

**ORANGE COUNTY
BOARD OF COMMISSIONERS**

ACTION AGENDA ITEM ABSTRACT

Meeting Date: December 10, 2013

Action Agenda

Item No. 5-a (Proposed)

SUBJECT: Public Hearing and Adoption of the Final Financing Resolution Authorizing the Issuance of \$10,500,000 of Installment Financing to Finance Various County and School Capital Investment Plan Projects and County Equipment

DEPARTMENT: Finance and Administrative Services

PUBLIC HEARING: (Y/N)

Y

ATTACHMENT(S):

1. Listing of Projects to be Financed
2. Bid Summary and Debt Service Schedule
3. Resolution Approving Financing Terms and Documents for 2014 Installment Financing

INFORMATION CONTACTS:

Clarence Grier, 919-245-2453
Robert Jessup, 919-933-9891

PURPOSE: To:

- 1) Conduct a public hearing to receive public comment on the final financing resolution authorizing the issue of \$10,500,000 of installment financing to finance various County and School Capital Investment Plan Projects and County equipment, including the proposed transfer of Culbreth Middle School, including the buildings and the related real estate, from the Chapel Hill - Carrboro City School Board to Orange County to facilitate the financing of a new science wing at the school; and
- 2) adopt the final financing resolution authorizing the issue of \$10,500,000 of installment financing to finance various County and School Capital Investment Plan Projects and County equipment.

BACKGROUND: During its November 5, 2013 meeting, the Board of County Commissioners approved the financing of various County and School Capital projects and County equipment (Attachment 1).

Staff requested and received bids for the proposed installment financing from the following financial institutions:

1. SunTrust Institutional and Government Inc.
2. Bank of America Public Capital Corp
3. PNC Bank

4. First Tennessee Bank

Bank of America was selected as the financially responsive and financially responsible bidder. The financing agreement will be subdivided into two installment financing agreements: one for the financing of the capital investment projects and one for the financing of the equipment.

The financing terms of the two installment financing agreements will be follows:

1. Installment Financing Agreement 1 – Capital Projects - \$8.16 million in total debt service, Interest Rate – 2.41%, Average debt service over 15 years totals \$544,252.
2. Installment Financing Agreement 1 – Equipment - \$3.88 million, Interest Rate – 1.24%, Average debt service over 5 years totals \$776,537.

Total debt service will average \$803,098 over the term of the installment financing agreements.

Additionally, under the installment financing method selected by the County, the financing will be secured by a mortgage on the school land and buildings. For the County to grant a mortgage and collateral, the County must own the Culbreth Middle School and the proposed constructed Science Wing. The Chapel Hill – Carrboro City (CHCCS) School Board will have to transfer the property to the County for the financing. The County will lease the property back to CHCCS for its use during the financing term, and the financing documents will provide for the school property to be returned to CHCCS when the financing is retired. The annual lease to CHCCS will be \$1 per year.

The CHCCS Board, at its meeting last week, approved the overall financing plan, including the transfer of the school property. State law provides that such a transfer can occur only after a public hearing. The resolution provides the County's approval of the transfer, and provides approval of other financing terms and documents for the installment financing previously approved by the Board in principle.

FINANCIAL IMPACT: There is no financial impact related to this action. However, there will be a financial impact in proceeding with the financing. The maximum annual debt service applicable to the County and School capital investment projects financing would require \$646,920, and \$796,415 for the equipment financing in fiscal year 2014-15. The total combined debt service for the fiscal year 2014 – 2015 for this financing would be \$1,443,335.

RECOMMENDATION(S): The Manager recommends the Board conduct the public hearing, receive public comments, close the public hearing and approve the resolution authorizing the steps to move forward with the financing of the stated capital project and equipment financing.

Attachment 1 – Proposed Projects

<u>Project</u>	<u>Estimated Amount</u>	<u>Description</u>
Culbreth Middle School Science Wing	\$ 4,971,676	Science Wing for Chapel Hill – Carrboro City Schools
HVAC Projects	\$ 130,000	Community Geothermal Projects
Roofing Projects	\$ 115,000	County
Information Technology	\$ 1,436,000	Equipment, BOCC Initiatives, Firehouse Software and Central Permitting Software
Whitted Building Renovations	\$ 1,700,000	BOCC Meeting Room
Viper Radio System	\$ 500,000	Additional Channels for Existing Towers increase the Viper System capacity
Communication System Improvements	\$ 709,062	Purchase of additional Viper Radios
Vehicle Replacements	\$ 899,416	Vehicles Purchases

Orange County, NC
2013 IPC

	Banc of America Public Capital Corp			First Tennessee Bank	PNC Equipment Finance
					
	Option A	Option C	Requested Alternative	Option A	Option A
NTE Amount	3,736,000	10,461,154	10,461,154	3,736,000	3,736,000
Term	60 Months	180 Months	180 Months	5 Years	5 Years
Interest Mode		Fixed through maturity		Fixed through Maturity	Fixed through Maturity
Final Maturity	2/1/2019	2/1/2029	2/1/2029	2/1/2019	2/1/2019
Interest Rate	1.24%	2.41%	1.24% / 2.41% Blend	1.44%	1.59%
Optional Call Provisions	Prepayment without penalty at anytime (with 30 days notice) on any payment date	Prepayment without penalty at anytime (with 30 days notice) after half the term has elapsed on any payment date	Prepayment without penalty at anytime (with 30 days notice) after half the term has elapsed on any payment date	Prepayment without penalty at anytime Subject to Make-whole payments	Prepayment in whole with 3% penalty on any payment date beginning 2nd anniversary of lease commencement
Bank / Legal Fees	None	\$7,500 Legal Fee	\$7,500 Legal Fee	Not to exceed \$3,500 Attorney's fees	\$1,500 Legal Costs
Offer Expiration		Offer must be accepted by November 29, 2013		Offer must be accepted by December 11, 2013	Offer must be accepted by January 7, 2013
Other		None Specified		Must maintain Borrower's LT GO Debt Rating by Moody's at A1 or better and Borrower's LT Debt Rating by S&P at A+ or better	None
Estimated Debt Service				Not a commitment to lend. Bank must complete due diligence	
FY 15	796,414.83	1,491,207.89	1,443,334.61	804,384.96	811,225.64
FY 16	785,063.60	1,443,817.00	1,407,921.40	791,041.60	795,525.10
FY 17	774,788.40	1,414,463.20	1,387,541.50	779,270.40	782,631.90
FY 18	770,157.00	1,385,109.40	1,367,161.60	768,513.60	770,754.60
FY 19	756,262.80	1,355,755.60	1,346,781.70	757,756.80	758,877.30
FY 20		559,401.80	559,401.80		
FY 21		548,532.70	548,532.70		
FY 22		536,663.60	536,663.60		
FY 23		525,818.60	525,818.60		
FY 24		514,973.60	514,973.60		
FY 25		504,128.60	504,128.60		
FY 26		492,283.60	492,283.60		
FY 27		481,462.70	481,462.70		
FY 28		470,641.80	470,641.80		
FY 29		459,820.90	459,820.90		
Total	3,882,686.63	12,184,080.99	12,046,468.71	3,900,967.36	3,919,014.54

