

EXTRACTS FROM MINUTES OF THE BOARD

A regular meeting of the Board of Commissioners of the County of Buncombe, North Carolina, was duly held on April 2, 2024 at 5:00 p.m. in the Commission Chambers, 200 College Street, Suite 326, Asheville, North Carolina. Chairman Brownie Newman presiding.

The following members were present:

The following members were absent:

* * * * *

Commissioner _____ moved that the following resolution, copies of which having been made available to the Board, be adopted:

RESOLUTION OF THE COUNTY OF BUNCOMBE, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN AMENDMENT TO AN INSTALLMENT FINANCING CONTRACT; PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO AND DECLARING THE INTENT OF THE COUNTY TO REIMBURSE ITSELF FOR CAPITAL EXPENDITURES FROM PROCEEDS OF SUCH RELATED LIMITED OBLIGATION BONDS

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 Buncombe Financing Corporation (the “*Corporation*”) has previously executed and delivered (1) Limited Obligation Bonds (County of Buncombe, North Carolina), Series 2015 (the “*2015 Bonds*”), evidencing proportionate undivided interests in rights to receive certain revenues under an Installment Financing Contract dated as of April 1, 2015 (the “*2015 Contract*”) in the aggregate principal amount of \$126,635,000, under an Indenture of Trust dated as of April 1, 2015, as supplemented (the “*2015 Indenture*”) between the Corporation and Regions Bank, as successor trustee to U.S. Bank National Association, (the “*Trustee*”) in order to (a) pay the capital costs of certain County and school improvements (the “*2015 Project*”), including the construction of (i) an addition to the County’s Health & Human Services Campus, including a parking deck adjacent to the addition (the “*HHS Facilities*”) and (ii) the Enka Intermediate School in Candler, North Carolina (the “*Enka Intermediate School*”) and (b) refinance a portion of the County’s installment payment obligations under the Prior Contracts (as defined in the 2015 Contract) and certain of the County’s general obligation bonds and (2) Limited Obligation Bonds, Series 2018 (the “*2018 Bonds*”), evidencing proportionate undivided interests in rights to receive certain revenues pursuant to the 2015 Contract, as amended by Amendment Number One to the 2015 Contract, dated as of March 15, 2018 (the “*First Amendment*”) in the aggregate principal amount of \$65,000,000, under Supplemental Indenture Number 1 dated as of March 15, 2018 (the “*First Supplement*”) and together with the 2015 Indenture, the “*Indenture*”) to the 2015 Indenture in order to pay the capital costs of certain school improvements, including to Asheville High School and Montford North Star Academy (the “*2018 Project*”);

WHEREAS, to secure its obligations under the 2015 Contract, as amended, the County executed and delivered a deed of trust, dated as of April 1, 2015 (the “*2015 Deed of Trust*”) granting a security interest in the HHS Facilities and the Enka Intermediate School, including the sites on which they are located and a notice of extension, dated as of March 15, 2018 (the “*Notice of Extension*” and together with the 2015 Deed of Trust, the “*Deed of Trust*”) granting a security interest in the sites on which Asheville High School and Montford North Star Academy are located;

WHEREAS, the County previously released Enka Intermediate School from the Deed of Trust on May 17, 2023 pursuant to a Deed of Partial Release on file with the County’s Register of Deeds;

WHEREAS, the Board of Commissioners (the “*Board*”) hereby determines that it is in the best interest of the County to enter into (1) Amendment Number Two to the 2015 Contract (the “*Second Amendment*”) and, together with the 2015 Contract and the First Amendment, the “*Contract*”) with the Corporation in order to (a) finance the capital costs of the acquisition, construction and equipping of improvements to (i) various school facilities located in the Buncombe County School District (the “*County School District*”), including but not limited to, improvements to WD Williams Elementary School, Avery’s Creek Elementary School, Reynolds High School, Oakley Elementary School, North PPAB 10527651v6

Buncombe Middle School, T.C. Roberson High School and other County School District schools; (ii) various school facilities located in the Asheville City School District (the “*City School District*” and together with the County School District, the “*School Districts*”), including but not limited to, improvements to Herring Elementary School, Asheville High School, Montford North Star Academy and other City School District schools; and (iii) various miscellaneous projects in both School Districts and (iv) various County facility improvements, including solar panel installation, EMS East Base construction, fleet and general services complex upgrades and County vehicle purchases (collectively, the “*2024 Projects*”) and (b) pay the costs related to the execution and delivery of the Second Amendment and (2) a second notice of extension to the existing Deed of Trust (the “*Second Notice of Extension*”) granting a security interest in T.C. Roberson High School and North Buncombe Middle School and the improvements thereon, to further secure the County’s obligations under the Contract;

