

REQUEST FOR BOARD ACTION

HENDERSON COUNTY  
BOARD OF COMMISSIONERS

**PUBLIC HEARING  
TO CONSIDER  
FINAL APPROVAL OF THE FINANCING CONTRACT FOR THE  
INNOVATIVE HIGH SCHOOL PROJECT  
19 October 2016 at 9:00 o'clock a.m.**

ATTACHMENT(S): Proposed Resolution (contained in the form of proposed Board minute extract)

SUMMARY:

A public hearing has been scheduled on 19 October 2016 in the above matter.

At the conclusion of the public hearing, the Board may choose to take action, delay action to a subsequent meeting, or take no action.

Notice of this public hearing was published on October 5, 2016, stating that the Board would hold a public hearing at 9:00 a.m. on October 19, 2016 to receive public comments on the proposed execution and delivery by the County of (1) an installment financing contract in a principal amount not to exceed \$21,500,000 (the "Contract"), the proceeds of which would be used to finance (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) a deed of trust, security agreement and fixture filing (the "Deed of Trust") under which the County would grant a lien on the County's fee simple interest in the real property on which the Innovative High School will be located, together with the improvements thereon, as may be required for the benefit of the entity providing the funds to the County under the Contract.

**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 19, 2016 at 9:00 a.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:

\* \* \* \* \*

Officials of the County of Henderson, North Carolina (the “*County*”) reported to the Board of Commissioners of the County (the “*Board*”) that notice of a public hearing was published on October 5, 2016, stating that the Board would hold a public hearing at 9:00 a.m. on October 19, 2016 to receive public comments on the proposed execution and delivery by the County of (1) an installment financing contract in a principal amount not to exceed \$21,500,000 (the “*Contract*”), the proceeds of which would be used to finance (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) a deed of trust, security agreement and fixture filing (the “*Deed of Trust*”) under which the County would grant a lien on the County’s fee simple interest in the real property on which the Innovative High School will be located, together with the improvements thereon, as may be required for the benefit of the entity providing the funds to the County under the Contract.

The Chairman of the Board then announced that the Board would hear anyone who wished to be heard on the questions of the proposed Contract, the Deed of Trust and the Project to be financed thereby.

[No one spoke at the public hearing.]

Commissioner \_\_\_\_\_ moved that the public hearing be closed. The motion was unanimously adopted.

After the closing of the public hearing, 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, APPROVING AN INSTALLMENT FINANCING CONTRACT AND  
PROVIDING FOR CERTAIN OTHER 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 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 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 that it is in the best interest of the County to enter into an Installment Financing Contract dated as of December 1, 2016 (the “*Contract*”) with the Henderson County Governmental Financing Corporation (the “*Corporation*”) in order to (1) finance (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) pay certain costs incurred in connection with the execution and delivery of the Project;

*WHEREAS*, to secure its obligations under the Contract, the County will execute and deliver a Deed of Trust, Security Agreement and Fixture Filing dated as of December 1, 2016 (the “*Deed of Trust*”), granting a lien on the County’s fee simple interest in the real property on which the Innovative High School will be located, together with the improvements thereon;

*WHEREAS*, the Corporation will execute and deliver an aggregate principal amount not to exceed \$21,500,000 of its Limited Obligation Bonds, in one or more series (collectively, the “*Bonds*”), each evidencing proportionate undivided interests in rights to receive certain Revenues (as defined in the Contract) pursuant to the Contract;

WHEREAS, in connection with the sale of the Bonds to PNC Capital Markets LLC and Robert W. Baird & Co. (collectively, the “*Underwriters*”), the Corporation will enter into a Contract of Purchase to be dated on or about December 14, 2016 (the “*Purchase Contract*”) between the Corporation and the Underwriters relating to the Bonds, and the County will execute a Letter of Representation to the Underwriters (the “*Letter of Representation*”);

WHEREAS, there have been described to the Board the forms of the following documents (collectively, the “*Instruments*”), copies of which have been made available to the Board, which the Board proposes to approve, enter into and deliver, as applicable, to effectuate the proposed installment financing:

- (1) the Contract;
- (2) the Deed of Trust;
- (3) an Indenture of Trust dated as of December 1, 2016 (the “*Indenture*”) between the Corporation and U.S. Bank National Association, as trustee; and
- (3) the Letter of Representation.

