

FORSYTH COUNTY
BOARD OF COMMISSIONERS

BRIEFING DRAFT

MEETING DATE: May 21, 2020 AGENDA ITEM NUMBER: 9

SUBJECT: RESOLUTION RATIFYING AND AUTHORIZING EXECUTION OF A STANDBY PURCHASE AGREEMENT RENEWAL WITH WELLS FARGO BANK, NATIONAL ASSOCIATION, FOR THE 2004A AND 2004B VARIABLE RATE GENERAL OBLIGATION BONDS (FINANCE DEPARTMENT)

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:

SUMMARY OF INFORMATION:

The 2004A and 2004B Variable Rate General Obligation Bonds require a standby purchase agreement to be in place so that investors will purchase the bonds when remarketed as designed. Wells Fargo Bank has provided this standby purchase agreement since the issuance of the bonds, and this will be the fifth renewal of this agreement. The agreement is for three years at a rate of 0.40%. Due to the Bank's request to have this renewal agreed upon by May 1, 2020, and the uncertainty of the credit markets, it was in the best fiscal interest of the County to agree to the renewal as quickly as possible.

ATTACHMENTS: YES NO

SIGNATURE: _____ DATE: _____
COUNTY MANAGER

**RESOLUTION RATIFYING AND AUTHORIZING EXECUTION OF A STANDBY
PURCHASE AGREEMENT RENEWAL WITH WELLS FARGO BANK, NATIONAL
ASSOCIATION, FOR THE 2004A AND 2004B VARIABLE RATE
GENERAL OBLIGATION BONDS
(FINANCE DEPARTMENT)**

WHEREAS on April 30, 2020, Forsyth County committed to the fifth renewal of a standby purchase agreement with Wells Fargo Bank, National Association, for the 2004A and 2004B Variable Rate General Obligation Bonds, due to a May 1, 2020, bank deadline and uncertainty in the credit markets;

WHEREAS Wells Fargo Bank, National Association, has provided the County with standby purchase services since the issuance of the aforementioned bonds in June of 2004 to provide for a liquidity facility pursuant to which the Bank would purchase Bonds under certain circumstances, and the Bank is willing to purchase the Bonds, on the terms and conditions set forth in the original agreement as last amended by this renewal; and

WHEREAS Forsyth County has requested and received an agreement extension to June 23, 2023, from Wells Fargo Bank, National Association at the same terms as the prior agreement extension, where the County pays a commitment fee at a rate per annum equal to 0.40% multiplied by the par amount of the bonds still outstanding at each quarterly due date;

NOW, THEREFORE, BE IT RESOLVED, that the Forsyth County Board of Commissioners ratifies and authorizes the County Manager's execution, on behalf of Forsyth County, a renewal of the 2004A and 2004B Variable Rate General Obligation Bonds Standby Purchase Agreement and associate Fee Letter, both of which are attached hereto and incorporated herein by reference, with Wells Fargo Bank, National Association at a rate per annum equal to 0.40%, subject to a pre-audit certificate thereon by the County Chief Financial Officer, where applicable, and approval as to form and legality by the Forsyth County Attorney.

Adopted this 21st day of May, 2020.



FEE LETTER

April 29, 2020

Paul L. Fulton, Jr., Chief Financial Officer
Lee Plunkett, Assistant Chief Financial Officer
Forsyth County
201 North Chestnut Street
Winston-Salem, NC 27101

Re: Standby Purchase Agreements, dated as of June 1, 2004, between County of Forsyth, North Carolina and Wells Fargo Bank, National Association (formerly Wachovia Bank National Association) relating to Variable Rate General Obligation Bonds, Series 2004A and 2004B as supplemented and amended May 14, 2009, February 1, 2011, May 29, 2014 and June 5, 2017 (individually or collectively, the “Agreement” or “Agreements”)

Dear Paul and Lee,

The purpose of this letter is to amend certain terms of the referenced Agreements effective on the date hereof.

