

April 23, 2015 – Special Session

The Swain County Board of Commissioners held a Special Session on April 23, 2015. Present were Chairman Carson, Vice-Chair Monteith, Commissioner Moon, Commissioner Bushyhead and Commissioner Burns.

Chairman Carson called the meeting to. Chairman Carson led the pledge of Allegiance.

Purpose: The purpose of this special session is to consider approval of a resolution for financing agreement to finance costs of construction, expansion and improvement to public school facilities, approving certain other documents and actions relating thereto and authorizing certain actions in connection therewith and approval of a resolution making required findings, authorizing and ratifying the filing of an application for approval of a financing agreement authorized by NCGS 160A-20 and declaring intention to reimburse itself from proceeds of one or more qualified tax credit bonds and from tax-exempt financing.

Commissioner Bushyhead made a motion to approve the following resolution:

RESOLUTION APPROVING INSTALLMENT FINANCING AGREEMENT TO FINANCE COSTS OF CONSTRUCTION, EXPANSION AND IMPROVEMENT TO PUBLIC SCHOOL FACILITIES, APPROVING CERTAIN OTHER DOCUMENTS AND ACTIONS RELATING THERETO AND AUTHORIZING CERTAIN ACTIONS IN CONNECTION THEREWITH.

WHEREAS, The Swain County Board of Education, which has general control and supervision of all matters pertaining to the public schools in the Swain County Schools System, its respective school administrative unit (**the “Board of Education”**), and the County of Swain, North Carolina (**the “County”**) have determined to cooperate in a plan to finance costs of a project which each has found to be necessary and desirable to provide for improved public school facilities and improved public education in the County; and

WHEREAS, such project consists of the design, acquisition, construction and equipping of expansion and improvements to County school facilities (**together, the “Project”**), including improvements to property constituting East Elementary School in the County (**“East Elementary School”**) to better serve the citizens of the County; and

WHEREAS, the Project will take place at the site of East Elementary School, including improvements thereon (**together, the “Site”**) and in connection with the financing of the Project the Board of Education will convey the Site to the County; and

WHEREAS, pursuant to the County's request the County has received proposals from Branch Banking and Trust Company (**the “Bank”**) for installment financing of the Project under the authority granted to the County in Section 160A-20 of the General Statutes of North Carolina, and the County's representatives have recommended to the Board of Commissioners of the County (**the “Board of Commissioners”**) that such an installment financing agreement be entered into between the County and the Bank pursuant to the Bank's proposals; and

WHEREAS, the County intends that a portion of such installment financing agreement obligations in a principal amount not to exceed \$2,400,000 (**the “QSCB Component”**) be treated as "qualified school construction bonds" (**“QSCBs”**) within the meaning of Section 54F of the Internal Revenue Code of 1986, as amended (**the “Code”**); and

WHEREAS, the County elects to treat such QSCB Component obligations as "specified tax credit bonds" under Section 6431 of the Code, as amended by the Hiring Incentives to Restore Employment Act (Pub. L. No. 111-147, 123 Stat. 301), enacted on March 18, 2010, which status enables an issuer of a QSCB to receive a direct payment of a refundable credit in lieu of providing a tax credit to the purchaser or holder of the QSCB; and

WHEREAS, the refundable credit payable with respect to each interest payment date will be equal to the lesser of (i) the amount of interest payable under the QSCB on such date or (ii) the amount of interest which would have been payable under the QSCB on such date if such interest were determined at the applicable credit rate determined under Section 54A(b)(3) of the Code (**the “Tax Credit Rate”**) (that is, the rate used in computing the amount of tax credit that could be claimed by the QSCB holder absent the "specified tax credit bond" refundable credit election); and

WHEREAS, the County has received an allocation of QSCB volume cap from the State of North Carolina in the amount of \$2,400,000 as evidenced by a writing received from the State Department of Public Instruction (**the “QSCB Allocation”**); and

WHEREAS, the County intends that a portion of such installment financing agreement obligations in a principal amount not to exceed \$800,000 (**the "Tax-Exempt Component"**) be treated as obligations the portion of which each Installment Payment (as defined below) designated as and comprising interest be excludable from gross income for federal income tax purposes; and

