

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: March 4, 2024

SUBJECT: Adoption of financing resolution for the Solid Waste Third Bay Transfer Station Project

PRESENTER: Samantha R. Reynolds, Finance Director

ATTACHMENTS: Extract of proposed minutes, including proposed resolution

SUMMARY OF REQUEST:

The attached required initial resolution authorizes the negotiation of an installment financing contract and provides for certain other related matters for the financing of the Solid Waste Third Bay Transfer Station Project. The maximum amount of this borrowing would be \$10,500,000. The County's obligation would be secured by the pledge of the Solid Waste property.

A reimbursement resolution was previously adopted by the Board on August 7, 2023.

Note: The "maximum amount" figure in the resolution is not intended to accurately state the project costs or amount to be financed, but rather act as a safe harbor number for the purpose of these resolutions only.

The resolution makes the necessary findings for the project and the financing, authorizes the Finance Director to make an application to the Local Government Commission (LCG) for approval of the financing, and directs staff to retain the assistance of its bond counsel, financial advisor, and the underwriter for the financing.

The resolution also sets a public hearing on the proposed financing for April 17, 2024, at 9:30 a.m. and directs the Finance Director to cause a notice of public hearing to be published once and no fewer than 14 days prior to the public hearing.

BOARD ACTION REQUESTED:

Staff requests that the Board adopt the proposed initial resolution for the Solid Waste Third Bay Transfer Station Project and schedule the required public hearing.

Suggested Motion:

I move that the Board of Commissioners adopt the financing resolution authorizing the negotiation of an installment financing contract and which provides for certain other related matters for the financing.

I further move that the Board schedule the public hearing on the proposed financing for April 17, 2024, at 9:30 a.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 March 4, 2024 at 5:30 p.m. in the Commissioners’ Meeting Room, Henderson County Historic Courthouse, 1 Historic Courthouse Square, Hendersonville, North Carolina. Rebecca McCall presiding.

The following members were present:

- J Michael Edney, Vice Chairman
- William Lapsley
- Daniel Andreotta
- David Hill

The following members were absent:

None

* * * * *

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 THERETO

WHEREAS, the County of Henderson, North Carolina (the “County”) is a validly existing political subdivision of the State of North Carolina, existing as such under and by virtue of the Constitution, statutes and laws of the State of North Carolina (the “State”);

WHEREAS, the County has the power, pursuant to the General Statutes of North Carolina to (1) purchase real and personal property, (2) enter into installment purchase contracts in order to finance the purchase of real and personal property used, or to be used, for public purposes, and (3) grant a security interest in some or all of the property purchased to secure repayment of the purchase price;

WHEREAS, the Board hereby determines that it is in the best interest of the County to (1) enter into an Installment Financing Contract (the “Contract”) with Henderson County Governmental Financing Corporation (the “Corporation”) to (a) finance the construction and equipping of a solid waste third transfer station bay (the “Solid Waste Facility” and such project is referred to herein as the “New Money Project”), and (b) refinance the County’s installment payment obligations related to a Financing

Agreement and Deed of Trust dated as of December 9, 2011 between the County and Branch Banking and Trust Company, the successor to which is Truist Bank, the proceeds of which were used to finance certain solid waste improvements (the “*Refunded Project*” and together with the New Money Project, the “*Projects*”) and (2) enter into a deed of trust, security agreement and fixture filing (the “*Deed of Trust*”) related to the County’s fee simple interest in certain real property on which the Solid Waste Facility is located (the “*Site*”) that will provide security for the County’s obligations under the Contract

WHEREAS, the County hereby determines that financing the New Money Project and refinancing the Refunded Project are 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 finance the New Money Project and refinance the Refunded 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 New Money Project and refinancing the Refunded Project is an amount not to exceed \$10,500,000.00, and that such cost of financing the New Money Project and refinancing the Refunded 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 New Money Project and refinancing the Refunded Project pursuant to the Contract is expected to exceed the cost of financing the New Money Project and refinancing the Refunded Project pursuant to a bond financing for the same undertaking, the County hereby determines that the cost of financing the New Money Project and refinancing the Refunded Project pursuant to the Contract and the Deed of Trust and the obligations of the County thereunder are preferable to a general obligation bond financing or revenue bond financing for several reasons, including but not limited to the following: (1) the cost of a special election necessary to approve a general obligation bond financing, as required by the laws of the State, would result in the expenditure of significant funds; (2) the time required for a general obligation bond election would cause an unnecessary delay which would thereby decrease the financial benefits of financing the New Money Project and refinancing the Refunded Project; 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 New Money Project and refinancing the Refunded Project pursuant to the Contract reasonably compares with an estimate of similar costs under a bond financing for the same undertaking as a result of the findings delineated in the above preambles;

