

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: March 1, 2010

SUBJECT: Resolutions - Recovery Zone Bonds (RZEDBs) Financing and Refinancing of Prior Financing Contracts

ATTACHMENTS: Draft Resolutions with Notice of Public Hearing

SUMMARY OF REQUEST:

The Board approved a resolution in December 2009 which authorized Staff to make an application for an allocation of Recovery Zone Economic Development Bonds (RZEDBs), a financing mechanism out of the American Recovery and Reinvestment Act (ARRA), for issuance to fund \$2 million in repair and renovation projects at Blue Ridge Community College. RZEDBs are taxable bonds that have a 45 percent interest subsidy/repayment to the issuer by the federal government.

Subsequent to this initial allocation request, notification was sent out by the N.C. Department of Commerce in January 2010 that over \$298 million of unallocated RZEDBs were available for local governments to request an additional allocation, if needed. Staff responded and requested an additional allocation to fund the Apple Valley Middle School/North High School Classroom Building Project in case this funding mechanism could be utilized. Approval of this additional allocation request is currently pending.

Also, due to a currently favorable public debt market, Staff has been working with our financial advisor on the possible refunding/refinancing of the County's outstanding 2001 Certificates of Participation (COPs) and four (4) other privately placed bank installment financing contracts. The potential annual debt service savings are currently at a favorable level that is acceptable by the Local Government Commission.

Staff is presenting to the Board three (3) resolutions drafted by our bond counsel for approval. The first resolution starts the RZED bond issuance process only for financing the community college repair and renovation projects and the Apple Valley/North High classroom building project. The second resolution is for refinancing some of the County's outstanding prior financing contracts only to gain potential annual debt service savings. The last resolution is a combination of financing the RZED bonds and the refinancing together to potentially gain maximum savings.

The resolutions have been drafted by bond counsel such that depending on the debt market and savings at the time of contract execution, anticipated to be during May-June

timeframe, the County can make a decision as to whether to combine the RZED bond financing with the refinancing of prior financing contracts or not.

The resolutions makes the necessary findings for issuing the bonds and refinancing prior financing contracts while authorizing 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. Each resolution also calls for a required public hearing on the proposed financing to be held on the Board's April 5, 2010 meeting at 7:00 p.m. and directs Staff to cause a notice of the public hearing to be published in the local newspaper.

Staff will be requesting proposals from financial institutions for the RZED bond financing and will provide to the Board as soon as they are received along with potential savings from refinancing prior financing contracts for discussion at the next meeting or at the public hearing.

BOARD ACTION REQUESTED:

It would be appropriate for the Board to approve the attached resolutions drafted by bond counsel at today's meeting which will authorize the necessary actions to be taken to move forward with the RZED bond financing and the refinancing of prior financing contracts and set a required public hearing for the Board's April 5, 2010 meeting at 7:00 p.m.

Suggested Motion:

I move the approval of the Resolutions 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 April 5th meeting at 7:00 p.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 March 1, 2010 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:

The following members were absent:

None

* * * * *

Commissioner _____ 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 THERETO

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 or refinance 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 Henderson County Governmental Financing Corporation (the “*Corporation*”) or a financial institution to be determined (the “*Bank*”) in order to pay the capital costs of (a) improvements at Blue Ridge Community College consisting of (i) replacement of the Spearman Building roof and (ii) construction, repair and renovation projects at various buildings to provide HVAC/energy efficiency and safety/ADA, (b) construction of a classroom building serving both Apple Valley Middle School and North Henderson High School, including related site improvements therefor, a cafeteria addition and locker room renovations (collectively, the “*Projects*”), and (c) refinancing its installment payment obligations under (i) an installment financing contract dated as of January 15, 2001 between the County and the Corporation (the “*2001 Contract*”), (ii) a financing agreement and deed of trust dated as of February 10, 2000 (the “*2000 Contract*”), (iii) a financing agreement and deed of trust dated as of April 10, 2002 (the “*2002 Contract*”) and (iv) an installment financing contract dated as of November 27, 2006 (the “*2006 Contract*,”) and (v) an installment financing contract dated as of May 10, 2007 (the “*2007 Contract*,” and collectively with the 2001 Contract, the 2000 Contract, the 2002 Contract and the 2006 Contract, the “*Prior Contracts*”), 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 Apple Valley Middle School and North Henderson High School are located (collectively, the “*Sites*”) that will provide security for the County’s obligations under the Contract;

