

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

PUBLIC HEARING TO CONSIDER

**APPROVAL OF THE EXECUTION AND DELIVERY OF AN INSTALLMENT
FINANCING CONTRACT TO PAY FOR THE CAPITAL COSTS FOR THE
CONSTRUCTION OF A NEW LAW ENFORCEMENT CENTER AND RENOVATIONS
TO THE FORMER HEALTH DEPARTMENT BUILDING TO BE USED AS A
DEVELOPMENT SERVICES CENTER**

OCTOBER 4, 2010 7:00 P.M.

- ATTACHMENTS:**
- 1) Extract of Public Hearing Minutes
 - 2) Newspaper Notice
 - 3) Notice of Award of Recovery Zone Economic
Development Bond (RZEDB) Capacity
 - 4) Summary of Financing Rates Proposed
 - 5) BB&T Proposal
 - 6) Draft Installment Financing Contract

SUMMARY OF REQUEST:

A public hearing to hear comments on the execution and delivery of a proposed installment financing contract is required by the State of North Carolina pursuant to N.C.G.S. 160A-20. A notice of the public hearing shall be published once at least 10 days before the hearing. This notice was duly advertised in the Times-News on Thursday, September 23, 2010.

The proposed contract being considered is to finance the capital costs for the construction of a new Law Enforcement Center and renovations to the former Health Department Building to be used as a development services center.

Attached for the Board's information is a Notice of Award from the N.C. Department of Commerce to issue Recovery Zone Economic Development Bonds (RZEDBs) for the projects. As the Board is aware, by issuing these bonds to finance the projects the County will receive back a 45 percent interest payment subsidy from the U.S. Treasury.

A summary of interest rates proposed to finance the projects is attached. The lowest responsive proposal received was from BB&T Governmental Finance. A copy of their proposal is attached for the Board's information.

Financing documents in substantially final form will be presented to the Board of Commissioners at the October 20, 2010 regularly scheduled meeting for consideration and approval.

BOARD ACTION REQUESTED:

No Board action required.

Motion Suggested:

No motion necessary.

EXTRACTS FROM MINUTES OF THE BOARD OF COMMISSIONERS

A regular meeting of the Board of Commissioners of the County of Henderson, North Carolina (the "*Board*") was held in the Commissioners' Meeting Room, Henderson County Historic Courthouse, 1 Historic Courthouse Square, Hendersonville, North Carolina, at 7:00 p.m. on October 4, 2010 after proper notice, and was called to order by the Chairman, and upon the roll being called, the following members of the Board answered present:

The following members of the Board were absent:

Also present:

* * *

The Finance Director reported to the Board that notice of a public hearing regarding the construction of a new law enforcement center (the "*Law Enforcement Center*") and the renovation of an existing County facility for use as a development services center (collectively, the "*Projects*") pursuant to an installment financing contract (the "*Contract*"), in a principal amount not to exceed \$7,500,000 and the giving, in connection with the Contract, as grantor, of a deed of trust and security agreement (the "*Deed of Trust*") on the real property on which the Law Enforcement Center will be located, was published on September 23, 2010 stating that the Board would hold a public hearing thereon on October 4, 2010 at 7:00 p.m.

The Chairman announced that the Board would hear anyone who wished to be heard on the questions of the proposed Contract, the Projects to be financed thereby and the granting of the Deed of Trust.

The following persons spoke at the public hearing:

Commissioner _____ moved that the public hearing be closed and the motion was unanimously adopted.

HELD the 4th day of October, 2010.

TERESA WILSON
Clerk to the Board
County of Henderson, North Carolina

**NOTICE OF
PUBLIC HEARING**

At its September 22, 2010 meeting, the Board of Commissioners (the "Board of Commissioners") of the County of Henderson, North Carolina (the "County") adopted a resolution which:

1. Authorized the County to proceed to pay the capital costs of new law enforcement center (the "Law Enforcement Center") and the renovation of an existing County facility for use as a development services center (collectively the "Project"),

pursuant to N.C.G.S. 105-228.30, in the amount of One Dollar (\$1.00) per each Five Hundred Dollars (\$500.00) or fractional part thereof, and the Clerk of Courts fee, pursuant to N.C.G.S. 7A-308, in the amount of Forty-five Cents (45) per each One Hundred Dollars (\$100.00) or fractional part thereof or Five Hundred Dollars (\$500.00), whichever is greater. A deposit of five percent (5%) of the bid, or Seven Hundred Fifty Dollars (\$750.00), whichever is greater, will be required at the time of the sale and must be tendered in the form of certified funds. Following the expiration of the statutory upset bid period, all the remaining amounts will be immediately due and owing.

The Project will be located at 100 N. Grove Street, Hendersonville, North Carolina. The Mortgaged Property will be subject to the mortgage provided in the Deed of Trust. On payment by the County of all installment payments due under the Contract, the Deed of Trust and any lien created thereunder will terminate and the County's title to the Mortgaged Property will be unencumbered.

NOTICE IS HEREBY GIVEN, pursuant to Sections 160A-20 of the General Statutes of North Carolina, that on October 4, 2010 at 7:00 p.m. in the Commissioners' Meeting Room, Henderson County Historic Courthouse, 1 Historic Courthouse Square, Hendersonville, North Carolina, a public hearing will be conducted concerning the approval of the execution and delivery of the Contract and the County's acquisition of the Project. All interested parties are invited to present comments at the public hearing regarding the execution and delivery of the Contract and the Project to be financed thereby.

/s/ Teresa Wilson
Clerk to the Board
of Commissioners
County of Henderson,
North Carolina

Published:
September 23, 2010



North Carolina
Department of Commerce
Commerce Finance Center

Beverly Eaves Perdue, Governor
J. Keith Crisco, Secretary

Stewart J. Dickinson, Director

September 24, 2010

To: Henderson County

Re: Notice of Contingent Award of Recovery Zone Economic Development Bond Capacity

The North Carolina Tax Reform Allocation Committee [the "TRAC"] awarded you a total of \$25,000,000.00 of Recovery Zone Economic Development Bonds: \$6,000,000.00 to be used for the construction of a new Law Enforcement Center and repairs, and \$1,500,000.00 to be used for renovations to the County's former Public Health Department Building contingent on the following:

This allocation is subject to the representations made in your application documents and otherwise. Additionally, this allocation must be used on or before November 4, 2010, which is 45 days from the date of the TRAC's allocation decision, unless an extension on this deadline is approved by the TRAC in its sole discretion. If the full amount of this allocation has not been used on or before November 4, 2010 (unless otherwise extended), then the portion of the allocation that has not been used shall be deemed not to have been allocated to you in the first instance, such that said unused (and therefore unallocated) bond capacity shall become immediately available to the TRAC for reallocation to any entity, in the TRAC's sole discretion. For the purposes of this allocation, a portion of the allocation is considered "used" when bonds that utilize that portion of the allocated capacity are actually issued and written notice is provided to and received by the North Carolina Department of Commerce, Commerce Finance Center (301 North Wilmington St., Raleigh, NC 27601), of: (i) the date of the bond issuance; and (ii) the total amount of the bonds actually issued. An allocation will not be considered "used" if bonds have not been issued by the 45-day deadline (unless otherwise extended).

Additionally, you are cautioned to ensure that all projects are in full compliance with all applicable laws, rules, regulations and requirements, including, without limitation, requirements specific to Recovery Zone Bonds projects found at <http://www.irs.gov/taxexemptbond/article/0,,id=206034,00.html>; 04 N.C.A.C. 1H. 0401 to .0404; the American Recovery and Reinvestment Act of 2009 and its implementing rules, regulations and requirements; and the applicable local jurisdiction's approval requirements. The TRAC's decision to allocate bond capacity to you is not (and shall not be construed as or relied upon as) a statement or decision that any particular project in fact complies with any or all applicable laws, rules, regulations or requirements. To the contrary, you must seek out and retain your own independent legal counsel (to the extent this has not already happened) to help ensure that all applicable requirements regarding these bonds are followed.

HENDERSON COUNTY
FINANCING FOR NEW LAW ENFORCEMENT
CENTER/FORMER HEALTH DEPARTMENT BUILDING
RENOVATIONS

\$7,500,000

Summary of Financing Rates Proposed

	Tax-Exempt	Taxable RZEDB
<u>Financial Institution:</u>	<u>Fixed Rate</u>	<u>Fixed Rate</u>
BB&T	3.14%	4.80% *
SunTrust	3.27%	6.49%
First Citizens	4.49%	-

*The Taxable RZEDB Fixed Rate proposed by BB&T translates to a 2.64% effective interest rate after applying the 45 percent interest payment subsidy from the U.S. Treasury.


Branch Banking and Trust Company

September 24, 2010

J. Carey McLelland
Finance Director
Henderson County
Historic Courthouse Annex
113 North Main Street
Hendersonville, North Carolina 28792

Governmental Finance
5130 Parkway Plaza Blvd.
Charlotte, NC 28217
(704) 954-1700
Fax (704) 954-1799

Dear Mr. McLelland:

Branch Banking and Trust Company ("BB&T") is pleased to offer this proposal for the financing requested by Henderson County, North Carolina ("County").

- (1) **Project:** Construction of a new Law Enforcement Center and the Renovation to the existing Public Health Department Building
- (2) **Amount To Be Financed:** \$ 7,500,000.00
- (3) **Interest Rates, Financing Terms and Corresponding Payments:**

<u>Term</u>	<u>Tax-Exempt Rate</u>	<u>Taxable - RZEDB</u>
15 years	3.14%	4.80%

Payments shall be annually, level principal payments in arrears. See the attached amortization schedule(s) for information on payments.

The financing proceeds shall be deposited on behalf of the County in a project fund account with Branch Banking & Trust. Earnings on the project fund shall accrue to the benefit of the County for use on Project costs or interest payments.

The interest rates stated above are valid for a closing not later than 45 days after today. Closing of the financing is contingent upon completing documentation acceptable to BB&T its counsel. Closing shall be in person with the County as determined by BB&T and its counsel.

