

## **REQUEST FOR BOARD ACTION**

### **HENDERSON COUNTY BOARD OF COMMISSIONERS**

**MEETING DATE:** July 15, 2015

**SUBJECT:** Public Hearing Regarding the Health Sciences Education Center Project and Related Financing Documents

**PRESENTER:** J. Carey McLelland, Finance Director

**ATTACHMENTS:** Installment Financing Contract - DRAFT

#### **SUMMARY OF REQUEST:**

The purpose of this required hearing is to take public comment on the Project, the proposed draft installment financing contract and any other transactions contemplated and associated with the Project.

#### **PUBLIC NOTICE:**

The public hearing notice was published in the Hendersonville Time-News on Saturday, June 27, 2015 which is within the required time frame of publishing no fewer than 14 days prior to the public hearing.

#### **BOARD ACTION REQUESTED:**

After holding the hearing to receive public comments, no further action is required by the Board.

***Suggested Motion:***

***No motion suggested.***

**INSTALLMENT FINANCING CONTRACT**

between

**HENDERSON COUNTY GOVERNMENTAL FINANCING CORPORATION**

and

**COUNTY OF HENDERSON, NORTH CAROLINA**

Dated as of  
August 15, 2015

# INSTALLMENT FINANCING CONTRACT

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INSTALLMENT PAYMENT SCHEDULE - 2015 BONDS..... PS-1

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## INSTALLMENT FINANCING CONTRACT

**THIS INSTALLMENT FINANCING CONTRACT**, dated as of August 15, 2015 (this “*Contract*”), is between **HENDERSON COUNTY GOVERNMENTAL FINANCING CORPORATION** (the “*Corporation*”), a nonprofit corporation duly created, existing and in good standing under the laws of the State of North Carolina (the “*State*”), and the **COUNTY OF HENDERSON, NORTH CAROLINA** (the “*County*”), a political subdivision validly existing under the Constitution, statutes and laws of the State.

### WITNESSETH:

**WHEREAS**, the County is a duly created and validly existing political subdivision, organized under and by virtue of the Constitution and laws of the State;

**WHEREAS**, the County has the power, pursuant to Section 160A-20 of the General Statutes of North Carolina, to enter into installment contracts to finance the purchase of real or personal property;

**WHEREAS**, the Board of Commissioners of the County (the “*Board*”) has determined that it is in the best interest of the County (1) to finance the acquisition, construction and equipping of a Joint Health Education Center in the County (the “*Project*”) and (2) to pay the costs related to the execution and delivery of this Contract;

**WHEREAS**, to obtain funds to finance the Project, the County has entered into this Contract with the Corporation under which it will make Installment Payments and Additional Payments (as such terms are defined below) in consideration thereof;

**WHEREAS**, there will be executed and delivered pursuant to an Indenture of Trust dated as of August 15, 2015 (the “*Indenture*”) between the Corporation and U.S. Bank National Association, as trustee (the “*Trustee*”), Limited Obligation Bonds, Series 2015 (the “*2015 Bonds*”), evidencing proportionate undivided interests in rights to receive certain Revenues (as defined below) under this Contract;

**WHEREAS**, pursuant to the Indenture, the Corporation has assigned the Trust Estate (as defined in the Indenture) to the Trustee;

**WHEREAS**, the 2015 Bonds evidence proportionate undivided interests in the rights to receive certain Revenues and shall be payable solely from the sources provided in the Indenture;

**WHEREAS**, the execution, performance and delivery of this Contract have been authorized, approved and directed by the Board by a resolution passed and adopted by the Board on July 15, 2015;

**WHEREAS**, the execution, delivery and performance of this Contract by the Corporation, and the assignment by the Corporation to the Trustee, pursuant to the Indenture, of the Trust Estate, have been authorized, approved and directed by all necessary and appropriate action of the Corporation;

**WHEREAS**, the obligation of the County to make Installment Payments and Additional Payments 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**, to secure further the obligation of the County hereunder, the County has entered into a Deed of Trust, Security Agreement and Fixture Filing dated as of August 15, 2015 (the “*Deed of*”

*Trust*”) with the deed of trust trustee named therein for the benefit of the Corporation and its assignee; 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 money due under this Contract;

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

## **ARTICLE I DEFINITIONS**

All words and phrases defined in Article I of the Indenture have the same meaning in this Contract. In addition, 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 Trustee and the Corporation, any expenses of the Corporation in defending an action or proceeding in connection with this Contract or the Indenture 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 County or the Corporation is expressly required to pay as a result of this Contract (together with interest that may accrue thereon if the County fails to pay the same).

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

*“Corporation”* means Henderson County Governmental Financing Corporation or any successor thereto.

