

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: November 2, 2009

SUBJECT: Qualified School Construction Bonds (QSCBs) Financing Resolution

ATTACHMENTS: Draft Resolution with Notice of Public Hearing

SUMMARY OF REQUEST:

The Board of Commissioner funding plan for school capital projects in the current fiscal year includes the issuance of Qualified School Construction Bonds (QSCBs) as a part of the American Recovery and Reinvestment Act (ARRA) to finance repair and renovation projects at multiple school facilities. The County and the public schools made applications to the N.C. Department of Public Instruction for QSCB funds to finance the various projects. Henderson County was awarded a total 2009 QSCB allotment of \$4,270,400.29 to finance the projects.

Staff is presenting to the Board a required resolution prepared by our bond counsel to start the QSCB issuance process for financing the school projects. The resolution makes the necessary findings for issuing the bonds and authorizes the negotiation of an installment financing contract and certain other related matters including the filing of an application with the Local Government Commission for approval.

The resolution also call for a required public hearing on the proposed financing to be held on the Board's November 18, 2009 meeting date at 11:00 a.m. and directs Staff to cause a notice of the public hearing to be published in the local newspaper.

At the time this agenda item was being prepared, only one lender in North Carolina has surfaced and offered to purchase QSCBs through calendar year 2009 from local governments via a privately-placed installment financing contract. Staff has requested a proposal from this financial institution and will provide to the Board as soon as it has been received for discussion at the meeting or at the public hearing. If local governments are unsuccessful in issuing their 2009 QSCB allotments by the end of calendar year 2009, the Department of Public Instruction has approved the rollover of these allotments to 2010.

BOARD ACTION REQUESTED:

It would be appropriate for the Board to approve the attached resolution drafted by bond counsel at today's meeting which will authorize the necessary actions to be taken to move forward with the QSCB financing and set the required public hearing for the Board's November 18th meeting at 11:00 a.m.

Suggested Motion:

I move the approval of the Resolution of the Board of Commissioners of the County of Henderson, North Carolina, authorizing the negotiation of an installment financing contract and providing for certain other related matters thereto which includes the setting of a public hearing on the proposed financing for the Board's November 18th meeting at 11:00 a.m.

EXTRACTS FROM MINUTES OF THE BOARD OF COMMISSIONERS

A regular meeting of the Board of Commissioners of the County of Henderson, North Carolina, was duly held on November 2, 2009 at 5:30 p.m. in the Commissioners' Meeting Room, Henderson County Historic Courthouse, 1 Historic Courthouse Square, Hendersonville, North Carolina. Chairman Bill Moyer presiding.

The following members were present:

William Moyer, Chairman
Charlie Messer, Vice Chairman
Larry Young
Chuck McGrady
Mark Williams

The following members were absent:

None

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Commissioner McGrady moved that the following resolution, copies of which having been made available to the Board of Commissioners, be adopted, by reading the title thereof (further reading waived without objection):

**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF HENDERSON,
NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT
FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS
THERE TO**

WHEREAS, the County of Henderson, North Carolina (the "*County*") is a validly existing political subdivision of the State of North Carolina, existing as such under and by virtue of the Constitution, statutes and laws of the State of North Carolina (the "*State*");

WHEREAS, the County has the power, pursuant to the General Statutes of North Carolina to (1) purchase real and personal property, (2) enter into installment purchase contracts in order to finance the purchase of real and personal property used, or to be used, for public purposes, and (3) grant a security interest in some or all of the property purchased to secure repayment of the purchase price;

WHEREAS, the Board hereby determines that it is in the best interest of the County to (1) enter into an Installment Financing Contract (the "*Contract*") with a financial institution to be determined (the "*Bank*") in order to pay the capital costs of various construction, repair and renovation projects at (a) Apple Valley Middle School, (b) Balfour Education Center, (c) Dana Elementary School, (d) East Henderson High School, (e) Hendersonville Elementary School, (f) North Henderson High School, (g) Rugby Middle School and (h) West Henderson High School (collectively, the "*Projects*") and (2) to enter into a deed of trust and security agreement (the "*Deed of Trust*") related to the County's fee simple interest in the real property on which Hendersonville Elementary School is located (the "*Site*") that will provide security for the County's obligations under the Contract;