WHEREAS, to make an offering and sale of the Bonds, there will be prepared a Preliminary Official Statement with respect to the Bonds (the “*Preliminary Official Statement*”), a draft thereof having been presented to the Board, and a final Official Statement relating to the Preliminary Official Statement (together with the Preliminary Official Statement, the “*Official Statement*”), which Official Statement will contain certain information regarding the County;

WHEREAS, it appears that each of the Instruments and the Preliminary Official Statement is in an appropriate form and is an appropriate instrument for the purposes intended;

WHEREAS, the Board has conducted a public hearing on this date to receive public comment on the proposed Contract and the transactions contemplated thereby; and

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

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

Section 1. ***Ratification of Instruments.*** 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, 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 Instruments.

Section 2. ***Authorization of the Official Statement.*** The form, terms and content of the Preliminary Official Statement are in all respects authorized, approved and confirmed, and the use of the Preliminary Official Statement and of the final Official Statement by the Underwriters in connection with the sale of the Bonds is hereby in all respects authorized, approved and confirmed. The Chairman, the County Manager and the Finance Director are each hereby authorized and directed, individually and collectively, to deliver, on behalf of the County, the Official Statement in substantially such form, with such changes, insertions and omissions as each may approve.

Section 3. ***Authorization to Execute the Contract.*** The County approves the financing of the Project in accordance with the terms of the Contract, which will be a valid, legal and binding obligation of the County in accordance with its terms. The form and content of the Contract are hereby in all respects authorized, approved and confirmed, and the Chairman, the Clerk, the County Manager and the Finance Director and their respective designees are hereby authorized, empowered and directed, individually and collectively, to execute and deliver the Contract, 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 Contract presented to the Board. From and after the execution and delivery of the Contract, the Chairman, the Clerk, the County Manager and the Finance Director are hereby authorized, empowered and directed, individually and collectively, 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 Contract as executed.

Section 4. ***Authorization to Execute the Deed of Trust.*** The County approves the form and content of the Deed of Trust, and the Deed of Trust is in all respects authorized, approved and confirmed. The Chairman, the Clerk, the County Manager, the Finance Director and their respective designees are hereby authorized, empowered and directed, individually and collectively, to execute and deliver the Deed of Trust, including necessary counterparts, in substantially the form and content of the Deed of Trust 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 Deed of Trust presented to the Board. From and after the execution and delivery of the Deed of Trust, the Chairman, the Clerk, the County Manager and the Finance Director are hereby authorized, empowered and directed, individually and collectively, 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 Deed of Trust as executed.

Section 5. ***Letter of Representation.*** The form and content of the Purchase Contract are hereby approved in all respects, and the County Manager or the Finance Director is authorized to execute the Letter of Representation for the purposes stated therein.

Section 6. ***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 Instruments and the Preliminary Official Statement, and the Chairman, the County Manager and the Finance Director are authorized, individually and collectively, to proceed with the transactions contemplated by the Contract in accordance with the Instruments 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 by this Resolution as required by law. The County's representatives or designees are in all respects authorized on behalf of the County to supply all information pertaining to the County for use in the Official Statement and the transactions contemplated by the Instruments or the Preliminary Official Statement. The County's representatives or their respective designees are hereby authorized, empowered and directed, individually and collectively, to do any and all other acts and to execute any and all other documents which they, in their discretion, deem necessary or appropriate to consummate the transactions contemplated by the Instruments or the Preliminary Official Statement or as they deem necessary or appropriate to implement and carry out the intent and purposes of this Resolution. Without limiting the foregoing, the Finance Director is hereby authorized and directed to select one or more financial institutions to serve as an additional Underwriter for the Bonds if the Finance Director determines, in his

discretion, that such an appointment is necessary or appropriate to implement and carry out the intent and purposes of this Resolution.

Section 7. *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 8. *Repealer.* All motions, orders, resolutions and parts thereof, in conflict herewith are hereby repealed.

Section 9. *Effective Date.* This Resolution is effective on the date of its adoption.

On motion of Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, the foregoing resolution entitled **“RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF HENDERSON, NORTH CAROLINA, APPROVING AN INSTALLMENT FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS”** was duly adopted by the following vote:

AYES:

NAYS:

