

**FORSYTH COUNTY  
BOARD OF COMMISSIONERS****DRAFT**MEETING DATE: SEPTEMBER 12, 2019 AGENDA ITEM NUMBER: 15

- SUBJECT: A. AMENDMENT TO THE FY 2019-2020 BUDGET ORDINANCE TO ESTABLISH A CAPITAL RESERVE FUND**
- B. AMENDMENT TO THE DEBT SERVICE FUND**
- C. ADOPTION OF CAPITAL RESERVE FUND**

**COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:****SUMMARY OF INFORMATION:**

During the Fiscal Year 2019-2020 budget adoption process, an Alternate Service Level was presented to the Board of Commissioners to establish a Debt Service Fund to account for revenue, expenditures, and reserves associated with debt issuances by the County. The Debt Service Fund was adopted during the June 27, 2019, meeting. Based on the advice of the County's tax counsel, a Capital Reserve Fund should also be established as a safe harbor for resources to avoid the Debt Service Fund becoming a yield restricted sinking fund that could negatively impact future earnings in the debt leveling plans.

During the establishment of the Debt Service Fund, the General Fund included a Transfer to the Debt Service Fund in the amount of \$67,913,216. With the establishment of the Capital Reserve Fund, the Transfer to the Debt Service Fund would be removed. This amendment will also appropriate the committed fund balance as of June 30, 2019, for all debt leveling plans in the amount of \$28,667,861.13 and transfer it to the Capital Reserve Fund. The new appropriation would be a Transfer to the Capital Reserve Fund in the amount of \$96,581,077.13 (\$28,667,861.13 in Debt Leveling Plan reserves as of June 30, 2019, and \$67,913,216 in FY20 property taxes needed for debt service).

ATTACHMENTS:  Yes  NoSIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
COUNTY MANAGER

**FORSYTH COUNTY, NORTH CAROLINA  
AMENDMENT TO  
2019-2020 BUDGET ORDINANCE**

**FROM: BUDGET & MANAGEMENT**

**MEETING DATE:** September 12, 2019

**EXPLANATION:**

During the Fiscal Year 2019-2020 budget adoption process, an Alternate Service Level was presented to the Board of Commissioners to establish a Debt Service Fund to account for revenue, expenditures, and reserves associated with debt issuances by the County. The Debt Service Fund was adopted during the June 27, 2019, meeting. Based on the advice of the County's tax counsel, a Capital Reserve Fund should also be established as a safe harbor for resources to avoid the Debt Service Fund becoming a yield restricted sinking fund that could negatively impact future earnings in the debt leveling plans.

During the establishment of the Debt Service Fund, the General Fund included a Transfer to the Debt Service Fund in the amount of \$67,913,216. With the establishment of the Capital Reserve Fund, the Transfer to the Debt Service Fund would be removed. This amendment will also appropriate the committed fund balance as of June 30, 2019, for all debt leveling plans in the amount of \$28,667,861.13 and transfer it to the Capital Reserve Fund. The new appropriation would be a Transfer to the Capital Reserve Fund in the amount of \$96,581,077.13 (\$28,667,861.13 in Debt Leveling Plan reserves as of June 30, 2019, and \$67,913,216 in FY20 property taxes needed for debt service).

**BE IT ORDAINED BY THE FORSYTH COUNTY BOARD OF COMMISSIONERS THAT THE FISCAL YEAR 2019-2020 BUDGET ORDINANCE IS HEREBY AMENDED AS FOLLOWS:**

The paragraph added to Appropriations Section (Section 2) on June 27, 2019, is amended by deleting strikethrough language and adding underscored language as follows: *In order to more clearly present debt service activities the County hereby removes same from the General Fund and establishes a Debt Service Fund and Capital Reserve Fund. The Chief Financial Officer is hereby directed to transfer all cash, investments, reserves and any other related assets from the General Fund to the ~~Debt Service Fund~~ Capital Reserve Fund effective July 1, 2019 and to report same back to the Board of Commissioners concurrent with the presentation of the Comprehensive Annual Financial Report.*