The first paragraph of Section 2.05 of each Agreement is hereby amended to read as follows:

The County will pay to the Bank a commitment fee (computed on the basis of the actual number of days elapsed in a year of 360 days) effective June 23, 2020 at a rate per annum equal to 0.40% multiplied by the Available Commitment in effect from time to time payable quarterly in arrears on the first day of March, June, September and December and on the Termination Date; provided, however, the rate per annum shall increase immediately as set forth below if the long-term municipal bond rating assigned to the Bonds by any two or more of Standard & Poor’s, Moody’s or Fitch should fall to any of the following levels:

Credit Rating (S&P/Moody’s/Fitch)	Percentage of Available Commitment
AAA/Aaa/AAA to AA+/Aa1/AA+	+7.5bps
AA+/Aa1/AA+ to AA/Aa2/AA	+7.5bps
AA/Aa2/AA to AA-/Aa1/AA-	+7.5bps

AA-/Aa1/AA- to A+/A1/A+	+15bps
A+/A1/A+ to A/A2/A	+15bps
A/A2/A to A-/A3/A-	+15bps
A-/A3/A- to BBB+/Baa1/BBB+	+25bps
BBB+/Baa1/BBB+ to BBB/Baa2/BBB	+35bps
BBB/Baa2/BBB to BBB-/Baa3/BBB-	+50bps

If one or more of the underlying ratings are withdrawn or suspended for any credit-related reason, or an event of default occurs, the percentage of Available Commitment shall automatically increase to that which would apply if any rating assigned to the County's parity debt (general obligations) is "BBB-/Baa3" plus on hundred basis points (1.00%) per annum. All of the foregoing pricing increases shall be cumulative. References above are to rating categories as presently determined by the rating agencies, and in the event of the adoption of any new or changed rating system or a "global" rating scale by such rating agency, the ratings categories shall be adjusted accordingly to a new rating which most closely approximates the ratings currently in effect.

Please indicate your acceptance of these amendments by signing below and returning a signature page via .pdf by Friday May 1, 2020 (to be followed by four originals of this letter to be received by the Bank no later than May 15, 2020 by courier or regular mail delivery). After that date, the Bank's agreement to amend the terms herein is void and subject to further extension in writing by the Bank.

[Remainder of page left blank intentionally; signature pages follow]

**WELLS FARGO BANK,
NATIONAL ASSOCIATION**

By: _____
Reid Andrews
Senior Vice President

Accepted,

COUNTY OF FORSYTH, NORTH CAROLINA

By: J. Dudley Watts 4/3-120
J. Dudley Watts, County Manager



April 29, 2020

Paul L. Fulton, Jr., Chief Financial Officer
Lee Plunkett, Assistant Chief Financial Officer
Forsyth County
201 North Chestnut Street
Winston-Salem, North Carolina 27101

Re: Standby Purchase Agreements, dated June 1, 2004, as supplemented and amended, regarding County of Forsyth, North Carolina Variable Rate General Obligation School Bonds, Series 2004A and 2004B

Gentlemen:

Reference is hereby made to those certain Standby Purchase Agreements, dated as of June 1, 2004, as supplemented and amended (the "**Agreement**"), between the County of Forsyth, North Carolina (the "**County**") and Wells Fargo Bank, National Association (formerly Wachovia Bank, National Association) (the "**Bank**"). The purpose of this letter (the "**2020 Amendment**") is to amend the Agreement according to the following terms and conditions. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

Revised Definitions. The following definitions are hereby amended and restated in their entirety to read as follows:

"Expiration Date" means, initially, the Initial Expiration Date and, thereafter, such later date as provided for in Section 2.11(b) or as may be otherwise agreed to in writing by the Bank and the County. The Expiration Date is hereby extended to June 23, 2023.