WHEREAS, after a public hearing and due consideration, the Board of Commissioners has determined that it is in the best interests of the County and that the most efficient manner of financing the Project will be to enter into such an installment financing agreement and related documents to make available to the County funds with which to finance the costs of capital improvements of the Project; and

WHEREAS, there have been presented at this meeting drafts of the following documents relating to such financing (**the "Documents"**):

(a) a Financing Agreement and Deed of Trust between the County and the Bank (**the "Installment Financing Agreement"**), under which Installment Financing Agreement the Bank would make available to the County funds with which to finance costs of the Project and as otherwise provided therein the County would be obligated to repay amounts advanced in installments, with interest (**the "Installment Payments"**) and certain other payments, and the Site would be encumbered to secure the County's obligations to the Bank, among other requirements;

(b) a Project Fund Agreement (**the "Project Fund Agreement"**), between the County and the Bank under which the Bank may hold and disburse proceeds of the Installment Financing Agreement;

(c) a Construction, Rehabilitation and Acquisition Agreement (**the "Construction Agreement"**), between the Board of Education and the County, which furthers such plan to finance costs of and to develop the Project;

(d) a Lease Agreement (**the "Lease"**), between the County, as lessor, and the Board of Education, as lessee, which provides for the lease by the County to the Board of Education of the Site as a part of such plan to finance costs of the Project.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners as follows:

Section 1. The County hereby determines to finance the Project through the Bank in accordance with the Bank's proposals and this resolution. The amount financed shall not exceed \$3,200,000. The annual interest rate (in the absence of default) (a) of the QSCB Component shall not exceed the Tax Credit Rate plus 1% and (b) of the Tax-Exempt Component shall not exceed 3.59%, and the financing term for each of the QSCB Component and the Tax-Exempt Component shall not exceed 20 years. The Installment Payments corresponding to the QSCB Allocation are hereby designated as "qualified school construction bonds" within the meaning of Section 54F of the Code. The County hereby irrevocably elects to have Section 6431(f) of the Code apply to the Installment Payments designated as qualified school construction bonds and to receive the refundable credit provided in Section 6431 of the Code in lieu of the credit otherwise allowed under Section 54F of the Code.

Section 2. The forms, terms and provisions of the Documents, consistent with the provisions of this resolution, are hereby approved in all respects. The Chairman of the Board of Commissioners, the Vice Chairman of the Board of Commissioners, the County Manager, the County Finance Officer, the Clerk to the Board of Commissioners and the County Attorney are hereby authorized and directed to execute, deliver and record, as appropriate, the Documents in substantially the forms presented, together with such additions, changes, modifications and deletions as they may deem necessary or appropriate, and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Board of Commissioners and the County.

Section 3. The County's payments of Installment Payments shall be subject to annual appropriation of funds by the Board of Commissioners. The County shall not be obligated to make any payments under the Installment Financing Agreement beyond those for which funds have been appropriated in the Board of Commissioner's sole discretion during the County's then-current fiscal year. The Installment Financing Agreement shall not constitute a pledge of the County's full faith and credit. Neither the County's full faith and credit nor its taxing power is pledged directly, indirectly or contingently to secure any moneys due under the Installment Financing Agreement.

Section 4. The County Manager and County Finance Officer are hereby authorized and directed, together or separately, to hold executed copies of the Documents, and any other

documents authorized or permitted by this resolution, in escrow on the County's behalf until the conditions for the delivery of the Documents have been completed to such officer's satisfaction, and thereupon to release the executed copies of such documents for delivery to the appropriate persons or organizations. Without limiting the generality of the foregoing, this authorization and direction is hereby specifically extended to authorize such officers to approve changes to any documents (including the Documents) or closing certifications previously signed by County officers of employees, provided that such changes shall not substantially alter the intent of such certificates from the expressed in the forms of such certificates as executed by such officers. Such officer's authorization of the release of any such document for deliver shall constitute conclusive evidence of such officer's approval of any such changes.

