



REQUEST FOR BOARD ACTION

ITEM NO. 18.

DATE OF MEETING: September 20, 2010

REQUESTED BY: Michael G. Mack, Director, PCU

SHORT TITLE: Resolution Approving the Interim Construction Period Financing in the Form of a New Issue of Water Revenue Bond Anticipation Notes (BANS) in the Aggregate Principal Amount of \$4,955,000 for the Pender County Surface Water Treatment Plant and Associated Water Transmission Main Projects and Request the North Carolina Local Government Commission Proceed With the Private Sale of the BANS to Bank of America/Merrill Lynch in Accordance With the Terms of the Proposal.

BACKGROUND: Pender County has previously determined to undertake certain water system improvements, including construction of the new Water Treatment Plant and associated Water Transmission Main. The County has also determined to issue Revenue Bonds to finance a portion of the Project's costs.

The North Carolina Local Government Commission (LGC) in consultation with the County has solicited competitive proposals from banks to provide a portion of the construction period financing for the project in the form of Water Revenue Bond Anticipation Notes (BANS) in the amount of \$4,955,000. The notes are to be issued in anticipation of the later sale of the Bonds.

The terms and conditions of the Water Revenue Bond Anticipation Notes are contained in the Resolution details.

SPECIFIC ACTION REQUESTED: To consider a resolution approving the Interim Construction Period Financing in the form of Water Revenue Bond Anticipation Notes in the amount of \$4,955,000 for the Pender County Surface Water Treatment Plant and associated Water Transmission Main Projects and request the North Carolina Local Government Commission proceed with the private sale of the BANS to Bank of America/Merrill Lynch in accordance with the terms of the proposal and pursuant to this resolution.

Resolution Approving Interim Financing For County Water Plant Project

WHEREAS:

Pender County has previously determined to carry out the acquisition and construction (the "Project") of certain water system improvements, particularly the construction of a new water treatment plant and associated distribution lines.

The County has previously authorized the issuance of up to \$4,955,000 of County water revenue bonds (the "Bonds") to pay a portion of the Project costs.

The North Carolina Local Government Commission (the "LGC"), in consultation with the County, has solicited competitive proposals from banks to provide a portion of the construction-period financing for the Project in the form of water revenue bond anticipation notes in the amount of \$4,955,000. The notes are to be issued in anticipation of the later sale of the Bonds. Bank of America, N.A. (the "Bank") has submitted the County's preferred proposal for the purchase of the notes.

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

1. ***Determination To Proceed with Financing through the Bank*** – The County will carry out the Project with interim construction financing in the form of a new issue of water revenue bond anticipation notes in the aggregate principal amount of \$4,955,000. The County will issue the notes in anticipation of the later issuance of the Bonds.

The County will issue the notes to the Bank substantially in accordance with a financing proposal from the Bank dated September 13, 2010. The County requests that the North Carolina Local Government Commission (the "LGC") proceed with the private sale of the bond anticipation notes to the Bank in accordance with the terms of the proposal and pursuant to this resolution.

2. ***Form and Details of Notes*** -- The bond anticipation notes will take the form of a single water revenue bond anticipation note (the "Note") to be designated "Water Revenue Bond Anticipation Note, Series 2010." The Note will be dated the date of its delivery to the Bank, will mature (without option of prior payment) on October 17, 2012, and will bear interest at the annual rate of 1.19% (calculated on the basis of a 360-day year of twelve 30-day months), payable on the first anniversary of the delivery date and then at maturity. All payments will be made in lawful money of the United States.

The Note will be substantially in the form set out in Exhibit A, with such changes as the officers signing the Note may approve. The delivery of the Note to the Bank will be conclusive evidence of such officers' approval of the final form of the Note. The Note will be fully registered as to the payment of principal and interest, and will be registered initially in the name of the Bank or its designee.

The Note must be signed by the manual or facsimile signature of the Board's Chairman or Vice Chairman or the County Manager. The County's seal must be affixed thereto or a facsimile thereof printed thereon and attested by the manual or facsimile signature of the Board's

Clerk or any Assistant or Deputy Clerk. No Note will be valid unless at least one signature appearing on such Note is manually applied; the manual signature may be the signature of an official of the North Carolina Local Government Commission (the "LGC") that is required by law to appear on the Note.

3. Interest Rate Adjustment for the Note -- From and after a "Rate Adjustment Event," as defined below, the annualized interest rate used to calculate the interest on the Note will change to such rate as may be appropriate to provide any current or previous registered owner of the Note (a "Noteholder") with the same tax-equivalent yield as it enjoyed prior to the Rate Adjustment Event. Upon any Rate Adjustment Event, the principal of the Note will continue to be due on October 17, 2012, but interest payments on the Note will be adjusted to reflect the new interest rate to be borne by the Note. The County shall additionally pay to such Noteholder, or to any prior Noteholder, any taxes, interest, penalties or other charges assessed against or payable by such Noteholder, or prior Noteholder, and attributable to a Rate Adjustment Event, notwithstanding the repayment of the entire principal amount of the Note or any transfer or assignment of the Note.

"Rate Adjustment Event" means any final determination by the Internal Revenue Service, any federal administrative agency or any court (a) that the County has taken an action, or failed to take an action, with the result that the interest on the Note is includable in gross income of the owner thereof for federal income tax purposes, or (b) that the Note is not a "qualified tax-exempt obligation" within the meaning of Section 265 of the Code as a result of (i) any action the County takes, or fails to take, or (ii) any representation made by the County being a misrepresentation.

4. Issuance under Bond Order -- The Note is issued as a bond anticipation note under the terms of the Bond Order for County water revenue bonds previously adopted on September 20, 2010 (the "Bond Order").

5. Pledge of Revenues and Note Proceeds -- All "Net Revenues," as defined in the Bond Order, are hereby pledged to the payment of the principal of and interest on the Note, subject only to the right to make application of such revenues to other purposes as provided in the Bond Order and by law. All proceeds of the Note, including the investment earnings on the original proceeds (together, the "Proceeds"), are hereby pledged to the payment of the Note, subject to the County's right to apply the Proceeds to "Project Costs," as provided in this resolution.

6. Use of Proceeds for Project Costs -- The County will use the Proceeds only to pay Project Costs. The County will apply Proceeds to pay particular Project Costs only after it has received approval for the payment of such costs from the United States of America -- Department of Agriculture -- Rural Utilities Service (or any successor agency), as the prospective purchaser of the Bonds. The County shall make available to the registered owner of the Note all records related to the use and investment of Proceeds and the payment of Project Costs as such owner may reasonably request from time to time.

"Project Costs" means all costs of design, planning, construction, acquisition, installation, equipping and generally carrying out of the Project, as determined in accordance with generally accepted accounting principles and as will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Note, including (a) sums required to reimburse the County or its agents for advances made for any such costs, (b) interest during the

construction period and for up to six months thereafter, and (c) all costs related to the financing of the Project through the issuance of the Note and all related transactions.

7. ***Agreement To Apply Revenues*** -- The County shall apply the Net Revenues to the payment of principal of and interest on the Note as the same shall become due, to the extent other funds (such as Bond proceeds) are not otherwise available and appropriated for such purpose.

8. ***Agreement To Provide Financial Statements*** -- The County shall send to the Bank a copy of the County's audited financial statements for each fiscal year within 30 days of the County's acceptance of such statements, but in any event within 270 days of the completion of such fiscal year.

9. ***Note will be a Special Obligation*** -- The Note will be a special obligation of the County, payable solely from the Net Revenues and other funds pledged therefor as provided in this resolution and in the Bond Order. The principal of and interest on the Note will be payable solely from such revenues and other funds. Neither the County's faith and credit nor its taxing power is or will be pledged for the payment of the principal of or interest on the Note, and no owner of the Note will have the right to compel the exercise of the County's taxing power in connection with any default on the Note.

10. ***Actions toward Issuance of Bonds*** -- The County covenants, for the benefit of the beneficial owners of the Note, that it will act with all due diligence and make all commercially reasonable efforts in the undertaking of the Project and otherwise so as to provide for the issuance of the Bonds in a timely manner and to provide for the timely payment of the principal of and interest on the Note as the same becomes due.

11. ***Finance Officer as Registrar; Payments to Registered Owners*** -- The County's Finance Officer is appointed Registrar for the Note. As Registrar, the Finance Officer shall maintain appropriate books and records of the ownership of the Note. The County shall treat the registered owner of the Note as the person exclusively entitled to payment of principal and interest and the exercise of all rights and powers of the owner, except that the County will pay principal of and interest on the Note at maturity to the person shown as the registered owner on the County's registration books at the end of the day on October 1, 2012 (whether or not such day is a business day).

In no event will the Registrar register the transfer of the Note to any person other than a bank, an insurance company or a similar financial institution unless the LGC has previously approved such transfer.

12. ***Direction To Execute Documents*** -- The Board authorizes and directs the Board's Chairman, the County Manager and all other County officers to act on the County's behalf and execute and deliver all appropriate documents (the "Documents") for the proposed financing. The execution and delivery of any Document by an authorized officer will be conclusive evidence of such officer's approval of the final form of such Document. The Documents in final form, however, must be consistent with the financing plan described in this resolution and with the Bank's proposal.

13. ***Authorization to Finance Officer To Complete Closing*** -- The Board authorizes and directs the Finance Officer to take all appropriate action to provide for the issuance of the

Note to the Bank in accordance with this resolution. The Finance Officer shall hold executed copies of all financing documents authorized or permitted by this resolution in escrow on the County's behalf until the conditions for their delivery have been completed to such officer's satisfaction, and thereupon shall release the executed copies of such documents for delivery to the appropriate persons or organizations.

Without limiting the generality of the foregoing, the Board specifically authorizes the Finance Officer to approve changes to any documents, agreements or certifications previously signed by County officers or employees, provided that such changes do not conflict with this resolution or substantially alter the intent from that expressed in the form originally signed. This authorization is also specifically extended to authorize and direct the Finance Officer to make further agreements or covenants on behalf of the County regarding the custody and investment of Proceeds. The Finance Officer's authorization of the release of any such document for delivery will constitute conclusive evidence of such officer's approval of any such changes.

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

14. Resolutions As To Tax Matters -- The County will not take or omit to take any action the taking or omission of which will cause the Note to be an "arbitrage bond," within the meaning of Section 148 of the "Code" (as defined below), or a "private activity bond" within the meaning of Code Section 141, or otherwise cause interest on the Note 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 Note proceeds. In this resolution, "Code" means the United States Internal Revenue Code of 1986, as amended, and includes applicable Treasury regulations.

15. Note is a "Bank-Qualified" Obligation -- The Board designates the Note as a "qualified tax-exempt obligation" for the purpose of Code Section 265(b)(3), which provides beneficial income tax treatment for interest on the Note in the hands of certain financial institutions.

16. Miscellaneous Provisions -- All County officers and employees are authorized and directed to take all such further action as they may consider necessary or desirable in furtherance of the issuance of the Note and all other purposes of this resolution. All such prior actions of the County officers and employees are ratified, approved and confirmed. Upon the absence, unavailability or refusal to act of the Chairman, the County Manager or the Finance Officer, any of such persons may assume any responsibility or carry out any function assigned to any other officer in this resolution. In addition, the Vice Chairman or any Deputy or Assistant Clerk to the Board may in any event assume any responsibility or carry out any function assigned to the Chairman 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.

I certify as follows: that the foregoing resolution (which includes the attached Exhibit A) was properly adopted at a meeting of the Board of Commissioners of Pender County, North Carolina; that such meeting was properly called and held on September 20, 2010; that a quorum was present and acting throughout such meeting; and that such resolution has not been modified or amended, and remains in full effect as of today.

Dated this _____ day of September, 2010.

[SEAL]

Clerk, Board of Commissioners
Pender County, North Carolina

Exhibit A – Sample Form of Note

REGISTERED NOTE NUMBER R-1

October 12, 2010

\$4,955,000

UNITED STATES OF AMERICA

STATE OF NORTH CAROLINA

PENDER COUNTY

Water Revenue Bond Anticipation Note, Series 2010

PENDER COUNTY, NORTH CAROLINA (the “County”), for value received, acknowledges itself indebted and promises to pay, solely from the Net Revenues and other funds described below and pledged to the payment hereof, to

BANK OF AMERICA, N.A.

its successors and its registered assigns (the "Noteholder"), the principal sum of

FOUR MILLION NINE HUNDRED FIFTY-FIVE THOUSAND DOLLARS (\$4,955,000)

on October 12, 2012, without option of prepayment, and to pay, solely from such source, to the registered owner hereof interest on the unpaid principal from the date hereof until payment of the entire principal sum at the annual rate of 1.19% (calculated on the basis of a 360-day year consisting of twelve 30-day months), with such interest payable on October 12, 2011, and at maturity.

Principal of and interest on this Note are payable upon presentation and surrender of this Note at the office of the County's Finance Officer, who has been appointed Registrar, in Burgaw, North Carolina, or at such successor office as the Registrar may designate in writing to the Noteholder. Principal and interest are payable in lawful money of the United States of America.

From and after a “Rate Adjustment Event,” as defined below, the annualized interest rate used to calculate the interest on the Note will change to such rate as may be appropriate to provide any current or previous Noteholder with the same tax-equivalent yield as it enjoyed prior to the Rate Adjustment Event. Upon any Rate Adjustment Event, the principal of the Note will continue to be due on May 4, 2011, but interest payments on the Note shall be adjusted to reflect the new interest rate to be borne by the Note. The County shall additionally pay to such Noteholder, or to any prior Noteholder, any taxes, interest, penalties or other charges assessed against or payable by such Noteholder, or prior Noteholder, and attributable to a Rate Adjustment Event, notwithstanding the repayment of the entire principal amount of the Note or any transfer or assignment of the Note.

“Rate Adjustment Event” means any final determination by the Internal Revenue Service, any federal administrative agency or any court (a) that the County has taken an action, or failed to take an action, with the result that the interest on the Note is includable in gross income of the owner thereof for federal income tax purposes, or (b) that the Note is not a “qualified tax-exempt obligation” within the meaning of Section 265 of the Code as a result of (i) any action the County takes, or fails to take, or (ii) any representation made by the County being a misrepresentation.

This Note has been authorized and is issued pursuant to a bond order adopted by the County’s governing Board of Commissioners on September 20, 2010 (the “Bond Order”), a resolution also adopted by the Board on September 20, 2010 (the “Note Resolution”), and the Constitution and laws of the State of North Carolina, including The State and Local Government Revenue Bond Act. The Note has been authorized and is issued to provide funds, together with other available funds, to pay capital costs of certain water system improvements in anticipation of the issuance of certain County water revenue bonds (the "Bonds") previously authorized for such purpose.

This Note is a special obligation of the County, payable solely from the net operating revenues of the County’s water system (the “Net Revenues,” as specifically defined in the Bond Order) and other revenues and funds pledged therefor as provide in the Bond Order and the Note Resolution. Neither the faith and credit nor the taxing power of the County is pledged for the payment of the principal of or interest on this Note, and no owner of this Note has any right to compel the exercise of the County’s taxing power in connection with any default hereon.

Reference is made to the Bond Order, the Note Resolution and all amendments and supplements thereto for a description of the provisions, among others, with respect to the nature and extent of the security, the County's rights, duties and obligations, the Noteholder's rights and the terms upon which this Note is issued, to all of which provisions each Noteholder, by the acceptance hereof, agrees. The terms and conditions of the Bond Order and the Note Resolution form a part of the contract between the County and the Noteholder.

The County may issue additional obligations secured by a lien on Net Revenues, including liens ranking on a parity with the lien on Net Revenues securing this Note, under the terms and conditions set forth in the Bond Order and the Note Resolution.

This Note is fully registered as to both principal and interest. Transfer of this Note may be registered upon books maintained for that purpose by the Registrar. Prior to due presentment for registration of transfer, the Registrar shall treat the registered owner of this Note as the person exclusively entitled to payment of principal and interest and the exercise of all other rights and powers of the owner, except that the County shall pay principal of and interest on this Note at maturity to the person shown as owner on the County’s registration books at the end of the day on October 1, 2012 (whether or not such day is a business day). In no event will the Registrar register the transfer of this Note to any person other than a bank, an insurance company or a similar financial institution unless the North Carolina Local Government Commission has previously approved such transfer.

The County has designated this Note as a "qualified tax-exempt obligation" for the purpose of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

This Note is issued with the intent that North Carolina law will govern its interpretation.

All acts, conditions and things required by the Constitution and laws of the State of North Carolina to happen, exist or be performed precedent to and in the issuance of this Note have happened, exist and have been performed.

[The remainder of this page has been left blank intentionally.]

IN WITNESS WHEREOF, the County has caused this Note to be signed by the Chairman of its Board of Commissioners, its seal to be affixed hereto and attested by the Clerk of such Board, and this Note to be dated October 12, 2010.

[SEAL]

ATTEST:

**PENDER COUNTY,
NORTH CAROLINA**

By: *[sample only do not sign]*
[name]
Clerk, Board of Commissioners

By: *[sample only do not sign]*
[name]
Chairman, Board of Commissioners

[\$4,955,000 Water Revenue Bond Anticipation Note, Series 2010]

CERTIFICATE OF LOCAL GOVERNMENT COMMISSION

The issuance of the within Note has been approved under the provisions of The State and Local Government Revenue Bond Act, Article 5, Chapter 159 of the North Carolina General Statutes, as amended.

Local Government Commission of North Carolina

T. Vance Holloman
Secretary, North Carolina Local Government Commission

By _____
[T. Vance Holloman or Designated Assistant]

TRANSFER OF NOTE

Transfer of this Note may be registered by the registered owner or his duly authorized attorney upon presentation hereof to the Registrar, who will note such transfer in books kept by the Registrar for that purpose and in the registration blank below.

**Date of Re-
Registration**

**Name of New
Registered Owner**

**Signature
of Registrar**

**[\$4,955,000 Water Revenue Bond Anticipation Note, Series 2010,
of Pender County, North Carolina]**