WHEREAS, the Corporation will assist the County in the financing of the 2024 Projects through the execution and delivery of limited obligation bonds, in one or more series (the “*2024 Bonds*”);

WHEREAS, the County hereby determines that the acquisition, construction and equipping of the 2024 Projects are essential to the County’s proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the 2024 Projects have or will provide an essential use and permit or will permit the County to carry out public functions that it is authorized by law to perform; and that entering into the Second Amendment is necessary and expedient for the County by virtue of the findings presented herein;

WHEREAS, the County hereby determines that the 2015 Contract, as amended by the Second Amendment, allows the County to acquire the 2024 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 financing the acquisition, construction and equipping of the 2024 Projects in an amount not to exceed \$81,500,000, and that such cost of the acquisition, construction, equipping 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, construction and equipping of the 2024 Projects pursuant to the Contract is expected to exceed the cost of financing the same pursuant to a bond financing for the same undertaking, the County hereby determines that the cost of financing the acquisition, construction and equipping of the 2024 Projects 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 acquiring, constructing and equipping the 2024 Projects and (3) insufficient revenues are produced by the 2024 Projects so as to permit a revenue bond financing;

WHEREAS, the County has determined and hereby determines that the estimated cost of financing the acquisition, construction and equipping of the 2024 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 bond 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;

WHEREAS, the County believes, to the best of its knowledge, 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, the County desires to proceed with the 2024 Projects and will incur and pay certain expenditures in connection with the 2024 Projects prior to the date of issuance of the 2024 Bonds (the “*Original Expenditures*”), such Original Expenditures to be paid for originally from a source other than the proceeds of the 2024 Bonds, and the County intends, and reasonably expects, to be reimbursed for such Original Expenditures from a portion of the proceeds of the 2024 Bonds;

WHEREAS, a public hearing on the Second Amendment, the proposed 2024 Projects and the Second Notice of Extension after publication of a notice with respect to such public hearing, was held on April 2, 2024 and approval of the LGC with respect to entering the Contract must be received;

WHEREAS, the Board hereby determines that it is in the best interest of the County to release the HHS Facilities (as further described in Appendix A to this Resolution) from the lien of the Deed of Trust (such release referred to herein as the “*Release*”) as there exists sufficient collateral under the Deed of Trust, without the HHS Facilities, to appropriately secure the County’s obligations under the Contract; and

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 Second Amendment and Second Notice of Extension.*** The County Manager and the Finance Director (the “*Authorized Officers*”), with advice from the Senior Staff Attorney and Bond Counsel, are hereby authorized and directed to proceed and negotiate on behalf of the County a Second Amendment for a principal amount not to exceed \$81,500,000 in order to finance the 2024 Projects in accordance with the provisions of Section 160A-20 of the General Statutes of North Carolina, as amended, and to provide in connection with the Second Amendment, as security for the County’s obligations thereunder, the Second Notice of Extension extending the lien from the 2015 Deed of Trust to the sites of T.C. Roberson High School and North Buncombe Middle School and the improvements thereon.

Section 2. ***Application to LGC.*** The Finance Director or her designee is hereby directed to file with the LGC an application for its approval of the Second 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. ***Direction to Retain Professionals.*** The Finance Director is hereby authorized and directed to retain the assistance of Parker Poe Adams & Bernstein LLP, Raleigh, North Carolina, as bond counsel; Davenport & Company, LLC, Charlotte, North Carolina, as financial advisor; Regions Bank, Atlanta, Georgia, as trustee; Stifel, Nicolaus & Co., Inc, as managing underwriter; and Raymond James & Associates, Inc., as co-managing underwriter. The Finance Director is hereby authorized to retain such other professionals as she deems necessary in her judgment to carry out the transaction contemplated in this Resolution.

