly served in the above-stated cause, makes this answer to the petition and complaint for Bond Validation and order served upon it, and says:

1.

This defendant admits the allegations contained in each and every paragraph of the petition and complaint for bond validation of the Honorable John Herbert Cranford, District Attorney of the Coweta Judicial Circuit, filed against this defendant in this case (the “Petition and Complaint”).

2.

Answering further, this defendant shows that due and legal service was made upon it to show cause why its Coweta County Development Authority Taxable Revenue Bond (Hitachi Construction Machinery Americas Inc. Project), Series 2023 in the principal amount of \$33,000,000 (the “Bond”), described in the Petition and Complaint, should not be confirmed and validated.

Following the service of the Petition and Complaint and order upon it, the Clerk of the Superior Court of Coweta County, Georgia, had published in the newspaper in which sheriff's advertisements are published for Coweta County a notice to the public of the validation hearing as required by law.

An affidavit of the publisher of said newspaper is attached hereto, made a part hereof and marked Exhibit A.

3.

This defendant further shows that the authority for the issuance of the Bond by it is pursuant to the Constitution and laws of the State of Georgia, including specifically the Act (as defined in the Petition and Complaint) and a resolution of this defendant adopted on August 3, 2023 (the "Resolution"), a certified copy of which forms a part of the Petition and Complaint. The Resolution has in no way been altered or repealed and is of full force and effect.

4.

This defendant further shows that it has the requisite power and authority to adopt the Resolution and to perform its obligations under the Resolution, that the Resolution has been duly adopted, and that the Resolution constitutes the legal, valid and binding obligation of this defendant.

5.

This defendant further shows that it has the requisite power and authority to issue, execute, deliver and perform its obligations under the Bond, that the issuance, execution, delivery and performance of the Bond have been duly authorized by this defendant, and that the Bond, when issued, executed and delivered, will constitute the legal, valid, binding and limited obligation of this defendant.

6.

This defendant further shows that it has the requisite power and authority to execute, deliver and perform its obligations under the Lease, dated as of the first day of the month in which

the Bond is issued (the “Lease”), between this defendant and Hitachi Construction Machinery Americas Inc. (the “Company”), that the execution, delivery and performance of the Lease have been duly authorized by this defendant, and that the Lease, when executed and delivered by the parties thereto, will constitute a legal, valid and binding obligation of this defendant.

7.

This defendant further shows that it has the requisite power and authority to execute, deliver and perform its obligations under the Memorandum of Understanding, dated as of May 4, 2023 (the “Memorandum of Understanding”), among this defendant, the County, the Company, the Coweta County Board of Tax Assessors, the Coweta County Tax Commissioner, and the Coweta County School District, that the execution, delivery and performance of the Memorandum of Understanding have been duly authorized by this defendant, and that the Memorandum of Understanding has been executed and delivered by the parties thereto and constitutes a legal, valid and binding obligation of this defendant.

8.

This defendant further affirmatively shows that it has waived the performance audit or review requirements set forth in O.C.G.A. Section 36-82-100 by including a specific waiver of public accountability in the notice to the public, as part of these validation proceedings.

9.

This defendant submits that it has in every way complied with the Constitution and laws of the State of Georgia governing the authorization, issuance and delivery of the Bond and that all steps taken pertaining thereto are legal and valid in all respects, and prays an adjudication of all matters pertaining to the validity of the Bond and the security therefor.

WHEREFORE, having answered fully, this defendant prays for judgment in favor of the issuance of the Bond, finding that all necessary requirements as a matter of fact and as a matter

of law have been met, that this defendant is authorized to issue the Bond and to enter into and perform its obligations under the Lease, and that an order be issued validating and confirming the Bond and the security therefor and authorizing the Clerk of the Superior Court of Coweta County, Georgia, to execute the certificate of validation on the Bond, all as provided by law.

Nathan Lee, Esq.
Counsel for the Coweta County Development
Authority

Address:
Glover & Davis, P.A.
10 Brown Street
Newnan, GA 30263
(770) 683-6000
Georgia Bar No. 443770

EXHIBIT A

PUBLISHER'S AFFIDAVIT

STATE OF GEORGIA

COUNTY OF COWETA

I, _____, DO HEREBY CERTIFY that I am publisher of *The Newnan Times-Herald*, the newspaper in which sheriff's advertisements appear for Coweta County, and the attached notice of a Bond Validation hearing was published in said newspaper on the following dates: August ____, 2023 and August ____, 2023.