WHEREAS, the County hereby determines that the acquisition of the Projects and has previously determined that the acquisition of the projects financed under the Prior Contracts are essential to the County’s proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the Projects and the projects financed under the Prior Contracts will provide or are providing an essential use and will permit or are permitting 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 has been advised that it can achieve savings by refinancing the principal portion of Installment Payments due under the Prior Contracts;

WHEREAS, the County hereby determines that the Contract allows the County to (a) refinance the Prior Contracts and (b) purchase the Projects and take title thereto at a favorable interest rate currently available in the financial marketplace and on terms advantageous to the County;

WHEREAS, the County hereby determines that the estimated cost of financing the acquisition of the Projects and refinancing the Prior Contracts is an amount not to exceed \$30,000,000 and that such cost of the acquisition of the Projects and the refinancing of the Prior Contracts 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 and the refinancing of the Prior Contracts pursuant to the Contract is expected to exceed the cost of financing the acquisition of the Projects and refinancing the Prior Contracts pursuant to a bond financing for the same undertaking, the County hereby determines that the cost of financing the Projects and refinancing the Prior Contracts 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) insufficient revenues are produced by the Projects or projects financed under the Prior Contracts so as to permit a revenue bond financing;

WHEREAS, the County has determined and hereby determines that the estimated cost of financing the Projects and refinancing the Prior Contracts 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 or refinanced 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 and the refinancing of the Prior Contracts for a principal amount not to exceed \$30,000,000 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 one or both of the Sites, 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; Underwriter.*** That the County Manager and the Finance Director, with advice from the County Attorney, are hereby authorized and directed to retain the assistance of (a) Parker Poe Adams & Bernstein LLP, Charlotte, North Carolina, as special counsel and (b) Stephens, Inc., as underwriter, if the County Manager and the Finance Director determine that a public sale of the County's installment payment obligations under the Contract is advisable.

Section 4. ***Public Hearing.*** That a public hearing (the "*Public Hearing*") shall be conducted by the Board of Commissioners on April 5, 2010 at 7:00 p.m. in the Commissioners' Meeting Room, Henderson County Historic Courthouse, Hendersonville, North Carolina, concerning the Contract, the Deed of Trust, the proposed Projects, the refinancing of the Prior Contracts 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 _____, 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 PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO**" was duly adopted by the following vote:

AYES:

NAYS:

None

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

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 1st day of March, 2010.

WITNESS my hand and the corporate seal of the County of Henderson, North Carolina, this the 1st day of March, 2010.

(SEAL)

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

EXHIBIT A
NOTICE OF PUBLIC HEARING

At its March 1, 2010 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 (a) improvements at Blue Ridge Community College consisting of (i) replacement of the Spearman Building roof and (ii) construction, repair and renovation projects at various buildings to provide HVAC/energy efficiency and safety/ADA, (b) construction of a classroom building serving both Apple Valley Middle School and North Henderson High School, including related site improvements therefor, a cafeteria addition and locker room renovations (collectively, the "*Projects*"), and (c) refinancing its installment payment obligations under (i) an installment financing contract dated as of January 15, 2001 between the County and the Corporation (the "*2001 Contract*"), (ii) a financing agreement and deed of trust dated as of February 10, 2000 (the "*2000 Contract*"), (iii) a financing agreement and deed of trust dated as of April 10, 2002 (the "*2002 Contract*"), (iv) an installment financing contract dated as of November 27, 2006 (the "*2006 Contract*," and collectively with the 2001 Contract, the 2000 Contract, the 2002 Contract and the 2006 Contract, the "*Prior Contracts*"), pursuant to an installment financing contract (the "*Contract*"), in a principal amount not to exceed \$30,000,000 under which the County will make certain installment payments, in order to make the Projects and the projects financed under the Prior Contracts 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 Apple Valley Middle School or North Henderson High School or both are located (collectively, the "*Sites*"), 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.

