



## REQUEST FOR BOARD ACTION

ITEM NO. 7

**DATE OF MEETING:** January 20, 2015

**REQUESTED BY:** Randell Woodruff, County Manager

**SHORT TITLE:** Resolution to Approve a Bond Counsel Agreement for 2015 Limited Obligation Bonds and Budget Amendment.

**BACKGROUND:** Work is proceeding on what is expected to be the 2015 financing for several capital projects, some of which were begun or substantially completed with general fund dollars. The financing will reimburse the general fund for the expended county funds as well as provide funding for other critical projects. The board has approved a preliminary financing plan and has also conducted a preliminary public hearing on the financing. Now is an appropriate time to formally engage the bond counsel for the project. Attached for your consideration is an engagement letter from the law firm of Sanford Holshouser that describes the firm's scope of services and fee for serving as the county's bond counsel. Mr. Bob Jessup of the firm will serve as our bond counsel. Mr. Jessup has served as bond counsel for a number of county financings and has provided advice and guidance for the initial work that has been done on the anticipated 2015 financing.

The firm has proposed a scope of services and fee which are similar to what the county has agreed to in the past. Mr. Jessup has proposed discounted fee of \$67,500, with the funds being paid up front. The fee would be placed in a trust account and drawn down incrementally as different milestones of the financing are reached. The fee can be reimbursed to county from the loan proceeds at the time of closing.

**SPECIFIC ACTION REQUESTED:** Approve the selection of Sanford Holshouser (Bob Jessup) as bond counsel for the Pender County proposed 2015 financing according to the terms of the attached engagement letter and approve the attached budget amendment.

**COUNTY MANAGER'S RECOMMENDATION**

Respectfully recommend approval.

DM  
Initial

**RESOLUTION**

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

the Board hereby authorizes the selection of Sanford Holshouser (Bob Jessup) as bond counsel for the Pender County proposed 2015 financing according to the terms of the attached engagement letter and approve the attached budget amendment. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

**AMENDMENTS:**

MOVED \_\_\_\_\_ SECONDED \_\_\_\_\_

APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_ UNANIMOUS

YEA VOTES: Williams \_\_\_ Brown \_\_\_ McCoy \_\_\_ Piepmeyer \_\_\_ Tate \_\_\_

\_\_\_\_\_  
J. David Williams, Chairman      1/20/2015  
Date

\_\_\_\_\_  
ATTEST      1/20/2015  
Date

# SanfordHolshouser

209 Lloyd Street, Suite 350 | Carrboro, NC 27510  
www.sanfordholshouserlaw.com

December 22, 2014

**By Electronic Mail**

Bob Murphy  
Interim County Manager  
Pender County

**Pender County, North Carolina – Service as Bond Counsel for 2015 LOBs  
(Old Topsail High School Renovation and Other Projects)**

Dear Bob:

Thank you for giving us at Sanford Holshouser this additional chance to work with you and for Pender County as bond counsel on the planned 2015 financing. We appreciate the opportunity and the County's continued confidence in us. I am writing now to confirm our understanding with respect to the scope of our work and our fee arrangements.

Our Firm will represent the County as bond counsel in connection with the proposed authorization and issuance of approximately \$24,000,000 in limited obligation bonds. We understand the County is planning to issue these bonds to finance the renovation of Old Topsail High School, the construction of improvements at Pender Commerce Park, work on the planned new Commerce Park wastewater treatment plant and other County projects. We understand this bond issue is planned as a public offering to close as early as March.

Our job as bond counsel will include preparing the appropriate financing documents and coordinating the financing process with the County and all other financing participants. At the closing of the bond issue, we will deliver our legal opinion as to the general enforceability of the County's repayment obligations and as to certain customary matters of federal and North Carolina tax law.

Attachment A to this letter describes the planned scope of our work in more detail. As you know, we have already completed some of the work described in the attachment, and other aspects of the work are underway. Please let me assure you that the scope of

s★h

**Sanford Holshouser LLP**

December 22, 2014

page 2

work described in the attachment is consistent with the scope of our work on similar financings for Pender County and for other local governments.

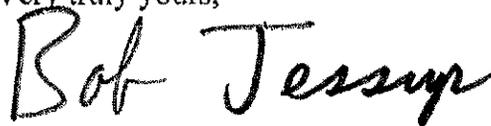
We have agreed that our Firm's fee for acting as the County's bond counsel, based on the assumptions outlined in this letter, will be \$75,000. We have further agreed on procedures for our billing and collecting that fee, which I have outlined in Attachment B. Finally, I have attached a bill that reflects the terms in this letter, and a copy of our W-9 form for your convenience.

\* \* \* \* \*

I hope that you find this letter sets out an appropriate description of the terms of our engagement and is consistent with your understanding. Please let me know if you have any questions or comments about any of the information in this letter.

