

## REQUEST FOR BOARD ACTION

### HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** March 2, 2009

**SUBJECT:** Debt Refinancing – Series 1999 Detention Center Certificates of Participation (COPs)

**ATTACHMENTS:** 1) Projected Debt Service Savings  
2) Resolution

#### **SUMMARY OF REQUEST:**

Staff is presenting to the Board of Commissioners an opportunity to refinance the outstanding Series 1999 Detention Center Certificates of Participation (COPs) debt issue due to favorable rate conditions in the current debt market. The date to pay off the outstanding callable bonds is June 1, 2009 and now is an opportune time to refinance them at a lower interest rate.

The not to exceed interest rate offered by Branch Banking & Trust Company to refinance over the remaining 10-year term is 3.64 percent. The estimated debt service savings in the current fiscal year is \$34,125 and the cumulative projected savings over the remaining ten years is \$278,195.

A formal application to the Local Government Commission (LGC) and a public hearing on the financing documents is required to do a current refinancing of debt previously issued in the public market. The attached resolution for the Board's consideration makes the necessary findings to do the refinancing, authorizes staff to make an application with the LGC and calls for a public hearing on the financing documents.

#### **BOARD ACTION REQUESTED:**

Approve the attached resolution drafted by bond counsel making the necessary findings for the current refunding, authorizing staff to make an application with the Local Government Commission and calling for a public hearing on the financing documents at the Board's regularly scheduled meeting on March 18, 2009.

#### **Suggested Motion:**

**I move the Board of Commissioners approve the attached resolution which makes the necessary findings for a current refunding of the outstanding Series 1999 Detention Center COPs debt issue; and which also authorizes staff to make an application with the Local Government Commission and calls for a public hearing on the financing documents for March 18, 2009 at 11:00 a.m.**

SAVINGS

Henderson County, North Carolina  
 Installment Financing Contract - Refunding (1999 Bds)  
 Series 2009  
 Preliminary and Subject to Change

Date	Prior Debt Service	Refunding Debt Service	Savings	Present Value to 04/01/2009 @ 3.6408249%
06/30/2009	585,775.00	551,649.80	34,125.20	33,920.60
06/30/2010	693,800.00	668,970.80	24,829.20	24,397.66
06/30/2011	671,050.00	646,843.60	24,206.40	22,918.18
06/30/2012	648,300.00	623,862.00	24,438.00	22,273.90
06/30/2013	620,550.00	596,062.40	24,487.60	21,488.47
06/30/2014	598,050.00	573,626.80	24,423.20	20,635.26
06/30/2015	575,550.00	551,373.20	24,176.80	19,668.52
06/30/2016	551,250.00	527,301.60	23,948.40	18,744.36
06/30/2017	525,937.50	501,484.80	24,452.70	18,398.10
06/30/2018	500,625.00	475,995.60	24,629.40	17,815.36
06/30/2019	475,312.50	450,834.00	24,478.50	17,021.75
	6,446,200.00	6,168,004.60	278,195.40	237,282.16

Savings Summary

PV of savings from cash flow	237,282.16
Plus: Refunding funds on hand	592.97
Net PV Savings	237,875.13

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, One Historic Courthouse Square, Hendersonville, North Carolina 28792, at 5:30 p.m. on March 2, 2009.

The following members were present:

The following members were absent:

Also present:

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 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 installment refinancing of the acquisition, construction, installation and equipping of the County detention facilities located at 375 First Avenue, East in Hendersonville, North Carolina (the "Detention Facilities"); and

**WHEREAS**, proceeds of the \$9,065,000 Certificate of Participation, Series 1999 (Henderson County Project) Evidencing Proportionate Undivided Interests in Rights to Receive Revenues Pursuant to an Installment Financing Contract (the "1999 Contract") with the County (the "1999 Certificates") were used to finance the Detention Facilities; and

**WHEREAS**, the Board now proposes to refinance the Detention Facilities through an installment financing contract (which may include an amendment to the 1999 Contract) (the "2009 Contract") with Branch Banking and Trust Company (the "Bank"), obligating the County to repay in installments the amount financed at a fixed annual interest rate of not more than 3.64% over a term not exceeding June 1, 2019, resulting in a total amount financed not to exceed \$5,400,000 (excluding reserves); and