Remuneration for the underwriting and origination shall be \$6000.00 which shall include all legal documents with opinions and reviews necessary to BB&T to correctly document this transaction as noted in the American Recovery Act of 2009. All applicable taxes, surveys, zoning, appraisals, permits, costs of environmental studies, title insurance premiums, LGC approval fees, costs of counsel for the County and any other costs shall be the County's responsibility and separately payable by the County. The financing documents shall allow prepayment of the principal balance in whole on a scheduled payment date with a 1% prepayment premium.

The stated interest rates assume that the County shall comply with IRS Code Sections 141, 148, 149(e) and Section 265(b)(3) if applicable. BB&T reserves the right to terminate its interest in this bid or to negotiate a mutually acceptable rate if the financing is not a qualified tax-exempt or taxable financing.

(4) Security:

This financing shall be secured by a first lien security interest on (a) all personal property acquired with financing proceeds, (b) all improvements to real estate that are constructed or improved with financing proceeds, and all associated real estate, and (c) all real estate designated for or acquired with financing proceeds as determined by BB&T and Henderson County.

(5) Financing Documents:

It shall be the responsibility of the County to retain and compensate counsel to appropriately structure the Recovery Zone Economic Development Bond according to Federal and North Carolina State statutes. BB&T shall also require the County to provide an opinion of counsel as to authorization and enforceability of the obligation and as to any litigation. BB&T shall also require the County's Bond Counsel to provide an unqualified legal opinion. BB&T reserves the right to review the Bond and supporting documentation all of which must be mutually acceptable to BB&T and its counsel.

* * * * *

BB&T appreciates the opportunity to provide this financing proposal and requests to be notified within ten days of this proposal should BB&T be the successful proposer.

BB&T shall have the right to cancel this offer by notifying the County of its election to do so (whether or not this offer has previously been accepted by the County) if at any time prior to the closing there is a material adverse change in the County's financial condition, if we discover adverse circumstances of which we are currently unaware, if we are unable to agree on acceptable documentation with the County or if there is a change in law (or proposed change in law) that changes the economic effect of this financing to BB&T. We reserve the right to negotiate and/or terminate our interest in this transaction should we be the successful proposer.

Please call me at (704) 954-1700 with your questions and comments. We look forward to hearing from you.

Sincerely,

BRANCH BANKING AND TRUST COMPANY



F. Louis Loyd III/BAS
Senior Vice President

Enclosure

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Henderson County, NC
Construction of a new Law Enforcement Center and the
Renovation to the existing Public Health Department Building

Compound Period : Annual

Nominal Annual Rate : 3.150 %

AMORTIZATION SCHEDULE - Normal Amortization, 360 Day Year

Date	Payment	Interest	Principal	Balance
Loan 09/24/2010				7,500,000.00
2011 Totals	0.00	0.00	0.00	
1 09/24/2011	736,250.00	236,250.00	500,000.00	7,000,000.00
2012 Totals	736,250.00	236,250.00	500,000.00	
2 09/24/2012	720,500.00	220,500.00	500,000.00	6,500,000.00
2013 Totals	720,500.00	220,500.00	500,000.00	
3 09/24/2013	704,750.00	204,750.00	500,000.00	6,000,000.00
2014 Totals	704,750.00	204,750.00	500,000.00	
4 09/24/2014	689,000.00	189,000.00	500,000.00	5,500,000.00
2015 Totals	689,000.00	189,000.00	500,000.00	
5 09/24/2015	673,250.00	173,250.00	500,000.00	5,000,000.00
2016 Totals	673,250.00	173,250.00	500,000.00	
6 09/24/2016	657,500.00	157,500.00	500,000.00	4,500,000.00
2017 Totals	657,500.00	157,500.00	500,000.00	
7 09/24/2017	641,750.00	141,750.00	500,000.00	4,000,000.00
2018 Totals	641,750.00	141,750.00	500,000.00	
8 09/24/2018	626,000.00	126,000.00	500,000.00	3,500,000.00
2019 Totals	626,000.00	126,000.00	500,000.00	
9 09/24/2019	610,250.00	110,250.00	500,000.00	3,000,000.00
2020 Totals	610,250.00	110,250.00	500,000.00	
10 09/24/2020	594,500.00	94,500.00	500,000.00	2,500,000.00
2021 Totals	594,500.00	94,500.00	500,000.00	
11 09/24/2021	578,750.00	78,750.00	500,000.00	2,000,000.00
2022 Totals	578,750.00	78,750.00	500,000.00	
12 09/24/2022	563,000.00	63,000.00	500,000.00	1,500,000.00
2023 Totals	563,000.00	63,000.00	500,000.00	
13 09/24/2023	547,250.00	47,250.00	500,000.00	1,000,000.00

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Henderson County, NC
Construction of a new Law Enforcement Center and the
Renovation to the existing Public Health Department Building

Date	Payment	Interest	Principal	Balance
2024 Totals	547,250.00	47,250.00	500,000.00	
14 09/24/2024	531,500.00	31,500.00	500,000.00	500,000.00
2025 Totals	531,500.00	31,500.00	500,000.00	
15 09/24/2025	515,750.00	15,750.00	500,000.00	0.00
2026 Totals	515,750.00	15,750.00	500,000.00	
Grand Totals	9,390,000.00	1,890,000.00	7,500,000.00	

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Henderson County, NC
 Construction of a new Law Enforcement Center and the
 Renovation to the existing Public Health Department Building

Compound Period : Annual

Nominal Annual Rate : 4.800 %

AMORTIZATION SCHEDULE - Normal Amortization, 360 Day Year

Date	Payment	Interest	<u>Principal</u>	Balance
Loan 09/24/2010				7,500,000.00
2011 Totals	0.00	0.00	0.00	
1 09/24/2011	860,000.00	360,000.00	500,000.00	7,000,000.00
2012 Totals	860,000.00	360,000.00	500,000.00	
2 09/24/2012	836,000.00	336,000.00	500,000.00	6,500,000.00
2013 Totals	836,000.00	336,000.00	500,000.00	
3 09/24/2013	812,000.00	312,000.00	500,000.00	6,000,000.00
2014 Totals	812,000.00	312,000.00	500,000.00	
4 09/24/2014	788,000.00	288,000.00	500,000.00	5,500,000.00
2015 Totals	788,000.00	288,000.00	500,000.00	
5 09/24/2015	764,000.00	264,000.00	500,000.00	5,000,000.00
2016 Totals	764,000.00	264,000.00	500,000.00	
6 09/24/2016	740,000.00	240,000.00	500,000.00	4,500,000.00
2017 Totals	740,000.00	240,000.00	500,000.00	
7 09/24/2017	716,000.00	216,000.00	500,000.00	4,000,000.00
2018 Totals	716,000.00	216,000.00	500,000.00	
8 09/24/2018	692,000.00	192,000.00	500,000.00	3,500,000.00
2019 Totals	692,000.00	192,000.00	500,000.00	
9 09/24/2019	668,000.00	168,000.00	500,000.00	3,000,000.00
2020 Totals	668,000.00	168,000.00	500,000.00	
10 09/24/2020	644,000.00	144,000.00	500,000.00	2,500,000.00
2021 Totals	644,000.00	144,000.00	500,000.00	
11 09/24/2021	620,000.00	120,000.00	500,000.00	2,000,000.00
2022 Totals	620,000.00	120,000.00	500,000.00	
12 09/24/2022	596,000.00	96,000.00	500,000.00	1,500,000.00
2023 Totals	596,000.00	96,000.00	500,000.00	
13 09/24/2023	572,000.00	72,000.00	500,000.00	1,000,000.00

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Henderson County, NC
Construction of a new Law Enforcement Center and the
Renovation to the existing Public Health Department Building

Date	Payment	Interest	Principal	Balance
2024 Totals	572,000.00	72,000.00	500,000.00	
14 09/24/2024	548,000.00	48,000.00	500,000.00	500,000.00
2025 Totals	548,000.00	48,000.00	500,000.00	
15 09/24/2025	524,000.00	24,000.00	500,000.00	0.00
2026 Totals	524,000.00	24,000.00	500,000.00	
Grand Totals	10,380,000.00	2,880,000.00	7,500,000.00	



PARKER POE DRAFT – 09/28/10

INSTALLMENT FINANCING CONTRACT

BETWEEN

BRANCH BANKING AND TRUST COMPANY

AND

COUNTY OF HENDERSON, NORTH CAROLINA

DATED AS OF
NOVEMBER 1, 2010

INSTALLMENT FINANCING CONTRACT

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and is not part of the Installment Financing Contract.)

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THIS INSTRUMENT HAS BEEN PRE-AUDITED
IN THE MANNER REQUIRED BY THE LOCAL
GOVERNMENT BUDGET AND FISCAL
CONTROL ACT.

J. Carey McLelland
Finance Director
County of Henderson, North Carolina

INSTALLMENT FINANCING CONTRACT

This **INSTALLMENT FINANCING CONTRACT**, dated as of November 1, 2010 (this “**Contract**”), is between **BRANCH BANKING AND TRUST COMPANY** (the “**Bank**”), a state banking corporation, and its successors and assigns, and the **COUNTY OF HENDERSON, NORTH CAROLINA** (the “**County**”), a political subdivision of the State of North Carolina (the “**State**”), validly existing under and by virtue of the Constitution, statutes and laws of the State.

