

## MINUTES

**STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS  
NOVEMBER 2, 2009**

The Henderson County Board of Commissioners met for a regularly scheduled meeting at 5:30 p.m. in the Commissioners' Meeting Room of the Historic Courthouse on Main Street, Hendersonville.

Those present were: Chairman Bill Moyer, Vice-Chairman Charlie Messer, Commissioner Larry Young, Commissioner Chuck McGrady, County Manager Steve Wyatt, Assistant County Manager Selena Coffey, Attorney Russell Burrell, and Clerk to the Board Teresa L. Wilson.

Also present were: Finance Director Carey McLelland, Code Enforcement Director Toby Linville, Planning Director Anthony Starr, Engineer Marcus Jones, Tax Assessor/Collector Stan Duncan, Research/Budget Analyst Amy Brantley, PIO Christy DeStefano, and Associate County Attorney Sarah Zambon.

Absent was: Commissioner Mark Williams.

### CALL TO ORDER/WELCOME

Chairman Moyer called the meeting to order and welcomed all in attendance.

### PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the American Flag was led by Meredith Jones of The Ruby's 4-H.

### INVOCATION

County Manager Steve Wyatt gave the invocation.

### INFORMAL PUBLIC COMMENTS

Tryon Mayor Alan Peoples recognized the work of Staff from the Henderson County Parks & Recreation Department and the Henderson County Sheriff's Department. He had hosted the 1A, 3A and 3A Cross Country Regional's at Jackson Park the prior Saturday during extreme rain and Henderson County staff worked from 9:00 a.m. until 4:30 p.m. and did an outstanding job.

### DISCUSSION/ADJUSTMENT OF AGENDA

*Commissioner McGrady made the motion to adopt the agenda as presented. All voted in favor and the motion carried.*

### CONSENT AGENDA

*Commissioner McGrady made the motion to adopt the consent agenda as presented. All voted in favor and the motion carried.*

Consent Agenda consisted of the following:

#### **Minutes**

Draft minutes were presented for board review and approval of the following meetings(s):

- October 13, 2009 – Special Called Meeting
- October 21, 2009 – Regularly Scheduled Meeting

#### **Tax Collector's Report**

Deputy Tax Collector Carol McCraw had presented the Tax Collector's Report to the Commissioners dated October 23, 2009 for information only. No action was required.

DATE APPROVED: November 18, 2009

**Financial Report/Cash Balance Report – September 2009**

Provided for the Board’s review and approval were the September 2009 Financial Report and Cash Balance Report.

The Following are explanations for departments with higher budget to actual percentages for the month of September.

- Finance – annual software maintenance contract expense incurred in 1<sup>st</sup> quarter
- Fire Marshal – worker’s compensation premium/fire district(s) contracts
- Rescue Squad – first quarter FY2010 non-profit contribution/vehicle fuel and maintenance
- HOME Program – payments to Housing Assistance Corp. for Homebuyer’s Assistance Program to be reimbursed from the City of Asheville

The Travel & Tourism Fund YTD deficit of \$8,594 is the result of lower occupancy tax collections due to the current local economy and reduced room rates being offered for stays.

The Emergency 911 Communications Fund YTD deficit of \$104,538 is from encumbered funds from the scheduled replacement of Computer-aided Dispatch (CAD) servers in the 911 Center due to age. This equipment replacement was budgeted in FY2010 and is paid entirely from 911 telephone surcharge funds.

The YTD deficit in the CDBG – The Warm Company Project Grant Fund is due to the timing difference between the expenditure of funds and subsequent reimbursement from the federal government.

The YTD deficit in the Immigration and Customs Enforcement (ICE) Fund is due to the timing difference between the expenditure of funds and subsequent reimbursement from the federal government.

The YTD deficit of \$2,995 in the Edneyville Park Project is equipment purchased for the new community center that has been requested from and will be reimbursed from the State PARTF Grant.

The ongoing YTD deficits reported in the Public School System Repair Projects and the North High/Apple Valley HVAC Water Pipe Repair Project will be reimbursed from future FY2010 financing proceeds.

The YTD deficit in the Solid Waste Landfill Fund is temporary and due to the July and August invoices for waste hauling to the Palmetto Landfill being paid in the month of September.

Suggested Motion:

*I move that the Board of Commissioners approves the September 2009 County Financial Report and Cash Balance Report as presented.*

**Henderson County Public Schools Financial Reports – September 2009**

Provided were the Henderson County Public Schools September 2009 Financial Reports for the Board’s information.

Staff requested that the Board consider approving the School System’s September 2009 Financial Reports as presented.

Suggested Motion:

*I move that the Board of Commissioners approves the September 2009 Henderson County Public Schools Financial Reports as presented.*

**Quarterly Schools Maintenance Report**

Included in the agenda packet were several pages of the Schools Quarterly Maintenance Report. The expenditures are summarized in the report received.

Staff presented this material for the Board's information only. No specific Board action is requested.

**Resolution – Non-Profit Recognition Month**

The Non-Profit community of Henderson County has requested that the Board of Commissioners adopts the provided Resolution proclaiming the month of November locally as Non-Profit Recognition Month. A copy of the resolution is attached hereto and incorporated as a part of the minutes.

Suggested Motion:

*I move the Board of Commissioners adopts the Resolution as presented, proclaiming the month of November as Non-Profit Recognition Month.*

**Resolution – Henderson County Red Cross Day**

Mike Williams, with the Henderson County Chapter of the American Red Cross, has requested that the Board of Commissioners adopts the provided Resolution establishing November 18 as Henderson County's Red Cross Day. A copy of the resolution is attached hereto and incorporated as a part of the minutes.

