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GASTON COUNTY

COMMISSIONER'S COURT

NORTH CAROLINA

MAY 13, 2010

The Gaston County Board of Commissioners (BOC) met in Recessed Session on May 13, 2010 at 9:05 pm, immediately following its Work Session, in the Commissioners Room, Gaston County Courthouse.

Chairman Mickey Price presided with Commissioners Allen R. Fraley, Vice-Chair; Joe D. Carpenter, Donnie Loftis, Tracy L. Philbeck and John A. Torbett in attendance.

Commissioner Tom Keigher was not in attendance.

Others present included Jan Winters, County Manager; Charles L. Moore, County Attorney; and Martha M. Jordan, Clerk to the Board.

2010-142 Finance - Resolution Approving Certain Documents and Approving and Authorizing Certain Actions in Connection with Financing a Portion of the Cost of Certain Facilities to Collect and Convert Landfill Gas to Electricity

Chairman Price recognized the County Attorney for comments.

The County Attorney advised that Page 2 of subject document had been updated to change the lender from "Bank of America" to "Banc of America Public Capital Corp"; the Local Government Commission was advised of the material change in approval for the financing; they assured that this would not be an issue; staff has some concerns about portions of the document relating to the business structure of the financing; staff request is to move forward with approval of the documents although some document changes may occur prior to closing as a result of the Finance Director's meeting with the Bank on May 14, 2010; any changes would not be substantial in nature. The County Attorney advised that one of the primary issues that came up at the eleventh hour was that an escrow agent was to be provided for the funding rather than having the County deposit funds in its normal trust account (North Carolina Capital and Management Trust); this was not in the initial proposal; staff would prefer to push back on that issue and other issues that came up at the last minute; changes may or not be made to the documents dependent on the Finance Director's conversations with the Bank. He advised that the BOC would be made aware of any actual changes prior to closing and that the closing may not be possible on Monday as previously indicated to Chairman Price.

Chairman Price asked if the BOC could move forward with adoption of the document as long as the numbers did not change.

The County Attorney recommended approving the documents in substance and authorizing some variations in the terms; advised that there would be no charge for an escrow agent although the County would lose interest income.

Mr. Bill Bradley indicated that there should be no additional charge for an escrow agent; will ask for the difference in the earning rate from Capital Trust to whoever the Bank's escrow agent may be;

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wanted to be assured of the highest rate possible; will make sure that this is recognized as public funds and is collateralized under the State Statutes.

Commissioner Fraley questioned the reasoning behind the bank's requirement to use an escrow agent.

The Finance Director advised that he was not aware of the reasoning behind the requirement since it took place at the eleventh hour; staff was on course to do what was in place; staff learned late this afternoon that there were additional things to be added to the agreement.

Chairman Price asked if there were any risks involved if the issue was delayed for two weeks.

The County Attorney advised that the Public Works Director was on a tight time frame with respect to contracts and meeting deadlines; will need to close in order to start construction on the project; must close prior to the next regular meeting, if possible.

Commissioner Torbett asked how much dollar swing was involved.

The Finance Director advised that there should be no change in the amount borrowed or the interest rate; staff was assured it would stay the same.

Commissioner Carpenter offered his support with the understanding that the agreement would not be executed unless it was within the perimeters just discussed; asked if the motion covered all ten sections of the agreement.

The County Attorney advised that the financing agreement was for \$5.8M at the quoted rate; plan to discuss the escrow agent requirement with the bank tomorrow; BOC approval covers all ten sections of the agreement.

Chairman Price called for a motion and action was taken as set forth therein and herewith as follows:

A regular meeting of the Board of Commissioners for the County of Gaston, North Carolina, was held in the Commissioners' Room in the Gaston County Courthouse at 325 North Marietta Street, in Gastonia, North Carolina, the regular place of meeting, on May 13, 2010, at 6:00 P.M.

Present: Chairman Mickey Price, presiding, and Commissioners Allen R. Fraley, Donnie Loftis, John A. Torbett, Tracy L. Philbeck and Joe D. Carpenter.

Absent: Commissioner Tom Keigher.

* * * * *

Commissioner Torbett introduced the following resolution, a copy of which had been provided to each Commissioner and which was read by its title:

RESOLUTION APPROVING CERTAIN DOCUMENTS AND APPROVING AND AUTHORIZING CERTAIN ACTIONS IN CONNECTION WITH FINANCING A PORTION OF THE COST OF CERTAIN FACILITIES TO

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COLLECT AND CONVERT LANDFILL GAS TO ELECTRICITY

WHEREAS, the County of Gaston, North Carolina (the "County"), is a validly existing political subdivision of the State of North Carolina (the "State"), under and by virtue of the Constitution and laws of the State; and

WHEREAS, the County has the power, pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended, to (a) finance the purchase of real and personal property by installment agreements that create in the property purchased a security interest to secure payment of the purchase price to the entity advancing moneys for such transaction and (b) finance the construction of fixtures or improvements on real property by agreements that create in such fixtures or improvements and in the real property on which such fixtures or improvements are located a security interest to secure repayment of moneys advanced or made available for such construction; and

WHEREAS, the County has determined to finance pursuant to said Section 160A-20 a portion of the cost of a project consisting of the acquisition, construction and installation of facilities with which to collect methane gas from the Gaston County Landfill and to convert such gas to electricity for sale to a utility (the "Project"), which financing is to be in amount of \$5,800,000 (the "Amount Advanced"); and WHEREAS, under Section 1400U-1 of the Internal Revenue Code of 1986, as amended (the "Code"), pursuant to the provisions of the American Recovery and Reinvestment Act of 2009 ("ARRA"), the County has received an allocation of recovery zone facility bond limitation in the amount of \$5,800,000 and the County now desires that its obligation to repay the Amount Advanced pursuant to the Installment Financing Contract (as defined hereinafter) constitute a recovery zone facility bond under Section 1400U-3 of the Code pursuant to the provisions of ARRA; and