PREAMBLES

WHEREAS, the County has the power, pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended, to (1) purchase real and personal property, (2) enter into installment financing contracts in order to finance the purchase of real and personal property used, or to be used, for public purposes, and (3) finance the construction of fixtures or improvements on real property by contracts that create in the fixtures or improvements and in the real property on which such fixtures or improvements are located a security interest to secure repayment of moneys advanced or made available for such construction;

WHEREAS, the Board of Commissioners of the County (the “**Board**”) has previously determined, and hereby further determines, that it is in the best interests of the County to provide for the construction of a new law enforcement center (the “**Law Enforcement Center**”) and the renovation of an existing County facility for use as a development services center (collectively, the “**Project**”), and to place a lien on the real property on which the Law Enforcement Center will be located, as more particularly described in Exhibit A (the “**Mortgaged Property**”);

WHEREAS, in order to obtain a portion of the funds to pay the costs of the Project, the Board has determined that it is in the best interests of the County to enter into this Contract with the Bank under which the County will make Installment Payments and Additional Payments in consideration thereof;

WHEREAS, the Bank will advance a principal amount of \$7,500,000 (the “**Advance**”) to the County pursuant to this Contract to be used to pay the cost of the Project and for other purposes as set forth in this Contract;

WHEREAS, the execution, performance and delivery of this Contract have been authorized, approved and directed by the Board by a resolution finally passed and adopted by the Board on October 4, 2010;

WHEREAS, the execution, delivery and performance of this Contract by the Bank, have been authorized, approved and directed by all necessary and appropriate action of the Bank;

WHEREAS, the obligation of the County to make the Installment Payments and Additional Payments shall constitute a limited obligation of the County, payable solely from currently budgeted appropriations of the County; shall not constitute a general obligation or other indebtedness of the County within the meaning of the Constitution of the State; and shall not constitute a direct or indirect pledge of the faith and credit or taxing power of the County within the meaning of the Constitution of the State;

WHEREAS, in order to further secure the County's obligations under this Contract, the County has entered into a Deed of Trust, Security Agreement and Fixture Filing, dated as of November 1, 2010 (the "**Deed of Trust**"), with the deed of trust trustee named therein for the benefit of the Bank creating a lien on all of the right, title and interest of the County in the Mortgaged Property; and

WHEREAS, no deficiency judgment may be rendered against the County in any action for breach of a contractual obligation under this Contract, and the taxing power of the County is not and may not be pledged in any way directly or indirectly or contingently to secure any moneys due under this Contract;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants in this Contract contained, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Section 1.1. **Definitions.** The following terms have the meanings specified below unless the context clearly requires otherwise:

"Additional Payments" means the reasonable and customary expenses and fees of the Bank, any expenses of the Bank in defending an action or proceeding in connection with this Contract and any taxes or any other expenses, including, but not limited to, licenses, permits, state and local income, sales and use or ownership taxes or property taxes which the Bank is expressly required to pay as a result of this Contract (together with interest that may accrue thereon in the event that the County shall fail to pay the same, as set forth in this Contract).

"Advance" means the original aggregate principal amount equal to \$7,500,000 advanced by the Bank to enable the County to construct and equip the Project under this Contract, as such amount advanced may be adjusted by amendment to this Contract.

"Bank" means Branch Banking and Trust Company, a North Carolina state banking corporation, and its successors and assigns.

"Bank Representative" means any person or persons at the time designated to act on behalf of the Bank for purposes of performing any act on behalf of the Bank under this Contract by a written certificate furnished to the County containing the specimen signatures of such person or persons and signed on behalf of the Bank by its vice president.

"Board" means the duly elected governing Board of Commissioners of the County, or any successor to its functions.

"Business Day" means a day on which the Bank, at its principal corporate offices, is not required or authorized by law to remain closed.

“Code” means the Internal Revenue Code of 1986, as amended, including regulations promulgated thereunder.

“Completion Date” means the date on which completion of the construction and equipping of the Project has occurred, as evidenced by a certificate provided for in Section 5.3.

“Construction Contracts” means the contracts between the County and contractors selected and hired by the County relating to the construction of the Project.

“Cost of Acquisition and Construction” shall be deemed to include the payment of, or the reimbursement to the County for the following items:

(1) obligations incurred or assumed for the Project in connection with the construction of the Project;

(2) the cost of the construction, improving, equipping and furnishing of the Project; including, without limitation, the Bank’s fees and expenses incurred in connection with the delivery of the Advance to the County, fees and expenses of the Local Government Commission of North Carolina, if any, legal fees and expenses, taxes, inspection costs, the cost of permit fees, filing and recording costs and survey expenses in connection with the granting of the Deed of Trust on the Mortgaged Property;

(3) all other costs which are considered to be a part of the costs of the construction, improvement, equipping and furnishing of the Project in accordance with generally accepted accounting principles and which will not affect the tax status for federal income tax purposes of the designated interest component of the Installment Payments payable by the County under this Contract, including sums required to reimburse the County for advances made by the County that are properly chargeable to the construction, equipping or furnishing of the Project, and including the interest component of the Installment Payments prior to the Completion Date; and

(4) payment or prepayment of the principal component of Installment Payments, at the option of the County, from any funds remaining in the Project Fund subsequent to the Completion Date.

“County” means the County of Henderson, a political subdivision of the State of North Carolina, validly existing under and by virtue of the Constitution, statutes and laws of the State of North Carolina, and any successor to its functions.

“County Representative” means (1) the person or persons at the time designated to act on behalf of the County for the purpose of performing any act under this Contract by a written certificate furnished to the Bank containing the specimen signatures of such person or persons and signed on behalf of the County by the County Manager of the County, or (2) if any or all of the County’s rights and obligations are assigned under this Contract, the person or persons at the time designated to act on behalf of the County and the assignee by a written certificate similarly furnished and of the same tenor.

“Deed of Trust” means the Deed of Trust, Security Agreement and Fixture Filing, dated as of November 1, 2010, from the County to the deed of trust trustee named therein, for the benefit of the Bank and its successor and assignees, creating a lien in and to the Mortgaged Property, and as the same may be amended and supplemented from time to time as provided in the Deed of Trust, all of the terms, definitions, conditions and covenants of which are incorporated herein by reference and are made a part of this Contract as if fully set forth herein.

“Deed of Trust Trustee” means the trustee named in the Deed of Trust, and any successor trustee thereto.

“Event of Default” means any of the events of default as defined in Section 13.1.

“Fiscal Year” means a twelve-month period commencing on July 1 of any year and ending on June 30 of the immediately succeeding year, or such other twelve-month period which may subsequently be adopted as the Fiscal Year of the County.

“Installment Payments” means those payments made by the County to the Bank as described in Article III and in the Payment Schedule attached hereto.

“Interest Rate” means 4.80% per annum, calculated on a 30/360-day basis.

“Mortgaged Property” means the real property all improvements thereto located within the County as described in Exhibit A attached and incorporated herein by reference, as the same may be amended and supplemented from time to time so as to add real property thereto or to release real property therefrom.

“Net Proceeds” when used with respect to any proceeds from policies of insurance, proceeds of any condemnation award arising out of the condemnation of all or any portion of the Project, or the proceeds from any sale or lease of the Project pursuant to the Deed of Trust or otherwise, mean the amount remaining after deducting from the gross proceeds thereof all expenses (including, without limitation, attorneys’ fees and costs) incurred in the collection of such proceeds.

“Payment Schedule” means the document attached hereto and incorporated herein by reference, which sets forth the County’s Installment Payments.

“Plans and Specifications” means the plans and specifications to be prepared by an architect selected and hired by the County relating to the construction, improving, equipping and furnishing of the Project.

“Project” means the construction of the Law Enforcement Center and the renovation of an existing County facility for use as a development services center.

“Project Fund” means the fund of that name created in Article IV of this Contract into which the Bank shall deposit the Advance.

“Revenues” means (1) all Net Proceeds not applied to the replacement of the Project; (2) all of the Installment Payments, and (3) all other revenues derived from this Contract.

“State” means the State of North Carolina.

“Title Policy” means the policy of title insurance issued by [Name of Title Insurance Company], in connection with the Mortgaged Property and the transactions contemplated by this Contract.

ARTICLE II

THE ADVANCE

Section 2.1. *The Advance.* The Bank hereby makes an advance to the County of the Advance, and the County hereby accepts from the Bank the Advance to be applied in accordance with the terms and conditions of this Contract. The proceeds of the Advance are being used to construct and equip the Project in accordance with the Plans and Specifications, if any.

[END OF ARTICLE II]

ARTICLE III
INSTALLMENT PAYMENTS; ADDITIONAL PAYMENTS

Section 3.1. ***Amounts and Times of Installment Payments and Additional Payments.***

(a) The County shall repay the obligation created by this Contract in annual installment payments consisting of an interest component and a principal component as provided in this Contract and Payment Schedule attached to this Contract. The County hereby approves the Advance by the Bank to the County pursuant to this Contract in the amount of \$7,500,000 to be repaid by the County in Installment Payments as provided in this Contract at an interest rate per annum equal to the Interest Rate.

(b) The Installment Payments are first payable on [October __, 2011] and continue on each [October __] thereafter until [October __, 2025], as provided in this Contract and the Payment Schedule attached to this Contract.

(c) Each installment shall be deemed to be an Installment Payment and shall be paid in the amounts and at the times set forth in the attached Payment Schedule, except as otherwise provided herein. If an Installment Payment is due on any day which is not a Business Day, such Installment Payment shall be due on the next succeeding Business Day and the County shall make such Installment Payment on such Business Day with no additional interest due thereon. Upon completion of the Project, the County may direct the Bank to transfer any remaining amounts on deposit in the Project Fund and receive a credit against the amount of Installment Payments otherwise owed under the Contract equal to any such amounts transferred from the Project Fund to make such Installment Payment. Installment Payments shall be sufficient in the aggregate to repay the principal amount of the Advance, together with interest thereon, as the same shall become due and payable. The County shall pay any Additional Payments on a timely basis directly to the person or entity to which such Additional Payments are owed. All payments shall be made in lawful currency of the United States.

Section 3.2. ***Place of Payments.*** All payments required to be made to the Bank hereunder shall be made to the Bank as wire transfers to the Bank on the payable date or as may be otherwise directed in writing by the Bank.

Section 3.3. ***Late Charges.*** An Installment Payment that is not paid within 30 days of the due date thereof is subject to a late payment charge of 4% of the amount of the past due Installment Payment.

Section 3.4. ***No Abatement.*** There will be no abatement or reduction of the Installment Payments or Additional Payments by the County for any reason, including but not limited to, any failure by the County to appropriate sufficient funds for the payment of the Installment Payments or Additional Payments, any defense, recoupment, setoff, counterclaims or any claim (real or imaginary) arising out of or related to the Mortgaged Property or the acquisition, construction, improving, equipping and furnishing of the Project. The County assumes and shall bear the entire risk of loss and damage to the Project from any cause whatsoever, it being the intention of the parties that the Installment Payments shall be made in all events unless the obligation to make such Installment Payments is terminated as otherwise provided herein.

