

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY

### BOARD OF COMMISSIONERS

**MEETING DATE:** 19 April 2006

**SUBJECT:** Financing Resolution: Sugarloaf Road School, Mills River School, Historic Courthouse, Technology Education Building

**ATTACHMENT(S):** Memorandum from Office of the County Attorney  
Draft Resolution

#### SUMMARY OF REQUEST:

This is a resolution (in a form similar to that used in previous similar circumstances) for consideration concerning the proposed installment contract financing for the Sugarloaf Road and Mills River school projects, the Blue Ridge Community College Technology Education building, and the renovation of the Historic Courthouse.

First, the resolution makes the necessary findings for the undertaking and authorizes the preparation of an installment purchase financing contract which will provide the funding for these projects.

Second, the resolution authorizes the Chairman and Staff to submit an application to the Local Government Commission for its required approval of the installment purchase financing contract. The resolution also authorizes staff to apply for municipal bond insurance with respect to the contract and approves the financing team necessary to complete the process.

Last, the resolution calls for a required public hearing on the financing documents to be held on the Board of Commissioner's 1 May 2006 meeting date at 7:00 p.m. and directs the Clerk to the Board to cause a notice of the public hearing to be published in the local newspaper.

Proposed Motion:

***I move that the Board approve the proposed resolution regarding the financing of the Sugarloaf Road and Mills River Elementary School projects, the Blue Ridge Community College Technology Education Building project, and the Historic Courthouse Renovation and Construction project.***

**DRAFT**

Extract from Minutes of a regular meeting of the Board of Commissioners (the "Board") of the County of Henderson, North Carolina held in the Commissioners' Meeting Room, 100 North King Street, Hendersonville, North Carolina 28792, at 9:00 a.m. on April 19, 2006.

The following members were present:

Chairman William L. Moyer; Vice Chairman Charlie Messer; Shannon Baldwin; Larry Young; Chuck McGrady.

The following members were absent:

None.

Also present:

County Manager Steven Wyatt; County Attorney Russell Burrell; Assistant County Manager Justin Hembree; Budget Director Selena Coffey; Clerk to the Board Elizabeth Corn; and, Finance Director Carey McLelland.

Commissioner \_\_\_\_\_ moved that the following resolution (the "Resolution"), a copy of which was made available to the Board and which was read by title:

**"RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF HENDERSON, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT, DIRECTING THE PUBLICATION OF NOTICE WITH RESPECT THERETO AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO AND MAKING CERTAIN FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH**

**I. Undertakings**

WHEREAS, the Board of Commissioners (the "Board") of the County of Henderson, North Carolina (the "County"), desires to provide for the design, acquisition, construction, renovation and equipping of two elementary schools ("the School Facilities"), the design, acquisition, construction and equipping of a Technology Education and Development Building at Blue Ridge Community College ("Technology Building") and the design, renovation, construction and equipping of the Henderson County Historic Courthouse (the "Courthouse") building (collectively, the "Facilities"); and

WHEREAS, the Board now proposes to finance the Facilities through an installment financing contract (the "Contract") with Henderson County Governmental Financing Corporation, Hendersonville, North Carolina ("the Corporation"), obligating the County to repay in installments the amount financed at a fixed annual interest rate of not more than 5.30% over a term not exceeding 20 years, resulting in a total amount financed not to exceed \$51,000,000 (excluding reserves and costs of issuance); and

WHEREAS, pursuant to N.C.G.S. Section 160A-20, the County is authorized to finance the design, acquisition, construction, renovation and equipping of the Facilities by entering into the Contract

and a deed of trust (the "Deed of Trust") that create in the School Facilities and the Courthouse a security interest to secure payment of the obligation thereby created; and

WHEREAS, subject to the prior approval of the Local Government Commission of North Carolina (the "LGC") pursuant to N.C.G.S. Section 159-148, the County intends to finance the cost of the Facilities pursuant to N.C.G.S. Section 160A-20 by executing and delivering to the Corporation or other financing entity the Contract providing for the financing of a principal amount not to exceed \$51,000,000 (excluding reserves and costs of issuance); and