Thank you again for this opportunity to work with you and for Pender County.

Very truly yours,



Robert M. Jessup Jr.

cc: Michael Mack, Pender County Utilities  
Sylvia Blinson, interim finance officer  
Carl W. Thurman, III, Esq.  
(each by electronic mail)

## **Attachment A – Description of the Scope of the Work**

We look forward to working with you on this financing. As bond counsel for Pender County in this transaction, our responsibilities will be as follows:

- \* examining the applicable law;
- \* advising the County generally as to legal matters concerning the financing;
- \* preparing the primary financing documents;
- \* drafting all necessary proceedings of the County Board and a notice for publication of the required public hearing;
- \* coordinating with the County Attorney as to his required work, including his work as counsel for the nonprofit corporation that is part of the financing plan;
- \* discussing and negotiating draft financing documents with the underwriter, the bond trustee and their respective counsel;
- \* helping to coordinate the financing process with staff of the North Carolina Local Government Commission and the County's financial adviser;
- \* coordinating work with the attorneys hired by the County to acquire the title insurance policy that is required as part of the financing plan;
- \* preparing documents required for the bond closing, including a certificate describing the planned use and investment of bond proceeds to document compliance with applicable federal tax rules;
- \* reviewing, on the County's behalf, the closing documents prepared by others;
- \* collaborating with all parties as to closing arrangements and supervising the closing;
- \* delivering our legal opinion at the closing evaluating the validity of the County's repayment obligations and the tax treatment of interest payments made by the County;

## Sanford Holshouser LLP

December 22, 2014

page 4

- \* delivering at the closing a supplemental legal opinion to the bond underwriter as to matters related to the bond offering, a letter to the bond trustee for its reliance on the primary legal opinion, and any other supplemental opinions that may become necessary;
- \* preparing and filing the required I.R.S. Form 8038-G; and
- \* preparing complete sets of the financing documents for all parties.

Our engagement does not include any work related to real estate matters, including obtaining title insurance commitments or policies or doing any research as to title matters. In addition, our engagement does not contemplate our representing the nonprofit financing corporation that is needed for this transaction. Please also note that we are not financial advisers, and the County should not look to us, or rely on us, for financial advice.

The County's application to the Local Government Commission is the County's responsibility. The application requires that we submit the forms of the financing documents and this fee arrangement letter, but the other forms and materials must be completed by County representatives.

Similarly, the preliminary and final official statements that are part of the bond offering process are the County's responsibility. The document is primarily managed by the underwriter's counsel, but it is the County's responsibility under the federal securities laws to assure that the official statement is correct and complete in all material respects. Except as noted below, we will not assume or undertake responsibility for the preparation of the official statement, and we will not perform any investigation to determine its accuracy, completeness or sufficiency. We will not review the County's financial condition, 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.

As part of our work as bond counsel, however, we will prepare summaries of bond documents and a form of our legal opinion to be included in the official statement, and we are responsible for those items. We will also review or prepare, and approve, any other descriptions in the official statement of (1) the terms of the bonds and the financing documents and (2) our legal opinion.

We represent the County as a separate entity. We do not represent any individual officer or individual governing board member of the County. Our professional duty of confidentiality, for example, runs only to the County as an entity and not to any individual representative. In some cases the rules of professional responsibility for lawyers may require us to share information received from a County representative with other County

## Sanford Holshouser LLP

December 22, 2014

page 5

representatives, or directly with the County Board. We will take direction for our work from the County Manager unless we are directed otherwise by the County Attorney.

Although we serve as bond counsel to the County, it is our responsibility to deliver legal opinions at the closing that are objective; that is, they are to set forth our evaluation of the legal matters at issue without regard to the County's financial or other interests. We will not represent any other party to the transaction, including the County's financial adviser, although we will of course explain and discuss our view of the applicable law and requirements for compliance with 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. Our Firm and the County may identify other matters prior to the closing that have to be completed after the closing. Otherwise, after the bond closing any work on matters such as arbitrage rebate, document revision, loan modifications or refinancings, IRS or SEC inquiry, tax law compliance or continuing disclosure would have to be the subject of a separate agreement between the Firm and the County.

Please let us know if we can in any way clarify our role.

**Attachment B – Procedures for Billing and Collecting the  
Fee**

We have agreed on a total bond counsel fee of \$75,000. We have further agreed that in exchange for the County's paying that fee by January 15, 2015, the County will receive a discount of 10% on the total fee, making the total discounted fee equal to \$67,500.

Upon our receipt of the fee payment, we will deposit the amount in our lawyers' trust account. The amount paid will be subject to disbursement as follows:

\* Sanford Holshouser can withdraw one-third of the amount paid on or after January 20, 2015, provided that (a) the County's Board of Commissioners has held the required public hearing on the financing (currently scheduled for January 5) and (b) we at Sanford Holshouser have circulated drafts of the key financing documents for the transaction (those being the trust agreement, financing contract and deed of trust).