Section 5. The Board of Commissioners on behalf of the County designates the Tax-Exempt Component as "qualified tax-exempt obligations" for the purpose of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (**the "Code"**) in the amount of \$800,000. The County does not reasonably anticipate (nor do any of its subordinate entities reasonably anticipate) issuing more than \$10,000,000 in tax exempt obligations during calendar year 2015 and the County (and any of its subordinate entities) will not designate more than \$10,000,000 of qualified tax-exempt obligations pursuant to Section 265(b)(3) of the Code during such calendar year.

Section 6. The Board of Commissioners hereby approves, ratifies and confirms the actions of the County Manager, the Finance Officer of the County, the County Attorney, Sands Anderson PC as bond counsel to the County, and any other County officers and representative in furtherance of and consistent with the purpose of this Resolution.

Section 7. The Board of Commissioners finds that the Site and the Project are essential to the educational and administrative needs of the County and the efficient operation of the public school system in the County, and the Board of Commissioners anticipates that the Site and the Project will continue to be essential to the educational and administrative needs of the County during the term of the Installment Financing Agreement.

Section 8. The officers and employees of the County are authorized and directed (without limitation except as may be expressly set forth herein) to make such elections, to take such other actions and to execute and deliver any other documents, certificates, undertakings, agreements or the instruments as they may deem necessary or appropriate to effectuate the transactions contemplated by the documents approved hereby, including agreements relating to the Project and the financing thereof and delivering a certificate or certificates setting forth the expected use and investment of the proceeds to be derived from the execution and delivery of the Installment Financing Agreement in accordance with federal tax law requirements.

Section 9. This resolution shall take effect immediately upon its passage.

The motion to adopt this resolution was made by Commissioner Ben Bushyhead, seconded by Commissioner Steve Moon and was approved by the following vote:

Ayes: Phil Carson, David Monteith, Ben Bushyhead, Steve Moon, Danny Burns

Noes: None

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I, Cindi C. Woodard, Clerk to the Board of Commissioners for the County Of Swain, North Carolina, **DO HEREBY CERTIFY** that the foregoing is an accurate copy of so much of the recorded minutes of a special meeting of said Board held on April 23, 2015, as relates in any way to the matter described therein.

I HEREBY FURTHER CERTIFY that due notice of such meeting of said Board, stating its time and place and the subjects to be considered, was (1) signed by the Chairman of the Board, given to the Chairman of the Board and each other member of the Board and posted on the courthouse bulletin board at least 48 hours prior to the meeting and (3) mailed or delivered as required by G.S. § 143-318.12.

WITNESS my hand and the corporate seal of said County, this ____ day of May, 2015.

Clerk to the Board of Commissioners

Commissioner Moon seconded the motion. A vote was unanimous.

Vice-Chair Monteith made a motion to approve the following resolution:

RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF SWAIN, NORTH CAROLINA MAKING REQUIRED FINDINGS, AUTHORIZING AND RATIFYING THE FILING OF AN APPLICATION FOR APPROVAL OF A FINANCING AGREEMENT AUTHORIZED BY NORTH CAROLINA GENERAL STATUTE 160A-20 AND DECLARING INTENTION TO REIMBURSE ITSELF FROM PROCEEDS OF ONE OR MORE QUALIFIED TAX CREDIT BONDS AND FROM TAX-EXEMPT FINANCING

WHEREAS, the Board of Commissioners (**the "Board of Commissioners"**) of the County of Swain, North Carolina (**the "County"**) desires to cause the design, acquisition, construction and equipping of expansion and improvements to County school facilities (**together, the "Project"**), including improvements to property constituting East Elementary School in the County to better serve the citizens of the County; and

WHEREAS, the County desires to finance the Project by the use of an installment contract or contracts authorized under North Carolina General Statute 160A, Article 3, Section 20, in a principal amount not to exceed \$3,200,000 (**the "Proposed Contract"**); and

WHEREAS, the County Board of Education (**the "Board of Education"**) has requested the County to acquire title to certain Project real property to be improved, specifically East Elementary School property in the County (**the "Property"**) and the County has held a public hearing and acquire title to such real property pursuant to Section 153A-158.1 of the General Statutes of North Carolina; and

