

## **REQUEST FOR BOARD ACTION**

### **HENDERSON COUNTY BOARD OF COMMISSIONERS**

**MEETING DATE:** May 6, 2024

**SUBJECT:** Adoption of financing resolution for Solid Waste Third Bay Transfer Station Installment Financing Contract

**PRESENTER:** Samantha R. Reynolds, Finance Director

**ATTACHMENTS:** Yes  
1. Installment Financing Resolution

#### **SUMMARY OF REQUEST:**

The attached required resolution prepared by the County's Bond Counsel, Parker Poe Adams & Bernstein LLP, approves the installment financing contract and provides for certain other related matters for the financing of the Solid Waste Third Transfer Station Bay Project. The maximum amount of this borrowing will not exceed \$10,000,000. The County's obligation would be secured by the pledge of the Solid Waste Facilities, including improvements and fixtures located therein.

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

The initial financing resolution was previously approved by the Board on March 4, 2024.

The public hearing was held by the Board on April 17, 2024.

#### **BOARD ACTION REQUESTED:**

Staff requests that the Board adopt the proposed resolution for the Solid Waste Third Bay Transfer Station installment financing contract.

#### ***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.*

**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF HENDERSON,  
NORTH CAROLINA, APPROVING AN INSTALLMENT FINANCING CONTRACT AND  
DELIVERY THEREOF AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS**

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

**WHEREAS**, the County has the power, pursuant to the General Statutes of North Carolina to (1) enter into installment contracts in order to purchase, or finance or refinance the purchase of, real or personal property and to finance or refinance the construction or repair of fixtures or improvements on real property and (2) create a security interest in some or all of the property financed or refinanced 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 to finance the construction and equipping of a third bay at the County’s solid waste transfer station (the “*Solid Waste Facility*” and such project is referred to herein as the “*Project*”);

**WHEREAS**, the County has received the bids and selected the contractor for the Project and has received proposals from lenders for the installment financing for the Project;

**WHEREAS**, based on the bids and total expected costs of the Project and the proposals received from lenders for the installment financing for the Project, the Board has determined that it is in the best interest of the County to receive an advance of funds in an aggregate principal amount not to exceed \$10,000,000 under an installment financing contract (the “*Contract*”) with JPMorgan Chase Bank, N.A. (the “*Lender*”) in order to (1) finance the costs of the Project and (2) pay the costs related to execution and delivery of the Contract;

**WHEREAS**, the obligation of the County to make Installment Payments under the Contract is a limited obligation of the County payable solely from currently budgeted appropriations of the County and does not constitute a pledge of the faith and credit of the County within the meaning of any constitutional debt limitation;

**WHEREAS**, in order to provide security for the County’s obligations under the Contract, the County will grant to the Lender a security interest under a deed of trust, security agreement and fixture filing (the “*Deed of Trust*”) in the County’s fee simple interest in the site of the Solid Waste Facility, together with all improvements and fixtures located thereon (collectively, the “*Mortgaged Property*”);

**WHEREAS**, the Board held a public hearing on April 17, 2024 regarding the County’s execution and delivery of the Contract, financing of the Project, and granting of a security interest in the Mortgaged Property;

**WHEREAS**, the County has submitted an application to the Local Government Commission of North Carolina (the “*LGC*”) to consider and approve the Contract as described above and expects to be on the LGC’s agenda at its May 7, 2024 meeting;

**WHEREAS**, there has been made available to the Board the form of the Contract and the Deed of Trust, which the County proposes to approve, enter into and deliver, as applicable, to effectuate the proposed financing;

**WHEREAS**, it appears that each of the Contract and the Deed of Trust (collectively, the “*Instruments*”) is in appropriate form and is an appropriate instrument for the purposes intended;

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

Section 1. **Approval, Authorization and Execution of Instruments.** The Board approves and authorizes the financing of the Project in accordance with the terms of the Instruments, which will be valid, legal and binding obligations of the County in accordance with their respective terms. The Board approves the amount to be advanced by the Lender to the County pursuant to the Contract in an aggregate principal amount not to exceed \$10,000,000, such amount to be repaid by the County to the Lender as provided in the Contract. The form, terms and content of the Instruments are in all respects authorized, approved and confirmed, and the County Manager, the Finance Director, and the Clerk to the Board, including anyone serving as such in an interim capacity (individually and collectively, the “*Authorized Officers*”), and their respective designees are authorized, empowered and directed to execute and deliver the Instruments for and on behalf of the County, including necessary counterparts, in substantially the forms presented to the Board, but with such changes, modifications, additions or deletions therein as shall to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all such changes, modifications, additions or deletions, and that from and after the execution and delivery of the Instruments, each of the Authorized Officers is authorized, empowered and directed 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 Instruments as executed.

Section 2. **Further Actions.** Each of the Authorized Officers is designated as the County’s representative to act on behalf of the County in connection with the transactions contemplated by the Instruments, and each of the Authorized Officers is authorized and directed to proceed with the financing of the Project in accordance with the terms of the Instruments and to seek opinions on matters 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 as required by law. Each of the Authorized Officers is authorized to designate one or more employees of the County to take all actions which each of the Authorized Officers is authorized to perform under this Resolution, and each of the Authorized Officers, including their designees, is in all respects authorized on behalf of the County to supply all information pertaining to the transactions contemplated by the Instruments. Each of the Authorized Officers is authorized to execute and deliver for and on behalf of the County any and all additional certificates, documents, opinions or other papers and perform all other acts as may be required by the Instruments or as they may deem necessary or appropriate in order to implement and carry out the intent and purposes of this Resolution. Any and all acts of the Authorized Officers may be done individually or collectively.

Section 3. **Related Actions.** All acts and doings of officers, employees and agents of the County, whether taken prior to, on, or after the date of this Resolution, that are in conformity with and in furtherance of the purposes and intents of this Resolution as described above shall be, and the same are, in all respects ratified, approved and confirmed.

Section 4. **Repealer.** All motions, orders, resolutions, ordinances and parts thereof, in conflict herewith are repealed.

Section 5. **Severability.** If any section, phrase or provision of this Resolution is for any reason declared to be invalid, such declaration will not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

Section 6. ***Effective Date.*** This Resolution is effective on the date of its adoption.

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

I, DENISA A. 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, APPROVING AN INSTALLMENT FINANCING CONTRACT AND DELIVERY THEREOF 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 6th day of May, 2024.

***WITNESS*** my hand and the corporate seal of the County of Henderson, North Carolina, this the \_\_\_\_\_ day of May, 2024.

[SEAL]

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Denisa A. Lauffer  
County Clerk  
County of Henderson, North Carolina