Publisher

Sworn to and subscribed
before me this ____ day
of August, 2023.

Notary Public

My commission expires:

(NOTARIAL SEAL)

(Attach clipping)

VERIFICATION

STATE OF GEORGIA

COUNTY OF COWETA

Personally appeared before the undersigned officer authorized to administer oaths in and for said State and County, the undersigned Chairman of the Coweta County Development Authority (the “Issuer”), who on oath depose and say that he is the elected, qualified and acting Chairman of the Issuer, and that he has read the above and foregoing answer relating to the issuance of the Coweta County Development Authority Taxable Revenue Bond (Hitachi Construction Machinery Americas Inc. Project), Series 2023 in the principal amount of \$33,000,000, and the Resolution, Lease and Memorandum of Understanding to be delivered in connection therewith, and that the same are true and correct.

COWETA COUNTY DEVELOPMENT
AUTHORITY

(SEAL)

Chairman

Sworn to and subscribed
before me this _____ day
of August, 2023.

Notary Public

My commission expires:
(NOTARIAL SEAL)

ACKNOWLEDGMENT OF DISTRICT ATTORNEY

Due and legal service of the within and foregoing answer of the defendant, the Coweta County Development Authority, is hereby acknowledged; copy received; process and all other and further service is hereby waived.

This _____ day of August, 2023.

District Attorney
Coweta Judicial Circuit

IN THE SUPERIOR COURT OF COWETA COUNTY

STATE OF GEORGIA

STATE OF GEORGIA,)	
)	
Plaintiff,)	CIVIL ACTION
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AUTHORITY and)	
HITACHI CONSTRUCTION MACHINERY)	
AMERICAS INC.)	
)	
Defendants.)	

ACKNOWLEDGMENT OF SERVICE
BY HITACHI CONSTRUCTION MACHINERY AMERICAS INC.

Due and legal service of the (i) petition and complaint for Bond Validation with exhibits and order dated August ____, 2023, and (ii) answer by the Coweta County Development Authority, is hereby acknowledged; copy received; process and any and all other notice and service waived this _____ day of August, 2023.

Earle R. Taylor III, Esq.
Counsel for Hitachi Construction Machinery
Americas Inc.

Address:
Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700
Atlanta, Georgia 30363
Georgia Bar Number: _____

IN THE SUPERIOR COURT OF COWETA COUNTY
STATE OF GEORGIA

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AUTHORITY and)	
HITACHI CONSTRUCTION MACHINERY)	
AMERICAS INC.)	
)	
Defendants.)	

ANSWER OF HITACHI CONSTRUCTION MACHINERY AMERICAS INC.

COMES NOW the defendant, Hitachi Construction Machinery Americas Inc., having been duly served in the above-stated cause, makes this answer to the petition and complaint for Bond Validation and order served upon it, and says:

1.

This defendant admits the allegations pertaining to it contained in each and every paragraph of the petition and complaint for Bond Validation of the Honorable John Herbert Cranford, District Attorney of the Coweta Judicial Circuit, filed against this defendant in this case (the "Petition and Complaint").

2.

Answering further, this defendant shows that due and legal service was made upon it to show cause why the Coweta County Development Authority Taxable Revenue Bond (Hitachi Construction Machinery Americas Inc. Project), Series 2023 in the principal amount of \$33,000,000 (the "Bond"), described in the Petition and Complaint should not be confirmed and validated.

3.

This defendant further shows that it has the requisite power and authority to enter into the Lease, dated as of the first day of the month in which the Bond is issued (the “Lease”), between this defendant and the Coweta County Development Authority (the “Issuer”) and the Guaranty Agreement, dated as of the first day of the month in which the Bond is issued (the “Guaranty”) from this defendant, as Guarantor, in favor of the purchaser of the Bond, that the execution, delivery and performance of the Lease and the Guaranty have been authorized by this defendant, and that the Lease and the Guaranty, when executed and delivered by the parties thereto, will each constitute a legal, valid and binding obligation of this defendant.

