

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: 3 October 2016

SUBJECT: Initial Resolution for Funding

PRESENTER: Charles Russell Burrell

ATTACHMENT(S): Proposed Resolution; Proposed Extract from Minutes

SUMMARY OF REQUEST:

Proposed is the approval by the Board for staff and the financing team to seek and negotiate an installment financing contract with Henderson County Governmental Financing Corporation, to finance the construction of the proposed Innovative High School project to be located on the campus of Blue Ridge Community College, and the reimbursement to the County of the costs of land acquisition for land previously used for economic development purposes.

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Approval of the Resolution.

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

I move that the Board adopt the "Resolution . . . Authorizing the Negotiation of an Installment Financing Contract and Providing for Certain Other Related Matters Thereto".

**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 Henderson County Governmental Financing Corporation (the "*Corporation*") in order to pay the capital costs of (a) the acquisition, construction and equipping of an innovative high school in Flat Rock, North Carolina to be used jointly by the Henderson County Board of Public Education and Blue Ridge Community College (the "*Innovative High School*") and (b) the acquisition of approximately 52 acres of land located in Ferncliff Industrial Park in the Town of Mills River, North Carolina for economic development purposes (the "*Land Acquisition*" and, collectively with the Innovative High School, the "*Project*"), and (2) to enter into a deed of trust, security agreement and fixture filing (the "*Deed of Trust*") related to the County's fee simple interest in certain real property on which the Innovative High School will be located (the "*Site*") that will provide security for the County's obligations under the Contract;

WHEREAS, the County hereby determines that the acquisition, construction and equipping of the Project is essential to the County's proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the Project 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 Project 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, construction and equipping of the Project is an amount not to exceed \$21,500,000, and that such cost of the acquisition, construction and equipping of the Project 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, construction and equipping of the Project pursuant to the Contract is expected to exceed the cost of financing the acquisition, construction and equipping of the Project pursuant to a bond financing for the same undertaking, the County hereby determines that the cost of financing the acquisition, construction and equipping of the Project pursuant to the Contract and the 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, constructing and equipping the Project; and (3) no revenues are produced by the Project so as to permit a revenue bond financing;

WHEREAS, the County has determined and hereby determines that the estimated cost of financing the acquisition, construction and equipping of the Project 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 ("*Bond 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 money 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 and the Deed of Trust and the Project to be financed.

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 Bond Counsel, are hereby authorized and directed to proceed and negotiate on behalf of the County for the financing of the acquisition, construction and equipping of the Project for a principal amount not to exceed \$21,500,000 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, a 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 Bond Counsel, Financial Advisor and Underwriters.*** 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 bond counsel; Stephens Inc., Charlotte, North Carolina, as financial advisor; and PNC Capital Markets LLC, Charlotte, North Carolina, and Robert W. Baird & Co., Winston-Salem, North Carolina, as underwriters.

Section 4. ***Public Hearing.*** That a public hearing (the "*Public Hearing*") shall be conducted by the Board of Commissioners on October 19, 2016 at 9:00 a.m. in the Commissioners' Meeting Room, Henderson County Historic Courthouse, Hendersonville, North Carolina, concerning the Contract, the Deed of Trust, the proposed Project 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 14 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.

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 October 3, 2016 at 5:30 p.m. in the Commissioners' Meeting Room, Henderson County Historic Courthouse, 1 Historic Courthouse Square, Hendersonville, North Carolina. Chairman Thomas H. Thompson presiding.

The following members were present:

The following members were absent:

None

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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
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 Henderson County Governmental Financing Corporation (the "*Corporation*") in order to pay the capital costs of (a) the acquisition, construction and

equipping of an innovative high school in Flat Rock, North Carolina to be used jointly by the Henderson County Board of Public Education and Blue Ridge Community College (the "*Innovative High School*") and (b) the acquisition of approximately 52 acres of land located in Ferncliff Industrial Park in the Town of Mills River, North Carolina for economic development purposes (the "*Land Acquisition*" and, collectively with the Innovative High School, the "*Project*"), and (2) to enter into a deed of trust, security agreement and fixture filing (the "*Deed of Trust*") related to the County's fee simple interest in certain real property on which the Innovative High School will be located (the "*Site*") that will provide security for the County's obligations under the Contract;