WHEREAS, the County does not anticipate a future property tax increase to pay installment payments falling due under the Contract;

WHEREAS, Parker Poe Adams & Bernstein LLP, as special counsel (“*Bond Counsel*”), will render an opinion to the effect that entering into the Contract and the transactions contemplated thereby are authorized by law;

WHEREAS, no deficiency judgment may be rendered against the County in any action for its breach of the Contract, and the taxing power of the County is not and may not be pledged in any way directly or indirectly or contingently to secure any money due under the Contract;

WHEREAS, the County is not in default under any of its debt service obligations;

WHEREAS, the County's budget process and Annual Budget Ordinance are in compliance with the Local Government Budget and Fiscal Control Act, and external auditors have determined that the County has conformed with generally accepted accounting principles as applied to governmental units in preparing its Annual Budget ordinance;

WHEREAS, past audit reports of the County indicate that its debt management and contract obligation payment policies have been carried out in strict compliance with the law, and the County has not been censured by the North Carolina Local Government Commission (the "*LGC*"), external auditors or any other regulatory agencies in connection with such debt management and contract obligation payment policies;

WHEREAS, a public hearing on the Contract after publication of a notice with respect to such public hearing must be held and approval of the LGC with respect to entering the Contract must be received; and

WHEREAS, the County hereby determines that all findings, conclusions and determinations of the County in this Resolution are subject to modification or affirmation after all interested parties have been afforded the opportunity to present their comments at a public hearing regarding the execution and delivery of the Contract and the Deed of Trust and the Project to be financed.

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

Section 1. ***Authorization to Negotiate the Contract.*** That the County Manager and the Finance Director, with advice from the County Attorney and Bond Counsel, are hereby authorized and directed to proceed and negotiate on behalf of the County for the financing of the New Money Project and refinancing of the Refunded Project for a principal amount not to exceed \$10,500,000.00 under the Contract to be entered into in accordance with the provisions of Section 160A-20 of the General Statutes of North Carolina and to provide in connection with the Contract, as security for the County's obligations thereunder, a Deed of Trust conveying a lien and interest in the Site, including the improvements thereon, as may be required by the entity, or its assigns, providing the funds to the County under the Contract.

Section 2. ***Application to LGC.*** That the Finance Director or his designee is hereby directed to file with the LGC an application for its approval of the Contract and all relevant transactions contemplated thereby on a form prescribed by the LGC and to state in such application such facts and to attach thereto such exhibits regarding the County and its financial condition as may be required by the LGC.

Section 3. ***Direction to Retain Bond Counsel, Financial Advisor and Underwriter.*** 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, Raleigh, North Carolina, as bond counsel; DEC Associates Inc., Charlotte, North Carolina, as financial advisor; and PNC Capital Markets LLC, Charlotte, North Carolina, and, if necessary, such additional financial institution as the Finance Director may choose, as underwriter.

Section 4. **Public Hearing.** That a public hearing (the “*Public Hearing*”) shall be conducted by the Board of Commissioners on April 17, 2024 at 9:30 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 _____, the foregoing resolution entitled “**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF HENDERSON, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO**” was duly adopted by the following vote:

AYES:

NAYS:

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

I, DENISA LAUFFER, 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 4th day of March, 2024.

WITNESS my hand and the corporate seal of the County of Henderson, North Carolina, this the 4th day of March 2024.

(SEAL)

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

EXHIBIT A
NOTICE OF PUBLIC HEARING

At its March 4, 2024 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 a) finance the construction and equipping of a solid waste third transfer station bay (the “*Solid Waste Facility*” and such project is referred to herein as the “*New Money Project*”), and (b) refinance the County’s installment payment obligations related to an installment financing agreement with Branch Banking and Trust Company, the successor to which is Truist Bank, the proceeds of which were used to finance certain solid waste improvements (the “*Refunded Project*” and together with the New Money Project, the “*Projects*”), pursuant to an installment financing contract (the “*Contract*”), in a principal amount not to exceed \$10,500,000.00 under which the County will make certain installment payments 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, security agreement and fixture filing (the “*Deed of Trust*”) granting a lien on the real property on which the Solid Waste Facility will be located (the “*Mortgaged Property*”) for the benefit of the entity, or its assigns, providing the funds to the County under the Contract.

The Solid Waste Facility will be located at 191 Transfer Station Drive, Hendersonville, North Carolina 28791. 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 April 17, 2024 at 9:30 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, the financing of the New Money Project, and the refinancing of the Refunded Project. 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 and refinanced thereby.

/s/ Denisa Lauffer
Clerk to the Board of Commissioners
County of Henderson, North Carolina

Published: April __, 2024