4.

This defendant further shows that it has the requisite power and authority to execute, deliver and perform its obligations under the Memorandum of Understanding, dated as of May 4, 2023 (the “Memorandum of Understanding”), among this defendant, the Issuer, Coweta County, Georgia, the Coweta County School System, the Coweta County Board of Tax Assessors and the Coweta County Tax Commissioner, that the execution, delivery and performance of the Memorandum of Understanding have been duly authorized by this defendant, and that the Memorandum of Understanding has been executed and delivered by the parties thereto and constitutes a legal, valid and binding obligation of this defendant.

WHEREFORE, having answered fully, this defendant prays for judgment in favor of the issuance of the Bond, finding that all necessary requirements as a matter of fact and as a matter of law have been met, that this defendant is authorized to enter into the Lease and the Guaranty and to assume the obligations represented thereby, and that an order be issued confirming and validating the Bond and the security therefor and authorizing the Clerk of the Superior Court of Coweta County, Georgia, to execute the certificate of validation on the Bond, all as provided by law.

Earle R. Taylor III, Esq.
Counsel for Hitachi Construction Machinery
Americas Inc.

Address:
Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700
Atlanta, Georgia 30363
Georgia Bar Number: _____

VERIFICATION

STATE OF GEORGIA

COUNTY OF COWETA

Personally appeared before the undersigned officer authorized to administer oaths in and for said State and County, the undersigned CEO of Hitachi Construction Machinery Americas Inc. (the “Company”), who on oath deposes and says that he is the elected, qualified and acting CEO of the Company, and he has read the above and foregoing answer relating to the issuance of Coweta County Development Authority Taxable Revenue Bond (Hitachi Construction Machinery Americas Inc. Project), Series 2023 in the principal amount of \$33,000,000, and the Lease, the Guaranty and Memorandum of Understanding to be delivered in connection therewith, and that the same are true and correct.

HITACHI CONSTRUCTION MACHINERY
AMERICAS INC

(SEAL)

By: _____
CEO

Sworn to and subscribed
before me this _____ day
of August, 2023.

Notary Public

My commission expires:

(NOTARIAL SEAL)

ACKNOWLEDGMENT OF DISTRICT ATTORNEY

Due and legal service of the foregoing answer of the defendant, Hitachi Construction Machinery Americas Inc., is hereby acknowledged; copy received; process and all other and further service is hereby waived.

This _____ day of August, 2023.

District Attorney
Coweta Judicial Circuit

IN THE SUPERIOR COURT OF COWETA COUNTY

STATE OF GEORGIA

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HITACHI CONSTRUCTION MACHINERY)	
AMERICAS INC.)	
)	
Defendants.)	

VALIDATION ORDER

The above-entitled cause coming on for a hearing pursuant to an order heretofore granted, and it appearing from an examination and inspection of the proceedings concerning the Coweta County Development Authority Taxable Revenue Bond (Hitachi Construction Machinery Americas Inc. Project), Series 2023 in the principal amount of \$33,000,000 (the “Bond”), described in the pleadings of this cause, including a petition and complaint for bond validation of the Honorable John Herbert Cranford, District Attorney of the Coweta Judicial Circuit filed against the defendants in this case (the “Petition and Complaint”), that the same is regular and in due form, and after inspection of the record and hearing the evidence on all matters bearing upon the Bond, the right of defendant Coweta County Development Authority (the “Issuer”) to issue the Bond, and the security therefor, this Court makes the following Findings of Fact and Conclusions of Law pursuant to O.C.G.A. Section 9-11-52(a):

Findings of Fact

1. Capitalized terms used but not defined herein shall have the meanings assigned to them in the Petition and Complaint.

2. This action is brought by the State of Georgia, as plaintiff, in accordance with the Act and the Revenue Bond Law for the validation of the Bond for the benefit of the Company.

