

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: September 22, 2010

SUBJECT: Resolution – Installment Contract Financing for the New Law Enforcement Center and Former Health Department Renovation Projects

ATTACHMENTS: Draft Resolution with Notice of Public Hearing

SUMMARY OF REQUEST:

Staff is presenting to the Board a required resolution prepared by our bond counsel to start the installment contract financing process for financing the New Law Enforcement Center and Former Health Department Renovation Projects. The resolution makes the necessary findings for financing the projects and authorizes 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.

The resolution also calls for a required public hearing on the proposed financing to be held on the Board's October 4, 2010 meeting date at 7:00 p.m. and directs Staff to cause a notice of the public hearing to be published in the local newspaper.

The Board has not yet approved a construction contract for renovations to the former Health Department Building, and as a result, the amount shown in the attached resolution is subject to change.

Staff has requested proposals for financing the two projects and will present the results to the Board at its October 4th meeting.

BOARD ACTION REQUESTED:

It would be appropriate for the Board to approve the attached resolution drafted by bond counsel at tonight's meeting which will authorize the necessary actions to be taken to move forward with the installment contract financing process and set the required public hearing for the Board's October 4th meeting at 7:00 p.m.

Suggested Motion:

I move the approval of the 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 which includes the setting of a public hearing on the proposed financing for the Board's October 4th 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 September 22, 2010 at 9:00 a.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

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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 a financial institution to be determined

(the “*Bank*”) in order to pay the capital costs of construction of a new law enforcement center (the “*Law Enforcement Center*”) and the renovation of an existing County facility for use as a development services center (collectively, the “*Project*”), 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 the Law Enforcement Center 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 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 of the Project is an amount not to exceed \$8,000,000 and that such cost of the acquisition 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 of the Project pursuant to the Contract is expected to exceed the cost of financing the acquisition of the Project pursuant to a bond financing for the same undertaking, the County hereby determines that the cost of financing the Project 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 and constructing 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 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 (“*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 project 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 Project for a principal amount not to exceed \$8,000,000 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 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 Special Counsel.*** 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 special counsel.

Section 4. ***Public Hearing.*** That a public hearing (the "*Public Hearing*") shall be conducted by the Board of Commissioners on October 4, 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 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 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 22nd day of September, 2010.

WITNESS my hand and the corporate seal of the County of Henderson, North Carolina, this the 22nd day of September, 2010.

(SEAL)

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

EXHIBIT A
NOTICE OF PUBLIC HEARING

At its September 22, 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 new law enforcement center (the "*Law Enforcement Center*") and the renovation of an existing County facility for use as a development services center (collectively, the "*Project*"), pursuant to an installment financing contract (the "*Contract*"), in a principal amount not to exceed \$8,000,000 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 and security agreement (the "*Deed of Trust*") under which the real property on which the Law Enforcement Center 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 Project will be located at 100 N. Grove Street, 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 October 4, 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 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: _____