

Extract of Minutes of a regular meeting of the Board of Commissioner of the County of Buncombe, North Carolina held in the Commissioners’ Chambers at the Buncombe County Courthouse, Asheville, North Carolina, at 4:30 p.m. on May 1, 2012.

* * *

The following members were present:

The following members were absent:

Also present:

* * *

Commissioner _____ moved that the following resolution (the “*Resolution*”), a copy of which was available with the Board and which was read by title:

RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF BUNCOMBE, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN AMENDMENT TO AN INSTALLMENT FINANCING CONTRACT, DIRECTING THE PUBLICATION OF NOTICE WITH RESPECT THERETO AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO

WHEREAS, the County of Buncombe, 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 financing 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 County has previously (1) entered into an Installment Financing Contract dated as of December 1, 2003 (the “*2003 Contract*”) with Buncombe Financing Corporation, a North Carolina nonprofit corporation (the “*Corporation*”), to finance the 2003 Projects and refinance the 1995 Projects (each, as defined in the 2003 Contract) and (2) provided a security interest in certain of the 2003 Projects and the sites on which such 2003 Projects are located through a Deed of Trust and Security Agreement dated as of December 29, 2003 (the “*2003 Deed of Trust*”) from the County to the deed of trust trustee named therein;

WHEREAS, the County has previously entered into Amendment Number One to the 2003 Contract dated as of January 1, 2005 (the “*2005 Amendment*”) with the Corporation to finance the 2005 Project (as defined in the 2005 Amendment);

WHEREAS, the Board has been advised that the County may be able to refinance a portion of its installment payments under the 2003 Contract and the 2005 Amendment so as to reduce the County's installment payments under the 2003 Contract and the 2005 Amendment;

WHEREAS, the Board has previously determined that it is in the best interest of the County to enter into an Installment Financing Contract dated as of December 1, 2010 (the "*2010 Contract*") under Section 160A-20 of the General Statutes of North Carolina (the "*Act*") in order to pay the capital costs of (a) the acquisition, construction, installation and equipping of a life safety tower to be installed as part of the Buncombe County Courthouse (the "*Safety Tower*"), (b) the construction, equipping and furnishing of a public safety training center (the "*Training Center*"), (c) the acquisition and installation of a new radio communications system, (d) renovations to the County's offices located at 35 Woodfin Street, Asheville, North Carolina, (e) renovations to the County's offices located at 40 Coxe Avenue, Asheville, North Carolina, (f) construction, equipping and furnishing of a new physical plant facility located at 40 McCormick Place, Asheville, North Carolina (the "*Physical Plant*"), and (g) renovations to the science laboratory at Asheville High School (collectively, the "*2010 Projects*") and, in connection therewith, provided a security interest in the site of the Buncombe County Courthouse through a Deed of Trust, Security Agreement and Fixture Filing dated as of December 1, 2010 (the "*2010 Deed of Trust*") from the County to the deed of trust trustee named therein;

WHEREAS, the Board hereby determines that it is in the best interest of the County to enter into Amendment Number One to the 2010 Contract (the "*First Amendment*" and collectively with the 2010 Contract, the "*Contract*") in order to pay the capital costs of (1)(a) the construction, installation and equipping of a four-story courts building adjacent to and further renovations of the Buncombe County Courthouse, (b) further construction, equipping and furnishing of the Training Center, (c) the acquisition and installation of new software systems for the Department of Social Services, (d) the acquisition of new sites for and upgrade and expansion of the County's public safety radio network, (e) the construction of an expansion to the County's construction and demolition landfill, (f) replacement of a chiller at the Enka Campus of Asheville-Buncombe Technical College, and (g) the acquisition of land and an existing building for use as administrative offices for Asheville-Buncombe Technical College (collectively, the "*2012 Projects*") and (2) if feasible, the refinancing of all or a portion of the County's installment payment obligations under the 2003 Contract and the 2005 Amendment;

WHEREAS, the Board determines that it is in the best interest of the County to enter into a notice of extension to the 2010 Deed of Trust (the "*Notice of Extension*") in connection with the execution and delivery of the First Amendment relating to the County's fee simple interest in the site on which the four-story courts building will be located as may be required to secure the financing and refinancing;

