



REQUEST FOR BOARD ACTION

ITEM NO. 16.

DATE OF MEETING: September 17, 2012

REQUESTED BY: Michael G. Mack, Director, PCU; Claiburn B. Watson, Finance Officer

SHORT TITLE: Resolution by the Pender County Board of Commissioners Approving the Issuance of General Obligation Water Bonds in the Amount of \$17,500,000 for the Permanent Financing of the New Surface Water Treatment Plant.

BACKGROUND: The voters of Pender County, North Carolina (the "County"), on November 7, 2006, approved the issuance of up to \$17,500,000 of the County's general obligation bonds (the "Water Bonds") to pay capital costs of providing water system improvements, especially including costs of a new County water treatment plant.

The County has now determined to issue all of the unissued Water Bonds. The United States of America, acting by and through Rural Utilities Service, an agency of the United States Department of Agriculture (the "Government"), has offered to purchase the bonds. The County has determined to accept that offer.

This resolution formally authorizes the sale of \$17,500,000 in County General Obligation Water Bonds; formally pledges the County's taxing power to provide for payment on the bonds if necessary; approves the form of the bonds themselves; states the County's agreement to comply with the relevant provisions of federal tax law; and authorizes County staff to complete the process of issuing the bonds, and approves the steps to that end previously taken. This includes authorizing the Finance Officer to determine the final interest rates and principal payment schedule in coordination with USDA and the LGC staff when USDA determines the final rates later in September.

SPECIFIC ACTION REQUESTED: To consider the resolution approving the Issuance of General Obligation Water Bonds in the amount of \$17,500,000 for the permanent financing of the new Water Treatment Plant to the United States of America, through Rural Utilities Service, an agency of the United States Department of Agriculture.

COUNTY MANAGER'S RECOMMENDATION

Respectfully recommend approval.


Initial

RESOLUTION

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

the attached resolution approving the Issuance of General Obligation Water Bonds in the amount of \$17,500,000 for the permanent financing of the new Water Treatment Plant to the United States of America, through Rural Utilities Service, an agency of the United States Department of Agriculture is approved.

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

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

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

George R. Brown, Chairman 09/17/12
Date

ATTEST 09/17/12
Date

Resolution for the Sale of \$17,500,000 General Obligation Water Bonds

WHEREAS --

The voters of Pender County, North Carolina (the "County"), on November 7, 2006, approved the issuance of up to \$17,500,000 of the County's general obligation bonds (the "Water Bonds") to pay capital costs of providing water system improvements, especially including costs of a new County water treatment plant.

The County has now determined to issue all of the unissued Water Bonds. The United States of America, acting by and through Rural Utilities Service, an agency of the United States Department of Agriculture (the "Government"), has offered to purchase the bonds. The County has determined to accept that offer.

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

1. *Determination To Sell Water Bonds* - The County will issue and sell all of the Water Bonds for their authorized purpose. The proceeds from the sale of the Water Bonds will be used to retire bond anticipation notes previously issued by the County for the same purpose.

2. *Sale to the Government* -- The County asks the North Carolina Local Government Commission (the "LGC") to sell the Water Bonds to the Government at a private sale, substantially in accordance with the terms of this resolution and the financing commitments previously provided by the Government.

3. *Pledge of Faith, Credit and Taxing Power* -- The County's full faith and credit are hereby irrevocably pledged for the payment of the principal of and interest on the Water Bonds. Unless other funds are lawfully available and appropriated for timely payment of the Water Bonds, the County will levy and collect an annual ad valorem tax, without restriction as to rate or amount, on all locally taxable property in the County sufficient to pay the principal of and interest on the Water Bonds as the same become due.

4. *Payment and Other Details of Water Bonds* -- (a) The Water Bonds will be issued as two separate fully registered bonds. Each of the Water Bonds will be dated the date of its initial delivery to the Government. One of the Water Bonds (the "Series A Bond") will be issued in an aggregate principal amount not to exceed \$16,500,000, will be numbered RA-1 and will bear interest at an annual rate not to exceed 4.375%. The second of the two Water Bonds (the "Series B Bond") will be issued in an aggregate principal amount not to exceed \$1,000,000, will be numbered RB-1 and will bear interest at an annual rate not to exceed 3.375%.

(b) The Finance Officer is authorized to determine the annual interest rates on, and the final principal and interest payment schedules for, the Water Bonds. The Finance Officer will execute a certificate prior to the initial delivery of the Water Bonds stating these terms. This certificate will be conclusive evidence of the Finance Officer's approval and determination of such matters. In any event, however, the final payment on each of the Water Bonds must be payable not more than 40 years from the closing date for the Bond.

(c) Installments of principal and interest will be payable in lawful money of the United States. Each payment on a Water Bond will be applied first to interest accrued to the payment date and then to principal.

5. Prepayment -- The County may prepay principal installments of the Water Bonds in whole or in part at any time at the County's option, without premium. The County may prepay one of the Water Bonds without making any prepayment of the other.