WHEREAS, the County hereby determines that the acquisition, construction and equipping of the Project is essential to the County's proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the Project 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 Project 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, construction and equipping of the Project is an amount not to exceed \$21,500,000, and that such cost of the acquisition, construction and equipping of the Project 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, construction and equipping of the Project pursuant to the Contract is expected to exceed the cost of financing the acquisition, construction and equipping of the Project pursuant to a bond financing for the same undertaking, the County hereby determines that the cost of financing the acquisition, construction and equipping of the Project pursuant to the Contract and the 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, constructing and equipping the Project; and (3) no revenues are produced by the Project so as to permit a revenue bond financing;

WHEREAS, the County has determined and hereby determines that the estimated cost of financing the acquisition, construction and equipping of the Project 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 ("*Bond 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 money 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 and the Deed of Trust and the Project to be financed.

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 Bond Counsel, are hereby authorized and directed to proceed and negotiate on behalf of the County for the financing of the acquisition, construction and equipping of the Project for a principal amount not to exceed \$21,500,000 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, a 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 Bond Counsel, Financial Advisor and Underwriters.*** 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 bond counsel; Stephens Inc., Charlotte, North Carolina, as financial advisor; and PNC Capital Markets LLC, Charlotte, North Carolina, and Robert W. Baird & Co., Winston-Salem, North Carolina, as underwriters.

Section 4. **Public Hearing.** That a public hearing (the "*Public Hearing*") shall be conducted by the Board of Commissioners on October 19, 2016 at 9:00 a.m. in the Commissioners' Meeting Room, Henderson County Historic Courthouse, Hendersonville, North Carolina, concerning the Contract, the Deed of Trust, the proposed Project 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 14 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:

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 3rd day of October, 2016.

WITNESS my hand and the corporate seal of the County of Henderson, North Carolina, this the 3rd day of October, 2016.

(SEAL)

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

EXHIBIT A
NOTICE OF PUBLIC HEARING

At its October 3, 2016 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) the acquisition, construction and equipping of an innovative high school in Flat Rock, North Carolina to be used jointly by the Henderson County Board of Public Education and Blue Ridge Community College (the "*Innovative High School*") and (b) the acquisition of approximately 52 acres of land located in Ferncliff Industrial Park in the Town of Mills River, North Carolina for economic development purposes (the "*Land Acquisition*" and, collectively with the Innovative High School, the "*Project*"), pursuant to an installment financing contract (the "*Contract*"), in a principal amount not to exceed \$21,500,000 under which the County will make certain installment payments in order to make the Project available to the County;
2. Authorized the County to proceed to provide, in connection with the Contract, as grantor, a deed of trust, security agreement and fixture filing (the "*Deed of Trust*") under which certain real property on which the Innovative High School will be located (the "*Site*"), as set forth below (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 Innovative High School will be located on approximately 3.33 acres off East Campus Drive near its intersection with College Drive, in Flat Rock, 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. The Project will be owned by the County and leased to Blue Ridge Community College and the Henderson County Board of Public Education.

Any person wishing to comment in writing on the proposed execution and delivery of the Contract and the nature and location of the Project should do so within 14 days after the date of publication of this notice to the Finance Director of the County, Henderson County Historic Courthouse, 113 North Main Street, Hendersonville, North Carolina 28792, Attention: Finance Director.

NOTICE IS HEREBY GIVEN, pursuant to Sections 160A-20 of the General Statutes of North Carolina, that on October 19, 2016 at 9:00 a.m. in the Commissioners' Meeting Room, Henderson County Historic Courthouse, 1 Historic Courthouse Square, Hendersonville, North Carolina 28792, a public hearing will be conducted concerning the approval of the execution and delivery of the Contract and the County's the acquisition, construction and equipping of the Project. All interested parties are invited to present comments at the public hearing regarding the execution and delivery of the Contract and the Project to be financed thereby.

/s/ Teresa Wilson

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

Published: _____, 2016