3. All pleadings have been properly filed and properly served upon the parties.

4. The notice of the hearing was published once a week in each of the two weeks preceding the hearing.

5. The Issuer is a public body corporate and politic created pursuant to the Act. The Issuer has been duly created, its members have been duly appointed, and the Issuer is operating and existing as a public corporation. The Issuer has been created for the purpose of promoting and expanding for the public good and welfare of the County and its citizens, industry, agriculture, trade, commerce and recreation within the County.

6. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Georgia.

7. The Authority has duly adopted the Resolution, and the Resolution is in full force and effect. The Issuer has duly authorized the issuance of the Bond and the execution, delivery and performance of its obligations under the Lease and the Memorandum of Understanding.

8. The Company has duly authorized the execution, delivery and performance of its obligations under the Lease, the Guaranty and the Memorandum of Understanding.

9. The Bond shall be dated its date of issuance and shall be issued in fully registered form. The interest on the Bond shall be payable on the 1st days of June and December, commencing

upon the issuance of the Bond. The Bond shall bear interest at the rate of 8% per annum and shall mature on December 1, 2034. The prepayment provisions of the Bond and all other pertinent facts pertaining to the Bond are set forth in detail in the Resolution.

10. The proceeds of the Bond will be used for the purpose of financing the Project and paying the costs of issuing the Bond.

11. Under the terms of the Lease, the Company will pay the Issuer amounts sufficient to enable the Issuer to pay debt service on the Bond as the same become due. The Company has historically operated profitably.

12. The Issuer has created a lien on the Lease and the Pledged Revenues as security for the Bond.

13. The Company's willingness to acquire and construct the Project and the feasibility of the Project are based in part on the Leasehold Valuation Methodology.

14. Under the terms of the Guaranty, the Company absolutely and unconditionally guarantees to the Purchaser the payment of the principal of and the interest on the Bond.

15. The Bond is a limited obligation of the Issuer payable solely from the Pledged Revenues. The Bond shall not directly, indirectly or contingently obligate the State of Georgia or the County to levy or to pledge any form of taxation whatever therefor or to make any appropriation for its payment.

16. The financing of the Project by the issuance of the Bond is within the public purposes intended to be served by the Issuer in that the financing of the Project by the issuance of the Bond will promote and expand for the public good and welfare of the County and its citizens, industry, trade and commerce within the County.

17. The Project is a “project” within the meaning of the Act and will be located in the County.

18. The Resolution, the Lease, the Guaranty and the Memorandum of Understanding constitute the security for the Bond.

19. The economic benefits that will inure to the County from the Project and the operation thereof and the payments to be made under the Lease and the Memorandum of Understanding will be equal to or greater than the benefits to be derived from the Company under the Lease and the purchase option granted to the Company in the Lease.

20. The Issuer included a waiver of the Independent Audit in the notice of the hearing.

Conclusions of Law

1. The defendants named are proper parties defendant and this Court has jurisdiction over the subject matter of this proceeding and the parties thereto are properly before this Court. The County, the Coweta County School System, the Board of Assessors, and the Coweta County Tax Commissioner are not indispensable parties.

2. The Act and the Revenue Bond Law have been duly enacted and approved and are legal and valid in all respects, and all rights, powers, authorities and duties therein granted and imposed are legal in all respects, and pursuant to the Act, the Issuer was legally created and is validly existing as a public body corporate and politic of the State of Georgia.

3. The Company has the power and authority to execute, deliver and perform its obligations under the Lease, the Guaranty and the Memorandum of Understanding. The Lease and the Guaranty, when executed and delivered by the parties thereto, will each constitute a legal, valid and binding obligation of the Company. The Memorandum of Understanding constitutes a legal, valid and binding obligation of the Company.

4. The Issuer has the power and authority to adopt the Resolution and to perform its obligations thereunder. The Resolution constitutes a legal, valid and binding obligation of the Issuer.

5. The Issuer has the power and authority to issue, execute, deliver and perform its obligations under the Bond. The Bond, when issued, executed and delivered, will constitute a legal, valid and binding limited obligation of the Issuer.

6. The Issuer has the power and authority to execute, deliver and perform its obligations under the Lease and the Memorandum of Understanding. The Lease, when executed and delivered by the parties thereto, will constitute a legal, valid and binding obligation of the Issuer. The Memorandum of Understanding constitutes a legal, valid and binding obligation of the Issuer.