Orange County, NC
2013 IPC

STEFL		SunTrust Institutional & Government					
							
	Option A (Annex II)		Option B (Annex I) if Annex II is accepted		Option B (Annex I) if Annex II is not accepted		Option A & Option B Combination
NTE Amount	3,736,000		6,864,000		6,864,000		10,461,154
Term	5 Years		15 Years		15 Years		15 Years
Interest Mode	Fixed through Maturity		Fixed through Maturity		Fixed through Maturity		Fixed through Maturity
Final Maturity	2/1/2019		15 Years from Closing		15 Years from Closing		15 Years
Interest Rate	1.51%	1.71%	2.70%	2.87%	3.02%	3.21%	1.51% / 2.70% Blend
Optional Call Provisions	Prepayment on any payment date at 101% of par	Prepayment on any payment date at par	Prepayment on any payment date (make whole)	Prepayment on any payment date at par	Prepayment on any payment date (make whole)	Prepayment on any payment date at par	Prepayment on any payment date (make whole)
Bank / Legal Fees	\$5,000 Document Review Fee + \$500 STEFL Fee		\$5,000 Document Review Fee				\$5,000 Document Review Fee \$500 STEFL Fee
Offer Expiration	Offer must be accepted by November 26, 2013 and close by January 7, 2013		Offer must be accepted by November 26, 2013 and close by January 7, 2013				
Other	An escrow set up fee of \$250 will be assessed.						
Estimated Debt Service							
FY 15	829,785.17	837,968.64	645,428.80	657,670.61	668,536.64	682,222.72	1,475,213.97
FY 16	813,326.80	819,462.80	621,100.00	631,810.00	641,320.40	653,294.20	1,434,426.80
FY 17	801,745.10	806,347.10	608,923.00	618,866.30	627,700.20	638,817.10	1,410,668.10
FY 18	790,163.40	793,231.40	596,746.00	605,922.60	614,080.00	624,340.00	1,386,909.40
FY 19	778,581.70	780,115.70	584,569.00	592,978.90	600,459.80	609,862.90	1,363,150.70
FY 20			572,392.00	580,035.20	586,839.60	595,385.80	572,392.00
FY 21			559,215.00	566,091.50	573,219.40	580,908.70	559,215.00
FY 22			547,065.00	553,176.50	558,599.20	565,431.60	547,065.00
FY 23			534,915.00	540,261.50	545,009.20	550,986.60	534,915.00
FY 24			522,765.00	527,346.50	531,419.20	536,541.60	522,765.00
FY 25			509,615.00	513,431.50	517,829.20	522,096.60	509,615.00
FY 26			497,492.00	500,545.20	503,239.20	506,651.60	497,492.00
FY 27			485,369.00	487,658.90	489,679.40	492,238.70	485,369.00
FY 28			473,246.00	474,772.60	476,119.60	477,825.80	473,246.00
FY 29			461,123.00	461,886.30	462,559.80	463,412.90	461,123.00
Total	4,013,602.17	4,037,125.64	8,219,963.80	8,312,454.11	8,396,610.84	8,500,016.82	12,233,565.97

Disclaimer

The U.S. Securities and Exchange Commission (the “SEC”) has clarified that a broker, dealer or municipal securities dealer engaging in municipal advisory activities outside the scope of underwriting a particular issuance of municipal securities should be subject to municipal advisor registration. Davenport & Company LLC (“Davenport”) has registered as a municipal advisor with the SEC. As a registered municipal advisor Davenport may provide advice to a municipal entity or obligated person. When acting as a registered municipal advisor Davenport is a fiduciary required by federal law to act in the best interest of a municipal entity or obligated person without regard to its own financial or other interests, except when Davenport acts as an underwriter, as noted below, or as a registered investment advisor. If and when an issuer engages Davenport to provide financial advisory or consultant services with respect to the issuance of municipal securities, Davenport is obligated to evidence such a financial advisory relationship with a written agreement. As a financial advisor, Davenport’s fiduciary obligations to the issuer are the same as those of a registered municipal advisor.

However, should an issuer choose to consider Davenport as an underwriter, under the Municipal Securities Rulemaking Board (“MSRB”) Rule G-17 Davenport is obligated to disclose that the underwriter’s primary role is to purchase securities with a view to distribution in an arm’s length commercial transaction with the issuer and the underwriter has financial and other interests that differ from those of the issuer; unlike a municipal advisor, the underwriter does not have a fiduciary duty to the issuer under the federal securities laws and is, therefore, not required by federal law to act in the best interest of the issuer without regard to its own financial or other interests; the underwriter has a duty to purchase securities from the issuer at a fair and reasonable price, but must balance that duty with its duty to sell municipal securities to investors at prices that are fair and reasonable; the underwriter will review the official statement of the issuer’s securities in accordance with, and as part of, its responsibilities to investors under the federal securities laws, as applied to the facts and circumstances of the transaction. Rule G-17 also requires an underwriter to deal fairly at all times with both municipal issuers and investors. The SEC has clarified that in order for a person to serve as an underwriter with respect to an issuance of municipal securities there must be a relationship to a particular transaction.

Davenport’s compensation when serving as an underwriter is normally contingent on the closing of a transaction. Clients generally prefer this arrangement so they are not obligated to pay a fee unless the transaction is completed. However, MSRB Rule G-17 requires an underwriter to disclose that compensation that is contingent on the closing of a transaction or the size of a transaction presents a conflict of interest, because it may cause the underwriter to recommend a transaction that is unnecessary or to recommend that the size of the transaction be larger than is necessary.

This material was prepared by public finance, or other non-research personnel of Davenport. This material was not produced by a research analyst, although it may refer to a Davenport research analyst or research report. Unless otherwise indicated, these views (if any) are the author’s and may differ from those of the Davenport fixed income or research department or others in the firm. Davenport may perform or seek to perform financial advisory, underwriting or placement agent services for the issuers of the securities and instruments mentioned herein.