Suggested Motion:

*I move the Board of Commissioners adopts the Resolution as presented, establishing November 18 as Henderson County's Red Cross Day.*

**Proclamation – Human Rights Day**

The Human Relations Council of Henderson County has requested that the Board of Commissioners declares December 10, 2009 as Human Rights Day in Henderson County in recognition of the 61<sup>st</sup> anniversary of the adoption of the Universal Declaration of Human Rights by the United Nations. A copy of the resolution is attached hereto and incorporated as a part of the minutes.

Suggested Motion:

*I move the Board of Commissioners adopts the Proclamation as presented, proclaiming December 10, 2009 as Human Rights Day in Henderson County.*

**12<sup>th</sup> Annual Henderson county Benefit Toy Run Parade Day Proclamation**

The 2009 Henderson County Benefit Toy Run Parade Day has been scheduled for Saturday, November 21, 2009. The provided proclamation sets aside this day as Henderson County Benefit Toy Run Parade Day. A copy of the proclamation is attached hereto and incorporated as a part of the minutes.

Suggested Motion:

*I move the Board adopts the proclamation as presented, proclaiming November 21, 2009 as The 2009 Henderson County Benefit Toy Run Parade Day.*

**Qualified School Construction Bonds (QSCBs) Financing Resolution**

The Board of Commissioner funding plan for school capital projects in the current fiscal year includes the issuance of Qualified School Construction Bonds (QSCBs) as a part of the American Recovery and Reinvestment Act (ARRA) to finance repair and renovation projects at multiple school facilities. The County and the public schools made applications to the N.C. Department of Public Instruction for QSCB funds to finance the various projects. Henderson County was awarded a total 2009 QSCB allotment of \$4,270,400.29 to finance the projects.

Staff presented to the Board a required resolution prepared by out bond counsel to start the QSCB issuance process for financing the school projects. The resolution makes the necessary findings for issuing the bonds 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. A copy of the resolution is attached hereto and incorporated as a part of the minutes.

The resolution also calls for a required public hearing on the proposed financing to be held on the Board's November 18, 2009 meeting date at 11:00 a.m. and directs Staff to cause a notice of the public hearing to be published in the local newspaper.

At the time this agenda item was being prepared, only one lender in North Carolina has surfaced and offered to purchase QSCBs through calendar year 2009 from local governments via a privately-placed installment financing contract. Staff has requested a proposal from this financial institution and will provide to the Board as soon as it has been received for discussion at the meeting or at the public hearing. If local governments are unsuccessful in issuing their 2009 QSCB allotments by the end of calendar year 2009, the Department of Public Instruction has approved the rollover of these allotments to 2010.

**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 November 18<sup>th</sup> meeting at 11:00 a.m.*

**Purchase of Used Excavator for Solid Waste**

The Solid Waste Division has received three bids for a used, late model, rubber tired excavator. ASC Construction Equipment, Inc., of Mills River submitted the lowest bid, \$108,000. The machine is a Volvo EW160B with 1,162 hours of service and power-train warranty through June 15, 2010. The dealer has offered to extend the warranty for an additional twelve months at no extra charge.

Currently, the Division removes excess waste from overloaded trailers with the existing excavator. This large, track type machine is inappropriate for such use. The practice causes damage to the contractor's trailers and creates excessive litter on site. The proposed machine will be equipped with a smaller attachment, reducing the exposure of damage to the trailers. Additionally, the rubber tired design of the proposed excavator will allow the unloading of extra weight in trailers to take place in the transfer station. This will eliminate the litter problem caused by the current method.

The Solid Waste Enterprise Fund FY 2010 budget included \$110,000 for the purchase of this machine.

**Suggested Motion:**

*I move that the Board authorizes the County Engineer to purchase the used EW160 excavator from ASC Construction Equipment of Mills River at a purchase price of \$108,000.*

**Purchase of Replacement Loader for the Transfer Station**

The Solid Waste Division has received six bids for a new replacement for the loader used in the Stoney Mountain Transfer Station. The bids ranged from \$134,644 to \$180,549.00.

Staff recommends rejecting the low bid from Interstate Equipment Company for a JCB 426-HT Loader for failing to meet significant specifications. The engine and transmission are not manufactured by the equipment manufacturer, as call for in the specifications. The turning radius is 18% larger than the specifications. This causes concern in the tight quarters of the transfer station. The specific warranty is an option costing \$4,850. Other specifications of concern were no locking front axle, weaker electrical

system, limited ingress/egress, and the door does not swing out of the operator's vision when open. Other discrepancies were minor.

The Caterpillar bid from Carolina for the 930H met almost all specifications. No discrepancies should effect operation. The rated horsepower is 149, when the specification called for 150. There are grease fittings on the drive shaft and there is no 4<sup>th</sup> gear in reverse. High speed in reverse is not desirable. Other discrepancies were also minor.

The Solid Waste Division has rented a Caterpillar 930G for the last three years and has had satisfactory service. Replacement with the updated mode should provide satisfactory service.

Caterpillar offers an optional attachment coupler for \$5,070. The couple on the base bid is similar or equal to the coupler on all six bids offered. The design of the standard coupler has been problematic in the transfer station operation. The optional upgrade should address the maintenance issues we have experienced with the standard version.

The Solid Waste Fund FY2010 budget included \$172,795.00 for the purchase of this machine.