\* Sanford Holshouser can withdraw an additional one-third of the amount paid on or after February 20, 2015, provided that the Local Government Commission has notified the County that the County's application for the approval of this financing will be on the agenda at the Commission's subsequent meeting. If that notice does not come before February 20, then our withdrawal will come once we have the notice (this would apply both for a notice in late February or a notice in a later month, if we miss out on March LGC approval).

\* The final one-third of the fee, or \$22,500, will remain in trust until the closing of the bond issue. Upon the closing, Sanford Holshouser may withdraw all remaining amounts from trust as a fully-earned fee.

If the financing is not considered by the LGC at or before its April meeting, or if the closing does not occur before June 1, then we would like the option to discuss with you changing this agreement in light of the new circumstances.

The amounts in trust remain the County's funds, held by Sanford Holshouser in trust. The County may request the return of these funds at any time, and we will then promptly return to the County any unearned balance from the trust account. Any request, however, and must take into account the value of our work up to the time of the request and the value of the discount previously provided to the County.

We will invest funds held in the trust account in accordance with the North Carolina

## **Sanford Holshouser LLP**

December 22, 2014

page 7

State Bar's program for interest on lawyers' trust accounts, also known as "IOLTA." Under this program, amounts earned on trust funds are not credited to the trust balance for payment to the County or to us, but instead are pooled by the holding bank and paid to the State Bar for use in programs designed to benefit the broader public interest. You can find more information on the IOLTA program at [www.nciolta.com](http://www.nciolta.com). We hold the Sanford Holshouser IOLTA trust account at SunTrust Bank, N.A.

# SanfordHolshouser

209 Lloyd Street, Suite 350 | Carrboro, NC 27510  
www.sanfordholshouserlaw.com

## Billing for Pender County

*IN FULL* for professional services as bond counsel with respect to 2015 Limited Obligation Bonds including the following --

- a) advice and discussions with County representatives regarding the general structure of and procedure for the financing;
- b) drafting appropriate proceedings of the County's Board of Commissioners;
- c) preparing the primary financing documents, and reviewing and commenting upon draft documents prepared by others;
- d) coordinating the financing process with representatives of the North Carolina Local Government Commission, the underwriter and its counsel, the bond trustee and the County Attorney;
- e) collaborating with all parties as to closing arrangements, supervising the closing, and delivering our opinion at closing with respect to the validity of the County's obligations, the tax status of certain County interest payments and other matters; and
- f) all research, analysis and communications throughout, and including all expenses.

|  |                     |
|--|---------------------|
| <b>Stated fee</b>                            | <b>\$75,000.00</b>  |
| <b>Less – 10% discount for early payment</b> | <b>(\$7,500.00)</b> |
| <b>Net fee – Please pay</b>                  | <b>\$67,500.00</b>  |

This fee is collected and will be applied in accordance with the accompanying engagement letter.

This bill may be paid by mail or by ACH or wire transfer to SunTrust Bank, ACH/routing 0610000104, Account 371160453.

Our taxpayer identification number is 20-0467819.



# Request for Taxpayer Identification Number and Certification

Give Form to the  
 requester. Do not  
 send to the IRS.

|  |  |   |
|--|--|---|
| Print or type<br>See Specific Instructions on page 2.                            | Name (as shown on your income tax return)<br><b>Sanford Holshouser LLP</b>   |   |
|  | Business name/disregarded entity name, if different from above<br>---  |   |
|  | Check appropriate box for federal tax classification:<br><input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate<br><input checked="" type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ <b>P</b><br><input type="checkbox"/> Other (see instructions) ▶ |   |
|  | Exemptions (see instructions):<br>Exempt payee code (if any) _____<br>Exemption from FATCA reporting code (if any) _____   |   |
| Address (number, street, and apt. or suite no.)<br><b>209 Lloyd St., STE 350</b> |  | Requester's name and address (optional) |
| City, state, and ZIP code<br><b>Carrboro, NC 27510</b>                           |  |   |
| List account number(s) here (optional)   |  |   |

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I Instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

|   |  |
|---|--|
| Social security number                        |  |
| [ ] [ ] [ ] - [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] |  |
| Employer identification number                |  |
| 2 0 - 0 4 6 7 8 1 9                           |  |

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below), and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification Instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

|           |  |                      |
|-----------|--|----------------------|
| Sign Here | Signature of U.S. person ▶ <i>Herbert M. Jessup Jr</i> | Date ▶ <i>5-5-14</i> |
|-----------|--|----------------------|

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** The IRS has created a page on [www.irs.gov/w9](http://www.irs.gov/w9) for information about Form W-9, at [www.irs.gov/w9](http://www.irs.gov/w9). Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

**Purpose of Form**

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and

4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

**Note.** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.