Section 3.5. *Prepayment of Advance.*

(a) The County may prepay, in whole, but not in part, the principal components of the Installment Payments then outstanding on any scheduled payment date at a prepayment price of 101% of the principal components of the Installment Payments prepaid plus accrued interest thereon to the date of prepayment.

(b) In the event of loss or condemnation of or damage to the Project, if the County determines not to apply any Net Proceeds to the repair, restoration, modification, improvement or replacement of the Project as permitted by Section 7.3(a), and if the County has otherwise performed all of its obligations under this Contract, the County shall prepay the principal components of the Installment Payments then outstanding at par in accordance with and subject to the requirements of Section 7.3(b). If the prepayment is less than the remaining outstanding principal components of Installment Payments then outstanding, the Bank shall provide the County an updated Payment Schedule reflecting a reamortization on a level-principal basis across the remaining term.

(c) [The County may prepay, in whole but not in part, the principal components of the Installment Payments then outstanding at any time on giving the Bank not less than 30 days written notice thereof, at a prepayment price of 101% of the principal components of the Installment Payments prepaid plus accrued interest thereon to the date of prepayment if there occurs a reduction or elimination of the County's cash subsidy payment from the United States Treasury under Section 54AA or 6431 of the Code (as such Sections were added by Section 1531 of the American Recovery and Reinvestment Act, pertaining to "*Build America Bonds*") and Section 1400U-2 of the Code (pertaining to recovery zone economic development bonds); provided that no such prepayment is permitted under this Section 3.5(c) if the reduction or elimination of the County's cash subsidy payment from the United States Treasury resulted from any action, failure to act or misrepresentation on the part of the County.]

[END OF ARTICLE III]

ARTICLE IV PROJECT FUND

Section 4.1. **Project Fund.** There is hereby created a separate fund to be held by the Bank, on behalf of the County, designated as the “**Henderson County 2010 Installment Financing Project Fund.**” The Bank has caused \$7,494,000 (\$7,500,000 less the Bank’s fee of \$6,000) to be deposited in the Project Fund. The funds in the Project Fund will be disbursed in accordance with the provisions of this Article IV.

Section 4.2. **Investment.** The Bank shall invest and reinvest the money held in the Project Fund as permitted under Section 159-30 of the General Statutes of North Carolina, as amended, as directed in writing by the County. The County hereby directs the Bank to deposit and hold the money in the Project Fund in a BB&T public funds money rate savings account that complies with the requirements of Section 159-30 of the General Statutes of North Carolina, as amended, until either (1) the County and the Bank otherwise agree in writing or (2) the Project Fund is terminated under Section 4.4.

Section 4.3. **Disbursements.** Money held in the Project Fund shall be disbursed by the Bank for payment of the Cost of Acquisition and Construction on receipt of a written requisition signed by a below listed designated County Representative substantially in the form set forth in Exhibit B attached to this Contract, together with any documents or other items that the Bank determines to be necessary in connection therewith.

County Representatives:

J. Carey McLelland, Finance Director _____

Steven D. Wyatt, County Manager _____

The County may designate additional County Representatives to sign requisitions upon written notification to the Bank. The Bank is not obligated to disburse money from the Project Fund if the Bank has not received a final title policy, as required by Section 5.5 herein, within thirty days from the date this Contract is closed. If amounts held to the credit of the Project Fund are insufficient to pay the Costs of Acquisition and Construction, the County shall provide any balance of funds necessary to complete the Project. Any money remaining in the Project Fund after completion of the Project or on termination hereof before such completion shall be credited against future Installment Payments coming due under this Contract in the order of their due dates.

Section 4.4. **Termination.** The Project Fund shall be terminated at the earlier of (1) the final distribution of amounts held in the Project Fund or (2) the termination of this Contract.

Section 4.5. **Reliance of Bank on Documents.** The Bank may act in reliance on any writing or instrument or signature which it believes, in good faith, to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Bank is not liable in any manner for the sufficiency or correctness as to form, manner and execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and their duties under this Contract are limited to the receipt of such moneys, instruments or other documents received by it as the Bank, and for the disposition of the same in accordance herewith.

[END OF ARTICLE IV]

ARTICLE V CONSTRUCTION OF THE PROJECT

Section 5.1. **Construction.** The County shall comply with the provisions of Article 8 of Chapter 143 of the General Statutes of North Carolina, as amended, with respect to the acquisition and construction of the Project, and will enter into Construction Contracts, if any. The County shall cause the Project to be carried on expeditiously in accordance with the Plans and Specifications, if any, all applicable ordinances and statutes, and in accordance with the requirements of all regularly constituted authorities having jurisdiction over the same. The County shall ensure (1) that the Project does not impermissibly encroach upon nor impermissibly overhang any easement or right of way and (2) that the Project, when erected, will be wholly within the real property upon which the Project is located and any building restriction lines, however established, and will not violate applicable use or other restrictions contained in prior conveyances or applicable protective covenants or restrictions. The County shall cause all utility lines, septic systems and streets serving the Project to be completed in accordance with health department standards and other applicable regulations of any governmental agency having jurisdiction. The County will promptly correct any structural defect in the improvements or any departure from the Plans and Specifications, if any.

Section 5.2. **Right of Entry and Inspection.** The Bank and its representatives and agents have the right to enter on and inspect the Project from time to time, during and after any construction, and the County will cause any contractor or subcontractor to cooperate with the Bank and its representatives and agents during such inspections. No right of inspection or approval contained in this Contract imposes on the Bank any duty or obligation whatsoever to undertake any inspection or to give any approval.

Section 5.3. **Completion of Construction.** The County shall proceed with reasonable diligence to complete the Project in a timely manner. Upon completion of the Project, a County Representative shall deliver to the Bank (1) a certificate of the County stating the fact and date of such completion and stating that all of the Cost of Acquisition and Construction has been determined and paid (or that all of such Costs have been paid less specified claims which are subject to dispute and for which a retention in the Project Fund is to be maintained in the full amount of such claims until such dispute is resolved), (2) a certificate of a duly authorized officer or agent of the architects, engineers or supervising contractors, if any, selected and hired by the County in connection with the Project stating the fact and date of such completion, and (3) proof of the insurance coverage required by the Deed of Trust and Section 6.7 of this Contract. If the accounting of the Project Fund by the Bank shows that funds in the Project Fund will remain unexpended for the Cost of Acquisition and Construction, the unexpended funds in the Project Fund shall be transferred from the Project Fund and applied as a credit against the amount of Installment Payments otherwise due under the Contract.

Section 5.4. **Payment and Performance Bonds.** Each contractor entering into a Construction Contract with respect to the Project shall be required to furnish a performance bond and a separate labor and material payment bond as required by Article 3, Chapter 44A of the General Statutes of North Carolina, as amended, copies of which shall be provided to the Bank if the Bank so requests. In lieu of furnishing a performance bond and a separate labor and material payment bond, each contractor may furnish collateral in an amount of their construction contract securing the County pursuant to Article 8, Chapter 143 (Section 143-129) of the General Statutes of North Carolina, as amended, copies of the evidence of such collateral which shall be provided to the Bank if the Bank so requests.

In the event of any material default by a contractor under any Construction Contract, or in the event of a material breach of warranty with respect to any materials, workmanship or performance, the County shall promptly proceed, either separately or in conjunction with others, to pursue diligently its remedies against such contractor and/or against each surety of any bond securing the performance of the

Construction Contract. The Net Proceeds of any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, remaining after deduction of expenses incurred in such recovery (including, without limitation, attorneys' fees and costs), and after reimbursement to the County of any amounts theretofore paid by the County and not previously reimbursed to the County for correcting or remedying the default or breach of warranty which gave rise to the proceedings against the contractor or surety, shall be paid to the Bank for deposit into the Project Fund if received before the Completion Date therefor or if received thereafter, shall be deposited as otherwise provided in Section 8.2 or otherwise applied as provided in Section 8.3. The Net Proceeds of any performance or payment bond or insurance policy required by this Section shall likewise be paid into the Project Fund if received before the Completion Date, or, if received thereafter, shall either be deposited as provided in Section 8.2 or otherwise applied as provided in Section 8.3.

Section 5.5. Contractor's General Public Liability and Property Damage Insurance. Each contractor entering into a Construction Contract for the Project shall be required by the County to procure and maintain standard form (1) comprehensive general public liability and property damage insurance, at its own cost and expense, during the duration of such contractor's construction contract, in the amount of at least \$1,000,000 bodily injury and property damage liability combined single limit each occurrence/annual aggregate, and (2) comprehensive automobile liability insurance on owned, hired and non-owned vehicles for limits not less than \$1,000,000 each accident bodily injury and property damage liability. Such policies shall include the County and the Bank as additional named insureds, and shall include a provision prohibiting cancellation or termination without 30 days' prior written notice by certified mail to the Bank. A certificate evidencing such coverage shall be provided to the County and the Bank or, if such insurance is provided by a private carrier, a completed certificate of insurance, in form acceptable to the County and the Bank, shall be provided to the County and, if the Bank so requests, to the Bank with respect to each contractor entering into a construction contract. Such insurance shall provide protection from all claims for bodily injury, including death, property damage and contractual liability, products/completed operations, broad form property damage and XCU (explosion, collapse and underground property damage), where applicable.

Section 5.6. Contractor's Builder's Risk Completed Value Insurance. The County will procure and maintain, or will require each contractor entering into a Construction Contract for the Project to procure and maintain, property insurance (builder's risk) on all construction, renovation, equipping and furnishing of the Project (excluding contractor's tools and equipment) at the full and insurable value thereof. Such insurance will include the interest of the County and the contractor as additional insureds, and shall insure against "all risk" subject to standard policy conditions and exclusions. The County will require each contractor to purchase and maintain similar property insurance for portions of the work stored off the real property upon which the Project is located or in transit when such portions of the work are to be included in an application for payment. Each contractor shall be responsible for the payment of any deductible amounts associated with this insurance.

