

REQUEST FOR BOARD ACTION

ITEM NO. 23

DATE OF MEETING: August 2, 2010

REQUESTED BY: Michael G. Mack, Director, PCU

SHORT TITLE: Resolution Approving an Agreement and Authorizing a Purchase Order to Sanford Holshouser, LLP, to Represent Pender County as Bond Counsel for the Issuance of Bond Anticipation Notes, Utility Revenue Bonds, and Fixed-Rate General Obligation Bonds for Interim Construction and Permanent Financing of the Pender County Water Treatment Plant and Transmission Main Projects.

BACKGROUND: Bob Jessup of Sanford Holshouser, LLP. served as Bond Counsel to Pender County in connection with the authorization and issuance of general obligation water bonds as part of the Bond Referendums done in 2006 for the Pender County Water Treatment Plant and Water Districts.

Staff desires to retain Mr. Jessup and Sanford Holshouser LLP. to represent Pender County as Bond Counsel in the pending issuance of \$17,500,000 in fixed-rate General Obligation (GO) and \$5,000,000 in Utility Revenue Bond Anticipation Notes (BANS) for the Interim (during construction) financing of the Pender County Surface Water Treatment Plant and Transmission Main Projects. Mr. Jessup will also represent Pender County in the subsequent issuance of fixed-rate General Obligation Bonds and Utility Revenue Bonds associated with the Permanent (upon completion of construction) financing of the WTP with the USDA-RD.

Sanford Holshouser, LLP. has proposed to charge the County at the same rate that was in effect at the time of their agreement in 2006. A copy of the executed agreement is provided.

For all work as bond counsel leading to the County's issuance of \$17,500,000 in General Obligation BANS and Bonds, they will charge an amount equal to \$0.95 per \$1,000 for each issuance of BANS and \$0.95 per \$1,000 for the issuance of the Bonds with a minimum charge per issue of \$5,000 for the BANS and \$10,000 for the Bonds. With \$17,500,000 in GO BANS and \$17,500,000 in Bonds to be issued, the estimated cost is \$16,625 ($\$17,000,000/1,000 \times \0.95) for the BANS and \$16,625 for the Bonds.

For all work as bond counsel leading to the issuance of \$5,000,000 in Utility Revenue BANS sold as interim financing, they will charge \$10,000 for each separate round of interim financing.

For all work as bond counsel leading to the issuance of \$5,000,000 in fixed-rate Revenue Bonds sold to USDA-RD, they will charge \$10,000 for each separate issue of bonds. Only one issuance is anticipated.

The total estimated compensation to Sanford Holshouser, LLP. for their effort is \$53,250 based upon only one issuance of BANS and one issuance of Bonds.

Funds are available in the Water Treatment Plant Capital Project Fund (# 83-407490) and staff is recommending approval of the Agreements.

SPECIFIC ACTION REQUESTED: The Board of Commissioners is requested to approve the Agreement and Authorize a Purchase Order to Sanford Holshouser, LLP. to represent Pender County as Bond Counsel for the issuance of Bond Anticipation Notes, Utility Revenue Bonds, and Fixed-Rate General Obligation Bonds for the interim and permanent financing of the Pender County Water Treatment Plant and Transmission Main Projects in the amount of \$53,250.

COUNTY MANAGER'S RECOMMENDATION

Respectfully recommend approval.



Initial

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that:

the Agreement is approved and a Purchase Order to Sanford Holshouser, LLP. to represent Pender County as Bond Counsel for the issuance of Bond Anticipation Notes, Utility Revenue Bonds, and Fixed-Rate General Obligation Bonds for the interim and permanent financing of the Pender County Water Treatment Plant and Transmission Main Projects in the amount of \$53,250 is authorized.

