

**RESOLUTION APPROVING PROPOSED AGREEMENTS CONCERNING THE FINANCING OF REPAIRS AND IMPROVEMENTS TO PUBLIC SCHOOL FACILITIES, APPROVING CERTAIN OTHER DOCUMENTS AND ACTIONS RELATING THERETO AND AUTHORIZING CERTAIN ACTIONS IN CONNECTION THEREWITH.**

**WHEREAS,** the Montgomery County Board of Education (**the "Board"**) has previously determined to cooperate with Montgomery County, North Carolina (**the "County"**), to undertake a project for the design, construction, rehabilitation, repair and equipping of County school facilities, including roof replacement, energy saving improvements, heating and cooling system improvements and paving of parking areas and roadways (**together, the "School Project"**); and

**WHEREAS,** East Middle School is located in the County upon a parcel of real property (**the "Site"**) owned by the Board but to be acquired by the County pursuant to a deed to be approved and executed on behalf of the Board, and

**WHEREAS,** the County is authorized by law to acquire an interest in real property for the Board's use upon the Board's request; and

**WHEREAS,** the Board is authorized pursuant to N.C. Gen. Stat. §160A-274 (**"Section 160A-274"**) to enter into agreements with the County for the lease, exchange or other transfer of any interest in real or personal property, with or without consideration; and

**WHEREAS,** the Board desires that the County acquire the Site and improvements thereon in furtherance of qualified school construction bond installment financing of the School Project (**the "Financing"**); and

**WHEREAS,** the County proposes to provide such Financing through the execution and delivery of an Installment Financing Agreement and Deed of Trust from the County for the benefit of a bank to be selected by the County (**the "Lender"**) and related documents, pursuant

to the provisions of N.C. Gen. Stat. §§ 153A-158.1 and 160A-20 and other applicable law; and

**WHEREAS**, there have been presented to this meeting the following draft agreements which the Board proposes to execute in connection with the County's financing of the School Project, copies of which shall be filed with the Board's permanent records:

(a) A Construction, Rehabilitation and Acquisition Agreement dated as of August 1, 2012, **(the "Construction and Acquisition Agreement")** between the Board and the County, by means of which the Board would oversee the completion of the School Project; and

(b) A Lease Agreement dated as of August 1, 2012 **(the "Lease Agreement")** between the Board and the County, which provides for the lease by the County to the Board of the Site as part of such plan to finance the cost of the School Project.

**NOW THEREFORE, BE IT THEREFORE RESOLVED, by the Montgomery County Board of Education as follows:**

1. It is hereby determined to be necessary and desirable and in furtherance of the Board's public responsibilities for the Board to enter into the Construction and Acquisition Agreement and the Lease Agreement **(together, the "Agreements")**.

2. The Board, pursuant to Section 160A-274, hereby authorizes the conveyance of the Board's interest in the Site and improvements thereon to the County for the consideration of not less than One Hundred Dollars (\$100.00). The Board's Chair and Vice Chair, or either of them, are hereby authorized and directed to execute and deliver an appropriate deed or deeds to carry out such conveyances, and the Board's Secretary, (the Superintendent) is hereby authorized and directed to apply the Board's seal thereto and to attest the same.

3. The Board's Chair or Vice Chair, or either of them, is hereby authorized and

directed to execute the Agreements and deliver them to the appropriate counterparties, and the Board's Secretary, (the Superintendent) is hereby authorized and directed to apply the Board's seal thereto and to attest the same. The Agreements shall be in substantially the forms submitted to this meeting, which are hereby approved, with such additions, changes, modifications, and deletions as may be deemed necessary and appropriate by the officer executing each such Agreement, such officer's execution and delivery to constitute conclusive evidence of approval of such changes.

4. The Superintendent is hereby authorized and directed to hold the executed Agreements and any other documents authorized or permitted by this resolution in escrow on the Board's behalf until the conditions for the delivery of such documents have been completed to the Superintendent's satisfaction, and thereupon to release the executed copies of such documents for the delivery to the appropriate persons or organizations. Without limiting the generality of the foregoing, this authorization and direction is hereby specifically extended to authorize the Superintendent to approve changes to any Agreements, documents or closing certifications previously signed by the Board's officers or employees, provided that such changes shall not substantially alter the intent of such certifications from that expressed in the forms of such instruments or certifications as executed by such officers. The Superintendent's authorization of the release of any such documents for delivery shall constitute conclusive evidence of his approval of such changes.

5. The Board hereby acknowledges an installment financing agreement and deed of trust and related documents will be entered into by the County in order to accomplish the Financing, which documents will provide for the Site and improvements thereon to be security for the Financing, and approves of the County's entering into the same to finance the School



Project. The Board further acknowledges that federal law requirements for qualified school construction bond financing include compliance with the federal Davis-Bacon Act in connection with the construction, rehabilitation, repair and equipping of the School Project. The Chairman of the Board, Vice Chairman of the Board and Superintendent, and each of them, are hereby authorized and directed to execute and deliver on behalf of the Board a Tax Certificate setting forth the expected use and investment of the proceeds of the Financing (**the "Tax Certificate"**) and containing such covenants as may be necessary for the Financing to qualify as and to remain as "qualified tax credit bonds," "qualified school construction bonds" and "specified tax credit bonds" under Sections 54A, 54F and 6431 of the Internal Revenue Code of 1986, as amended, and related regulations (**together, the "Code"**). The Board covenants on behalf of itself and the schools under its governance that the Board and the schools shall comply with the provisions of the Tax Certificate so that the Financing will not lose its status as "qualified tax credit bonds," "qualified school construction bonds" and "specified tax credit bonds" under Sections 54A, 54F and 6431 of the Code.

6. The Board hereby authorizes and directs its officers and employees to execute and deliver all other certificates, consents, instruments and documents and to take all such further action as are considered necessary or desirable or as may be required by the Lender in connection with the Financing, the execution and delivery of the Agreements and the carrying out of the transactions contemplated by this resolution.

8. All other actions of Board officers and the Board's agents and representatives in furtherance of carrying out of the transactions contemplated by this resolution are hereby ratified, approved and confirmed. All other resolutions or parts thereof in conflict with this resolution are, to the extent of such conflict, hereby repealed. This resolution shall take effect immediately.

Upon consideration of the foregoing Resolution and motion duly made by Board member, \_\_\_\_\_, and seconded by Board member, \_\_\_\_\_, the foregoing Resolution was passed by the following vote:

Ayes: \_\_\_\_\_.

Noes: \_\_\_\_\_.

I, Dale Ellis, Secretary of the Montgomery County Board of Education, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the recorded proceedings of a regular meeting of said Board held on August 6, 2012 as relates to the passage of the Resolution hereinabove set forth and that such proceedings have been recorded in the minutes of said Board.

I DO HEREBY FURTHER CERTIFY that a schedule of regular meetings of said Board has been on file in my office as of a date not less than seven days before the date of said meeting in accordance with North Carolina General Statutes Section 143.318-12.

WITNESS my hand and the official seal of said Board, this the \_\_\_\_ day of August, 2012

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Dale Ellis, Secretary