Apple Valley Middle School is located at 43 Fruitland Road, Hendersonville, North Carolina. North Henderson High School is located at 35 Fruitland Road, 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 April 5, 2010 at 7:00 p.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 and the Prior Projects to be financed and refinanced thereby.

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

Published: _____

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 March 1, 2010 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:

The following members were absent:

None

* * * * *

Commissioner _____ 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):

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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 or refinance 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 Henderson County Governmental Financing Corporation (the “*Corporation*”) or a financial institution to be determined (the “*Bank*”) in order to pay the capital costs of refinancing its installment payment obligations under (a) an installment financing contract dated as of January 15, 2001 between the County and the Corporation (the “*2001 Contract*”), (b) a financing agreement and deed of trust dated as of February 10, 2000 (the “*2000 Contract*”), (c) a financing agreement and deed of trust dated as of April 10, 2002 (the “*2002 Contract*”), (d) an installment financing contract dated as of November 27, 2006 (the “*2006 Contract*,”) and (e) an installment financing contract dated as of May 10, 2007 (the “*2007 Contract*,” and collectively with the 2001 Contract, the 2000 Contract, the 2002 Contract and the 2006 Contract, the “*Prior Contracts*”), 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 Clear Creek Elementary School and Etowah Elementary School, the construction of both of which were financed under the 2001 Contract, are located (collectively, the “*Sites*”) that will provide security for the County’s obligations under the Contract;

WHEREAS, the County has previously determined and hereby determines that the acquisition of the projects financed under the Prior Contracts are essential to the County’s proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the projects financed under the Prior Contracts are providing an essential use and are permitting 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 has been advised that it can achieve savings by refinancing the principal portion of Installment Payments due under the Prior Contracts;

WHEREAS, the County hereby determines that the Contract allows the County to refinance the Prior Contracts at a favorable interest rate currently available in the financial marketplace and on terms advantageous to the County;

WHEREAS, the County hereby determines that the estimated cost of refinancing the Prior Contracts is an amount not to exceed \$20,500,000 and that such cost of the refinancing of the Prior Contracts 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 refinancing of the Prior Contracts pursuant to the Contract is expected to exceed the cost of refinancing the Prior Contracts pursuant to a bond financing for the same undertaking, the County hereby determines that the cost of refinancing the Prior Contracts 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) insufficient revenues are produced by projects financed under the Prior Contracts so as to permit a revenue bond financing;

WHEREAS, the County hereby determines that the estimated cost of refinancing the Prior Contracts 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 refinanced 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 refinancing of the Prior Contracts for a principal amount not to exceed \$20,500,000 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 one or both of the Sites, 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; Underwriter.*** That the County Manager and the Finance Director, with advice from the County Attorney, are hereby authorized and directed to retain the assistance of (a) Parker Poe Adams & Bernstein LLP, Charlotte, North Carolina, as special counsel and (b) Stephens, Inc., as underwriter, if the County Manager and the Finance Director determine that a public sale of the County's installment payment obligations under the Contract is advisable.

Section 4. ***Public Hearing.*** That a public hearing (the "*Public Hearing*") shall be conducted by the Board of Commissioners on April 5, 2010 at 7:00 p.m. in the Commissioners' Meeting Room, Henderson County Historic Courthouse, Hendersonville, North Carolina, concerning the Contract, the Deed of Trust, the refinancing of the Prior Contracts 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 _____, 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 PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO**" was duly adopted by the following vote:

AYES:

NAYS:

None

STATE OF NORTH CAROLINA)
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COUNTY OF HENDERSON) SS:

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 1st day of March, 2010.