WHEREAS, the Board reaffirms the findings in its resolutions (1) with respect to the 2003 Contract and the 2005 Amendment and the projects financed and refinanced thereby adopted on October 7, 2003, November 4, 2003, November 16, 2004 and December 7, 2004 and (2) with respect to the 2010 Contract and the projects financed thereby adopted on September 21, 2010 and October 26, 2010;

WHEREAS, the County hereby determines that the acquisition of the 2012 Projects is essential to the County's proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the 2012 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 First Amendment and the Notice of Extension is necessary and expedient for the County by virtue of the findings presented herein;

WHEREAS, the County hereby determines that the First Amendment would allow the County to purchase the 2012 Projects 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 the acquisition of the 2012 Projects is an amount not to exceed \$66,000,000 and that such cost of the acquisition of the 2012 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 the acquisition of the 2012 Projects pursuant to the First Amendment is expected to exceed the cost of the acquisition of the 2012 Projects pursuant to a bond financing for the same undertaking, the County hereby determines that the cost of the acquisition of the 2012 Projects pursuant to the First Amendment and the Notice of Extension 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, constructing, improving and equipping the 2012 Projects; and (3) insufficient revenues are produced by the 2012 Projects so as to permit a revenue bond financing;

WHEREAS, the County has determined and hereby determines that the estimated cost of the acquisition of the 2012 Projects pursuant to the First Amendment 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 First Amendment;

WHEREAS, the sums to fall due under the First Amendment will be adequate but not excessive for its proposed purpose;

WHEREAS, Parker Poe Adams & Bernstein LLP and Martin L. Nesbitt, Jr., Esq., as co-bond counsel ("*Co-Bond Counsel*"), will each render an opinion to the effect that entering into the First Amendment 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 First Amendment, 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 First Amendment;

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 First Amendment after publication of a notice with respect to such public hearing must be held, and approval of the LGC with respect to entering into the First Amendment 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 First Amendment, the Notice of Extension and the projects to be financed and refinanced thereby.

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

Section 1. ***Authorization to Negotiate the First Amendment.*** The County Manager and the Finance Officer, with advice from the County Attorney and Co-Bond Counsel, are hereby authorized and directed to negotiate on behalf of the County for the financing of the 2012 Projects and the refinancing of a portion of the County's installment payment obligations under the 2003 Contract and the 2005 Amendment for a principal amount not to exceed \$79,000,000 under the First Amendment entered into in accordance with the provisions of the Act and to provide in connection with the First Amendment, as security for the County's obligations thereunder, the Notice of Extension conveying a lien and interest in the site of the new courts building, including the improvements thereon, as may be required by the entity or entities, or their respective assigns, providing the funds to the County under the First Amendment.

Section 2. ***Application to LGC.*** The Finance Officer or her designee is hereby directed to file with the LGC an application for its approval of the First Amendment 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. ***Financing Team.*** The financing team of Parker Poe Adams & Bernstein LLP, Charlotte, North Carolina, and Martin L. Nesbitt, Jr., Esq., Asheville, North Carolina, as co-bond counsel, Robert W. Baird & Co. and one or more additional financial institutions to be selected by the Finance Officer, as underwriters, and McGuireWoods LLP, as underwriters' counsel, is approved.

Section 4. ***Public Hearing.*** A public hearing (the "*Public Hearing*") shall be conducted by the Board on May 15, 2012 at 4:30 p.m. in the Commissioners' Chamber, Buncombe County Courthouse, Asheville, North Carolina, concerning the First Amendment, the Notice of Extension, the proposed projects to be financed and refinanced thereby, and any other transactions contemplated therein and associated therewith.

Section 5. ***Notice of Public Hearing.*** The Clerk to the Board is hereby directed to cause a notice of the Public Hearing 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.*** All motions, orders, resolutions and parts thereof in conflict herewith are hereby repealed.

Section 7. ***Effective Date.*** This Resolution is effective on the date of its adoption.