WHEREAS, it is now necessary for the Board of Commissioners for the County (the "Board") to approve certain documents and approve and authorize certain actions in connection therewith; and

WHEREAS, there have been presented for consideration by the Board copies of the following documents relating to such matter:

(a) a draft of an Installment Financing Contract, between the County and Banc of America Public Capital Corp (the "Installment Financing Contract"), under which Banc of America Public Capital Corp (the "Bank") would advance the Amount Advanced to finance a portion of the cost of the Project and the County would be obligated to make Installment Payments (as defined therein) to repay the Amount Advanced and to make certain other payments, among other requirements, such obligations being subject to termination by the County under certain circumstances as provided therein; and

(b) a draft of a Deed of Trust, Security Agreement and Financing Statement (the "Deed of Trust") which the County would execute and deliver to a trustee for the benefit of the Bank and which would encumber the site of the Project and the improvements on such site and certain related property, subject to certain exceptions, as security for the County's obligation to repay the Amount Advanced and any other funds advanced to it pursuant to the Installment Financing Contract;

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

Section 1. The Board hereby confirms that the Project and its use are essential for improved facilities to collect and dispose of methane gas that is produced in connection with the operation of such landfill and the Project will permit the County to carry out public functions that it is authorized by law to perform.

Section 2. The Board hereby finds and determines that it is in the best interest of the County to enter into the Installment Financing Contract and the Deed of Trust in order to effectuate the financing of a portion of the cost of the Project as described above.

Section 3. The form and content of the Installment Financing Contract and the Deed of Trust, each of which will be a valid, legal and binding obligation of the County in accordance with its terms, are hereby approved in all respects and the Chairman of the Board, the County Manager of the County, the Assistant County Manager of the County, the Finance Director of the County, the County Attorney of the County and the Clerk to the Board are hereby authorized and directed to execute and deliver the Installment Financing Contract and the Deed of Trust, as may be applicable, in substantially the forms presented to the Board, together with such additions, changes, modifications and deletions as they, with the advice of counsel, may deem necessary and appropriate, and such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Board and the County; provided, however, that the due date of the final Installment Payment is not later than December 31, 2020 and that the aggregate amount of the principal components of the Installment Payments does not exceed \$5,800,000.

Section 4. The Board hereby approves, ratifies and confirms the actions of the County Manager, the Assistant County Manager, the Finance Director and the County Attorney of the County in connection with this matter.

Section 5. The officers and employees of the County are authorized and directed (without limitation except as may be expressly set forth herein) to take such other actions and to execute and deliver such other documents, certificates, undertakings, agreements or other instruments as they, with the advice of counsel, may deem necessary or appropriate to effectuate the transactions contemplated by the Installment Financing Contract and the Deed of Trust.

Section 6. The County hereby irrevocably designates its obligation to repay the Amount Advanced under the Installment Financing Contract as a recovery zone facility bond for purposes of Section 1400U-3 of the Code.

Section 7. The County covenants that, to the extent permitted by the Constitution and laws of the State of North Carolina, it will comply with the requirements of the Code, as applicable to the Installment Financing Contract except to the extent that the County obtains an opinion of nationally-recognized bond counsel to the effect that noncompliance would not result in the interest components of the Installment Payments being includable in the gross income of the recipient thereof under Section 103 of the Code, as more specifically provided in the Installment Financing Contract.

Section 8. If any section, phrase or provision of this resolution is for any reason declared to be invalid, such declaration shall not

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affect the validity of the remainder of the sections, phrases or provisions of this resolution.

Section 9. All motions, orders, resolutions, ordinances and parts thereof in conflict herewith are hereby repealed.

Section 10. This resolution shall take effect immediately upon its passage.

Upon motion duly made and seconded, the foregoing resolution was passed by the following vote:

Ayes: Commissioners Fraley, Loftis, Torbett, Philbeck, Price and Carpenter .

Noes: None.

* * * * *

I, Martha M. Jordan, Clerk to the Board of Commissioners for the County of Gaston, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of said Board at a regular meeting held on May 13, 2010 as relates in any way to the matters described therein and that said proceedings are recorded in Minute Book No. 30 of the minutes of said Board, beginning on page and ending on page .

I HEREBY FURTHER CERTIFY that a schedule of regular meetings of said Board, stating that regular meetings of said Board are held in the Commissioners' Room in the Gaston County Courthouse at 325 North Marietta Street, in Gastonia, North Carolina, on the second and fourth Thursdays 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 13th day of May 2010.

Martha M. Jordan
Clerk to the Board of Commissioners

2010-143 Commissioner Loftis - To Authorize the County Manager to Utilize a Reduction in Force (RIF), if needed, for the FY2010-11 Budget

Commissioner Loftis introduced the following motion:

BE IT RESOLVED that the County Manager is hereby empowered to institute a Reduction in Force (RIF), if necessary, to move forward with the FY2010-11 Budget process.

Commissioner Philbeck provided the second, and the motion carried unanimously.

Adjournment

Chairman Price adjourned the Recessed Meeting of May 13, 2010 at 9:10 pm.

(All aforementioned documents are on file with the Clerk to the Board.)

Mickey Price, Chairman
Gaston County Board of Commissioners

Martha M. Jordan
Clerk to the Board

SEAL