WHEREAS, the County has received an insurance commitment from Ambac Assurance Corporation to issue an insurance policy that will guarantee payments by the County under the Contract; and

## **II. Undertakings Necessary**

WHEREAS, the County staff has advised the Board, and the Board hereby finds and determines, that the County must design, acquire, construct, renovate and/or equip the Facilities in order to maintain and enhance the County's public schools, Community College and certain administrative facilities to enable the County to perform its public functions, and that the Facilities will benefit the County and its residents; and

WHEREAS, a public hearing must be held to receive public comment on the desirability of installment financing for the Facilities, and the Board received evidence supporting the need for such financing; and

WHEREAS, the Board finds and determines that the undertakings are necessary and expedient for the aforesaid reasons and that the Facilities be financed under the terms, conditions and parameters heretofore stated and to be further determined with more particularity at a later date; and

## **III. Funds Not Excessive**

WHEREAS, the sums to fall due under the Contract can be included in the County's budget without difficulty; and

WHEREAS, the above factors lead to the conclusion that the payments under the Contract are not excessive for the stated purposes of designing, acquiring, constructing, renovating and/or equipping the Facilities; and

## **IV. Transaction a Public Purpose**

WHEREAS, the County Attorney has advised the County that the Facilities are authorized by law and are purposes for which public funds may be expended pursuant to the Constitution and laws of the State of North Carolina; and

## **V. Installment Purchase Financing Desirable**

WHEREAS, the Board finds and determines that short term or pay-as-you-go financing for the Facilities would place strains on the County's ability to fund general operations and education without a significant tax increase; and

WHEREAS, use of the County's un-obligated fund balance to finance the Facilities would reduce the fund below the guideline established by the LGC and would not be in the County's best interest; and

WHEREAS, the use of non-voted debt would not provide sufficient funds to complete the Facilities in a timely manner; and

WHEREAS, although the cost of financing under the proposed Contract is greater than the cost of general obligation bond financing, installment contract financing would be preferable to general obligation bond financing because a general obligation bond authorization probably could not be perfected in a timely manner and would not permit the alternative financing structures and repayment provisions available in the proposed negotiated installment contract financing; and

WHEREAS, the proposed cost of financing the Facilities is too great an amount to be funded by current appropriations; and

WHEREAS, the Board finds and determines that installment contract financing is therefore the most viable and efficient alternative and that the cost of such financing is reasonable; and

#### **VI. Compliance With Debt Management Controls**

WHEREAS, past audit reports of the County indicate that its debt management and contract obligations payment policies have been carried out in strict compliance with the law and the County has not been censured by the LGC, external auditors, or any other regulatory agencies in connection with such management; and

#### **VII. Estimated Tax Increase**

WHEREAS, the Board estimates that the County's *ad valorem* tax rate will be increased by approximately \$0.05 per \$100.00 assessed value in order to sustain the proposed financing; and

#### **VIII. No Default**

WHEREAS, the County is not in default in meeting any of its debt service or contract obligations; and

#### **IX. Application**

WHEREAS, it is the Board's intention to adopt this Resolution for the purpose of authorizing the design, acquisition, construction, renovation and/or equipping of the Facilities, making certain findings and determinations, approving the submission of an application for approval of the Contract to the LGC and authorizing such other acts deemed necessary and advisable to carry out the design, acquisition, construction, renovation and/or equipping of the Facilities.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF HENDERSON, NORTH CAROLINA, as follows:**

Section 1. The Chairman of the Board, the County Manager, the County Attorney, the Finance Director and the Clerk to the Board are hereby authorized and directed on behalf of the County to proceed with the preparation of the Contract providing for the financing of an amount not to exceed \$51,000,000

(excluding reserves and costs of issuances) at an annual interest rate not to exceed 5.30% and a term not to exceed 20 years, and otherwise proceed with the plan of financing for the Facilities described at this meeting.

Section 2. The Chairman of the Board, the County Manager, the County Attorney, the Finance Director and the Clerk to the Board are hereby authorized and directed to submit an application for the LGC's approval of the Contract pursuant to N.C.G.S. Section 160A-20 and Section 159-148, and to execute a sworn statement of debt of the County pursuant to N.C.G.S. Section 159-150, in connection with the financing of the Facilities.

Section 3. The financing team of LeBoeuf, Lamb, Greene & MacRae LLP, as special counsel, Wachovia Bank, National Association, as underwriter, Robinson, Bradshaw & Hinson P. A., as underwriter's counsel, Ambac Assurance Corporation, as bond insurer, and First-Citizens Bank & Trust Company, as trustee, is approved.

Section 4. This Resolution shall become effective immediately upon its adoption and shall supersede any and all previous resolutions regarding the design, acquisition, construction, renovation and/or equipping of the Facilities on an installment financing basis.

Section 5. That a public hearing (the "Public Hearing") shall be conducted by the Board of Commissioners on May 1, 2006, at 7:00 p.m. in the Commissioners' Meeting Room of the County Administration Building at 100 North King Street, Hendersonville, North Carolina, concerning the Contract, the Deed of Trust, the proposed design, acquisition, construction, renovation and/or equipping of the Facilities and any other transactions contemplated therein and associated therewith.

Section 6. The Clerk to the Board is hereby directed to cause a notice of the Public Hearing to be published once in a qualified newspaper of general circulation within the County on April 20, 2006."

On motion of Commissioner \_\_\_\_\_, the foregoing resolution entitled "RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF HENDERSON, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT, DIRECTING THE PUBLICATION OF NOTICE WITH RESPECT THERETO AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO AND MAKING CERTAIN FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH" was duly adopted by the following vote:

Aye:

Nay:

EXHIBIT A

**NOTICE OF PUBLIC HEARING  
ON WHETHER THE BOARD OF COMMISSIONERS  
FOR THE COUNTY OF HENDERSON, NORTH CAROLINA  
SHOULD APPROVE A PROPOSED INSTALLMENT FINANCING  
CONTRACT TO FINANCE THE COST OF CERTAIN PROJECTS**

NOTICE IS HEREBY GIVEN that the Henderson County Board of Commissioners (the "Board") will hold a public hearing on May 1, 2006, at 7:00 p.m. in the Commissioners' Meeting Room of the County Administration Building, 100 North King Street, Hendersonville, North Carolina for the purpose of considering whether the Board for the County of Henderson, North Carolina (the "County") should approve a proposed installment financing contract and certain related documents under which the County would obtain financing pursuant to North Carolina General Statutes § 160A-20, as amended, to finance the cost of the Projects hereinafter described and under which the County would secure the repayment of it of moneys advanced pursuant to such installment financing contract by granting a security interest in the School Facilities and Courthouse (each as defined below) and related sites and property thereof under a deed of trust. The Projects consist of (1) the design, acquisition, construction and equipping of the Sugarloaf Road Elementary School to be located at 2270 Sugarloaf Road, Hendersonville, North Carolina; (2) the design, construction, renovation and equipping of the Mills River Elementary School located at 96 School House Road, Horse Shoe, North Carolina (together, (1), and (2) are "the School Facilities"); and, (3) the design, acquisition, construction and equipping of a Technology Education and Development Building at Blue Ridge Community College located at 100 Alumni Way, Flat Rock, North Carolina; and, (4) the design, construction, renovation and equipping of the historic Henderson County Courthouse building located at 100 Main Street, Hendersonville, North Carolina ("the Courthouse"). The combined cost of constructing the Projects is estimated at approximately \$51,000,000. Drafts of proposed financing documents are available for inspection in the office of the County Manager. All persons interested in this public hearing are encouraged to attend and express their views.

/s/ Elizabeth W. Corn  
Clerk, Board of Commissioners

Henderson County, North Carolina  
Published: April 20, 2006