WITNESS my hand and the corporate seal of the County of Henderson, North Carolina, this the 1st day of March, 2010.

(SEAL)

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

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1. Authorized the County to proceed to pay the capital costs of refinancing its installment payment obligations under (a) an installment financing contract dated as of January 15, 2001 between the County and the Corporation (the "*2001 Contract*"), (b) a financing agreement and deed of trust dated as of February 10, 2000 (the "*2000 Contract*"), (c) a financing agreement and deed of trust dated as of April 10, 2002 (the "*2002 Contract*"), (d) an installment financing contract dated as of November 27, 2006 (the "*2006 Contract*," and (e) an installment financing contract dated as of May 10, 2007 (the "*2007 Contract*," and collectively with the 2001 Contract, the 2000 Contract, the 2002 Contract and the 2006 Contract, the "*Prior Contracts*"), pursuant to an installment financing contract (the "*Contract*"), in a principal amount not to exceed \$20,500,000 under which the County will make certain installment payments, in order to make the projects financed under the Prior Contracts 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 Clear Creek Elementary School and Etowah Elementary School or both are located (collectively, the "*Sites*"), 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.

Clear Creek Elementary School is located at [737 North Clear Creek Road](#), Hendersonville, North Carolina. Etowah Elementary School is located at 320 Etowah School Road, Etowah, 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 April 5, 2010 at 7:00 p.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 refinancing of the acquisition of the projects financed under the Prior Contracts. 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 refinanced thereby.

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

Published: _____

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The following members were present:

The following members were absent:

None

* * * * *

Commissioner _____ 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):

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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 Henderson County Governmental Financing Corporation (the “*Corporation*”) or a financial institution to be determined (the “*Bank*”) in order to pay the capital costs of (a) improvements at Blue Ridge Community College consisting of (i) replacement of the Spearman Building roof and (ii) construction, repair and renovation projects at various buildings to provide HVAC/energy efficiency and safety/ADA, and (b) construction of a classroom building serving both Apple Valley Middle School and North Henderson High School, including related site improvements therefor, a cafeteria addition and locker room renovations (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 Apple Valley Middle School and North Henderson High School are located (collectively, the “*Sites*”) 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 on 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 \$9,500,000 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 \$9,500,000 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 one or both of the Sites, 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; Underwriter.*** That the County Manager and the Finance Director, with advice from the County Attorney, are hereby authorized and directed to retain the assistance of (a) Parker Poe Adams & Bernstein LLP, Charlotte, North Carolina, as special counsel and (b) Stephens, Inc., as underwriter, if the County Manager and the Finance Director determine that a public sale of the County's installment payment obligations under the Contract is advisable.

Section 4. **Public Hearing.** That a public hearing (the “*Public Hearing*”) shall be conducted by the Board of Commissioners on April 5, 2010 at 7:00 p.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 _____, 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 PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO**” was duly adopted by the following vote:

AYES:

NAYS:

None

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

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 1st day of March, 2010.

WITNESS my hand and the corporate seal of the County of Henderson, North Carolina, this the 1st day of March, 2010.

(SEAL)

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

EXHIBIT A
NOTICE OF PUBLIC HEARING

At its March 1, 2010 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 of (a) improvements at Blue Ridge Community College consisting of (i) replacement of the Spearman Building roof and (ii) construction, repair and renovation projects at various buildings to provide HVAC/energy efficiency and safety/ADA, and (b) construction of a classroom building serving both Apple Valley Middle School and North Henderson High School, including related site improvements therefor, a cafeteria addition and locker room renovations (collectively, the "*Projects*"), pursuant to an installment financing contract (the "*Contract*"), in a principal amount not to exceed \$9,500,000 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 Apple Valley Middle School or North Henderson High School or both are located (collectively, the "*Sites*"), 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.

Apple Valley Middle School is located at 43 Fruitland Road, Hendersonville, North Carolina. North Henderson High School is located at 35 Fruitland Road, 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 April 5, 2010 at 7:00 p.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: _____