**Suggested Motion:**

*I move that the Board authorizes the County Engineer to purchase the Caterpillar 930H Loader with the Fusion Coupler upgrade from Carolina CAT of Asheville at a purchase price of \$148,698 and the optional coupler for \$5,070.*

**Lease with Henderson County Partnership for Economic Development, Inc.**

A draft document was provided leasing a part of the premises at the former Carnegie Library (until recently leased to the Greater Hendersonville Chamber of Commerce) to the Henderson County Partnership for Economic Development, Inc.

**Suggested Motion:**

*I move the Board approves the draft lease with Henderson county Partnership for Economic Development, Inc.*

**NOMINATIONS**

**Nominations**

1. CJPP (Criminal Justice Partnership Program) – 2 vac.

There were no nominations at this time so this item was rolled to the next meeting.

2. Downtown Hendersonville Inc. – 2 vac.

There were no nominations at this time so this item was rolled to the next meeting.

3. Historic Resources Commission – 1 vac.

There were no nominations at this time so this item was rolled to the next meeting.

4. Jury Commission – 1 vac.

Chairman Moyer nominated Leslie Coker for position #1 as recommended by Clerk of Court Kim Gasperson-Justice. *Commissioner McGrady made the motion to appoint Leslie Coker to position #1. Chairman Moyer made the motion to accept the appointment of Leslie Coker to position #1 by acclamation. All voted in favor and the motion carried.*

5. Juvenile Crime Prevention Council – 9 vac.

There were no nominations at this time so this item was rolled to the next meeting.

6. Senior Volunteer Services Advisory Council – 1 vac.

There were no nominations at this time so this item was rolled to the next meeting.

**ABANDONED MANUFACTURED HOME REMOVAL PROGRAM**

NCDENR has allocated funding for the removal of abandoned manufactured homes throughout the state. Each county can request reimbursement for the removal of up to 25 homes at \$1000 per home. Henderson County will contract with local companies to remove these homes and then request a reimbursement from the state of NC.

Code Enforcement Director Toby Linville provided a power-point presentation with the following information:

- House Bill 1134 granted Division of Pollution Prevention and Environmental Assistance program to fund removal of abandoned homes across NC at \$1000 per home through the Solid Waste Management Trust Fund
- Henderson County joined program through Solid Waste Management Plan in May 2009
- Publicity to identify low-income property owners who qualify for assistance
- County will contract with private companies and seek reimbursement from NC.

§130A-309.113 Management of abandoned Manufactured homes.

Plan: Notify property owner through Nuisance procedures

- A method by which the county proposes to identify abandoned manufactured homes in the county: Complaint driven or owner request
- A plan for the deconstruction of these abandoned manufactured homes: Contracted Service
- A plan for the removal including mercury switches from the thermostats, for reuse or recycling, as appropriate: Staff removes switches for Household Hazardous Waste. Contractor recycles as much metal as possible
- A plan for the proper disposal of abandoned manufactured homes that are not deconstructed under subdivision (2) of this subsection: N/A
- Authority to Contract – A county may contract with private entity
- Fee Authority – A unit of local government or a party that contracted with the county under subsection (b) of this section may charge a disposal fee for the disposal of any abandoned manufactured home at a landfill pursuant to this Part.
- An intact abandoned manufactured home shall not be disposed of in a landfill (2008-136, s.1.)
  - Eligible recipients based on Income Level
  - Manufactured home park owners ineligible
  - Owner must unhook all utilities and remove contents
  - Staff responsible for removing mercury switches
  - Contractor must document landfill fees and recycling weight

The following information is provided by the Department of Housing (HUD)

Income Definition	Percent (%) of Area Median Income (\$52,500)	Annual Income (\$)	Monthly Income (\$)	30 Percent of Monthly Income (\$)	Fair Market Rent as a Percent (%) of Maximum Affordable Rent
Low	>50 to 80	26,251 to 42,000	2,188 to 3,500	656 to 1,050	106% to 66%
Very low	>30 to 50	15,751 to 26,250	1,320 to 2,188	394 to 656	176% to 106%
Extremely low	<30	0 to 15,750	0 to 1,320	0 to 394	176% or more

DPPEA – Division of Pollution Prevention and Environmental Assistance

AMH Grant Program Application Requirements:

- Number of units intended to be managed
- Process of identifying AMH responsible parties
- Description of the process for recovery of funds from responsible parties
- Plan for meeting basic recycling requirements
- Plan for removal and proper management of mercury thermostats
- Plan for management of white goods/tires and other banned materials
- Expected local program revenues generated from zoning fees, tipping, or other fees
- Implementation timeline for overall AMH program
- Identification of abandoned units
- Deconstruction of units
- Program budget identifying key costs elements

Mr. Linville asked the Board if they wished to proceed with the grant, how to set the income limit, and how the Board would suggest covering cost above the grant. He has spoken with a few companies that do this kind of work and have shown interest. The companies have stated they cannot do this kind of work for \$1000 and would need to collect somewhere between \$1500 and \$2000 per home removal depending on the materials being removed and the location. Therefore the property owner or the County will have to absorb the overage.

Chairman Moyer noted there are issues involved with the nuisance ordinance with homes in the County that need to be disposed of and the property owner must do something. \$1000 would be a great help.

Mr. Linville was aware of approximately ten (10) low income folks that have homes on their property and could benefit from the program. The grant would be good for up to twenty-five (25) home removals. He was not aware if the 10 folks would have the funds to pay the difference between the cost and the grant.