Account # 83-407409 WTP Capital Project Fund \$53,250

The Chairman/County Manager is authorized to execute any document necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

YEA VOTES: Tate ___ Blanchard ___ Brown ___ Rivenbark ___ Williams ___

Jimmy T. Tate, Chairman 08/02/2010
Date

ATTEST 08/02/2010
Date

**Sanford
Holshouser LLP**

209 Lloyd St., Suite 350
Carrboro, NC 27510

July 9, 2010

By Electronic Mail

David McCole
Finance Officer, Pender County
Burgaw, North Carolina

Service as Bond Counsel for Pender County

Dear Mr. McCole:

I am writing to confirm our understanding that our Firm will represent Pender County as bond counsel in connection with the proposed authorization and issuance of utility revenue bonds (and related interim construction financing) for the County water plant and transmission lines project. We understand that the County is planning on up to \$5,000,000 of revenue bond financing for this project, to go along with up to \$17,500,000 of general obligation bond financing.

Thank you for giving us at Sanford Holshouser this additional chance to work for the County. We appreciate the opportunity, and the County's continued confidence in us.

In this letter I want to review the responsibilities of bond counsel, and make a proposal for our fee arrangements.

First of all, I have attached a short memo outlining our understanding of our responsibilities in this representation. This memo is consistent with the scope of work we have established with clients of all sizes, on all different types of financing projects. It is certainly consistent with the scope we have established for other Pender County projects. Please call me if you have any questions about the scope of our work or any other aspect of our representation.

The fee arrangements I've described below are consistent with our existing and past fee arrangements on other USDA - Rural Development revenue bond financings. I hope you will find these arrangements to be acceptable, but of course please let me know if you have any questions or concerns. Every financing is a little bit different, and not all of our fees are the same. But the fees quoted below are consistent with our other USDA work.

We will charge the County separately for work on interim financings and for the permanent financing with USDA - Rural Development. As you know, Rural Development generally requires

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Sanford Holshouser LLP

April 21, 2010

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you to arrange separately for private "interim" financing to pay for the costs of a project during the construction period. This interim financing usually takes the form of "bond anticipation notes," with the staff of the Local Government Commission generally arranging for the sale of the notes in cooperation with bond counsel and County staff. If your construction is still going on when the notes come due, you would have to issue additional notes. If the project is finished, or nearly so, then you can shift to issuing the bonds. Generally the LGC and USDA are able to coordinate the financing so that only round of interim financing is necessary, but sometimes additional rounds are required.

For all work as bond counsel leading to the County's issuance of revenue bond anticipation notes sold as interim financing in accordance with the LGC's usual procedures, we will charge \$10,000 for each separate round of interim financing.

Then, for all work as bond counsel leading to the County's issuance of fixed-rate revenue bonds sold to Rural Development, we will charge \$10,000 for each separate issue of bonds. This is not for each separate bond, but for each time you issue bonds -- which I expect will be only once.

Our quoted fees include all expenses. These fees would be paid in connection with each closing, and we would not expect to submit any statement except in connection with a closing. These fees also include my attendance at a meeting in the County in connection with the execution of closing documents for each bond or note issuance if you desire. In addition, there would be no additional charge for my attendance at any meetings in Raleigh that the staff of the Local Government Commission might like me to attend. These fees are in addition to the fees we will charge for our work on the general obligation bonds that are part of the package for financing this project.

If for any reason the County decides not to proceed with the issuance of bonds or notes, or decides to proceed with another bond counsel, then we would be compensated at our normal hourly rates for time actually spent from the beginning of the process (or if there have been interim financings for which we have already been paid, since the closing of the most recent interim financing), plus out-of-pocket expenses.

We at Sanford Holshouser represent a variety of other local governments and financial institutions. It is entirely possible that during the course of our representation of the County, one or more of our clients may become involved in transactions with the County. For example, our Firm regularly represents the Governmental Finance group of BB&T in its North Carolina public finance matters. I expect that BB&T would be among the banks interested in providing interim financing.

We certainly do not expect that any such representation would produce an actual conflict with our work as bond counsel for the County. If we become aware that any of our other clients has become involved in a transaction with the County, we will discuss the circumstances with you,

Sanford Holshouser LLP

April 21, 2010

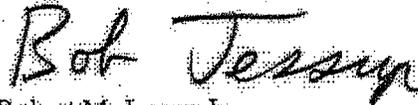
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but we would continue to represent the County in these bond matters. We would not represent BB&T or any other bank in connection with a County financing. We will endeavor to discuss with you any such actual circumstance should one arise.

Please call me if you have any questions or comments about any of the information in this letter. Otherwise, if the County accepts the terms set out in this letter, please have a copy of this letter signed in the space indicated below, and then please return it to me. This will indicate the County's acceptance of our proposed scope of service and fee arrangement.

Once again, let us say that we appreciate the chance to work for the County, and we look forward to moving ahead.

Very truly yours,



Robert M. Jessup Jr.

Approved:

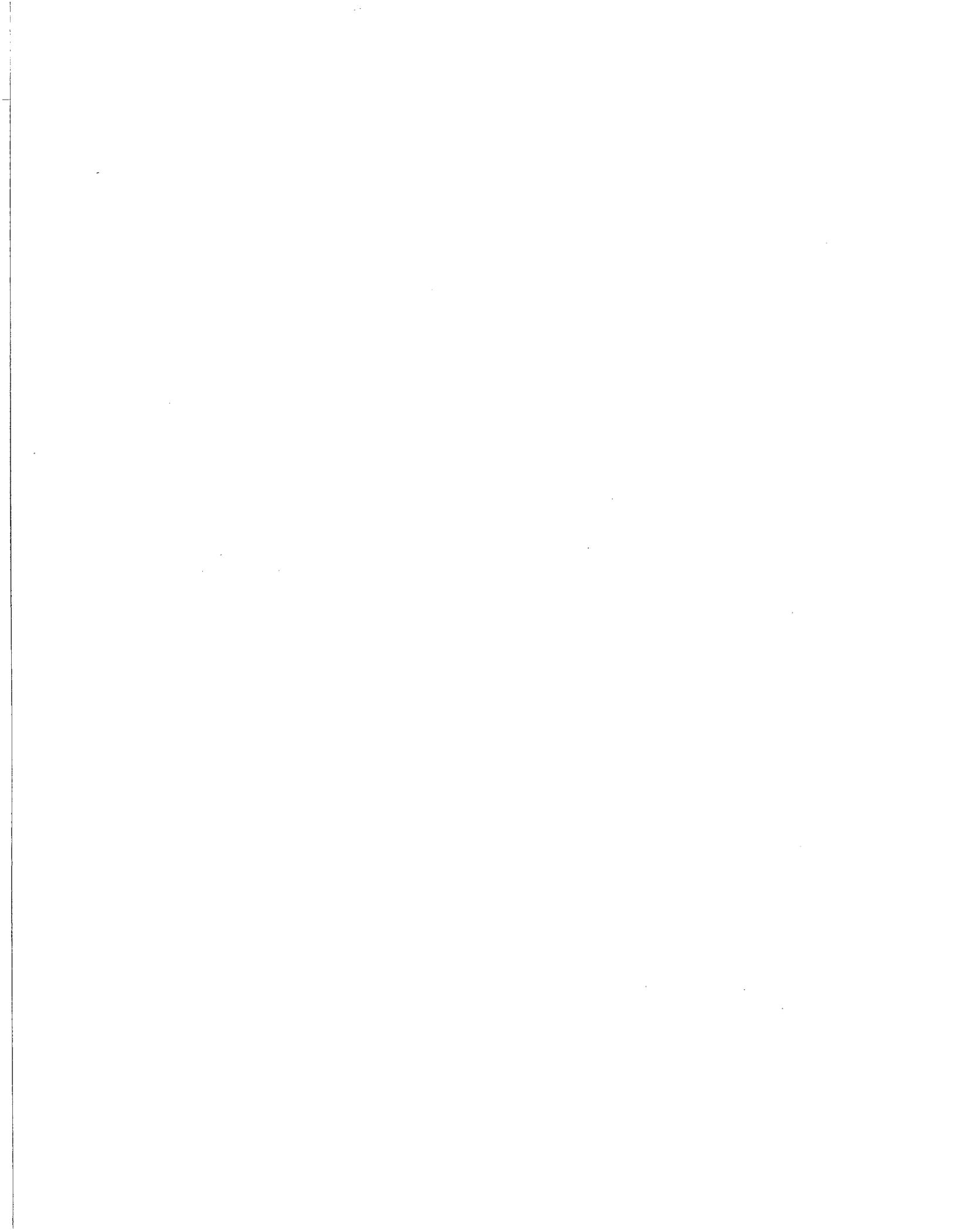
PENDER COUNTY, NORTH CAROLINA

By: _____

Printed name: _____

Title: _____

cc: Trey Thurman, County Attorney
Michael Mack, utilities director
(each by electronic mail)



**Sanford
Holshouser LLP**

209 Lloyd St., Suite 350
Carrboro, NC 27510

Memorandum

To: Pender County

Date: July 9, 2010

Regarding: Representation as Bond Counsel in connection with proposed authorization and issuance of County revenue bonds and related interim financing for County Water Plant and Transmission Lines.

We look forward to working with you on the financing described above. As bond counsel for this transaction, we expect that our responsibilities will be as follows:

1. examining the applicable law;
2. general advice and discussions with County representatives regarding the general structure of and procedure for the financing;
3. preparing to completion the primary financing documents for the transaction;
4. drafting all necessary proceedings of the County's Board of Commissioners;
5. coordinating the financing process with staff of the North Carolina Local Government Commission, representatives of USDA-Rural Development and representatives of the providers of interim construction financing;
6. discussing draft financing documents with all working group members;
7. preparing all documents required for the closing of each bond or note issue;

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8. collaborating with all parties as to closing arrangements, supervising the closing, delivering our opinion upon the closing with respect to the validity of the bonds or notes and the general exemption from taxation of interest on the obligations, and preparing the required I.R.S. Form 8038-G and filing it with the Internal Revenue Service;

9. delivering our supplemental opinions to other parties as requested; and

10. preparing complete, bound sets of financing documents for all parties.

We generally consider our engagement as concluded with the bond closing, except for the completion of miscellaneous "post-closing matters," such as completing bond transcripts or other matters we may identify at closing. For example, any work on matters of tax law compliance, tax controversy, continuing disclosure under securities laws or amendments to documents would have to be the subject of a separate engagement.

We represent the County as a separate entity. We do not represent any individual officer or individual County Commissioner. Our professional duty of confidentiality, for example, runs only to the County as an entity and not to any individual representative. We will take direction for our work from the County Manager, the County Attorney and the Finance Officer unless we are directed otherwise.

We will serve as bond counsel to the County with responsibility to deliver objective legal opinions upon closing. These opinions will be based, in part, on certifications by others as to factual matters. We will not represent any other party, although we will of course explain and discuss our view of the applicable law and requirements for compliance with all parties.

We will not review the County's financial condition, its ability to pay the notes or bonds, the feasibility of the financed projects or the adequacy of the security provided to bond owners, and we will express no opinion on these matters.

Please let us know if you have any questions or if we can in any way clarify our role.

-- Sanford Holshouser LLP

Sanford Holshouser

Attorneys at Law

SENATOR TERRY SANFORD (1917-1998)
GOVERNOR JAMES E. HOLSHOUSE, JR.

March 27, 2006

John Bauer
Pender County Manager
Post Office Box 5
Burgaw, NC 28425

Service as Bond Counsel for Pender County

Dear Mr. Bauer:

I am writing to confirm our understanding that we will represent Pender County and its several County water and sewer districts as bond counsel in connection with the proposed authorization and issuance of general obligation water bonds. Thank you for calling on us once again to assist Pender County. We appreciate this opportunity.