7. The pledge of and lien on the Lease and the Pledged Revenues shall be valid and binding against the Issuer and against all parties having claims against the Issuer whether such claims arise in contract, tort or otherwise and irrespective of whether such parties have notice thereof.

8. The proposed Leasehold Valuation Methodology is not unreasonable and is not arbitrary and does not create an unconstitutional tax exemption.

9. The undertaking for which the Bond will be issued, the use of the proceeds of the Bond for the purposes set forth in the Petition and Complaint and in the Resolution, and the issuance of the Bond and the security therefor are sound, feasible and reasonable because the Lease Payments are sufficient to pay debt service on the Bond, because the Company has historically operated profitably and because of the Guaranty.

10. The use of the proceeds of the Bond to acquire and construct the Project, the leasing of the Project under the Lease and the granting of the purchase option contained in the Lease do not

violate the prohibition in the Georgia Constitution on the payment by public bodies of gratuities to private sector persons.

11. The adoption of the Resolution and the subsequent issuance of the Bond to acquire and construct the Project does not constitute a “business loan” or confer any other “public benefit” within the meaning of O.C.G.A. § 50-36-1. Neither the Company nor any other participant in the transaction involving the Bond or the Project and their respective counsel constitute an “applicant for public benefits” within the meaning of O.C.G.A. § 50-36-1 in connection with the issuance of the Bond; therefore, such persons are not subject to Systematic Alien Verification of Entitlement pursuant to such code section in connection with the issuance of the Bond. The transaction described in the Resolution is not a public project and is therefore not subject to the Georgia Local Government Public Works Construction Law (O.C.G.A. § 36-91-1 et seq.).

12. The Issuer has properly waived the requirement that an Independent Audit be conducted with respect to the Bond.

13. The Issuer is taking all proper and necessary steps to issue the Bond and to use the proceeds for the purposes stated.

14. Plaintiff is entitled to a judgement validating the Bond and the security therefor.

15. Any Finding of Fact contained herein which could be considered a Conclusion of Law is hereby deemed to be a Conclusion of Law, and any Conclusion of Law which could be considered a Finding of Fact is hereby deemed to be a Finding of Fact.

Based on these Findings of Fact and Conclusions of Law, it is therefore:

ORDERED AND ADJUDGED THAT:

1. The Bond and the security therefor are hereby validated and confirmed in each and every respect.

2. The Clerk of this Court is authorized and directed to execute a certificate of validation upon the Bond originally issued and upon each Bond issued in exchange the Series Bond previously issued.

3. The Company shall pay the costs of these proceedings.

Dated this _____ day of August, 2023.

Judge, Superior Court
Coweta County, Georgia

IN THE SUPERIOR COURT OF COWETA COUNTY

STATE OF GEORGIA

STATE OF GEORGIA,

Plaintiff,

V.

COWETA COUNTY DEVELOPMENT
AUTHORITY and
HITACHI CONSTRUCTION MACHINERY
AMERICAS INC.

Defendants.

CIVIL ACTION

FILE NO. _____

BOND VALIDATION

CLERK'S CERTIFICATE

The undersigned Clerk of the Superior Court of Coweta County, DOES HEREBY CERTIFY that he/she has compared the within and foregoing copy of the record of the proceeding for the confirmation and validation of the Coweta County Development Authority Taxable Revenue Bond (Hitachi Construction Machinery Americas Inc. Project), Series 2023 in the principal amount of \$33,000,000, including the petition and complaint for Bond Validation and all exhibits, notices, orders and documents attached thereto, the answers of the Coweta County Development Authority and Hitachi Construction Machinery Americas Inc., and an order of the Court dated August____, 2023, the same constituting the entire file of the Clerk of the Court in said cause, there being no other matter of record other than the foregoing, with the original record thereof now remaining in this office, and the same is a true, correct and complete copy of and the whole of such original record, and that this Court is a Court of Record.

I FURTHER CERTIFY that no intervention or objection was raised or filed in connection with the validation of the Bond referred to in said record and that the validation order has been entered.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of said Court this the _____ day of August, 2023.

Clerk, Superior Court
Coweta County, Georgia

(SEAL)