The Board discussed concern of how to pay the overage.

Assistant County Manager Selena Coffey addressed the Board and explained based on situations the prior year, \$5,000 had been placed in the Code Enforcement FY09-10 budget for helping in cases such as this.

County Manager Steve Wyatt suggested requiring the individuals to do some of the labor and also suggested packaging the 10 as a group which might make it more attractive to a contractor. Mr. Wyatt stated it would be necessary for folks to substantiate their income level.

Mr. Linville felt that a hybrid model could be done for the folks who can't afford the removal and the County would pick up the difference, and the folks that don't qualify and must pay the remainder.

Commissioner Messer questioned if there is a place in Henderson County where the mobile homes could be placed for recycling.

*Commissioner McGrady made the motion that the Board of Commissioners approves the Henderson County abandoned Manufactured Housing Removal Program as presented, and direct staff to suggest an appropriate way to fund based on income and bring the information back before the Board. All voted in favor and the motion carried.*

#### **ENGINEER SELECTION SOLID WASTE CAPITAL IMPROVEMENTS**

Marcus Jones stated as directed by the Board with approval of the subject projects, Engineering staff solicited engineering firms to perform the design and construction administration for the Capital

Improvement to the County's Solid Waste facilities.

In accordance with NC General Statute 143-64.31 (Procurement of Architectural, Engineering, and Surveying Services), staff developed a Request for Qualifications (RFQ) and posted it on the County's website. The responses were received by October 16, 2009 and the following firms submitted Statements of Qualifications: Civil Design Concepts, Golder Associates, Joyce Engineering, and McGill & Associates.

A detailed review of the firms was conducted by the selection committee based on the criteria established within the RFQ. The selection criteria are as follows: Project Team, Project Experience, Project Approach, Relationship with Funding / Regulatory Agency and Customer Service. The selection committee consisted of Marcus Jones (County Engineer) and Will Sagar (Solid Waste Manager). McGill & Associates was selected by the committee as the most qualified. McGill's direct, successful experience with Henderson County solid Waste was the most significant criteria leading to their recommendation. This direct experience will be important in meeting the aggressive schedule needed to bid the project during the favorable construction environment.

*Commissioner Young made the motion that the Board authorizes the selection of McGill & Associates as the most qualified responding Engineering firm to conduct the design and construction administration for the approved Solid Waste Capital Improvements. All voted in favor and the motion carried.*

#### **UPDATE ON WNC LIVE MARKET CENTER**

Commissioner Messer had attended a beef cattle commission meeting and the top item on the agenda was the WNC Live Market Center. At the meeting a detailed update was received and the center should be in operation no later than May 2010 or possibly by April 2010.

#### **STAFF REPORTS**

##### **County Attorney's Report**

There was nothing further at this time.

##### **County Manager's Report**

Mr. Wyatt reminded the Board that a public hearing would need to be scheduled as part of the requirement of the QSCBs (Qualified School Construction Bonds) and suggested November 18 at 11:00 a.m.

#### **IMPORTANT DATES**

*Commissioner McGrady made the motion that the Board schedules a public hearing on the Qualified School Construction Bonds for November 18 at 11:00 a.m. All voted in favor and the motion carried.*

Chairman Moyer reminded the Board of the Hillandale Elementary School dedication scheduled for Sunday, November 8 at 3:00 p.m. and the Mills River School dedication scheduled for Sunday, November 15 at 3:00 p.m.

Chairman Moyer and staff have been working together, looking at the agenda in hopes of cancelling the mid month meeting of December 16. He referred to the County Manger's memo in regards to scheduling a planning workshop in January and asked the Board to look at their calendars for consideration of dates.

#### **CANE CREEK WATER & SEWER DISTRICT - no business**

#### **CLOSED SESSION- none**

#### **ADJOURN**



November 2, 2009

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*There being no further business Commissioner McGrady made the motion to adjourn at 6:00 p.m. All voted in favor and the motion carried.*

ATTEST:

\_\_\_\_\_  
Teresa L. Wilson, Clerk to the Board

\_\_\_\_\_  
William L. Moyer, Chairman

**HENDERSON COUNTY TAX DEPARTMENT**  
**Collector's Office**  
**200 North Grove Street**  
**Suite 66**  
**Hendersonville, NC 28792**

Phone: 828/697-5595

Fax: 828/698-6153

www.hendersoncountync.org/tc/

Stan C. Duncan  
Tax Collector & County Assessor

Sandy Allison  
Administrative Assistant II

October 23, 2009

Henderson County Board of Commissioners  
1 Historic Courthouse Square; Suite 1  
Hendersonville, NC 28792

Re: Tax Collector's Report to Commissioners – 11/02/09 Meeting

Please find outlined below collections information through October 22nd for the 2009 bills mailed out on August 5<sup>th</sup>, as well as registered motor vehicle bills. As a point of reference, we also have included collections information as of the same date last year.