We have attached a short memo outlining our understanding of our responsibilities in this representation. This description is consistent with the scope of work we have undertaken for other general obligation bond projects, both for Pender County and elsewhere. Please call me if you have any questions about the scope of our work or any other aspect of our representation.

Our fee for serving as bond counsel will consist of two components. First, we will charge \$5,000 for all work through the referendum. This amount will be payable to us promptly after the referendum, whether or not the referendum passes.

This fee contemplates that there will be separate ballot questions for the County and for each water district. If there is only a County-wide referendum question, then this component of the fee will be \$1,500.

The fee includes all expenses, and includes my attending all relevant meetings at the LGC and my coming down for one of the County Board meetings at which the bond matters are discussed. This will be the only amount payable to us if the referendum is unsuccessful.

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RECEIVED MAR 29 2006

SANFORD HOLSHOUSE LLP
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POST OFFICE BOX 2437, RALEIGH, NORTH CAROLINA 27602
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John Bauer
March 27, 2006
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For all subsequent work as bond counsel leading to the County's issuance of fixed-rate general obligation bonds or bond anticipation notes offered at competitive sale in accordance with the Local Government Commission's standard procedures or to the United States Department of Agriculture, we will charge an amount equal to \$0.95 per \$1,000 of bonds or notes offered, with a minimum charge per issue of \$5,000 for notes and \$10,000 for bonds. These fees also include all expenses, and include my attendance at a County Board meeting and a meeting in the County for the execution of closing documents, if you desire. These fees would be paid in connection with each closing, and we would not expect to submit any statement except in connection with a closing.

If for any reason the County decides not to proceed with the referendum, we will be compensated at our normal hourly rates for time actually spent from the beginning of the process, plus out-of-pocket expenses, but not exceeding \$5,000. If the referendum passes but the County then decides either not to issue the bonds or to proceed with another bond counsel, we would then expect to be compensated at our normal hourly rates for time actually spent from the beginning of the referendum process, plus out-of-pocket expenses.

We at Sanford Holshouser represent a variety of other local governments and financial institutions. It is entirely possible that during the course of our representation of the County, one or more of our previous, present or future clients may become involved in transactions with the County. For example, allow me to point out that we regularly represent the Governmental Finance group of BB&T in its North Carolina public finance matters, and BB&T actively seeks lending work from the County.

We certainly do not expect that any such representation would produce an actual conflict with our work as bond counsel for the County. If we become aware that any of our other clients has become involved in a transaction with the County, we will discuss the circumstances with you, but we would continue to represent the County in these bond matters. We will endeavor to discuss with you any such actual circumstance should one arise.

Please call me if you have any questions or comments about any of the information in this letter. Otherwise, if you accept the terms set out in this letter, please have a copy of this letter signed in the space indicated below, and then

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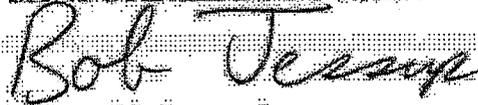
John Bauer
March 27, 2006
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please return it to me in the enclosed envelope. This will indicate the County's acceptance of our proposed scope of service and fee arrangement.

Once again, let us say that we appreciate the chance to work for Pender County, and we look forward to moving ahead.

Very truly yours,

SANFORD HOLSHOUSER

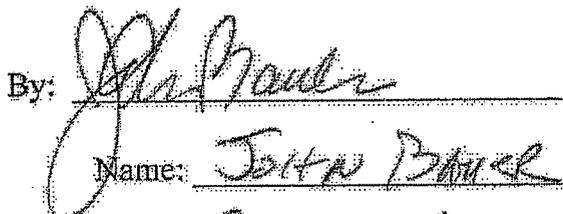


Robert M. Jessup Jr.

Approved:

Pender County, North Carolina

By:



Name:

John Bauer

Title:

County Manager