INCREASE:	<u>SECTION 1. REVENUES.</u> GENERAL FUND COMMITTED FUND BALANCE	<u>\$28,667,861.13</u>
DECREASE:	<u>SECTION 2. APPROPRIATIONS.</u> GENERAL FUND TRANSFER TO DEBT SERVICE FUND	<u>\$67,913,216.00</u>
INCREASE:	<u>SECTION 2. APPROPRIATIONS.</u> GENERAL FUND TRANSFER TO CAPITAL RESERVE FUND	<u>\$96,581,077.13</u>

**NATURE OF TRANSACTION:**

- Additional Revenue Available
- Transfer within Accounts of Same fund
- Other: Establish Capital Reserve Fund

APPROVED BY BOARD OF COUNTY COMMISSIONERS AND ENTERED ON MINUTES DATED \_\_\_\_\_ AGENDA ITEM NUMBER \_\_\_\_\_

**FORSYTH COUNTY, NORTH CAROLINA  
AMENDMENT TO  
DEBT SERVICE FUND**

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**FROM: BUDGET & MANAGEMENT**

**MEETING DATE:** September 12, 2019

**EXPLANATION:**

During the Fiscal Year 2019-2020 budget adoption process, an Alternate Service Level was presented to the Board of Commissioners to establish a Debt Service Fund to account for revenue and expenditures associated with debt issuances by the County. The Debt Service Fund was adopted during the June 27, 2019 meeting. Based on the advice of our tax counsel, a Capital Reserve Fund should be established as a safe harbor for resources to avoid the Debt Service Fund becoming a yield restricted sinking fund that could negatively impact future earnings in the debt leveling plans.

With the creation of a Capital Reserve Fund and in order for the Debt Service Fund to not create a residual balance, the Debt Service Fund is being amended as follows:

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DECREASE:	<u>SECTION 1. REVENUES.</u>	
	DEBT SERVICE FUND	
	TRANSFER FROM THE GENERAL FUND	\$67,913,216
	FUND BALANCE	<u>\$ 6,492,388</u>
		\$74,405,604
INCREASE:	<u>SECTION 1. REVENUES.</u>	
	DEBT SERVICE FUND	
	TRANSFER FROM THE CAPITAL RESERVE FUND	<u>\$65,504,557</u>
DECREASE:	<u>SECTION 2. APPROPRIATIONS.</u>	
	DEBT SERVICE FUND	
	BUDGET RESERVE	<u>\$8,901,047</u>

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- NATURE OF TRANSACTION:
- Additional Revenue Available
  - Transfer within Accounts of Same fund
  - Other:

APPROVED BY BOARD OF COUNTY COMMISSIONERS AND ENTERED ON MINUTES DATED \_\_\_\_\_ AGENDA ITEM NUMBER \_\_\_\_\_

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## Capital Reserve Fund

Be It Ordained by the Forsyth County Board of Commissioners:

### Section 1. Revenue.

The following revenues are hereby made available.

Transfer from the General Fund	<u>\$96,581,077.13</u>
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### Section 2. Authorization for Appropriation of Funds.

Be It Ordained that the following amounts are appropriated for the transfer of funds to pay or the payment of debt service on bonds currently outstanding, transfer of funds to pay or the payment of debt service on future bonds yet to be issued, funding of "pay-as-you-go" capital projects, funding of capital reserves for future capital projects, or other similar purposes, subject to review by the County Manager and the Board of County Commissioners; and the County Manager and Chief Financial Officer are hereby authorized to execute the necessary documents to carry out these purposes, subject to the limitations herein, a pre-audit certificate thereon by the County Chief Financial Officer, if applicable, and the approval as to form and legality by the County Attorney.

Transfer to the Debt Service Fund	\$65,504,557.00
Budget Reserve	<u>\$31,076,520.13</u>
Total	<u>\$96,581,077.13</u>

### Section 3. Effective Date.

This ordinance shall become effective upon adoption.

Adopted this 12<sup>th</sup> day of September, 2019.