Annual Bills G01 Only:

2009 Total Charge \$56,983,299.18  
Payments & Releases: 11,567,238.70  
Unpaid Taxes: 45,416,060.48  
**Percentage collected: 20.30%**  
(through 10/22/09)

2008 Total Charge: \$55,799,742.45  
Payments & Releases: 10,779,372.23  
Unpaid Taxes: 45,020,370.22  
**Percentage Collected: 19.32%**  
(through 10/22/08)

Motor Vehicle Bills G01 Only:

2009 Total Charge: \$1,786,820.98  
Payments & Releases: 1,291,223.25  
Unpaid Taxes: 495,597.73  
**Percentage collected: 72.26%**  
(through 10/22/09)

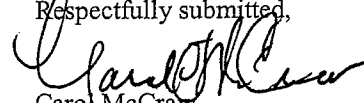
2008 Total Charge: \$1,911,186.64  
Payments & Releases: 1,357,107.31  
Unpaid Taxes: 554,079.33  
**Percentage collected: 71.01%**  
(through 10/22/08)

Fire Districts All Bills

2009 Total Charge: \$6,328,565.18  
Payments & Releases: 1,379,642.10  
Unpaid Taxes: 4,948,923.08  
**Percentage collected: 24.74%**  
(through 10/22/09)

2008 Total Charge: \$6,256,550.64  
Payments & Releases: 1,309,097.92  
Unpaid Taxes: 4,947,452.72  
**Percentage collected: 23.98%**  
(through 10/22/08)

Respectfully submitted,

  
Carol McCraw,  
Deputy Tax Collector

Stan C. Duncan,  
Tax Collector

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

## LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into this the 2<sup>nd</sup> day of November, 2009, and effective 1 December 2009, by and between HENDERSON COUNTY, hereinafter "the Lessor" and THE HENDERSON COUNTY PARTNERSHIP FOR ECONOMIC DEVELOPMENT, INC., hereinafter "the Lessee";

### WITNESSETH:

WHEREAS the Lessee desires to lease, and the Lessor desires to let, the space more particularly described below for operation by the Lessee as its office and headquarters; and,

WHEREAS the parties hereto have mutually agreed to the terms of this Lease Agreement as hereinafter set out;

NOW THEREFORE in consideration of the premises and the promises and covenants contained in the terms and conditions hereinafter set forth, Lessor does hereby rent, lease, and demise unto Lessee for and during the term and under the terms and conditions hereinafter set forth those premises or office space, with all rights, privileges, and appurtenances thereto belonging, lying, and being in the City of Hendersonville, County of Henderson, North Carolina, and more particularly described as follows:

BEING approximately the upper floor (hereinafter "Suite 1") of those premises owned by the Lessor and located at 330 North King Street, Hendersonville, Henderson County, North Carolina, plus the non-exclusive use of the common rest rooms and kitchen of such premises located on the lower floor thereof.

### TERMS AND CONDITIONS

1. TERM. The Lessee shall have said lease premises for a term of five (5) years and seven months; commencing on the 1st day of December 2009 or as soon thereafter as possession of the leased premises is ceded to Lessee, and terminating on the 30<sup>th</sup> day of June, 2015. Either party must give the other party written notice of the termination of this lease by not later than 30 June 2014. Should no such notice be timely given, then this lease shall be automatically renewed for a term of one year. This automatic renewal shall further occur from year to year, on the terms stated hereinbelow, unless at least one year's written notice of non-renewal is given.

Notwithstanding the term hereof and effective date of this Lease, the Lessee shall be allowed entry into the premises for purposes of evaluation and renovation (so long as the same is approved by the Lessor, which approval shall not be unreasonably withheld) prior to 1 December 2009.

2. INITIAL ANNUAL RENT. The Lessee shall pay to the Lessor as rental for said premises the annual sum of Seventeen Thousand Dollars (\$17,000.00), payable quarter-annually, with each installment due within five (5) days of the Lessee receiving each quarter-annual installment of its budget appropriation from the Lessor. This annual rent shall be modified annually each July by the same amount as the increase or decrease in the United States Bureau of Labor Consumer Price Index for Urban Consumers ("CPI") calculated as of the end of the month of April prior the July modification. However, the first such modification shall not be occur or be effective until July, 2011. No annual increase hereunder shall exceed three percent (3%). It is anticipated that

the Lessor's annual appropriation to the Lessee will be modified in like amount with the annual rent increase or decrease.

3. INCLUDED AMENITIES. The Lessor shall furnish to the Lessee during the lease term at Lessor's sole cost and to the satisfaction of the Lessee the following:
  - a. Lessor to provide required fire extinguishers and servicing, pest control, and outside trash disposal including provision for the handling of recyclable items such as aluminum cans, cardboard, and paper;
  - b. No utilities;
  - c. Lessor expressly does not covenant that the leased premises are accessible to persons with disabilities.
4. MAINTENANCE. During the Lease term, the Lessor shall keep the leased premises in good repair and tenantable condition, to the end that all facilities are kept in an operative condition. The Lessor reserves the right to enter and inspect the leased premises at reasonable times, and to make necessary repairs to the premises.
5. UTILITIES. Lessee shall pay to the Lessor an additional monthly payment representing one-half of all utilities payments for the structure located at 330 North King Street, Hendersonville, North Carolina.
6. CONDITION OF LEASED PREMISES. It is understood and agreed that Lessee has had a reasonable opportunity to inspect the leased premises, and that the leased premises are in a condition satisfactory to the Lessee.
7. ADDITION OF STRUCTURES OR FIXTURES. The Lessee shall have the right during the existence of this lease, with the Lessor's prior consent, to make alterations, attach fixtures, and erect additions, structures, or signs in or upon the leased premises. Such fixtures, additions, structures, or signs so placed in or upon or attached to the leased premises under this lease or any prior lease of which this lease is an extension or renewal shall be and shall become the property of the Lessor at the termination of this lease or any renewal or extension thereof.
8. DAMAGE TO PREMISES. If the said premises be destroyed by fire or other casualty, without fault of the Lessee, this lease shall immediately terminate and the rent shall be apportioned to the time of the damage. In case of partial destruction or damage by fire or other casualty without fault of the Lessee, so as to render the premises untenable in whole or in part, there shall be an apportionment of the rent until the damage has been repaired. During such period of repair, Lessee shall have the right to obtain similar office space at the expense of the Lessee or the Lessee may terminate the lease by giving fifteen (15) days written notice to the Lessor.
9. INSURANCE. The Lessor shall obtain and maintain casualty insurance insuring the building containing the leased premises (but not the contents thereof), and shall have the Lessee named as an additional insured on such insurance. The Lessee shall obtain and maintain casualty insurance insuring its contents located or to be located in the leased premises, and shall have the Lessor named as an additional insured on such insurance.
10. DAMAGES. Lessor shall be liable to Lessee for any loss or damages suffered by Lessee which are a direct result of the failure of Lessor to perform an act required by this lease, and provided that Lessor could reasonably have complied with said requirement.