WHEREAS, findings of fact by this governing body must be presented to enable the North Carolina Local Government Commission to make its findings of fact set forth in North Carolina General Statute 159, Article 8, Section 151 prior to approval of the Proposed Contract; and

WHEREAS, the County or the Board of Education will pay, on and after the date hereof, certain expenditures (**the "Expenditures"**) in connection with the Project and expects to reimburse itself for the Expenditures from the proceeds of the QSCB Obligation (as defined below); and

WHEREAS, the Board of Commissioners intends to incur an obligation that will constitute qualified school construction bonds in a principal amount not to exceed \$2,400,000 (**the "QSCB Obligation"**) under Sections 54A and 54F of the Internal Revenue Code of 1986, as amended (**the "Code"**); and

WHEREAS, the Board of Commissioners is advised that Section 54A(d)(2)(D) of the Code requires the Board of Commissioners to adopt a resolution in the form hereof to preserve the ability to use a portion of the proceeds of the QSCB Obligation to reimburse the County or the County Board of Education for the Expenditures; and

WHEREAS, on November 17, 2014 the Board of Commissioners adopted a resolution to constitute a declaration of official intent to reimburse pursuant to the requirements of United States Treasury Regulations Section 1.150-2 in relation to the Project (**the "2014 Resolution"**), which 2014 Resolution is hereby affirmed; and

WHEREAS, the County or the Board of Education has paid beginning no earlier than 60 days prior to the date of adoption of the 2014 Resolution and this resolution, and will pay, on and after the date hereof, certain Expenditures, as defined above; and

WHEREAS, the Board of Commissioners has determined that those moneys previously advanced no earlier than 60 days prior to the date of adoption of the 2014 Resolution and this resolution and to be advanced on and after the date hereof to pay the Expenditures are available only for a temporary period and it is necessary to reimburse the Issuer for the Expenditures from the proceeds of one or more of tax-exempt financing transactions in an amount not to exceed \$800,000 (**the "Tax-Exempt Obligation"**).

NOW THEREFORE, BE IT RESOLVED that the Board of Commissioners of County of Swain, North Carolina, meeting on the 23rd day of April, 2015, makes the following findings of fact:

1. The Proposed Contract is necessary or expedient because the need for the Project is immediate, favorable interest rates are currently available in the financial marketplace and upon terms advantageous to the County and the County has been granted an allocation to proceed with the Proposed Contract under the Qualified School Construction Bond program, which allows the County to receive subsidies on QSCB Obligation interest payments.
2. The Proposed Contract is preferable to a bond issue for the same purpose because (a) the cost of the proposed undertaking 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 North Carolina Constitution (the “two-thirds limitation”), (b) the Project constitutes the construction of improvements on real property and therefore is suited for installment contract financing under North Carolina General Statute 160A, Article 3, Section 2, (c) the proposed Project is urgently needed and the Proposed Contract is the most expeditious method of raising funds quickly, (d) the Proposed Contract will provide financing for an essential project at an overall rate comparable to a general obligation bond issue without the cost, delay and uncertainty involved in a voted bond issue, and over a term not to exceed twenty years and (e) no revenues are produced by the Project that would permit a revenue bond financing.
3. The sums to fall due under the Proposed Contract are adequate and not excessive for the proposed purpose because payment of Project costs will not exceed the advances to be made under the Proposed Contract.
4. The County’s debt management procedures and policies are good because the County’s existing and planned debt falls well within North Carolina’s legal debt limitations for local governments.
5. There will be no increase in ad valorem property taxes necessary to meet the sums to fall due under the Proposed Contract.
6. The County is not in default in any of its debt service obligations.
7. The attorney for the County has rendered an opinion that the Project is authorized by law and is a purpose for which public funds may be expended pursuant to the Constitution and laws of North Carolina.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the County Manager and the County Finance Officer are and each of them is hereby authorized to act on behalf of the County of Swain in filing an application with the North Carolina Local Government Commission for approval of the Project and the proposed financing contract and in taking such other actions not inconsistent with this resolution, and all acts of the County Manager and County Finance Officer in relation to such application are hereby affirmed and ratified.