Section 5.7. Contractor's Worker's Compensation Insurance. Each contractor entering into a Construction Contract for the Project shall be required to procure and maintain, at its own cost and expense, worker's compensation insurance during the term of its Construction Contract, covering its employees working thereunder. Such insurance, if issued by a private carrier, shall contain a provision prohibiting cancellation or termination without 30 days' prior written notice by certified mail to the County and, if the Bank so requests, to the Bank. A certificate evidencing such coverage shall be provided to the County and the Bank if the Bank so requests; or, if such insurance is provided by a private carrier, a completed certificate of insurance, in form acceptable to the County and the Bank, shall be provided to the County and the Bank if the Bank so requests with respect to each contractor entering into a Construction Contract. Each Construction Contract shall also provide that each subcontractor of any

contractor who is a party to such Construction Contract shall be required to furnish similar worker's compensation insurance.

Section 5.8. ***Filing With the Bank.*** The County shall cause copies of all performance bonds and insurance contracts or approved certificates thereof, as required under Sections 5.4, 5.5, 5.6 and 5.7, to be delivered to the Bank, if the Bank requests, in a timely manner and in such form as to certify compliance with the applicable provisions of this Article V.

[END OF ARTICLE V]

ARTICLE VI COVENANTS OF THE COUNTY

Section 6.1. **Care and Use.** The County shall use, and shall cause the use of, the Project in a careful and proper manner, in compliance with all applicable laws and regulations, and, at its sole cost and expense, shall service, repair and maintain the Project so as to keep the Project in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear excepted. Any and all additions to or replacements of the Mortgaged Property and all parts thereof shall constitute accessions to the Mortgaged Property and shall be subject to all the terms and conditions of this Contract and included in the term "**Mortgaged Property**" as used in this Contract.

Section 6.2. **Inspection.** The Bank has the right on reasonable prior notice to the County to enter into and on the Mortgaged Property to inspect the Mortgaged Property.

Section 6.3. **Utilities.** The County shall pay all charges for gas, water, steam, electricity, light, heat or power, telephone or other utility services furnished to or used on or in connection with the Project. There shall be no abatement of the Installment Payments on account of interruption of any such services.

Section 6.4. **Taxes.** The County agrees to pay when due any and all taxes relating to the Project and the County's obligations under this Contract including, but not limited to, all license or registration fees, gross receipts tax, sales and use tax, if applicable, license fees, documentary stamp taxes, rental taxes, assessments, charges, ad valorem taxes, excise taxes, and all other taxes, licensees and charges imposed on the ownership, possession or use of the Project by any governmental body or agency, together with any interest and penalties.

Section 6.5. **Title Insurance.** The County agrees to obtain, at its own cost and expense, a Title Policy, or an endorsement to such Title Policy, in form satisfactory to the Bank, at the time of and dated as of the date of execution and delivery of this Contract, payable to the Bank, as its interest may appear, insuring fee title of the County to the Mortgaged Property, issued by a title insurance company qualified to do business in the State. The County must provide a final title policy to the Bank no later than 30 days after the date on which this Contract is closed.

Section 6.6. **Survey.** The County shall provide a certified survey by a registered land surveyor covering the Mortgaged Property satisfactory to the Bank, prior to the execution and delivery of this Contract, or if consented to in writing by the Bank, after the execution and delivery of this Contract but prior to the commencement of the any improvements on the real property. The survey shall detail all boundaries of the real property with dimensions, bound descriptions, and locations to streets, building lines, existing buildings or improvements, right-of-ways, easements, encroachments, or any aspect that may effect the real property, and shall certify the location of the real property within any flood hazard area, if applicable. If required by the Bank, the County shall obtain an endorsement to the Title Policy delivered pursuant to Section 6.5 insuring matters of survey to and including the date of such survey.

Section 6.7. **Insurance.** The County shall maintain, or cause to be maintained, at its own expense, except as hereinafter provided, insurance with respect to its property and business against such casualties and contingencies in amounts not less than is customary in similar activities and similarly situated. Without limiting the foregoing, the County shall maintain, or cause to be maintained, except as hereinafter provided, the following insurance:

(a) On completion of the Mortgaged Property, insurance against loss and/or damage to the Mortgaged Property under a policy or policies covering such risks as are ordinarily insured against by similar facilities, including without limiting the generality of the foregoing, fire, lightning, windstorm, windblown rain, hail, explosion, riot, riot attending a strike, civil commotion, damage from aircraft, smoke and uniform standard extended coverage and vandalism and malicious mischief endorsements, war risk (to the extent obtainable from an agency of the United States Government). Such insurance policy shall be in an amount not less than the lesser of (1) the full replacement cost of the Mortgaged Property, or (2) the prepayment price of all outstanding Installment Payments; *provided, however*, that no such insurance policy may have a deductible amount of more than \$100,000. No such insurance policy shall be written such that the proceeds thereof will produce less than the minimum coverage required by the preceding sentence, by reason of co-insurance provisions or otherwise, without the prior written consent thereto by the Bank. The term "full insurable value" shall mean the actual replacement cost of the Mortgaged Property (excluding foundation and excavation costs and costs of underground flues, pipes, drains and other uninsurable items), without deduction for physical depreciation, and shall be determined once every three years by a insurance consultant, in any case, selected and paid for by the County. Each such policy shall contain a replacement cost endorsement.

(b) Comprehensive general liability insurance protecting the County against liability for injuries to persons and/or property in the minimum amount of \$100,000 liability to any one person for property damage, \$2,000,000 liability for personal injury for any one occurrence and an aggregate annual liability limit of not less than \$2,000,000, with a deductible amount of not more than \$100,000.

(c) Workers' compensation insurance respecting all employees of the County working at the Mortgaged Property in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; *provided, however*, that the County may be self-insured with respect to all or any part of its liability for workers' compensation.

(d) After receipt of an elevation certificate with respect to the Mortgaged Property, national flood insurance, if applicable, in an amount acceptable to the Bank.

Each insurance policy obtained pursuant to this Section shall (1) be issued by a generally recognized and responsible insurance company qualified under the laws of the State to assume the risks covered by such policy, (2) name the County as an insured and the Bank as an additional insured, as their respective interests may appear, (3) with respect to the policies contained in paragraphs (a) and (d) above, contain standard mortgagee clauses naming the Bank as mortgagee, and (4) unless unavailable from the insurer, provide that such policy shall not be cancelled or modified in any way adverse to any insured party without at least 30 days' prior written notice to each insured party named therein. The County shall have the right to receive the proceeds from any insurance maintained pursuant to this Section, subject, however, to the limitations of this Article VI and Article VIII.

All such policies shall be deposited with the Bank, if the Bank so requests, provided that in lieu of such insurance policies there may be deposited with the Bank a certificate or certificates of the County attesting the fact that the insurance required by this Section is in full force and effect. Prior to the expiration of any such policy, the County shall furnish the Bank, if the Bank so requests, evidence satisfactory to the Bank that such insurance policy has been renewed or replaced or is no longer required by this Contract.

In lieu of separate insurance policies, the County may maintain blanket or umbrella insurance policies if such policies provide the same coverage required by this Section with protection against each risk not reducible by claims for other risks to amounts less than that specified in this Section and the County deposits with the Bank, if the Bank so requests, a certificate or certificates of the respective insurers evidencing such coverage and stating, as required, the amount of coverage with respect to the Mortgaged Property or any part thereof.

In lieu of policies of insurance written by commercial insurance companies meeting the requirements of this Section, the County may maintain a program of self-insurance or participate in group risk financing programs, risk pools, risk retention groups, purchasing groups and captive insurance companies, and in state or federal insurance programs.

Section 6.8. ***Rating and Insurance.*** The Bank reserves the right to have this transaction rated and/or insured by a qualified rating agency and/or insurer at any time during the term of this Contract. The County agrees to cooperate with the Bank and the agency/insurer in providing any requested financial or non-financial information that may be material to obtaining the rating/insurance.

Section 6.9. ***Risk of Loss.*** The County shall bear all risk of loss or damage to and condemnation of the Mortgaged Property.

Section 6.10. ***Performance by the Bank of the County's Responsibilities.*** Any performance required of the County or any payments required to be made by the County may, if not timely performed or paid, be performed or paid by the Bank, and, in such event, the Bank shall be immediately reimbursed by the County for such payments or other performance by the Bank, with interest thereon at a rate equal to the Interest Rate.

Section 6.11. ***Financial Statements.*** The County shall furnish to the Bank annually:

- (a) within 270 days of the end of its fiscal year, current financial statements,
- (b) the County's annual budget as approved by the Board (and any amendments thereto), and
- (c) such other documents relating to the financial condition of the County as the Bank shall request.

The County shall permit the Bank or its agents and representatives to inspect the County's books and records and make extracts therefrom. The County represents and warrants to and covenants with the Bank that all financial statements which have been or may be delivered to the Bank fairly and accurately reflect the County's financial condition and there has been and will be no material adverse change in the County's financial condition as reflected in the financial statements since the respective dates thereof.

[END OF ARTICLE VI]

ARTICLE VII TITLE; LIENS

Section 7.1. **Title.** Title to the Project and any and all additions, repairs, replacements or modifications thereto shall be in the County from and after the date of execution and delivery of this Contract so long as the County is not in default hereunder and shall vest permanently in the County upon the payment in full of the principal component of the Installment Payments free and clear of any lien or security interest of the Bank therein. On the date of the execution and delivery of this Contract, the Deed of Trust will be in full force and effect and no events of default shall have occurred thereunder. Upon payment or provision for payment in full of all of the County's obligations hereunder, including the principal component of the Installment Payments then outstanding and all other payments due hereunder, the Bank or its assignee, at the County's expense and request, shall cancel the Deed of Trust and this Contract will terminate.

If any of the real property improved by the County (in whole or in part) using any portion of the Advance consists of or is located on any real property acquired by the County through the exercise of the power of eminent domain, or through the threat of the exercise of the power of eminent domain, then during the term of this Contract the County may not transfer any interest in such real property to any entity other than a local governmental unit without the Bank's prior express written consent.