11. TERMINATION OF LEASE. Upon termination of this lease, the Lessee will peaceably surrender the leased premises in as good order and condition as when received, reasonable use, and wear and damage by fire, war, riots, insurrection, public calamity, by the elements, by act of God or by circumstances over which Lessee had no control or for which Lessor is responsible pursuant to this lease, excepted. The Lessee shall have no duty to remove any improvement or fixture place by it on the premises or to restore any portion of the premises altered by it. In the event Lessee elects to remove his improvements or fixtures and such removal causes damage or injury to the demised premises, Lessee will repair only to the extent of any such damage or injury.

12. NOTICES. All notices herein provided to be given or which may be given by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified, and postage prepaid and addressed as follows:

LESSOR	LESSEE
c/o County Attorney 1 Historic Courthouse Square, Suite 5 Hendersonville, NC 28792	330 North King Street, Suite 1 Hendersonville, NC 28792

Nothing herein contained shall preclude the giving of such notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice.

13. ASSIGNMENT. The Lessee shall not assign this lease without written consent of the Lessor, which shall not be unreasonably withheld but shall have the right to sublet the leased premises.

14. FREE FROM ADVERSE CLAIMS. The Lessor agrees that the Lessee upon keeping and performing the covenants and agreements herein contained shall at all times during the existence of this lease peaceably and quietly have, hold, and enjoy the leased premises free from the adverse claims of any person.

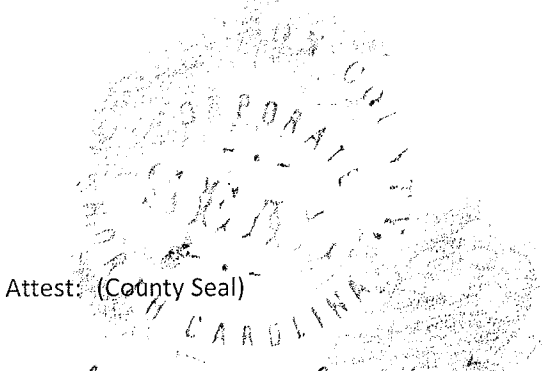
15. WAIVER, MODIFICATION, CANCELLATION. The failure of either party to insist in any instance upon strict performance of any of the terms and conditions herein set forth shall not be construed as a waiver of the same in any other instance. No modification of any provision hereof and no cancellation or surrender hereof shall be valid unless in writing and signed and agreed to by both parties.

16. RELIANCE ON FUNDING. The parties to this lease agree and understand that the continuation of this Lease Agreement for the term set forth herein or any extension or renewal thereof, is dependent upon and subject to the appropriation, allocation, or availability of funds for this purpose to the agency of the Lessee responsible for payment of said rental. The parties to this lease also agree that in the event the agency of the Lessee or that body responsible for the appropriation of said funds, in its sole discretion, determines in view of its total local office operations that available funding for the payments of rents is insufficient to continue the operation of its local office on the premises leased herein, the Lessee may choose to terminate the lease agreement set forth herein by giving Lessor written notice of said termination and the lease agreement shall terminate immediately without any further liability to Lessee.

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In witness hereof, all parties have caused this Lease Agreement to be duly approved, and to be executed in duplicate, each to have the force and effect of an original.



Attest: (County Seal)

Teresa L. Wilson  
Teresa Wilson, Clerk to the Board

(Corporate Seal)

HENDERSON COUNTY

BY: [Signature]  
William Moyer, Chairman  
Henderson County Board of Commissioners

THE HENDERSON COUNTY PARTNERSHIP FOR ECONOMIC DEVELOPMENT, INC.

BY: \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

(Corporate Seal)

**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 November 2, 2009 at 5:30 p.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:

William Moyer, Chairman  
Charlie Messer, Vice Chairman  
Larry Young  
Chuck McGrady

The following members were absent:

Mark Williams

\*

\*

\*

\*

\*

Commissioner McGrady 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 various construction, repair and renovation projects at (a) Apple Valley Middle School, (b) Balfour Education Center, (c) Dana Elementary School, (d) East Henderson High School, (e) Hendersonville Elementary School, (f) North Henderson High School, (g) Rugby Middle School and (h) West Henderson High School (collectively, the "*Projects*") 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 Hendersonville Elementary School is 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 Projects is essential to the County's proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the Projects 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 Projects and take title thereto at a favorable interest rate currently available in the financial marketplace and upon terms advantageous to the County;

*WHEREAS*, the County hereby determines that the estimated cost of financing the acquisition of the Projects is an amount not to exceed \$4,270,400.29 and that such cost of the acquisition of the Projects 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 Projects pursuant to the Contract is expected to exceed the cost of financing the acquisition of the Projects pursuant to a bond financing for the same undertaking, the County hereby determines that the cost of financing the Projects 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 the Projects; and (3) no revenues are produced by the Projects so as to permit a revenue bond financing;

*WHEREAS*, the County has determined and hereby determines that the estimated cost of financing the Projects 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 Projects 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 Projects for a principal amount not to exceed \$4,270,400.29 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 November 18, 2009 at 11:00 a.m. in the Commissioners' Meeting Room, Henderson County Historic Courthouse, Hendersonville, North Carolina, concerning the

Contract, the Deed of Trust, the proposed Projects 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 McGrady, 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 AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO**” was duly adopted by the following vote:

AYES:

William Moyer, Chairman  
Charlie Messer, Vice Chairman  
Larry Young  
Chuck McGrady

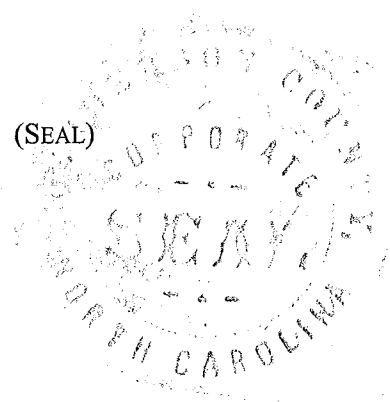
NAYS:

None

STATE OF NORTH CAROLINA            )  
  )     SS:  
COUNTY OF HENDERSON                )

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 2<sup>nd</sup> day of November, 2009.

*WITNESS* my hand and the corporate seal of the County of Henderson, North Carolina, this the 2<sup>nd</sup> day of November, 2009.



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

**EXHIBIT A**  
**NOTICE OF PUBLIC HEARING**

At its November 2, 2009 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 various construction, repair and renovation projects at (a) Apple Valley Middle, (b) Balfour Elementary, (c) Dana Elementary, (d) East Henderson High, (e) Hendersonville Elementary, (f) North Henderson High, (g) Rugby Middle and (h) West Henderson High (collectively, the "*Projects*"), pursuant to an installment financing contract (the "*Contract*"), in a principal amount not to exceed \$4,270,400.29 under which the County will make certain installment payments, in order to make the Projects 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 Hendersonville Elementary School is located (the "*Site*"), as set forth below, together with such other property as may be required (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 Site is located at 1039 Randall Circle, 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 November 18, 2009 at 11:00 a.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 Projects. All interested parties are invited to present comments at the public hearing regarding the execution and delivery of the Contract and the Projects to be financed thereby.

/s/ Teresa Wilson

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

Published: November 6, 2009

# HENDERSON COUNTY BOARD OF COMMISSIONERS

1 Historic Courthouse Square, Suite #1  
Hendersonville, NC 28792  
Phone (828) 697-4808 • Fax (828) 698-4443  
TDD: (828) 697-4580  
[www.hendersoncountync.org](http://www.hendersoncountync.org)

BILL MOYER  
Chairman  
CHARLIE MESSER  
Vice-Chairman

CHUCK MCGRADY  
MARK WILLIAMS  
LARRY YOUNG

## PROCLAMATION 12<sup>TH</sup> ANNUAL HENDERSON COUNTY BENEFIT TOY RUN PARADE DAY

WHEREAS, Henderson County area motorcyclists have banded together to actively promote a positive image of motorcyclists through community support; and,

WHEREAS, the motorcyclists recognize that many families need assistance in order to ensure a happy holiday season for their children; and

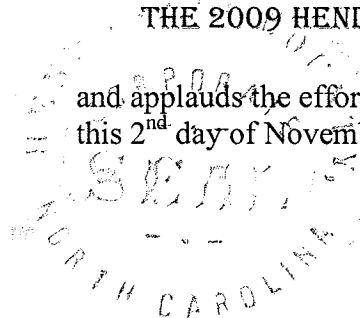
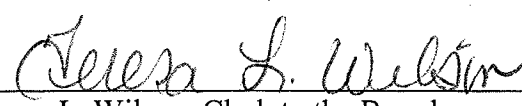
WHEREAS, toys provided in this annual parade have helped ensure a happy holiday season for hundreds of children throughout Western North Carolina;

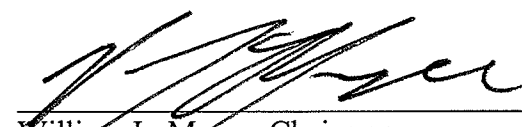
NOW THEREFORE BE IT PROCLAIMED that the Henderson County Board of Commissioners does hereby proclaim Saturday, November 21, 2009 as

THE 2009 HENDERSON COUNTY BENEFIT TOY RUN PARADE DAY

and applauds the efforts of those who participate in this charitable event. Adopted this 2<sup>nd</sup> day of November, 2009.