BE IT FURTHER RESOLVED that the County Manager and other County staff are authorized to publish such notice as is required for the Board of Commissioners to hold a public hearing on the Proposed Contract in accordance with and as required by Section 160A-20 of the General Statutes of North Carolina and to publish a notice of public hearing to be held for the purpose of considering whether the County should acquire the fee or any lesser interest in the real and personal property constituting the Property, and all such acts are hereby affirmed and ratified.

BE IT FURTHER RESOLVED that the Project is intended to be financed from the proceeds of the QSCB Obligation in the maximum principal amount of \$2,400,000, that this Resolution is intended to constitute both a declaration and an adoption of “official intent” to reimburse expenditures paid for a “qualified purpose” under Sections 54A(d)(2)(D) and 54F(a)(1) of the Code with proceeds of a “qualified school construction bond or bonds” as a “qualified tax credit

bond or bonds” under Section 54A of the Code, and that it is acknowledged that, in general, an Expenditure will be eligible for reimbursement from the proceeds of the QSCB Obligation only to the extent that (i) the Expenditure is for a “qualified purpose” within the meaning of Section 54A(d)(2)(C) of the Code, (ii) the Expenditure was paid on or after the date of the adoption of this Resolution, and (iii) the reimbursement is made not later than 18 months after the date the Expenditure is paid; and

BE IT FURTHER RESOLVED that the Board of Commissioners hereby reiterates and declares its intent to reimburse the County with the proceeds of the Tax-Exempt Obligation for Expenditures with respect to the Project made on and after the dates referenced above, that the County reasonably expects on the date hereof that it will reimburse Expenditures with proceeds of the Tax-Exempt Obligation, that each such Expenditure was and will be either (a) of a type properly chargeable to capital account under general federal income tax principles (determined in each case as of the date of the Expenditures), (b) a cost of issuance with respect to the Tax-Exempt Obligation, (c) a nonrecurring item that is not customarily payable from current revenues, or (d) a grant to a party that is not related to or an agent of the Issuer so long as such grant does not impose any obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the Issuer, and that the maximum principal amount of the Tax-Exempt Obligation expected to be issued for the Project is \$800,000.

BE IT FURTHER RESOLVED that all other actions of the County’s representatives, including the Manager, Finance Director, County Attorney and bond counsel, in furtherance of the purposes of this resolution are hereby ratified.

This resolution is effective upon its adoption this 23rd day of April, 2015.

The motion to adopt this resolution was made by Commissioner David Monteith, seconded by Commissioner Steve Moon and was approved by the following vote:

Ayes: Phil Carson, David Monteith, Ben Bushyhead, Steve Moon, Danny Burns

Noes: None

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I, Cindi C. Woodard, Clerk to the Board of Commissioners for the County Of Swain, North Carolina, **DO HEREBY CERTIFY** that the foregoing is an accurate copy of so much of the recorded minutes of a regular meeting of said Board held on April 23, 2015, as relates in any way to the matter described therein.

I HEREBY FURTHER CERTIFY that a schedule of regular meetings of said Board, stating that regular meetings of said Board are held in the Swain County Administration Building, District Courtroom, 101 Mitchell Street, Bryson City, North Carolina, on the second and fourth Thursday s of each month at 6:00 p.m., has been on file in my office as of a date not less than seven days before the date of said meeting in accordance with G.S. § 143-318.12.

WITNESS my hand and the corporate seal of said County, this ____ day of May, 2015.

Clerk to the Board of Commissioners

Commissioner Moon seconded the motion. A vote was unanimous.

Adjournment

With no further business to discuss at this time, Commissioner Bushyhead made a motion to adjourn the meeting. Vice-Chair Monteith seconded the motion. A vote was unanimous.

Respectfully submitted,

Cindi C. Woodard
Clerk to the Board
Swain County Commissioners

Phil Carson
Chairman
Swain County Commissioners