Section 7.2. **Liens.** The County shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, security interest, encumbrance or claim on or with respect to the Mortgaged Property or any interest therein, except for: (1) the lien and security interest of the Bank in the Mortgaged Property; (2) utility, access and other easements and rights of way, restrictions and exceptions which do not interfere with or impair the intended use of the Mortgaged Property; (3) permitted encumbrances as described in Exhibit B to the Deed of Trust; and (4) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property of the general character of the Mortgaged Property and as do not materially impair title thereto or the ability of the County to construct and operate the Project thereon. The County shall promptly, at its own expense, take such action as may be necessary duly to discharge any such mortgage, pledge, lien, security interest, charge, encumbrance or claim if the same shall arise at any time. The County shall reimburse the Bank for any expense incurred by the Bank in order to discharge or remove any such mortgage, pledge, lien, security interest, charge, encumbrance or claim.

Section 7.3. **Security Agreement.** To secure all obligations of the County hereunder, the County has granted to the Bank, pursuant to the Deed of Trust, a security interest in any and all of the County's right, title and interest in the Mortgaged Property, all additions, attachments, accessions, substitutions and replacements thereto, and rental payments due with respect thereto, and any and all proceeds thereof, including without limitation, the proceeds of insurance thereon. The County agrees to execute and deliver all documents, instruments and financing statements necessary or appropriate to maintain the security interest granted thereby. The Bank is authorized to file financing statements as specified by the Uniform Commercial Code in the State of North Carolina to perfect or maintain the Bank's security interest.

[END OF ARTICLE VII]

ARTICLE VIII
DAMAGE, DESTRUCTION, AND CONDEMNATION;
USE OF NET PROCEEDS

Section 8.1. ***Damage, Destruction or Condemnation.*** If, during the term of this Contract, (1) the Project or any portion of the Project is destroyed, or is damaged by fire or other casualty; (2) title to or the temporary or permanent use of the Project or any portion thereof or the estate of the County or the Bank or its assignee in the Project or any portion thereof is taken under the power of eminent domain by any governmental authority; (3) a material defect in construction of the Project becomes apparent; or (4) title to or the use of all or any portion of the Project is lost by reason of a defect in title thereto, the County shall continue to be obligated, subject to the provisions of Section 8.2, to pay the amounts specified in Section 3.1 at the respective times required.

Section 8.2. ***Obligation of the County to Repair and Replace the Project.*** Subject to the provisions of Section 8.3, the Bank shall cause the Net Proceeds of any insurance policies, performance bonds, condemnation awards or Net Proceeds received as a consequence of default under a Construction Contract or made available by reason of any occurrence described in Sections 5.4, 6.7(a) or 8.1, to be returned to the County. Except as set forth in Section 8.3, the County shall apply all Net Proceeds so returned to the prompt repair, restoration, modification, improvement or replacement of the damaged or destroyed Project. Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of such Net Proceeds shall be the property of the County, subject, if located on the Mortgaged Property, to the Deed of Trust, and shall be included as part of the Project under this Contract.

Section 8.3. ***Insufficiency of Net Proceeds; Discharge of the Obligation of the County To Repair the Project.*** If the Net Proceeds (plus any amount withheld therefrom by reason of any deductible clause) are insufficient to pay in full the cost of any repair, restoration, modification, improvement or replacement of the Project as required under Section 8.2, the County may elect to proceed under either of the following options; *provided, however*, that the option set forth in subparagraph (b) below will only be available in the event such Net Proceeds equal or exceed one-third of the then outstanding principal component of the Installment Payments:

(a) The County may complete the work and pay any cost in excess of the amount of the Net Proceeds, and the County agrees that, if by reason of any such insufficiency of the Net Proceeds, the County shall make any payments pursuant to this Section, the County is not entitled to any reimbursement therefor from the Bank nor is the County entitled to any diminution of the amounts payable under Section 3.1; or

(b) The obligation of the County to repair or replace the Project under Section 8.2 may, at the option of the County, be discharged by causing the Net Proceeds of such insurance policies, performance bonds or condemnation awards to be applied to the prepayment of all or any part of the then outstanding principal component of the Installment Payments in accordance with Section 3.5(c). If the Net Proceeds exceed the then outstanding principal component of the Installment Payments in accordance with Section 3.5(c), such excess shall be paid to or retained by the County.

Within 120 days of the occurrence of an event specified in Section 8.1, the County shall commence the repair, restoration, modification, improvement or replacement of the Project, or shall elect, by written notice to the Bank, to proceed under the provisions of paragraph (b) above. For purposes of this Section, "***commence***" shall include the retention of an architect or engineer in anticipation of repair, restoration, modification, improvement or replacement of the Project. If the County shall, after

commencing the repair, restoration, modification, improvement or replacement of the Project, determine that the Net Proceeds (plus any amount withheld therefrom by reason of any deductible clause) are insufficient for the accomplishment thereof, the County may, subject to the proviso set forth above, elect to proceed under Section 8.3(b).

Section 8.4. ***Cooperation of Bank.*** The Bank shall cooperate fully with the County in filing any proof of loss with respect to any insurance policy covering the events described in Section 8.1. In no event shall the Bank or the County voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim with respect to the Project without the written consent of the other.

[END OF ARTICLE VIII]

ARTICLE IX
REPRESENTATIONS AND WARRANTIES OF THE COUNTY

Section 9.1. *Representations and Warranties of the County.* The County represents, warrants and covenants to and with the Bank (all such representations, warranties and covenants to be continuing) that:

(a) The County is a political subdivision of the State, validly organized and existing under the laws of the State and has all powers necessary to enter into the transactions contemplated by this Contract and the Deed of Trust and to carry out its obligations hereunder;

(b) The County agrees that during the term of this Contract, it will take no action that would adversely affect its existence as a political subdivision in good standing in the State, cause the County to be consolidated with or merge into another political subdivision of the State or permit one or more other political subdivision of the State to consolidate with or merge into it, unless the County is the surviving political subdivision or the political subdivision of the State created thereby expressly assumes in writing the County's obligations hereunder;

(c) This Contract, the Deed of Trust and all other documents relating hereto and thereto, and the performance of the County's obligations hereunder and thereunder, have been duly and validly authorized, executed and delivered by the County and approved under all laws, regulations and procedures applicable to the County including, but not limited to, compliance with public meeting and bidding requirements, and, assuming the due authorization, execution and delivery hereof and thereof by the other parties hereto and thereto, constitute valid, legal and binding obligations of the County, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency and other laws affecting the enforcement of creditors' rights generally and such principles of equity as a court having proper jurisdiction may impose;

(d) Neither the execution and delivery of this Contract or the Deed of Trust or the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the terms and conditions hereof or thereof conflicts with or results in a breach of the terms, conditions, or provisions of any restriction or any agreement or instrument to which the County is now a party or by which the County is bound or constitutes a default under any of the foregoing, nor conflicts with or results in a violation of any provision of applicable law or regulation governing the County and no representation, covenant and warranty in this Contract is false, misleading or erroneous in any material respect;

(e) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best of the County's knowledge, threatened, against or affecting the County challenging the validity or enforceability of this Contract, the Deed of Trust or any other documents relating hereto and the performance of the County's obligations hereunder and thereunder, and compliance with the provisions hereof or thereof, under the circumstances contemplated hereby or thereby, does not and will not in any material respect conflict with, constitute on the part of the County a breach of or default under, or result in the creation of a lien or other encumbrance on any property of the County (except as contemplated herein or therein) pursuant to any agreement or other instrument to which the County is a party, or any existing law, regulation, court order or consent decree to which the County is subject;

(f) The estimated Cost of Acquisition and Construction is not less than \$7,500,000 and, other than building permits or other procedural requirements which are a prerequisite to the

construction of the Project and approval of the Local Government Commission of North Carolina (the "LGC"), which approval has been obtained, no approval or consent is required from any governmental authority with respect to the entering into or performance by the County of this Contract, the Deed of Trust and all other documents related hereto and thereto and the transactions contemplated hereby and thereby or if such approval is required, such approval has been duly obtained;

(g) The funds in the Project Fund and any investment earnings thereon will be used only for the purposes permitted in Article IV;

(h) There are no liens or encumbrances on the Mortgaged Property other than the lien created by the Deed of Trust and the other liens permitted hereby and thereby;

(i) The resolutions relating to the performance by the County of this Contract, the Deed of Trust and the transactions contemplated hereby and thereby, have been duly adopted, are in full force and effect, and have not been in any respect modified, revoked or rescinded;

(j) The construction and equipping of the Project is essential to the proper, efficient and economical operation of the County and the delivery of services and permit the County to carry out its public functions authorized and required by law to perform;

(k) The County reasonably believes sufficient funds will be available to satisfy all of its obligations hereunder;

(l) The County shall (1) cause its County Manager to include the Installment Payments coming due in any Fiscal Year in the corresponding annual budget request and shall require the County Manager to use his or her best efforts to obtain an appropriation therefor and (2) require that the deletion of such funds from the County's final budget be made only pursuant to an express resolution of the Board which explains the reason for such action. This covenant on the part of the County contained in this Section 9.1(l) shall be deemed to be and shall be construed to impose by law ministerial duties and it shall be the duty of each and every public official of the County to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the County to carry out and perform the covenant in this subparagraph and the agreements in this Contract to be carried out and performed by the County; *provided, however*, that nothing contained in this Section 9.1(l) shall obligate the County to so appropriate the funds included in such proposed budget;

(m) Funds appropriated by the County to make Installment Payments due in any Fiscal Year shall be used for no other purpose;

(n) The County agrees that during the term of this Contract, it will maintain the appropriate insurance required pursuant to this Contract and the Deed of Trust; and

(o) The County has good and marketable title to the Mortgaged Property.