This material has been prepared for information purposes only and is not a solicitation of any offer to buy or sell any security/instrument or to participate in any trading strategy. Any such offer would be made only after a prospective participant had completed its own independent investigation of the securities, instruments or transactions and received all information it required to make its own investment decision, including, where applicable, a review of any offering circular or memorandum describing such security or instrument. That information would contain material information not contained herein and to which prospective participants are referred. This material is based on public information as of the specified date, and may be stale thereafter. We have no obligation to tell you when information herein may change. We make no representation or warranty with respect to the completeness of this material. Davenport has no obligation to continue to publish information on the securities/instruments mentioned herein. Recipients are required to comply with any legal or contractual restrictions on their purchase, holding, sale, exercise of rights or performance of obligations under any securities/instruments transaction.

The securities/instruments discussed in this material may not be suitable for all investors or issuers. Recipients should seek independent financial advice prior to making any investment decision based on this material. This material does not provide individually tailored investment advice or offer tax, regulatory, accounting or legal advice. Prior to entering into any proposed transaction, recipients should determine, in consultation with their own investment, legal, tax, regulatory and accounting advisors, the economic risks and merits, as well as the legal, tax, regulatory and accounting characteristics and consequences, of the transaction. You should consider this material as only a single factor in making an investment decision.

The value of and income from investments and the cost of borrowing may vary because of changes in interest rates, foreign exchange rates, default rates, prepayment rates, securities/instruments prices, market indexes, operational or financial conditions or companies or other factors. There may be time limitations on the exercise of options or other rights in securities/instruments transactions. Past performance is not necessarily a guide to future performance and estimates of future performance are based on assumptions that may not be realized. Actual events may differ from those assumed and changes to any assumptions may have a material impact on any projections or estimates. Other events not taken into account may occur and may significantly affect the projections or estimates. Certain assumptions may have been made for modeling purposes only to simplify the presentation and/or calculation of any projections or estimates, and Davenport does not represent that any such assumptions will reflect actual future events. Accordingly, there can be no assurance that estimated returns or projections will be realized or that actual returns or performance results will not materially differ from those estimated herein. This material may not be sold or redistributed without the prior written consent of Davenport. 10.17.13 MB TC

RES-2013-111

Resolution Approving Financing Terms and Documents For 2014 Installment Financing

WHEREAS --

Orange County has previously determined to carry out a plan (the "Project") to acquire, construct and finance various public improvements as identified in the County's capital improvement plan, including a new science wing for Culbreth Middle School and the other projects and improvements shown on Exhibit A.

The County has solicited competitive proposals from financial institutions to provide the financing, and Banc of America Public Capital Corporation (the "Lender") has submitted the best proposal.

The County's Finance Officer has made available to this Board the draft agreements listed on Exhibit B (the "Agreements"), which relate to the County's carrying out the financing plan.

This resolution provides the County Board's final approval of the financing terms and documents for the financing of the Project.

BE IT THEREFORE RESOLVED by the Board of Commissioners of Orange County, North Carolina, as follows:

1. *Determination To Proceed with Financing* – The County confirms its plans to undertake the Project. The County will carry out the plan with financing from the Lender, substantially in accordance with the Lender's financing proposal.

Under the financing plan, the Lender will make funds available to the County for use on Project costs. The County will repay the amount advanced, with interest, over time. The County will grant to the Lender a mortgage-type interest in Culbreth Middle School to secure the County's repayment obligation. As part of this financing plan, the Chapel Hill – Carrboro Board of Education will transfer the school property to the County.

2. *Approval of Agreements; Direction To Execute Agreements* -- The Board approves the forms of the Agreements submitted to this meeting. The Board authorizes the Board's Chair and the County Manager, or either of them, to execute and deliver the Agreements in their final forms. The Agreements in their respective final forms must be

in substantially the forms presented, with such changes as the Chair or the County Manager may approve. The execution and delivery of any Agreement by an authorized County officer will be conclusive evidence of such officer's approval of any such changes.

The Agreements in final form, however, must be consistent with the financing plan described in this resolution and must provide (a) for the amount financed by the County not to exceed \$10,600,000, (b) for an annual interest rate not to exceed 2.75% (in the absence of default, or a change in tax status), and (c) for a financing term not to extend more than 15.5 years from the funding date.

3. *Officers To Complete Closing* – The County Manager, the Finance Officer and all other County officers and employees are authorized to take all proper steps to complete the financing in cooperation with the Lender and in accordance with this resolution.