Any prepayment shall be applied first to any accrued and unpaid interest and then to installments of principal in inverse order of maturity. No prepayment will affect the County's obligation to pay when due the remaining scheduled installments of principal of and interest on the Water Bonds. On any date designated for prepayment, notice having been given and moneys for the payment of the prepayment price being held in trust for such purpose, the Water Bonds or the applicable portions thereof becomes due and payable, and the interest on the Water Bonds or portions thereof so prepaid will cease to accrue.

6. Form of Bonds -- The Series A Bond will be in substantially the form of Exhibit A. The Series B Bond will be in substantially the same form as the Series A Bond, with appropriate changes to set forth its principal amount, interest rate and payment provisions. Each of the Water Bonds may have such additional minor changes (including any appropriate changes to the Series designation) not inconsistent with this Bond Order as may be approved by the Government and the officers signing the Water Bonds. This approval will be evidenced conclusively by the Government's acceptance of the delivery of the Water Bonds.

The Water Bonds must be signed by the manual or facsimile signature of this Board's Chairman or the County Manager. The County 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 Clerk. No Bond will be valid unless at least one of the signatures appearing on such Bond is manually applied or until such Bond has been authenticated by the manual signature of an authorized officer or employee of a bond registrar selected by the County; the manual signature may be the signature of an LGC official that is required by law to appear on the Bond.

7. Finance Officer as Registrar; Payments to Registered Owners – (a) The County’s Finance Officer is appointed Registrar for the Water Bonds. As Registrar, the Finance Officer will maintain appropriate books and records of the ownership of the Water Bonds. The County will treat the registered owner of each Water Bond as the person exclusively entitled to payment of principal and interest and the exercise of all rights and powers of the owner, except that principal and interest payments will be made to the person shown as owner on the County’s registration books at the end of the calendar day on the 15th day (whether or not a business day) of the month preceding the payment date.

(b) Any registered owner of Water Bonds may register the transfer of the ownership of such Water Bonds only by delivery to the Registrar of an assignment, in form and substance reasonably acceptable to the Registrar, that has been executed by such registered owner or its duly authorized attorney or legal representative. Upon receipt of such an assignment, the Registrar will register the Water Bonds as to both principal and interest on the registration books in the name of the transferee named in such assignment. Upon the Government’s request, the Water Bonds will be issued as, or exchanged for, Water Bonds in fully-registered form in denominations of \$500 and integral multiples thereof numbered from XR-1 upward for identification purposes.

(c) So long as the Government is the registered owner of the Water Bonds, principal and interest installments will be payable in such fashion, including automatic debiting, as the Government may determine. For any portion of the Water Bonds for which the Government is no longer the registered owner, installments will be payable by check or draft mailed on the payment date to the registered owner of the Water Bonds at its address as it appears on the registration books kept by the Registrar, except that the final installment of all the Water Bonds will be payable upon presentation and surrender of the Water Bonds to the Registrar at the County’s offices in Burgaw, North Carolina, or at such successor office as the Registrar may designate in writing to the registered owners of the Water Bonds.

8. County Officers To Complete Closing - After the sale of the Water Bonds, the County Finance Officer and all other County officers and employees are authorized to take all proper steps to have the Water Bonds prepared and executed in accordance with their terms and to deliver the Water Bonds to the Government upon payment for the Water Bonds.

The Finance Officer is authorized to hold the executed Water Bonds, and any other documents authorized or permitted by this resolution, in escrow on the County’s behalf until the conditions for the delivery of the Water Bonds and other documents have been completed to the Finance Officer’s satisfaction, and then to release the executed Water Bonds and other documents for delivery to the appropriate persons or organizations.

Without limiting the generality of the foregoing, this authorization is specifically extended to authorize the Finance Officer to approve changes to any documents previously signed by County officers or employees, provided that the Water Bonds must be in substantially the form approved by this resolution and that any such changes must not substantially alter the intent of the documents from that expressed in the forms originally signed. The Finance Officer's authorization of the release of any document for delivery will constitute conclusive evidence of that officer's approval of any changes.

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 Water Bonds. This authorization includes, without limitation, contracting with third parties for reports and calculations that may be required under the Water Bonds, this resolution or otherwise with respect to the Water Bonds.

9. 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 Water Bonds 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 on the Water Bonds 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 proceeds of the Water Bonds, and the County will pay any such required rebate from its general funds. For this paragraph, "Code" means the United States Internal Revenue Code of 1986, as amended, including applicable Treasury regulations.

10. Obligation To Refinance -- The County shall refinance the unpaid principal balance of any Water Bonds as to which the Government is the registered owner upon the Government's request, if at any time it appears to the Government that the County is able to do so with funds obtained from responsible private sources at reasonable rates and terms for loans for similar purposes and periods of time.