[END OF ARTICLE IX]

ARTICLE X TAX COVENANTS AND REPRESENTATIONS

Section 10.1. *Tax Covenants and Representations.*

(a) The County that it will not take or permit, or omit to take or cause to be taken, any action that would adversely affect the exclusion from gross income of the recipient therefor for federal income tax purposes of the interest components of the obligations created by this Contract if such the interest components of the obligations created by this Contract were to have been issued as a tax-exempt obligation and, if it should take or permit, or omit to take or cause to be taken, any such action, the County will take or cause to be taken all lawful actions within its power necessary to rescind or correct such actions or omissions promptly on having knowledge thereof. The County covenants that it will comply with all the requirements of Section 148 of the Code, including the rebate requirements, and that it will not permit at any time any of the proceeds of the Contract or other funds under their control be used, directly or indirectly, to acquire any asset or obligation, the acquisition of which would cause the Bond to be "arbitrage bonds" for purposes of Section 148 of the Code. The City covenants that it will comply with the investment instructions in the Arbitrage and Tax Regulatory Certificate, dated October __, 2010. The County will maintain books on which will be recorded (1) the Bank, or (2) any assignee of the Installment Payments due under this Contract, as the registered owner of such Installment Payments.

(b) Without limiting the generality of the foregoing, the County agrees that there shall be paid from time to time all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code and any temporary, proposed or final Treasury Regulations as may be applicable to the obligation created under this Contract from time to time. This covenant shall survive the termination of this Contract pursuant to Section 7.1.

(c) Notwithstanding any provision in this Contract to the contrary, if the County shall provide to the Bank an opinion of nationally recognized bond counsel to the effect that any action required under this Article X is no longer required, or to the effect that some further action is required, to maintain the tax status of the interest components of the obligations created by this Contract, the County and the Bank may rely conclusively on such opinion in complying with the provisions of this Article X.

[END OF ARTICLE X]

ARTICLE XI INDEMNIFICATION

Section 11.1. ***Indemnification.*** To the fullest extent permitted by applicable law, the County hereby agrees to indemnify, protect and save the Local Government Commission of North Carolina, the Bank and their respective officers, employees, directors, members and agents harmless from all liabilities, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys' fees that (1) arise in tort, in contract, under 42 U.S. Code §1983 or under the public bidding laws of the State or (2) arise out of, are connected with, or result, directly or indirectly, from the Project or any portion thereof, including, without limitation, the manufacture, selection, acquisition, delivery, possession, condition, construction, improvement, environmental or other condition, lease, use operation or return of the Project or any portion thereof. The indemnification arising under this Article XI shall continue in full force and effect notwithstanding the payment in full of all of the obligations under this Contract.

[END OF ARTICLE XI]

ARTICLE XII

DISCLAIMER OF WARRANTIES

Section 12.1. ***No Representations by the Bank.*** The County acknowledges and agrees that the designs for the Project have not been made by the Bank, and the Bank has not supplied any plans or specifications with respect thereto and that the Bank (a) is not a manufacturer of, nor a dealer in, any of the component parts of the Project or a similar Project; (b) has not made any recommendation, given any advice nor taken any other action with respect to (i) the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Project or any component part thereof or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Project or any component part thereof or any property or rights relating thereto at any stage of the construction thereof; (c) has not at any time had physical possession of the Project or any component part thereof or made any inspection thereof or any property or rights relating thereto; and (d) has not made any warranty or other representation, express or implied, that the Project or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed, or will accomplish the result which the County intends therefor, or (iii) is safe in any manner or respect.

Section 12.2. ***Disclaimer by the Bank.*** THE BANK MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE PROJECT OF ANY COMPONENT PART THEREOF TO THE COUNTY OR IN REGARD TO ANY OTHER CIRCUMSTANCE WHATSOEVER WITH RESPECT THERETO, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATIONS WITH RESPECT TO: THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE; THE DESIGN OR CONDITION THEREOF; THE SAFETY, WORKMANSHIP OR QUALITY THEREOF; COMPLIANCE THEREOF WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO; ANY LATENT DEFECT; THE TITLE TO OR INTEREST OF THE BANK THEREIN; THE ABILITY THEREOF TO PERFORM ANY FUNCTION; THAT THE ADVANCE WILL BE SUFFICIENT (TOGETHER WITH ANY OTHER AVAILABLE FUNDS OF THE COUNTY) TO PAY THE COST OF IMPLEMENTING THE PROJECT; OR ANY OTHER CHARACTERISTICS OF THE PROJECT, IT BEING AGREED THAT ALL RISKS RELATING TO THE PROJECT, THE COMPLETION THEREOF OR THE TRANSACTIONS CONTEMPLATED HEREBY ARE TO BE BORNE BY THE COUNTY AND THE BENEFITS OF ANY AND ALL IMPLIED WARRANTIES AND REPRESENTATIONS OF THE BANK ARE HEREBY WAIVED BY THE COUNTY.

[END OF ARTICLE XII]

ARTICLE XIII DEFAULT AND REMEDIES

Section 13.1. **Definition of Event of Default.** The County shall be deemed to be in default hereunder upon the happening of any of the following events of default (each, an “*Event of Default*”):

(a) The County fails to pay any Installment Payment or Additional Payment when due;

(b) The County fails to budget and appropriate moneys sufficient to pay all Installment Payments and the reasonably estimated Additional Payments coming due in the following Fiscal Year of the County;

(c) The County deletes from its duly adopted budget any appropriation for the purposes specified in clause (b) above;

(d) The County fails to perform or observe any term, condition or covenant of this Contract on its part to be observed or performed, other than as referred to in clauses (a), (b) or (c) above, or of the Deed of Trust on its part to be observed or performed, or breaches any warranty by the County herein or therein contained, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the County by the Bank, unless the Bank shall agree in writing to an extension of such time prior to its expiration;

(e) Any bankruptcy, insolvency or reorganization proceedings or similar litigation, is instituted by the County, or a receiver, custodian or similar officer is appointed for the County or any of its property, and such proceedings or appointments are not vacated or fully stayed within 90 days after the institution or occurrence thereof;

(f) Any representation, warranty or statement made by the County herein, in the Deed of Trust or in any other document executed or delivered in connection herewith or therewith is found to be incorrect or misleading in any material respect on the date made; or

(g) An attachment, levy or execution is levied on or against any portion of the Mortgaged Property.

Section 13.2. **Remedies on Default.** Upon the occurrence of any Event of Default, the Bank may exercise any one or more of the following remedies as the Bank, in its sole discretion, shall elect:

(a) Declare the unpaid portion of the then outstanding principal component of the Installment Payments immediately due and payable, without notice or demand to the County;

(b) Proceed by appropriate court action to enforce the performance by the County of the applicable covenants of this Contract or to recover for any breach thereof;

(c) Exercise or direct the Deed of Trust Trustee to exercise all the rights and remedies of a secured party or creditor under the Uniform Commercial Code of the State and the general laws of the State with respect to the enforcement of the security interest granted or reserved hereunder and under the Deed of Trust including, without limitation, to the extent permitted by law, re-enter and take possession of the Mortgaged Property without any court order or other process of law and without liability for entering the premises and to sell, lease, sublease or make other disposition of the same in a commercially reasonable manner for the account of the

County, and apply the proceeds of any such sale, lease, sublease or other disposition, after deducting all costs and expenses, including court costs and attorneys' fees, incurred with the recovery, repair, storage and other sale, lease, sublease or other disposition, toward the balance due under this Contract and, thereafter, to pay any remaining proceeds to the County; or

(d) Enforce its security interest or direct the Deed of Trust Trustee to institute foreclosure proceedings under the Deed of Trust and sell the Mortgaged Property.

NOTWITHSTANDING ANY OTHER PROVISIONS HEREIN, IT IS THE INTENT OF THE PARTIES HERETO TO COMPLY WITH SECTION 160A-20 OF THE GENERAL STATUTES OF NORTH CAROLINA, AS AMENDED. NO DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST THE COUNTY IN FAVOR OF THE BANK IN VIOLATION OF SECTION 160A-20 OF THE GENERAL STATUTES OF NORTH CAROLINA, AS AMENDED, INCLUDING, WITHOUT LIMITATION, ANY DEFICIENCY JUDGMENT FOR AMOUNTS THAT MAY BE OWED HEREUNDER WHEN THE SALE OF ALL OR ANY PORTION OF THE MORTGAGED PROPERTY IS INSUFFICIENT TO PRODUCE ENOUGH MONEY TO PAY IN FULL ALL REMAINING OBLIGATIONS UNDER THIS CONTRACT.

Section 13.3. **Further Remedies.** This Contract shall remain in full force and effect and the County shall be and remain liable for the full performance of all its obligations under this Contract. All remedies of the Bank are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy.

[END OF ARTICLE XIII]

ARTICLE XIV ASSIGNMENT

Section 14.1 *Assignment.* Except pursuant to the Deed of Trust, the County will not sell, assign, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance on or against any interest in this Contract or the Mortgaged Property (except for any permitted encumbrances under Section 7.2) without the prior written consent of the Bank. The County's interest in this Contract may not be assigned or transferred by operation of law.

The Bank may, at any time and from time to time, assign all or any part of its interest in the Mortgaged Property, the Project or this Contract, including, without limitation, the Bank's rights to receive Installment Payments payable to the Bank hereunder. Any assignment made by the Bank or any subsequent assignee shall not purport to convey any greater interest or rights than those held by the Bank pursuant to this Contract.

The County agrees that this Contract may become part of a pool of obligations at the Bank's or its assignee's option. The Bank or its assignees may assign or reassign all or any part of this Contract, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Contract without the consent of the Local Government Commission, although the Banks or any assignee shall give written notice to the Local Government Commission of any such assignment. Any assignment by the Bank may be only to a bank, insurance company, or similar financial institution or any other entity approved by the Local Government Commission. Notwithstanding the foregoing, no assignment or reassignment of the Bank's interest in the Deed of Trust or this Contract shall be effective unless and until the County shall receive a duplicate original counterpart of the document by which such assignment or reassignment is made disclosing the name and address of each such assignee.

The County further agrees that the Bank's interest in this Contract may be assigned in whole or in part upon terms which provide in effect that the assignor or assignee will act as a collection and paying agent for any holders of certificates of participation in this Contract, provided the County receives a copy of such agency contract and such collection and paying agent covenants and agrees to maintain for the full remaining term of this Contract a written record of each assignment and reassignment of such certificates of participation.