The Board authorizes the Finance Officer to hold executed copies of all financing documents authorized by this resolution in escrow on the County's behalf until the conditions for their delivery have been completed to his satisfaction, and thereupon to release the executed copies of the documents for delivery to the appropriate persons or organizations.

Without limiting the generality of the foregoing, the Board specifically authorizes the Finance Officer (a) to approve and enter into additional agreements to carry out the financing contemplated by this resolution, including agreements for the custody of financing proceeds and agreements for appropriate professional services, and (b) to approve changes to any documents previously signed by County officers or employees, provided that the changes do not contradict this resolution or substantially alter the intent from that expressed in the form originally signed. The Finance Officer's authorization of the release of any document for delivery will constitute conclusive evidence of his approval of the final form.

In addition, the Finance Officer is authorized to take all appropriate steps for the efficient and convenient carrying out of the County's on-going responsibilities with respect to the Project. This authorization includes, without limitation, contracting with third parties for reports and calculations that may be required under this resolution or otherwise with respect to the financing.

4. *Acceptance of Property Transfer* – The County agrees to accept title to the Culbreth School and its associated real property to facilitate the financing arrangements contemplated by the Agreements.

5. ***Lender May Act through Affiliates*** -- The Finance Officer may approve entering into the Agreements with an affiliate of the Lender if the Lender requests a change.

6. ***Resolutions as to Tax Matters*** -- The County will not take or omit to take any action the taking or omission of which will cause its obligations to pay principal and interest (the "Obligations") to be "arbitrage bonds," within the meaning of Section 148 of the "Code" (as defined below), or "private activity bonds" within the meaning of Code Section 141, or otherwise cause interest components of the installment payments to be includable in gross income for federal income tax purposes. Without limiting the generality of the foregoing, the County will comply with any Code provision that may require the County at any time to pay to the United States any part of the earnings derived from the investment of the financing proceeds. In this resolution, the Code" means the United States Internal Revenue Code of 1986, as amended, and includes applicable Treasury regulations.

7. ***Miscellaneous Provisions*** -- All County officers and employees are authorized to take all such further action as they may consider necessary or desirable in furtherance of the purposes of this resolution. All such prior actions of County officers and employees are ratified. Upon the absence, unavailability or refusal to act of the County Manager, the Chair or the Finance Officer, any other of such officers may assume any responsibility or carry out any function assigned in this resolution. In addition, the Vice Chair or any Deputy or Assistant Clerk to the Board may in any event assume any responsibility or carry out any function assigned to the Chair or the Clerk, respectively, in this resolution. All other Board proceedings, or parts thereof, in conflict with this resolution are repealed, to the extent of the conflict. This resolution takes effect immediately.

Exhibit A – proposed projects

Project	Estimated Amount (\$)
Culbreth Middle School Science Wing addition – construction and equipping	4,971,676
HVAC projects	130,000
Roofing projects	115,000
Information technology (including firehouse software and central permitting software)	1,436,000
Whitted Building – renovation costs and recapture of planning costs	1,700,000
VIPER radio system	500,000
Communication system improvements	709,062
Vehicle replacements	899,416
<i>TOTAL</i>	10,461,154

The County also expects to use additional financing proceeds to pay financing expenses.

Exhibit B -- draft agreements

(a) A draft dated November 26, 2013, of an Installment Financing Contract to be dated on or about January 1, 2014 (the "Financing Contract"), between the County and the Lender, providing for the advance of funds to the County for the County's undertaking of the project, setting out the County's repayment obligation and setting out the County's obligations regarding care for the collateral and other matters.

(b) A draft dated November 26, 2013, of a Deed of Trust and Security Agreement to be dated on or about January 1, 2014, from the County to a deed of trust trustee for the Lender's benefit, providing for a security interest in Culbreth Middle School, and its associated real property to secure the County's repayment obligations.

(c) A draft dated November 14, 2013, of a Lease to be dated on or about January 1, 2014, from the County to the Board of Education for the Chapel Hill – Carrboro City Schools (the "School Board"), providing for the School Board's continued use of the Culbreth Middle School property during the financing term.

(d) A draft dated November 14, 2013, of a Project Completion and Agency Agreement to be dated on or about January 1, 2014, between the County and the School Board, setting out their respective responsibilities for carrying out the acquisition and construction of the new Culbreth science wing.