Attest:

  
  
Teresa L. Wilson, Clerk to the Board

  
William L. Moyer, Chairman

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BILL MOYER  
Chairman  
CHARLIE MESSER  
Vice-Chairman

CHUCK MCGRADY  
MARK WILLIAMS  
LARRY YOUNG

## PROCLAMATION

**WHEREAS:** We believe in the unity of our human community and that each individual in Henderson County, regardless of race, ethnicity, religion, age, gender, disability, sexual orientation and economic status is entitled to equal justice, decent housing, adequate health care and equal opportunity for education; and

**WHEREAS:** We believe that disregard for human rights results in unfair and unequal treatment and offends the conscience of the community, and that a community in which all individuals enjoy equal respect is the highest aspiration of a society; and

**WHEREAS:** We further believe in the value of a meaningful, honest dialogue and shared activities to promote human rights, relations and responsibilities among the diverse groups of Henderson County;

**NOW THEREFORE BE IT RESOLVED** that the Henderson County Board of Commissioners proclaims December 10, 2009 locally as Human Rights Day and calls upon the citizens of Henderson County to be informed of this Proclamation by causing it to be disseminated, displayed and read in public places without distinction.

Adopted this 2<sup>nd</sup> day of November, 2009.



WILLIAM L. MOYER, CHAIRMAN  
HENDERSON COUNTY BOARD OF COMMISSIONERS

ATTEST:



TERESA L. WILSON, CLERK TO THE BOARD

# HENDERSON COUNTY BOARD OF COMMISSIONERS

1 Historic Courthouse Square, Suite 1  
Hendersonville, North Carolina 28792  
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BILL MOYER  
Chairman  
CHARLIE MESSER  
Vice-Chairman

CHUCK McGRADY  
MARK WILLIAMS  
LARRY YOUNG

## RESOLUTION

### BY THE HENDERSON COUNTY BOARD OF COMMISSIONERS NON-PROFIT RECOGNITION MONTH

WHEREAS, the Non-Profit Community of the Henderson County area is comprised of more than 150 organizations which provide diverse services to the community; and

WHEREAS, the members of the Non-Profit community are dedicated to the mission to improve the economy and quality of life of our community; and

WHEREAS, the members of the Non-Profit community are dedicated to the specific mission of their agencies which provide services to the community; and

WHEREAS, the members of the Non-Profit community are committed to supporting and respecting the uniqueness of each non-profit agency; and

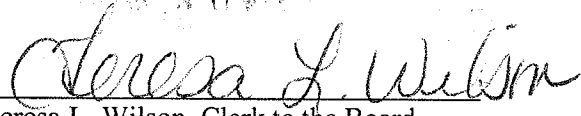
WHEREAS, the Non-Profit community is committed to increasing public awareness of the valuable and diverse services provided to the community;

NOW, THEREFORE, BE IT RESOLVED that the Henderson County Board of Commissioners, at their meeting on November 2, 2009 does hereby declare the month of November as Non-Profit Recognition month and extends its sincere congratulations to the Non-Profit community of Henderson County for their dedicated and unselfish service to the community.

Adopted this the 2<sup>nd</sup> day of November, 2009.



William L. Moyer, Chairman



Teresa L. Wilson, Clerk to the Board

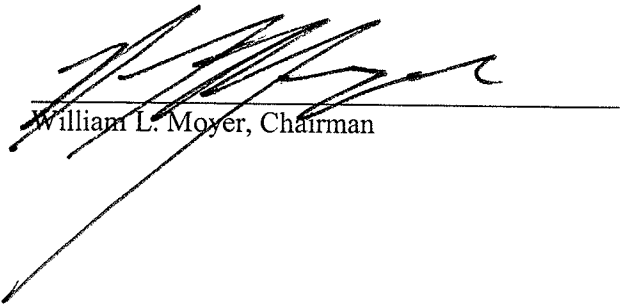
## RESOLUTION


### BY THE HENDERSON COUNTY BOARD OF COMMISSIONERS HENDERSON COUNTY RED CROSS DAY

- WHEREAS, the Henderson County Red Cross is standing by continuously to respond to disaster events affecting citizens of our community and responds at the time and scene of the event, usually within one hour of notification; and
- WHEREAS, the Henderson County Red Cross averages almost 40 local disaster responses each year, mostly home fires, and arrives at the disaster scene to assure that the affected individuals have safe shelter to go to, food, clothing and necessary personal supplies; and
- WHEREAS, the Henderson County Red Cross, in collaborative cooperation with the County Emergency Manager and Department of Social Services, opens and operates the community mass care emergency shelters most often required during winter storm-caused power outages and ensures that our community will have a safe place to stay and food to eat until the disaster situation is resolved; and
- WHEREAS, the Henderson County Red Cross provides skill and preparedness training to over 4,000 individuals in our county each year, including first aid, CPR and disaster preparedness designed to reduce the risk and affect of emergency situations; and
- WHEREAS, the Henderson County Red Cross is the liaison for active duty members of our country's Armed Forces to maintain communications with local family and receive emergency support; and
- WHEREAS, the Henderson County Red Cross collects over 5,900 units of blood for our country's medical needs, blood that is needed when our local neighbors undergo cancer treatments, hip replacements and other life-saving or life-improving procedures; and
- WHEREAS, the Henderson County Red Cross provides an opportunity for neighbors to help their neighbors at times of some of the greatest needs; and
- WHEREAS, the 182 volunteers and 3 ½ staff members of the Henderson County Red Cross have consistently demonstrated their commitment to making our community a safer and better place to live;

NOW, THEREFORE, BE IT RESOLVED that the Henderson County Board of Commissioners, at their meeting on November 2, 2009 does hereby establishing November 18 as Henderson County's Red Cross Day.

Adopted this the 2<sup>nd</sup> day of November, 2009.

  
\_\_\_\_\_  
William L. Moyer, Chairman

  
\_\_\_\_\_  
Teresa L. Wilson, Clerk to the Board