

REQUEST FOR BOARD ACTION

HENDERSON COUNTY  
BOARD OF COMMISSIONERS

**PUBLIC HEARING  
TO CONSIDER  
FINAL APPROVAL OF THE FINANCING CONTRACT FOR THE  
EDNEYVILLE SCHOOL CONSTRUCTION PROJECT  
21 February 2018 at 9:00 o'clock a.m.**

ATTACHMENT(S): Proposed resolution approving financing (contained in the form of proposed Board minute extract)

SUMMARY:

A public hearing has been scheduled on 21 February 2018 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.

The Board gave notice that this hearing would be conducted concerning the approval of the execution and delivery of the Financing Contract and the County's the acquisition, construction and equipping of the Project. Under the proposal, the County would pay the capital costs of acquisition, construction and equipping of a new Edneyville Elementary School, located at 2875 Pace Road, and related facilities, including a possibly a sanitary sewer system serving the school and the surrounding area (collectively, the "Project"), pursuant to an installment financing contract (the "Contract"), in a principal amount not to exceed \$29,000,000 under which the County will make certain installment payments in order to make the Project available to the County.

**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 February 21, 2018 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:

\* \* \* \* \*

The Finance Director 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 February 7, 2018, stating that the Board would hold a public hearing at 9:00 a.m. on February 21, 2018 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 \$29,000,000 (the "*Contract*"), the proceeds of which would be used to finance the acquisition, construction and equipping of a new Edneyville Elementary School and related facilities, including possibly a sanitary sewer system serving the school and the surrounding area (collectively, 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 Project 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.

[Summary of public comment.]

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 June 1, 2018 (the “*Contract*”) with the Henderson County Governmental Financing Corporation (the “*Corporation*”) in order to (1) finance the acquisition, construction and equipping of a new Edneyville Elementary School and related facilities, including a sanitary sewer system serving the school and the surrounding area (collectively, 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 June 1, 2018 (the “*Deed of Trust*”), granting a lien on the County’s fee simple interest in the real property on which the Project will be located, together with the improvements thereon;

*WHEREAS*, the Corporation will execute and deliver an aggregate principal amount not to exceed \$29,000,000 of its Limited Obligation Bonds (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 (the “*Underwriter*”), the Corporation will enter into a Contract of Purchase to be dated on or about May 24, 2018 (the “*Purchase Contract*”) between the Corporation and the Underwriter relating to the Bonds, and the County will execute a Letter of Representation to the Underwriter (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 June 1, 2018 (the “*Indenture*”) between the Corporation and U.S. Bank National Association, as trustee; and
- (3) the Purchase Contract and 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 Underwriter 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. ***Purchase Contract and 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. 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 Letter of Representation, including necessary counterparts, in substantially the form and content of the Letter of Representation 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 Letter of Representation presented to the Board. From and after the execution and delivery of the Letter of Representation, 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 Letter of Representation as executed.

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 \_\_\_\_\_, 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:

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, APPROVING AN INSTALLMENT FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS**” adopted by the Board of Commissioners of the County of Henderson, North Carolina at a meeting held on the 21st day of February, 2018.

*WITNESS* my hand and the corporate seal of the County of Henderson, North Carolina, this the \_\_\_\_\_ day of February, 2018.

(SEAL)

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

**EXHIBIT A  
NOTICE OF PUBLIC HEARING**

At its February 5, 2018 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 acquisition, construction and equipping of a new Edneyville Elementary School and related facilities, including a sanitary sewer system serving the school and the surrounding area (collectively, the "*Project*"), pursuant to an installment financing contract (the "*Contract*"), in a principal amount not to exceed \$29,000,000 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 new Edneyville Elementary 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 new Edneyville Elementary School will be located at 2875 Pace Road, Hendersonville, North Carolina 28792. 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 Henderson County Board of Public Education.

*NOTICE IS HEREBY GIVEN*, pursuant to Sections 160A-20 of the General Statutes of North Carolina, that on February 21, 2018 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: February 7, 2018



**001 LEGALS**

**NOTICE OF PUBLIC HEARING**

At its February 5, 2018 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 acquisition, construction and equipping of a new Edneyville Elementary School and related facilities, including a sanitary sewer system serving the school and the surrounding area collectively the "Project", pursuant to an installment financing contract (the "Contract"), in a principal amount not to exceed \$50,000,000 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 promulgated by a deed of trust, security agreement and future financing (the "Deed of Trust") under which certain real property on which the new Edneyville Elementary 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 new Edneyville Elementary School will be located at 7875 Pace Road, Hendersonville, North Carolina 28792. 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 Henderson County Board of Public Education.

NOTICE IS HEREBY GIVEN pursuant to Sections 140A.20 of the General Statutes of North Carolina, that on February 21, 2018 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 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.

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

Published: February 7th, 2018

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**CREDITORS NOTICE**

Having qualified as Administrator of the Estate of Lou Eben Hammond, deceased, of Henderson County, North Carolina, this is to notify all persons, firms and corporations having claims against said estate to present them to the undersigned in writing on or before May 07, 2018 or this notice will be filed in bar of their recovery. All persons, firms and corporations indebted to said estate will make settlement of once to the undersigned.

This the 6th day of February, 2018.