**WHEREAS**, pursuant to N.C.G.S. Section 160A-20, the County is authorized to refinance the Detention Facilities by entering into the 2009 Contract and a deed of trust (the "Deed of Trust") that create in the Detention Facilities and the site on which they are located 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 refinance the cost of the Detention Facilities pursuant to N.C.G.S. Section 160A-20 by executing and delivering to the Bank the 2009 Contract providing for the financing of a principal amount not to exceed \$5,400,000 (excluding reserves); and

## **II. UNDERTAKINGS NECESSARY**

**WHEREAS**, the County staff has advised the Board, and the Board hereby finds and determines, that the County should refinance the 1999 Contract and prepay the outstanding 1999 Certificates in order to generate debt service savings with respect to the 1999 financing of the Detention Facilities, which enables the County to perform a part of its public functions; and

**WHEREAS**, a public hearing will be held to receive public comment on the desirability of the installment refinancing of the Detention Facilities, of which the Board received evidence supporting the need for such refinancing; and

**WHEREAS**, the Board finds and determines that the undertakings are necessary and expedient for the aforesaid reasons and that the Detention Facilities be refinanced 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 2009 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 2009 Contract are not excessive for the stated purposes of refinancing the Detention Facilities; and

## **IV. TRANSACTION A PUBLIC PURPOSE**

**WHEREAS**, the County Attorney has advised the County that the proposed refinancing of the Detention Facilities is 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 refinancing of the 1999 Contract and prepayment of the outstanding 1999 Certificates 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 unobligated fund balance to refinance the Detention Facilities and prepay the outstanding 1999 Certificates may reduce the fund below the guideline established by the LGC and would not be in the County's best interest; and

**WHEREAS**, although the cost of refinancing under the proposed 2009 Contract may be greater than the cost of general obligation bond refinancing, installment contract refinancing would be preferable to general obligation bond refinancing 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 refinancing the 1999 Contract and prepaying the outstanding 1999 Certificates is too great an amount to be funded by current appropriations; and

**WHEREAS**, the Board finds and determines that installment contract refinancing is therefore the most viable and efficient alternative and that the cost of such refinancing 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 not be significantly increased in order to sustain the proposed refinancing given that debt service savings will be realized by the County as a result of the 2009 Contract; 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 refinancing of the Detention Facilities through the refunding of the outstanding 1999 Certificates and the prepayment of the 1999 Contract, making certain findings and determinations, approving the submission of an application for approval of the 2009 Contract to the LGC and authorizing such other acts deemed necessary and advisable to carry out the refinancing of the Detention Facilities through the prepayment of the outstanding 1999 Certificates and the 1999 Contract with proceeds from the 2009 Contract.

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 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 2009 Contract providing for the refinancing of an amount not to exceed \$5,400,000 (excluding reserves) at an annual interest rate not to exceed 3.64% and a term not to exceed June 1, 2019, and otherwise proceed with the plan of refinancing of the Detention Facilities described at this meeting.

Section 2. The Chairman of the Board, the County Manager, 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 refinancing of the Detention Facilities.

Section 3. The financing team of Dewey & LeBoeuf LLP, as special counsel, and Branch Banking and Trust Company, as lender, is approved.

Section 4. This Resolution shall become effective immediately upon its adoption and shall supersede any and all previous resolutions regarding the refinancing of the Detention Facilities on an installment financing basis.

Section 5. That a public hearing (the "Public Hearing") shall be conducted by the Board of Commissioners on March [18], 2009 at 11:00 a.m. in the Commissioners' Meeting Room of the Historic Courthouse at One Historic Courthouse Square, Hendersonville, North Carolina, concerning the 2009 Contract, the Deed of Trust and the proposed refinancing of the Detention Facilities through the execution and delivery of the 2009 Contract and prepayment of the outstanding 1999 Certificates.

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 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:

AYES:

NAYS:

**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 REFINANCE THE COST OF COUNTY DETENTION FACILITIES**

NOTICE IS HEREBY GIVEN pursuant to Sections 160A-20 of the General Statutes of North Carolina, as amended, that the Henderson County Board of Commissioners (the "Board") will hold a public hearing on March 18, 2009 at 11:00 a.m. in the Commissioners' Meeting Room of the Historic Courthouse, One Historic Courthouse Square, 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 refinance the cost of the Project 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 Project and related site and property thereof under a deed of trust. The Project consisted of the acquisition, construction, installation and equipping of County detention facilities located at 375 First Avenue, East, Hendersonville, North Carolina. The cost of refinancing the Project is estimated at approximately \$5,400,000. Drafts of proposed refinancing documents are available for inspection in the office of the Finance Director. 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: March xx, 2009