

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: November 16, 2011

SUBJECT: Solid Waste Capital Improvements Projects Financing

PRESENTER: J. Carey McLelland, Finance Director

ATTACHMENTS: Financing Resolution – Solid Waste Capital Improvements Projects

SUMMARY OF REQUEST:

The Board of Commissioners approved a funding plan for the Solid Waste Capital Improvements Projects which included financing \$2 million of the \$3.95 million project budget. A public hearing has been held on the financing as required N.C. General Statutes, a financing application has been mailed to the Local Government Commission (LGC) for approval, and the Board has previously approved a financing proposal from BB&T Governmental Finance to provide the \$2 million in funding to be financed for 15 years at a not to exceed interest rate of 3.20 percent.

Staff is presenting the attached, final financing resolution drafted by bond counsel to complete the installment contract financing for these projects. The LGC will be considering this financing for approval at their December 6th meeting and closing on the loan with BB&T is scheduled to take place on December 9th.

BOARD ACTION REQUESTED:

Request that the Board approve the attached resolution that will approve a financing agreement and deed of trust which have been reviewed by our bond counsel to provide for the acquisition, construction, furnishing and equipping of solid waste capital improvements projects and other related matters.

Suggested Motion:

I move the approval of the Resolution of the Board of Commissioners of the County of Henderson, North Carolina approving a financing agreement and deed of trust to provide for the acquisition, construction, furnishing and equipping of certain projects set forth therein and related matters.

A regular meeting of the Board of Commissioners of the County of Henderson, North Carolina, was duly held on November 16, 2011 at 9:00 a.m. in the Commissioners' Meeting Room, Henderson County Historic Courthouse, 1 Historic Courthouse Square, Hendersonville, North Carolina. Chairman J. Michael Edney presiding.

The following members were present:

The following members were absent:

* * * * *

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 COUNTY OF HENDERSON, NORTH CAROLINA APPROVING A FINANCING AGREEMENT AND DEED OF TRUST TO PROVIDE FOR THE ACQUISITION, CONSTRUCTION, FURNISHING AND EQUIPPING OF CERTAIN PROJECTS SET FORTH THEREIN AND RELATED MATTERS

WHEREAS, the County of Henderson, North Carolina (the "*County*") is a political subdivision validly existing under the Constitution, statutes and laws of the State (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 to finance the purchase or improvement 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 or improved to secure repayment of the purchase price;

WHEREAS, the Board of Commissioners of the County (the "*Board*") has previously determined, and hereby further determines, that it is in the best interest of the County to pay the capital costs of construction of a new scalehouse (the "*Scalehouse*") and a new recycling convenience center, construction of road improvements (the "*Road Improvements*") related to an existing solid waste transfer

station and the new recycling convenience center and acquisition of related equipment (the "*Equipment*") (collectively, the "*Project*");

WHEREAS, the County has determined that it would be in the best interest of the County to enter into a Financing Agreement and Deed of Trust dated on or about December 9, 2011 (the "*Agreement*") between the County and Branch Banking and Trust Company (the "*Bank*") for an advance of \$2,000,000 to be repaid over a term of 15 years at an interest rate of 3.20% in order to pay the capital costs of the Project and to provide a security interest in the real property on which the Scalehouse will be located (the "*Mortgaged Property*") and in the Road Improvements and the Equipment;

WHEREAS, there has been described to the Board the form of the Agreement, a copy of which has been made available to the Board, which the Board proposes to approve, enter into and deliver, as applicable, to effectuate the proposed installment financing;

WHEREAS, it appears that the Agreement is in an appropriate form and is an appropriate instrument for the purposes intended;

WHEREAS, the Board did conduct a public hearing on September 21, 2011, to receive public comment on the proposed Agreement and the Project; and

WHEREAS, the County has filed an application to the LGC for approval of the Agreement;

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

Section 1. ***Ratification of Actions.*** All actions of the County, the Chairman of the Board (the "*Chairman*"), the Clerk to the Board (the "*Clerk*"), the County Manager, the Finance Director of the County (the "*Finance Director*"), the County Attorney and their respective designees, whether previously or hereinafter taken, in effectuating the proposed financing are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the Agreement.

Section 2. ***Authorization to Execute the Agreement.*** The County approves the acquisition of the Project in accordance with the terms of the Agreement, which will be a valid, legal and binding obligation of the County in accordance with its terms. The form and content of the Agreement are hereby in all respects authorized, approved and confirmed, and the Chairman, the Clerk and the County Manager, and their respective designees, are hereby authorized, empowered and directed to execute and deliver the Agreement, including necessary counterparts, in substantially the form and content presented to the Board, but with such changes, modifications, additions or deletions therein as they may deem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of the County's approval of any and all changes, modifications, additions or deletions therein from the form and content of the Agreement presented to the Board, and that from and after the execution and delivery of the Agreement, the Chairman, the Clerk, the County Manager and the Finance Director are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Agreement as executed.

Section 3. ***Bank Qualification.*** The County has not issued or effected the issuance of, and reasonably anticipates that it shall not issue or effect the issuance of less than \$10,000,000 of tax-exempt obligations during the 2011 calendar year, and hereby designates the Agreement as a "qualified tax-exempt obligation," as defined by Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

Section 4. **County Representative.** The Chairman, the County Manager and the Finance Director are hereby designated as the County's Representative to act on behalf of the County in connection with the transactions contemplated by the Agreement, and the Chairman, the County Manager and the Finance Director are authorized to proceed with the acquisition of the Project in accordance with the Agreement and to seek opinions as a matter of law from the County Attorney, which the County Attorney is authorized to furnish on behalf of the County, and opinions of law from such other attorneys for all documents contemplated hereby as required by law. The County's representative and/or designee or designees are in all respects authorized on behalf of the County to supply all information pertaining to the County for use in the transactions contemplated by the Agreement. The County's representatives are hereby authorized, empowered and directed to do any and all other acts and to execute any and all other documents, which they, in their discretion, deem necessary and appropriate to consummate the transactions contemplated by the Agreement or as they deem necessary or appropriate to implement and carry out the intent and purposes of this Resolution.

Section 5. **Severability.** If any section, phrase or provision of this Resolution is for any reason declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

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

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

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 titled **“RESOLUTION OF THE COUNTY OF HENDERSON, NORTH CAROLINA APPROVING A FINANCING AGREEMENT AND DEED OF TRUST TO PROVIDE FOR THE ACQUISITION, CONSTRUCTION, FURNISHING AND EQUIPPING OF CERTAIN PROJECTS SET FORTH THEREIN AND RELATED MATTERS”** adopted by the Board of Commissioners of the County of Henderson, North Carolina in regular session convened on the 16th day of November, 2011, as recorded in the minutes of the Board of Commissioners of the County of Henderson, North Carolina.

WITNESS, my hand and the seal of the County of Henderson, North Carolina, this the ___ day of November, 2011.

(SEAL)

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