On motion of Commissioner _____, seconded by Commissioner _____, the foregoing resolution entitled **“RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF BUNCOMBE, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN AMENDMENT TO AN INSTALLMENT FINANCING CONTRACT, DIRECTING THE PUBLICATION OF NOTICE WITH RESPECT THERETO AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO”** was duly adopted by the following vote:

AYES:

NAYS:

EXHIBIT A
NOTICE OF PUBLIC HEARING

On December 16, 2010, the County of Buncombe, North Carolina (the “*County*”) executed and delivered an Installment Financing Contract (the “*2010 Contract*”) in order to pay the capital costs of (a) the acquisition, construction, installation and equipping of a life safety tower to be installed as part of the Buncombe County Courthouse (the “*Safety Tower*”), (b) the construction, equipping and furnishing of a public safety training center (the “*Training Center*”), (c) the acquisition and installation of a new radio communications system, (d) renovations to the County’s offices located at 35 Woodfin Street, Asheville, North Carolina, (e) renovations to the County’s offices located at 40 Coxe Avenue, Asheville, North Carolina, (f) construction, equipping and furnishing of a new physical plant facility located at 40 McCormick Place, Asheville, North Carolina (the “*Physical Plant*”), and (g) renovations to the science laboratory at Asheville High School (collectively, the “*2010 Projects*”) and, in connection therewith, provided a security interest in the site of the Buncombe County Courthouse through a Deed of Trust, Security Agreement and Fixture Filing dated as of December 1, 2010 (the “*2010 Deed of Trust*”) from the County to the deed of trust trustee named therein.

At its May 1, 2012 meeting, the Board of Commissioners (the “*Board of Commissioners*”) of the County adopted a resolution which:

1. Authorized the County to proceed to pay the capital costs of (1)(a) the construction, installation and equipping of a four-story courts building adjacent to and further renovations of the Buncombe County Courthouse, (b) further construction, equipping and furnishing of the Training Center, (c) the acquisition and installation of new software systems for the Department of Social Services, (d) the acquisition of new sites for and upgrade and expansion of the County’s public safety radio network, (e) the construction of an expansion to the County’s construction and demolition landfill, (f) replacement of a chiller at the Enka Campus of Asheville-Buncombe Technical College, and (g) the acquisition of land and an existing building for use as administrative offices for Asheville-Buncombe Technical College (collectively, the “*2012 Projects*”), and (2) if feasible, the refinancing of all or a portion of the County’s installment payment obligations, under Amendment Number One to the 2010 Contract to be dated on or about June 15, 2012 (the “*First Amendment*”), in a principal amount not to exceed \$79,000,000, under which the County will make certain installment payments, in order to make the 2012 Projects and the projects proposed to be refinanced available to the County; and
2. Authorized the County to proceed to provide, in connection with the First Amendment, as grantor, a Notice of Extension to the 2010 Deed of Trust (collectively with the 2010 Deed of Trust, the “*Deed of Trust*”) to create a lien and security interest on the land on which the new courts building is to be constructed and any improvements thereon as may be required for the benefit of the entity, or its assigns, providing the funds to the County under the First Amendment.

The Buncombe County Courthouse is located at 60 Court Plaza, Asheville, North Carolina 28801 and was previously mortgaged under the 2010 Deed of Trust. The new courts building is adjacent to the Buncombe County Courthouse and will be mortgaged under the Deed of Trust. On payment by the County of all installment payments due under the Contract, any lien created by the Deed of Trust will terminate and the County’s title to the Buncombe County Courthouse and the new courts building will be unencumbered.

NOTICE IS HEREBY GIVEN, pursuant to Sections 160A-20 of the General Statutes of North Carolina, that on May 15, 2012 at 4:30 p.m. in the Commissioners' Chambers, Buncombe County Courthouse, Asheville, North Carolina, a public hearing will be conducted concerning the First Amendment, the proposed 2012 Projects, the proposed refinancing of the projects and any other transactions contemplated therein and associated therewith. All interested parties are invited to present comments at the public hearing regarding the execution and delivery of the First Amendment and the projects to be financed or refinanced thereby.

/s/ KATHY HUGHES

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

Published: May __, 2012

STATE OF NORTH CAROLINA)
)
COUNTY OF BUNCOMBE) ss:

I, *Kathy Hughes*, Clerk to the Board of Commissioners of the County of Buncombe, 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 BUNCOMBE, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN AMENDMENT TO AN INSTALLMENT FINANCING CONTRACT, DIRECTING THE PUBLICATION OF NOTICE WITH RESPECT THERETO AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO”** adopted by the Board of Commissioners of the County of Buncombe, North Carolina, at a meeting held on the 1st day of May, 2012.

WITNESS my hand and the corporate seal of the County of Buncombe, North Carolina, this the 1st day of May, 2012.

Kathy Hughes
Clerk to the Board
County of Buncombe, North Carolina