"Prime Rate" means that annual interest rate set by the Bank from time to time as an interest rate basis for borrowings. If the Prime Rate shall be less than 1.0%, such rate shall be deemed to be 1.0% for all purposes of this Agreement. The Prime Rate is one of several interest rate bases used by the Bank. The Bank lends at rates above and below the Prime Rate. For purposes of computing interest, each change in the Prime Rate shall be effective on the date of such change.

Revised Provision. Sections 2.8(a) and 2.8(b) of the Agreement are hereby amended and restated in their entirety to read as follows:

- (a) Except as otherwise provided in subsection (b) of this Section, as provided in the Bond Resolution, each Bank Bond (including any Bank Bonds purchased by

the Bank on the Termination Date pursuant to Section 2.02) shall be redeemed on the date that is the earliest of (i) the 181st day after such Bond became a Bank Bond, (ii) the Expiration Date and (iii) the date of the termination of the obligation of the Bank to purchase Bonds pursuant to Section 6.02 upon the occurrence of an Event of Default.

- (b) If the County has delivered a written request to the Bank to convert any Bank Bond to a Term Bank Bond on or prior to the Business Day immediately preceding the earlier to occur of the (i) Expiration Date or (ii) the Amortization Date for such Bank Bond, then such Bank Bond shall be converted to a Term Bank Bond, provided that on the conversion date for such Term Bank Bond, (i) the representations and warranties of the County contained in Article IV, each other Related Document and any certificate or other writing delivered to the Bank pursuant hereto in connection with the transactions contemplated by this Agreement shall be true and correct as though made on and as of such date, except to the extent a representation or warranty relates specifically to an earlier date (in which case such representation and warranty shall be true and correct as of such date); and (ii) no Event of Default shall have occurred and be continuing. On the commencement date of each Term Bank Bond Period, the County shall be deemed to have represented and warranted to the Bank that the conditions set forth in (i) and (ii) of the immediately preceding sentence have been satisfied. Interest on any Term Bank Bond shall accrue at the Term Bank Bond Rate, and shall be paid by the County on each Interest Payment Date.

All principal and accrued interest with respect to each Bank Bond, whether it has been converted to a Term Bank Bond or not, shall be paid by the County on the earliest to occur of (i) the date on which any Bank Bond is redeemed or otherwise paid in accordance with its terms, (ii) the date of the remarketing of such Bank Bond, (iii) the date any Alternate Liquidity Facility becomes effective, (iv) if the conditions set forth in the immediately preceding paragraph for conversion to a Term Bank Bond are not satisfied, the Amortization Date and (v) the end of the Term Bank Bond Period, if applicable. Subject to repayment of any Bank Bond as described in the immediately preceding sentence, each Bank Bond evidencing a Term Bank Bond shall, in addition thereto, be redeemed or paid by the County in five (5) equal annual installments, rounded up to the nearest Authorized Denomination, the first of which will occur on the next September 1 occurring after the commencement of the Term Bank Bond Period, with each subsequent installment being payable on each September 1 during the Term Bank Bond Period, and with the final installment being due and payable no later than the end of the Term Bank Bond Period. If such schedule would result in the last required payment being less than an Authorized Denomination, then the last required payment shall be added to and included in the penultimate payment.

New Provision. The following new Section 7.13 is added to the end of Article VII of the Agreement, to read as follows:

Section 7.13. US QFC Stay Rules.

(a) Recognition of U.S. Resolution Regimes. In the event that any party that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of this Agreement (and any interest and obligation in or under this Agreement and any property securing this Agreement) from such Covered Entity will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement (and any such interest, obligation and property) were governed by the laws of the United States or a state of the United States. In the event that any party that is a Covered Entity or a BHC Act Affiliate of such party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights against such party with respect to this Agreement are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States. The requirements of this subsection (a) apply notwithstanding the provisions of subsection (b).