The County agrees to execute any document reasonably required in connection with any assignment. Any assignor must provide notice of any assignment to the County and the Local Government Commission, and the County shall keep a complete and accurate record of all assignments as required by the Code. After the giving of any such notice, the County shall thereafter make all payments in accordance with the notice to the assignee named therein and shall, if so requested, acknowledge such assignment in writing, but such acknowledgment shall in no way be deemed necessary to make the assignment effective.

[END OF ARTICLE XIV]

ARTICLE XV
LIMITED OBLIGATION OF THE COUNTY

Section 15.01. *Limited Obligation of the County.* NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE COUNTY WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A DELEGATION OF GOVERNMENTAL POWERS NOR AS A DONATION BY OR A LENDING OF THE CREDIT OF THE COUNTY WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE. THIS CONTRACT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE COUNTY TO MAKE ANY PAYMENTS BEYOND ANY PAYMENTS APPROPRIATED IN THE SOLE DISCRETION OF THE COUNTY FOR ANY FISCAL YEAR IN WHICH THIS CONTRACT IS IN EFFECT; *PROVIDED, HOWEVER*, THAT ANY FAILURE OR REFUSAL BY THE COUNTY TO APPROPRIATE FUNDS WHICH RESULTS IN ITS FAILURE TO MAKE ANY PAYMENT COMING DUE HEREUNDER WILL IN NO WAY OBTAIN THE OCCURRENCE OF THE EVENT OF DEFAULT RESULTING FROM SUCH NONPAYMENT. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE COUNTY IN ANY ACTION FOR BREACH OF A CONTRACTUAL OBLIGATION HEREUNDER, AND THE TAXING POWER OF THE COUNTY IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY AMOUNTS DUE HEREUNDER. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED TO PLEDGE OR TO CREATE A LIEN ON ANY CLASS OR SOURCE OF THE COUNTY'S FUNDS, NOR SHALL ANY PROVISION OF THIS CONTRACT RESTRICT THE FUTURE ISSUANCE OF ANY OF THE COUNTY'S BONDS OR OBLIGATIONS PAYABLE FROM ANY CLASS OR SOURCE OF THE COUNTY'S FUNDS. TO THE EXTENT OF ANY CONFLICT BETWEEN THIS ARTICLE XV AND ANY OTHER PROVISION OF THIS CONTRACT, THIS ARTICLE XV SHALL TAKE PRIORITY.

[END OF ARTICLE XV]

ARTICLE XVI MISCELLANEOUS

Section 16.1. **Notices.** Any and all notices, requests, demands, and other communications given under or in connection with this Contract are only effective if made in writing and delivered either personally or mailed by certified or registered mail, postage prepaid, or return receipt requested, and addressed as follows:

IF TO THE COUNTY: County of Henderson, North Carolina
 Historic Courthouse Annex
 113 North Main Street
 Hendersonville, North Carolina 28792
 Attention: Finance Director

IF TO THE BANK: Branch Banking and Trust Company
 5130 Parkway Plaza Boulevard, Building 9
 Charlotte, North Carolina 28217
 Attention: Account Administration/Municipal
 Re: Notice under 2010 Henderson County Financing Agreement

The County and the Bank may, by written notice to each other, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 16.2. **Time.** Time is of the essence of this Contract and each and all of its provisions.

Section 16.3. **If Payment or Performance Date not a Business Day.** If the date for making any payment, or the last date for performance of any act or the exercising of any right, as provided in this Contract, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Contract, and no interest shall accrue for the period after such nominal date.

Section 16.4. **Waiver.** No covenant or condition of this Contract can be waived except by the written consent of the Bank. Any failure of the Bank to require strict performance by the County or any waiver by the Bank of any terms, covenants or contracts in this Contract shall not be construed as a waiver of any other breach of the same or any other term, covenant or contract in this Contract.

Section 16.5. **Section Headings.** All section headings contained in this Contract are for convenience of reference only and are not intended to define or limit the scope of any provision of this Contract.

Section 16.6. **Entire Contract.** This Contract, together with the schedules and Exhibits attached to this Contract, constitutes the entire agreement between the parties, and this Contract shall not be modified, amended, altered or changed except as the County and the Bank may subsequently agree in writing.

Section 16.7. **Binding Effect.** Subject to the specific provisions of this Contract, this Contract is binding on and inures to the benefit of the parties and their respective successors and assigns (including expressly any successor of the Bank).

Section 16.8. **Covenants of County not Covenants of Officials Individually.** No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation,

obligation or agreement of any present or future member, agent or employee of the County in such person's individual capacity, and neither the members of the Board nor any other officer of the Board or the County shall be subject to any personal liability or accountability by reason of the issuance of the Certificates. No member of the Board or any agent or employee of the County shall incur any personal liability in acting or proceeding or if not acting or not proceeding, in good faith, reasonably and in accordance with the terms of this Contract.

Section 16.9. **Severability.** If any portion of this Contract is determined to be invalid under any applicable law, such provision shall be deemed void and the remainder of this Contract shall continue in full force and effect.

Section 16.10. **Governing Law and Jurisdiction.** This Contract shall be construed, interpreted and enforced in accordance with, the laws of the State. The exclusive forum and venue for all actions arising out of this Contract are with the North Carolina General Court of Justice in Stokes County, North Carolina or the U.S. District Court for the Middle District of North Carolina. Any attempt to contravene this Section shall be an express violation of this Contract.

Section 16.11. **Execution in Counterparts.** This Contract may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the County and the Bank have caused this Installment Financing Contract to be executed by their duly authorized officers as of the day and year first above written.

COUNTY OF HENDERSON, NORTH CAROLINA

[SEAL]

By: _____
Steven D. Wyatt
County Manager

Attest:

Teresa Wilson
Clerk to the Board of Commissioners

[COUNTY SIGNATURE PAGE TO THE INSTALLMENT FINANCING CONTRACT DATED AS OF NOVEMBER 1, 2010
BETWEEN BRANCH BANKING AND TRUST COMPANY AND THE COUNTY OF HENDERSON, NORTH CAROLINA]

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

[COUNTERPART SIGNATURE PAGE TO THE INSTALLMENT FINANCING CONTRACT, DATED AS OF
NOVEMBER 1, 2010 BETWEEN BRANCH BANKING AND TRUST COMPANY AND THE COUNTY OF HENDERSON, NORTH
CAROLINA]

BRANCH BANKING AND TRUST COMPANY,
as Bank

By: _____
F. Louis Loyd III
Senior Vice President

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

[COUNTERPART SIGNATURE PAGE TO THE INSTALLMENT FINANCING CONTRACT, DATED AS OF
NOVEMBER 1, 2010, BETWEEN BRANCH BANKING AND TRUST COMPANY AND THE COUNTY OF HENDERSON, NORTH
CAROLINA]

This Contract has been approved under the
provisions of Section 159-152 of the General
Statutes of North Carolina, as amended.

By: _____
T. Vance Holloman
Secretary
Local Government Commission of North Carolina

PAYMENT SCHEDULE

[Final amortization schedule to be inserted]

<u>DATE</u>	<u>INSTALLMENT PAYMENT PRINCIPAL COMPONENT</u>	<u>INSTALLMENT PAYMENT INTEREST COMPONENT</u>	<u>TOTAL INSTALLMENT PAYMENT</u>
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EXHIBIT A

REAL PROPERTY DESCRIPTION

[To be inserted]

EXHIBIT B

FORM OF REQUISITION

Branch Banking and Trust Company
Governmental Finance
5130 Parkway Plaza Boulevard, Building 9
Charlotte, North Carolina 28217
Attention: Project Fund Management

Re: Direction to Make Disbursements from the Henderson County 2010 Installment Financing Project Fund

Pursuant to Section 4.3 of the Installment Financing Contract, dated as of November 1, 2010 (the "**Contract**") between Branch Banking and Trust Company (the "**Bank**") and the County of Henderson, North Carolina (the "**County**") (BB&T Internal Contract Number _____), you are hereby directed to disburse from the Henderson County 2010 Installment Financing Project Fund (the "**Project Fund**") the amount indicated below.

To receive funds via wire transfer, please include:

ABA Routing Number: _____

Account Number: _____

Physical Address of the County: _____

The undersigned hereby certifies:

1. This is requisition number _____ from the Project Fund.

2. The amount to be disbursed is \$ _____.

3. The purpose of the disbursement is to _____.

Attached are a list of persons or companies to whom the County will remit payment and evidence that the amounts shown in this requisition are properly payable at this time, such as bills, receipts, invoices, architects' payment certifications or other appropriate documents. Such funds shall only be disbursed to the County and the County shall remit payment to any third-party owed.

4. The disbursement herein requested is for an obligation properly incurred, is a proper charge against the Project Fund as a Cost of Acquisition and Construction under the Contract and such obligation has not been the basis of any previous disbursement.

5. The County has appropriated in its current fiscal year funds sufficient to pay the Installment Payments and estimated Additional Payments due in the current fiscal year.

6. No notice of any lien, right to lien or attachment on, or claim affecting the right to receive payment of, any of the money payable herein to any of the persons, firms or corporations named herein has been received, or if any notice of any such lien, attachment or claim has been received, such lien,

attachment or claim has been released or discharged or will be released or discharged on payment of this requisition.

7. This requisition contains no items representing payment on account of any percentage entitled to be retained on the date of this requisition.

8. No Event of Default is continuing under the Contract, and no event or condition is existing which, with notice or lapse of time or both, would become an Event of Default.

9. Each amount requested for payment in this requisition either (a) represents reimbursement to the County for a Cost of Acquisition and Construction previously made, or (b) will be used by the County within three business days of the receipt of funds from the Bank to make the payments to the third parties described in the requisition.

Dated this ____ day of _____, 200__.

COUNTY OF HENDERSON, NORTH CAROLINA

By: _____
County Representative

APPROVED:

BRANCH BANKING AND TRUST COMPANY

By: _____
Authorized Bank Representative