

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 6 April 2009

SUBJECT: Adoption of financing resolution

ATTACHMENT(S): Proposed Extract of Minutes

SUMMARY OF REQUEST:

Before the Board is the issue of approving and authorizing the execution and delivery of the proposed installment financing contract and certain related documents and instruments under which the County would obtain financing pursuant to Section 160A-20 of the North Carolina General Statutes, as amended, for the refinancing of the acquisition, construction, installation and equipping of the County detention facilities located at 375 First Avenue, East in Hendersonville, North Carolina, including the refunding of the outstanding \$9,065,000 Certificates of Participation, Series 1999 (Henderson County Project) Evidencing Proportionate Undivided Interests in Rights to Receive Revenues Pursuant to an Installment Financing Contract with the County, as described in the notice of public hearing that was published on March 3, 2009 in the Times-News and under which the County would secure the repayment by it of moneys advanced pursuant to such installment financing contract by granting a security interest in the Detention Facilities and certain related property.

County staff will present further information on this matter.

BOARD ACTION REQUESTED:

Adoption of the financing resolution and financing documents.

If the Board is so inclined, the following motion is suggested:

I move that the Board adopt the “Resolution Approving An Installment Refinancing of Detention Facilities In Henderson County And Authorizing The Execution And Delivery Of Documents In Connection Therewith” attached to the agenda.

EXTRACTS FROM MINUTES OF BOARD OF COMMISSIONERS

The Board of Commissioners of the County of Henderson (the "County") held a regularly scheduled meeting in the Commissioners' Meeting Room at One Historic Courthouse Square in Hendersonville, North Carolina on April 6, 2009 at 5:30 p.m. The following Commissioners were:

Present: _____

Absent: _____

At 5:30 p.m., the Chairman stated that one of the purposes of the meeting was to approve and authorize the execution and delivery of the proposed installment financing contract and certain related documents and instruments under which the County would obtain financing pursuant to Section 160A-20 of the North Carolina General Statutes, as amended, for the 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"), which includes the refunding of the outstanding \$9,065,000 Certificates of Participation, Series 1999 (Henderson County Project) Evidencing Proportionate Undivided Interests in Rights to Receive Revenues Pursuant to an Installment Financing Contract with the County, as described in the notice of public hearing that was published on March 3, 2009 in the *Times-News* and under which the County would secure the repayment by it of moneys advanced pursuant to such installment financing contract by granting a security interest in the Detention Facilities and certain related property.

Thereupon, Commissioner _____ introduced the following resolution that was read by title, and moved that it be adopted.

**RESOLUTION APPROVING AN INSTALLMENT
REFINANCING OF DETENTION FACILITIES IN HENDERSON COUNTY
AND AUTHORIZING THE EXECUTION AND DELIVERY
OF DOCUMENTS IN CONNECTION THEREWITH**

WHEREAS, there have been available at this meeting substantially final drafts of the following:

- (1) A form of the Installment Financing Contract to be dated on or about April 14, 2009 (the "Contract") between Henderson County, North Carolina (the "County") and the Branch Banking and Trust Company (the "Bank");

- (2) A form of the Deed of Trust and Security Agreement to be dated on or about April 14, 2009 (the "Deed of Trust"), from the County to a trustee for the benefit of the Bank; and
- (3) A form of the Escrow Agreement to be dated on or about April 14, 2009 (the "Escrow Agreement"), by and between the County and First-Citizens Bank & Trust Company.

WHEREAS, the Board of Commissioners of the County desires to approve the proposed installment refinancing of the Detention Facilities and to authorize other actions in connection therewith;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the County as follows:

- (1) All actions heretofore taken by the County Manager, the Assistant County Manager, the Finance Director and the County Attorney effectuating the proposed installment refinancing of the Detention Facilities are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the documents referred to above.
- (2) The Board of Commissioners hereby finds and determines in connection with the Contract and the transactions contemplated thereby that (a) the Contract is necessary or expedient to the County, (b) such proposed Contract, under current circumstances, is preferable to a bond issue of the County for the same purpose, (c) the sums estimated to fall due under such Contract are adequate and not excessive for its proposed purpose, (d) the County's debt management procedures and policies are good and its debt will continue to be managed in strict compliance with the law, (e) any increase in taxes necessary to meet the sums estimated to fall due under the Contract will not be excessive and (f) the County is not in default regarding any of its debt service obligations.
- (3) Each of the Contract, the Deed of Trust and the Escrow Agreement, in the form submitted to this meeting, is hereby approved, in substantially such form and the Chairman or Vice Chairman of the Board, the County Manager, the Assistant County Manager, the Finance Director, the County Attorney and the Clerk to the Board are each hereby authorized and directed to execute and deliver each of those documents on behalf of the County, with such changes, insertions or omissions as they may approve with the advice of counsel.
- (4) Subject to the limitations set forth herein, the County Manager is hereby authorized to approve the terms of the Contract, including but not limited to, the aggregate principal amount thereof, the redemption provisions thereof and the interest rate thereon; provided that: (i) the principal amount of the Contract shall not exceed \$5,400,000; (ii) the final maturity date of the Contract shall not extend beyond June 1, 2019; and (iii) the interest rate thereof shall not exceed 3.64%.

- (5) The Chairman or Vice Chairman of the Board, the County Manager, the Assistant County Manager, the Finance Director, the Clerk to the Board, and the County Attorney are hereby authorized to take any and all such further action and to execute and deliver such other documents as may be necessary or advisable to carry out the intent of this Resolution and to effect the installment refinancing pursuant to the Contract, including, without limitation, entering into tax compliance certificates. Without limiting the generality of the foregoing, each of the County Manager and Finance Director is authorized to approve all details of the financing, including without limitation, the amount advanced under the Contract (which shall not exceed \$5,400,000), the annual payments under the Contract, the interest rate with respect to such payments, and the term of the Contract. Execution of the Contract by the Chairman or Vice Chairman of the Board or the County Manager and Finance Director shall conclusively evidence approval of all such details of the financing.

On motion of Commissioner _____, the foregoing resolution entitled "RESOLUTION APPROVING AN INSTALLMENT FINANCING OF DETENTION FACILITIES IN HENDERSON COUNTY AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS IN CONNECTION THEREWITH" was duly adopted by the following vote:

AYES:

NAYS:

This Resolution shall become effective immediately upon its adoption.

This the 6th day of April, 2009.

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: _____
William L. Moyer, Chairman

ATTESTED BY:

[SEAL]

Elizabeth W. Corn, Clerk to the Board