Section 4. ***Official Declaration of Intent for Reimbursement.*** The County presently intends, and reasonably expects, to reimburse itself for Original Expenditures not to exceed \$26,000,000 on or after the date occurring 60 days prior to the date of adoption of this Resolution from a portion of the proceeds of the 2024 Bonds. The County adopts this Resolution as a declaration of official intent under Section 1.150-2 of the Treasury Regulations promulgated under Section 103 of the Internal Revenue Code of 1986, as amended, to evidence the County's intent to reimburse itself for the Original Expenditures from proceeds of the 2024 Bonds. The Finance Director, or her designee, with advice from Bond Counsel, is hereby authorized, directed and designated to act on behalf of the County in determining and itemizing all of the Original Expenditures incurred and paid by the County in connection with the 2024 Projects during the period commencing on the date occurring 60 days prior to the date of adoption of this Resolution and ending on the date of execution and delivery of the Second Amendment.

Section 5. ***Release of HHS Facilities.*** The County is hereby authorized to request that the Trustee, as assignee of the beneficiary under the Deed of Trust, effectuate the Release in accordance with Section 1.14 of the Deed of Trust. The value of the remaining property secured by the Deed of Trust after the release of the HHS Facilities (as such value is evidenced by appraised, tax or insured value) is not less than 50% of the aggregate principal component of the Installment Payments then Outstanding under the Indenture. The legal description of the HHS Facilities will be contained in the Deed of Partial Release (and as described in Appendix A to this Resolution), to be presented to the Trustee for its execution, and to be executed by the Deed of Trust trustee and recorded in the office of the Register of Deeds of Buncombe County, North Carolina. The County is authorized to pay all fees and expenses in connection with such Release. All undefined capitalized terms used in this Section have the meanings provided for in the Contract.

Section 6. ***Other Acts Authorized.*** The Finance Director is hereby authorized to do any and all other things necessary to complete the steps necessary for the execution and delivery of the Second Amendment for the transactions described in this Resolution and to effectuate the Release.

Section 7. ***Repealer.*** All motions, orders, resolutions and parts thereof in conflict herewith are hereby repealed.

Section 8. ***Effective Date.*** This Resolution is effective on the date of its adoption.

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

I, Stacey K. Woody, duly appointed Interim Clerk to the Board of Commissioners of the County of Buncombe, North Carolina, *DO HEREBY CERTIFY*, that the foregoing is a true and accurate copy of the resolution entitled “**RESOLUTION OF THE COUNTY OF BUNCOMBE, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN AMENDMENT TO AN INSTALLMENT FINANCING CONTRACT; PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO AND DECLARING THE INTENT OF THE COUNTY TO REIMBURSE ITSELF FOR CAPITAL EXPENDITURES FROM PROCEEDS OF SUCH RELATED LIMITED OBLIGATION BONDS**” which was adopted by the Board of Commissioners of the County of Buncombe, North Carolina, at its regular meeting held on April 2, 2024, to become effective on April 2, 2024, and that such resolution has been duly recorded in the minutes of the County.

WITNESS my hand and the corporate seal of the County of Buncombe, North Carolina, this __ day of April, 2024.

(SEAL)

Stacey K. Woody
Interim Clerk to the Board of Commissioners
County of Buncombe, North Carolina

APPENDIX A

DESCRIPTION OF REAL PROPERTY TO BE RELEASED FROM DEED OF TRUST

HHS FACILITIES

BEGINNING at chiseled "X" in the sidewalk at the northeastern corner of the intersection of Coxe Avenue and Aston Street in the City of Asheville, said chiseled "X" being located North $12^{\circ} 54' 05''$ East 2,255.21 feet from NCGS monument identified as "Asheland" which is located at North 209520.057M, E287384.498M (NAD 1983), thence from said Beginning point North $11^{\circ} 58' 48''$ West 322.03 feet to a nail set in the southern margin of a 10 foot alley; thence with the southern margin of said alley North $78^{\circ} 01' 12''$ East 259.54 feet to a nail; thence South $11^{\circ} 58' 48''$ East 318.46 feet to a chiseled "X" in the sidewalk at the northwestern intersection of Buncombe Street and Aston Street; thence South $76^{\circ} 13' 12''$ West 113.52 feet to a nail; thence South $78^{\circ} 01' 06''$ West 146.08 feet to the point and place of BEGINNING, as shown on a survey for Buncombe County entitled "Health and Human Resources Complex" by W. Edwin Holmes, R.L.S, dated February 26, 1998.