(b) Limitation on the Exercise of Certain Rights Related to Affiliate Insolvency Proceedings. Notwithstanding anything to the contrary in this Agreement or any related agreement, but subject to the requirements of subsection (a), no party to this Agreement shall be permitted to exercise any Default Right against a party that is a Covered Entity with respect to this Agreement that is related, directly or indirectly, to a BHC Act Affiliate of such Covered Entity becoming subject to Insolvency Proceedings, except to the extent the exercise of such Default Right would be permitted under 12 C.F.R. § 252.84, 12 C.F.R. § 47.5, or 12 C.F.R. § 382.4, as applicable. After a BHC Act Affiliate of a party that is a Covered Entity has become subject to Insolvency Proceedings, any party that seeks to exercise a Default Right against such Covered Entity with respect to this Agreement shall have the burden of proof, by clear and convincing evidence that the exercise of such Default Right is permitted hereunder.

“*BHC Act Affiliate*” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“*Covered Entity*” means any of the following:

- (a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“*Default Right*” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“*Insolvency Proceeding*” means a receivership, insolvency, liquidation, resolution, or similar proceeding.

“*U.S. Special Resolution Regime*” means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

Other conditions:

Definitions. Except as otherwise defined herein, the capitalized terms used in this 2020 Amendment shall have the meanings ascribed to them in the Agreement.

Confirmation of Agreement. Except as specifically amended herein, all of the terms and conditions of the Agreement shall remain in full force and effect and are hereby ratified in full by the County and the Bank. By executing this 2020 Amendment below, the County (i) represents and warrants that no Default or Event of Default has occurred or is continuing under the Agreement, as amended herein, and (ii) except for those things reflected in the County’s financial statements and public disclosure documents related to the County’s financings since the time of the Agreement, reaffirms all representations and warranties as of this date outlined in Article IV of the Agreement. The County shall deliver to the Bank a certified copy of all documents, resolutions, and such other documents as the Bank may reasonably request authorizing the execution, delivery and performance of this 2020 Amendment and the terms herein. The County and the Bank further agree that this 2020 Amendment shall act only as a one-time extension of the Expiration Date and that all future extensions of the term of the Agreement shall be governed by the provisions of Section 2.11(b) or 7.01 of the Agreement, unless specifically agreed otherwise pursuant to a written agreement between the County and the Bank.

Claims against Bank. The County acknowledges and agrees that, as of the date hereof, it does not have any claim, defense or set-off right against the Bank, or any of its shareholders, officers, directors, employees, agents, successors, assigns or affiliates, nor any claim, defense or set-off right to the enforcement by the Bank of the full amount of the obligations under the Agreement. The County hereby expressly waives, releases, relinquishes, satisfies, acquits and discharges the Bank and its shareholders, officers, directors, employees, agents, successors, assigns and affiliates, from any and all defenses to payment or other defenses, set-offs, claims, counterclaims, liability and causes of action, accrued or unaccrued, known or unknown, which occurred or arose on or prior to the date hereof.

Counterparts. This 2020 Amendment may be executed in any number of counterparts, each of which taken together when so executed and delivered shall be deemed to constitute one and the same instrument.

Governing Law. This 2020 Amendment and the Agreement, as amended hereby, shall be deemed to be contracts made under, and for all purposes shall be construed in accordance with, the laws of the State of North Carolina.

Legal Fees. By accepting the terms of this letter, the County agrees to pay Bank’s legal fees related to this 2020 Amendment. The Bank is represented by McGuireWoods LLP.

Please confirm that the foregoing is our mutual understanding by signing and returning to the Bank an executed counterpart of this 2020 Amendment. This 2020 Amendment shall become effective as of the date first above referenced upon our receipt of an executed counterpart of this 2020 Amendment from you.

[Remainder of page left blank intentionally; signature pages follow]

Very truly yours,

**WELLS FARGO BANK,
NATIONAL ASSOCIATION**

By: _____
Reid Andrews
Senior Vice President

Agreed to and accepted as of the date first written above:

COUNTY OF FORSYTH, NORTH CAROLINA

By: J. Dudley Watts 4/30/20
J. Dudley Watts, County Manager