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

EXHIBIT A - Form of Bond

REGISTERED BOND WITHOUT COUPONS

(Registered as to both principal and interest)

No. RA-1

\$16,500,000

UNITED STATES OF AMERICA

STATE OF NORTH CAROLINA

PENDER COUNTY

General Obligation Water Bond, Series 2012A

PENDER COUNTY, NORTH CAROLINA (the "County"), for value received, hereby acknowledges itself indebted and promises to pay to the

UNITED STATES OF AMERICA

acting by and through Rural Utilities Service, an agency of the United States Department of Agriculture (the "Government"), its successors and its registered assigns (the "Bondholder"), the principal sum of

**SIXTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS
(\$16,500,000)**

in annual installments on June 1 in years and amounts as follows:

[principal payment schedule to be determined]

subject to prepayment as described below, and to pay to the registered owner of this Bond interest on the unpaid principal from the date of the Bond until payment of the entire principal sum at the annual rate of _____%, such interest being payable on June 1, 2013, and annually thereafter on each June 1. Principal and interest are payable in lawful money of the United States of America.

The County's full faith and credit are irrevocably pledged for the payment of the principal and interest on this Bond.

This Bond has been authorized by a bond order adopted by the Board of Commissioners (the Board") of Pender County, North Carolina, and approved by the voters of the County, and then a resolution adopted by the Board on September 17, 2012 (the "Bond Resolution"). This Bond is issued to provide funds, to be used together with other available funds, to pay costs of the acquisition and construction of improvements to the County's public water system.

The County may prepay principal of this Bond, in whole or in part at any time at the County's option, without premium. Any prepayment will be applied first to any accrued and unpaid interest and then to installments of principal in inverse order of maturity. No such prepayment will in any way affect the County's obligation to pay when due the remaining scheduled installments of principal of and interest on this Bond. On any date designated for prepayment, notice having been given and moneys for the payment of the prepayment price being held in trust for such purpose, this Bond (or the applicable portions hereof) becomes due and payable, and the interest on this Bond or the portion so prepaid ceases to accrue.

This Bond is registered as to both principal and interest. The County Finance Officer has been appointed Registrar for the Bond and charged with the responsibility for maintaining appropriate registration books and records indicating ownership of the Bond. The County will treat the registered owner of this Bond 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 principal and interest payments will be made to the person shown as owner on the County's registration books at the end of the calendar day on the 15th day (whether or not a business day) of the month preceding the payment date.

The registered owner of this Bond may register the transfer of the ownership of the Bond only by delivery to the Registrar of an assignment, in form and substance reasonably acceptable to the Registrar, that has been executed by the registered owner or its duly authorized attorney or legal representative. Upon receipt of such an assignment, the Registrar shall register this Bond as to both principal and interest on the County's registration books in the name of the transferee named in such assignment.

So long as the Government is the registered owner of this Bond, installments will be payable in such fashion, including automatic debiting, as the Government may determine. For any portion of this Bond for which the Government is no longer the registered owner, installments will be payable by check or draft mailed on the payment date to such alternate registered owner at its address as it appears on the registration books kept by the Registrar, except that the final installment will be payable upon presentation and surrender of this Bond to the Registrar at the offices of Pender County, North Carolina, in Burgaw, North Carolina, or at such successor office as the Registrar may designate in writing to the registered owners of the Bond.

The County intends that North Carolina law will govern the interpretation of this Bond.

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 Bond have happened, exist and have been performed, and the issue of Bonds of which this Bond is one, together with all other County indebtedness, is within every debt and other limit prescribed by the Constitution and laws of the State of North Carolina.

IN WITNESS WHEREOF, Pender County, North Carolina, has caused this Bond to be signed by the Chairman of its Board of Commissioners, its seal to be affixed hereto and attested by the Clerk of that Board, and this Bond to be dated October 15, 2012.

[SEAL]

ATTEST:

**PENDER COUNTY,
NORTH CAROLINA**

[sample only do not sign]
Michael N. Duvall
Clerk, Board of Commissioners

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

**[\$16,500,000
General Obligation Water Bond, Series 2012A,
of Pender County, North Carolina]**

CERTIFICATE OF LOCAL GOVERNMENT COMMISSION

The issuance of the within Bond has been approved by the North Carolina Local Government Commission in accordance with the Local Government Bond Act.

Local Government Commission of North Carolina

T. Vance Holloman
Secretary, North Carolina
Local Government Commission

By _____
[T. Vance Holloman or
Designated Assistant]

ASSIGNMENT

FOR VALUE RECEIVED the undersigned registered owner of this Bond hereby
sells, assigns, and transfers unto
_____ the within bond and all rights
thereunder and hereby irrevocably constitutes and appoints
_____ attorney to register the
transfer of said bond on the books kept for registration thereof, with full power of
substitution in the premises.

Dated: _____

Signed: _____
Registered Owner

NOTICE: The assignor's signature to this assignment must correspond with the name as it appears on the face of the within bond in every particular, without alteration or enlargement or any change whatever.

**[\$16,500,000
General Obligation Water Bond, Series 2012A,
of Pender County, North Carolina]**