## MEMORANDUM

TO: Paul Fulton  
Forsyth County, North Carolina

FROM: Paul Billow  
Womble Bond Dickinson (US) LLP

DATE: August 19, 2019

RE: Recommendation for Avoiding the Establishment of Yield Restricted Sinking Funds for Tax-Exempt Bonds Issued by the County

On May 10, 2019, we provided you with a memorandum describing the federal tax ramifications of establishing a debt service fund for the purpose of setting aside County revenues to be used solely to pay debt service on the County's outstanding bonds and other debt obligations (hereinafter collectively referred to as the "Bonds") in the current and future fiscal years. We refer you to such memorandum for background information regarding the same.

Based on the budget ordinance amendments and other materials provided to us by the County relating to the establishment of the County's Debt Service Fund and the associated debt leveling plans, it appears that the County's Debt Service Fund as currently structured would result in the creation of a sinking fund and that the portion of the Debt Service Fund that did not constitute a bona fide debt service fund would have to be yield restricted in some manner. Furthermore, due to the commingled nature of the Debt Service Fund, certain complicated allocation and accounting rules set forth in the Treasury Regulations would have to be applied to properly allocate the amounts held in the Debt Service Fund to each separate series of Bonds that would be paid from the Debt Service Fund (which we understand would currently include at least ten separate Bond issues).

We believe that these adverse tax consequences might be avoided while still adequately segregating amounts that are proposed to be deposited in the Debt Service Fund from other general fund revenues and ensuring that such revenues are used to pay for the capital projects and programs for which such funds are intended.

Our recommendation would be for the County to create a "Capital Improvement Fund" (or other similarly named fund) into which the County would deposit or transfer (1) tax revenues related to the various debt leveling plans, (2) non-tax revenues expected to be used to fund the debt leveling plans (such as lottery proceeds and federal interest subsidies on BABs and QSCBs), (3) any other appropriated general fund revenues that are to be used to pay debt service on Bonds or fund other capital projects, (4) investment earnings on the Capital Improvement Fund and (5) any other funds that the Board of Commissioners of the County determines to deposit or transfer to the Capital Improvement Fund. The purpose of the Capital Improvement Fund would be to create a repository for funds that the County chooses to set aside to fund its various capital projects or programs as determined by the County from time to time. The permitted uses of amounts held in the Capital Improvement Fund would be broader than just the payment of debt service on outstanding Bonds and might include (a) payment of debt service on Bonds currently outstanding, (b) payment of debt service on future Bonds yet to be issued, (c)

funding of “pay-as-you-go” capital projects, (d) funding of capital reserves for future capital projects or (e) other similar purposes. Although the payment of debt service on the Bonds would likely be the one use of these funds, there would be no reasonable assurance that such funds would be available for payment of debt service on the Bonds. Therefore, we believe that the broadening of the potential uses of such funds would be sufficient to avoid the creation of a specific nexus between such funds and the payment of debt service on Bonds so as to avoid the creation of a yield restricted sinking fund.

If the County so chose, it could appropriate funds directly from the Capital Improvement Fund to pay debt service on Bonds during each fiscal year as such debt service became due and payable. Alternatively, the County could elect to maintain a separate Debt Service Fund. In that case, in each fiscal year, the County would budget and transfer from the Capital Improvement Fund to the Debt Service Fund an amount necessary to pay debt service on the applicable Bonds during that fiscal year only. The idea would be to pay the current fiscal year’s debt service on the Bonds from the Debt Service Fund and deplete the amounts held in the Debt Service Fund each fiscal year, except for any reasonable carry-over amount permitted by the applicable Treasury Regulations. This approach would assure that in each fiscal year the County has adequately set aside an amount sufficient to pay the current fiscal year’s debt service before spending amounts held in the Capital Improvement Fund for any other purpose. This would allow the Debt Service Fund to be treated as a bona fide debt service fund under the federal tax laws and would not be subject to yield restriction or arbitrage rebate.

We are available to answer any questions that you may have or discuss this recommendation with you further as necessary.