WHEREAS, the County hereby determines that the acquisition of the Projects is essential to the County's proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the Projects will provide an essential use and will permit the County to carry out public functions that it is authorized by law to perform; and that entering into the Contract and Deed of Trust is necessary and expedient for the County by virtue of the findings presented herein;

WHEREAS, the County hereby determines that the Contract allows the County to purchase the Projects and take title thereto at a favorable interest rate currently available in the financial marketplace and upon terms advantageous to the County;

WHEREAS, the County hereby determines that the estimated cost of financing the acquisition of the Projects is an amount not to exceed \$4,270,400.29 and that such cost of the acquisition of the Projects exceeds the amount that can be prudently raised from currently available appropriations, unappropriated fund balances and non-voted bonds that could be issued by the County in the current fiscal year pursuant to Article V, Section 4 of the Constitution of the State;

WHEREAS, although the cost of financing the acquisition of the Projects pursuant to the Contract is expected to exceed the cost of financing the acquisition of the Projects pursuant to a bond financing for the same undertaking, the County hereby determines that the cost of financing the Projects pursuant to the Contract and Deed of Trust and the obligations of the County thereunder are preferable to a general obligation bond financing or revenue bond financing for several reasons, including but not limited to the following: (1) the cost of a special election necessary to approve a general obligation bond financing, as required by the laws of the State, would result in the expenditure of significant funds; (2) the time required for a general obligation bond election would cause an unnecessary delay which would thereby decrease the financial benefits of acquiring the Projects; and (3) no revenues are produced by the Projects so as to permit a revenue bond financing;

WHEREAS, the County has determined and hereby determines that the estimated cost of financing the Projects pursuant to the Contract reasonably compares with an estimate of similar costs under a bond financing for the same undertaking as a result of the findings delineated in the above preambles;

WHEREAS, the County does not anticipate a future property tax increase to pay installment payments falling due under the Contract;

WHEREAS, Parker Poe Adams & Bernstein LLP, as special counsel ("*Special Counsel*"), will render an opinion to the effect that entering into the Contract and the transactions contemplated thereby are authorized by law;

WHEREAS, no deficiency judgment may be rendered against the County in any action for its breach of the Contract, and the taxing power of the County is not and may not be pledged in any way directly or indirectly or contingently to secure any moneys due under the Contract;

WHEREAS, the County is not in default under any of its debt service obligations;

WHEREAS, the County's budget process and Annual Budget Ordinance are in compliance with the Local Government Budget and Fiscal Control Act, and external auditors have determined that the County has conformed with generally accepted accounting principles as applied to governmental units in preparing its Annual Budget ordinance;

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

WHEREAS, a public hearing on the Contract after publication of a notice with respect to such public hearing must be held and approval of the LGC with respect to entering the Contract must be received; and

WHEREAS, the County hereby determines that all findings, conclusions and determinations of the County in this Resolution are subject to modification or affirmation after all interested parties have been afforded the opportunity to present their comments at a public hearing regarding the execution and delivery of the Contract, the Deed of Trust and the Projects to be financed thereby.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF HENDERSON, NORTH CAROLINA, AS FOLLOWS:

Section 1. ***Authorization to Negotiate the Contract.*** That the County Manager and the Finance Director, with advice from the County Attorney and Special Counsel, are hereby authorized and directed to proceed and negotiate on behalf of the County for the financing of the Projects for a principal amount not to exceed \$4,270,400.29 under the Contract to be entered into in accordance with the provisions of Section 160A-20 of the General Statutes of North Carolina and to provide in connection with the Contract, as security for the County's obligations thereunder, the Deed of Trust conveying a lien and interest in the Site, including the improvements thereon, as may be required by the entity, or its assigns, providing the funds to the County under the Contract.

Section 2. ***Application to LGC.*** That the Finance Director or his designee is hereby directed to file with the LGC an application for its approval of the Contract and all relevant transactions contemplated thereby on a form prescribed by the LGC and to state in such application such facts and to attach thereto such exhibits regarding the County and its financial condition as may be required by the LGC.

