



REQUEST FOR BOARD ACTION

ITEM NO. 5.

DATE OF MEETING: May 17, 2010

REQUESTED BY: Dave McCole, Finance Officer

SHORT TITLE: Resolution Approving Arbitrage Rebate Calculation Contract

BACKGROUND: The County will be required to have an Arbitrage Rebate Calculation performed on the General Obligation School Bond Series 2005 bond issue, as related to the arbitrage rebate requirements contained in Section 148 of the Internal Revenue Code and those Regulations promulgated there under. The Arbitrage Rebate Calculation is performed to determine whether the county will have to pay back interest that was earned on the proceeds of the bonds. Normally a liability is incurred to the IRS on interest earned on bond proceeds that is higher than the bond yield. Due to the complexity of the Arbitrage Rebate Calculation, it is common practice to hire an outside firm that specializes in performing such returns. The County has contacted Bingham Arbitrage Rebate Services Inc. to perform the Arbitrage Rebate Calculation. The firm has over 22 years experience in performing the Rebate Calculation and has provided such services for several Counties in North Carolina.

SPECIFIC ACTION REQUESTED: The Board of Commissioners are requested to authorize the execution of a contract with Bingham Arbitrage Services Inc., to prepare the Arbitrage Rebate Calculation for the General Obligation School Bond Series 2005 bond issue in the amount of \$5,200.

6. Scope of Services & Fee Structure

The Series 2005 is a single purpose, fixed rate issue that consists of new money for construction for the new Topsail High School and school improvements for Pender High School and Burgaw Elementary. Pursuant to our phone conversation, this issue will not meet a spending exception due to construction being delayed and proceeds not spent until May 2008. Bingham will provide the County with an arbitrage rebate calculation. If a payment is due to the Internal Revenue Service, Bingham will prepare the IRS Form 8038-T.

Evaluation Dates: September 1, with the first installment period ending September 1, 2010. Bingham would initially provide an up-to-date report through December 31, 2009, and then a first installment report through the September 1, 2010 evaluation date.

FEE QUOTE

These schedules only apply to the referenced issue. Our annual fee would apply even for a partial year of investment activity. If at any time bond proceeds are mixed with non-proceeds, it may be necessary to uncommingle the fund.

| First Installment Period Arbitrage Rebate Compliance Report | \$35,000,000 Series 2005 |
|--|---------------------------------|
| Bond Year | Fee |
| 1 – 3 | \$1,300 per year |
| 4 – 5 | \$ 650 per year |
| Total First Installment Fee | \$5,200 |

In addition to our standard fee structure, the following fees may apply:

| Additional Fees that may apply¹: | |
|---|----------------|
| Uncommingling &/or Transferred Proceeds Fee | \$250 per year |
| Multiple Funds Requiring ARC (more than 4 funds) | \$250 per year |
| Copy/PDF Charge (Original Bank Statements/ Closing Documents or Printing PDF Files): | |
| 0 – 99 pages | No Charge |
| 100 – 200 pages | \$ 50 |
| 200 + pages | \$100 |

¹ The “Additional Fees that may apply” would only be added if applicable.

6. Scope of Services & Fee Structure (continued)

Excess Investment Yield Calculation (Yield Reduction)

The U.S. Treasury Regulations require that any capital project investment held beyond the three-year temporary period must be yield restricted to the bond yield, plus .125%. Any amount earned over the limit must be paid to the Internal Revenue Service in the form of a "yield reduction payment." Such payment is similar to an arbitrage rebate payment and is paid in the same manner and with the same frequency as arbitrage rebate; within 60 days of the fifth bond year [U.S. Treasury Regulations Section 1.148 5(c)(1) & (2)]. If a factor, only one payment is made to the Internal Revenue Service, either an arbitrage rebate payment or a yield reduction payment, whichever amount is higher.

Excess Investment Yield Calculation Fee

| | |
|--|----------------|
| Excess Earnings Calculation Fee Years Four & Five | \$150 per year |
|--|----------------|

Bond Counsel Involvement

On rare occasions over the course of a calculation, unforeseen circumstances arise that necessitate the involvement of bond counsel. In the event that Bingham would need to include counsel, additional fees may be involved. Various factors would require bond counsel involvement and the cost depends on the complexity of the situation. We seek counsel advice only when necessary. In those situations, it is in the best interest of our client when we involve counsel. Bingham would consult with the County prior to involving bond counsel, which could result in additional fees.

7. Signature Page (Pender County copy)

Bingham may withdraw, or renegotiate, this contract if our involvement is greater than originally anticipated. This would include Bingham's time commitment increasing if it became necessary to research and locate missing investment activity, or if bond proceeds are mixed with other non proceeds funds. Invoices will be sent along with our reports. Payment is expected within 30 days of the invoice date.

If this fee quote remains outstanding following 90 days, the quote will expire.

The documentation and information requested for the arbitrage rebate calculations should cover the entire history of the Bonds. Any investment changes that occurred during our review period would be considered necessary.

Bingham ARS, Inc.

Pender County

Kim A. Hoyt
Signature

Signature

Kim A. Hoyt
(Name Printed)

(Name Printed)

President
Title

Title

January 20, 2010
Date

Date

This contract has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Officer

Date

7. Signature Page (Bingham ARS, Inc. copy)

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Pender County

Kim A. Hoyt
Signature

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Kim A. Hoyt
(Name Printed)

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President
Title

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January 20, 2010
Date

Date