Section 3. ***Direction to Retain Special Counsel.*** That the County Manager and the Finance Director, with advice from the County Attorney, are hereby authorized and directed to retain the assistance of Parker Poe Adams & Bernstein LLP, Charlotte, North Carolina, as special counsel.

Section 4. ***Public Hearing.*** That a public hearing (the "*Public Hearing*") shall be conducted by the Board of Commissioners on November 18, 2009 at 11:00 a.m. in the Commissioners' Meeting Room, Henderson County Historic Courthouse, Hendersonville, North Carolina, concerning the

Contract, the Deed of Trust, the proposed Projects and any other transactions contemplated therein and associated therewith.

Section 5. ***Notice of Public Hearing.*** That the Clerk to the Board is hereby directed to cause a notice of the Public Hearing, in the form attached hereto as Exhibit A, to be published once in a qualified newspaper of general circulation within the County no fewer than 10 days prior to the Public Hearing.

Section 6. ***Repealer.*** That all motions, orders, resolutions and parts thereof in conflict herewith are hereby repealed.

Section 7. ***Effective Date.*** That this Resolution is effective on the date of its adoption.

On motion of Commissioner McGrady, 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 AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO”** was duly adopted by the following vote:

AYES:

William Moyer, Chairman
Charlie Messer, Vice Chairman
Larry Young
Chuck McGrady
Mark Williams

NAYS:

None

STATE OF NORTH CAROLINA)
) SS:
COUNTY OF HENDERSON)

I, TERESA WILSON, Clerk to the Board of Commissioners of the County of Henderson, North Carolina, *DO HEREBY CERTIFY* that the foregoing is a true and exact copy of a resolution entitled **“RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF HENDERSON, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO”** adopted by the Board of Commissioners of the County of Henderson, North Carolina at a meeting held on the 2nd day of November, 2009.

WITNESS my hand and the corporate seal of the County of Henderson, North Carolina, this the 2nd day of November, 2009.

(SEAL)

Teresa Wilson
Clerk to the Board of Commissioners
County of Henderson, North Carolina

EXHIBIT A
NOTICE OF PUBLIC HEARING

At its November 2, 2009 meeting, the Board of Commissioners (the "*Board of Commissioners*") of the County of Henderson, North Carolina (the "*County*") adopted a resolution which:

1. Authorized the County to proceed to pay the capital costs of various construction, repair and renovation projects at (a) Apple Valley Middle, (b) Balfour Elementary, (c) Dana Elementary, (d) East Henderson High, (e) Hendersonville Elementary, (f) North Henderson High, (g) Rugby Middle and (h) West Henderson High (collectively, the "*Projects*"), pursuant to an installment financing contract (the "*Contract*"), in a principal amount not to exceed \$4,270,400.29 under which the County will make certain installment payments, in order to make the Projects available to the County;
2. Authorized the County to proceed to provide, in connection with the Contract, as grantor, a deed of trust and security agreement (the "*Deed of Trust*") under which the real property on which Hendersonville Elementary School is located (the "*Site*"), as set forth below, together with such other property as may be required (the "*Mortgaged Property*"), will be mortgaged by the County to create a lien thereon for the benefit of the entity, or its assigns, providing the funds to the County under the Contract.

The Site is located at 1039 Randall Circle, Hendersonville, North Carolina. The Mortgaged Property will be subject to the mortgage provided in the Deed of Trust. On payment by the County of all installment payments due under the Contract, the Deed of Trust and any lien created thereunder will terminate and the County's title to the Mortgaged Property will be unencumbered.

NOTICE IS HEREBY GIVEN, pursuant to Sections 160A-20 of the General Statutes of North Carolina, that on November 18, 2009 at 11:00 a.m. in the Commissioners' Meeting Room, Henderson County Historic Courthouse, 1 Historic Courthouse Square, Hendersonville, North Carolina, a public hearing will be conducted concerning the approval of the execution and delivery of the Contract and the County's acquisition of the Projects. All interested parties are invited to present comments at the public hearing regarding the execution and delivery of the Contract and the Projects to be financed thereby.

/s/ Teresa Wilson

Clerk to the Board of Commissioners
County of Henderson, North Carolina

Published: _____