*“County”* means the County of Henderson, North Carolina or any successor to its functions.

*“County Representative”* means (1) the Finance Director or 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 Trustee and the Corporation containing the specimen signatures of such person or persons and signed on behalf of the County by the County Manager and the Finance Director of the County, or (2) if any or all of the County’s rights and obligations are assigned hereunder, 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 August 15, 2015 from the County to the deed of trust trustee named therein for the benefit of the Corporation or its assignees, 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.

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

*“Indenture”* means the Indenture of Trust dated as of August 15, 2015 between the Corporation and the Trustee, as amended or supplemented from time to time, pursuant to which the Bonds are executed and delivered.

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

*“Mortgaged Property”* means the property subject to the lien and security interest created by the Deed of Trust, as more particularly described therein.

*“Net Proceeds”* means, when used with respect to any (1) proceeds from policies of insurance which are payable to the Corporation or the Trustee, (2) proceeds from any payment and performance bond maintained pursuant to Section 4.11, (3) proceeds of any condemnation award arising out of the



condemnation of all or any portion of the Mortgaged Property or (4) proceeds from any sale or lease of the Mortgaged Property pursuant to the Deed of Trust or otherwise subsequent to an Event of Default, 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.

*"Project"* means (a) initially, the acquisition, construction and equipping of the Joint Health Education Center in the County, or (b) subsequently, as such term may be amended in connection with the execution and delivery of Additional Bonds.

*"Purchase Price"* means the amount of \$[Amount] advanced by the Corporation to enable the County to finance the Project, as such price may be adjusted in connection with the execution and delivery of Additional Bonds under Section 2.11 of the Indenture.

*"Revenues"* means (a) all Net Proceeds not applied to the replacement of the Project; (b) all Installment Payments; and (c) all investment income on all funds and accounts created under the Indenture (other than the Rebate Fund).

*"State"* means the State of North Carolina.

[END OF ARTICLE I]

**ARTICLE II**  
**ADVANCE OF PURCHASE PRICE**

The Corporation hereby makes an advance to the County of the Purchase Price, and the County hereby accepts from the Corporation the Purchase Price to be applied in accordance with the terms and conditions of this Contract. The County will use the proceeds of the Purchase Price to finance the Project and to pay certain costs incurred in connection with the execution and delivery of the 2015 Bonds.

[END OF ARTICLE II]

**ARTICLE III**  
**INSTALLMENT PAYMENTS; ADDITIONAL**  
**PAYMENTS; SECURITY**

**Section 3.1     *Amounts and Times of Installment Payments and Additional Payments.*** As consideration for the Corporation's advance of the Purchase Price to the County, the County shall repay to the Trustee, as assignee of the Corporation under the Indenture, the Purchase Price in installments with interest as provided in this Contract and the Payment Schedule attached hereto (each an "*Installment Payment*"). Each installment shall be deemed to be an Installment Payment and shall be paid in the amounts and at the times set forth on the Payment Schedule except as provided herein. There shall be credited against the amount of Installment Payments otherwise payable hereunder amounts equal to (1) earnings derived from the investment of the Bond Fund and the Prepayment Fund and (2) any other money not constituting Installment Payments required to be deposited in the Bond Fund. Installment Payments shall be sufficient in the aggregate to repay the Purchase Price together with interest thereon. As further consideration for the Corporation's advance of the Purchase Price to the County, the County shall also pay the Additional Payments, as required herein, on a timely basis directly to the person or entity to which such Additional Payments are owed.

**Section 3.2     *Place of Payments.*** The County shall make all payments required to be made to the Corporation hereunder to the Trustee at its designated office in immediately available funds or as may be otherwise directed in writing by the Trustee.

**Section 3.3     *Late Charges.*** To the extent permitted by law, if the County fails to pay any Installment Payment or any other sum required to be paid to the Trustee following the due date thereof, the County shall pay a late payment charge equal to the amount of the delinquency times a per diem rate calculated at the rate(s) borne by each respective Bond.

**Section 3.4     *No Abatement.*** Subject to Article XIV, 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 funds to the payment of said Installment Payments or Additional Payments, any defense, recoupment, setoff, counterclaims or any claim (real or imaginary) arising out of or related to 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 Purchase Price.*** If the County has performed all of its obligations under this Contract, then it shall have the option to prepay the Purchase Price on or after [June 1, 2025] or provide for prepayment of the Purchase Price on any date, in full or in part in the amount of \$5,000 or any integral multiple thereof on 45 days' notice to the Trustee, at a prepayment price equal to the then applicable prepayment price of the 2015 Bonds, including any required prepayment premium under Section 4.1 of the Indenture, plus accrued interest to the prepayment date. If the Purchase Price is partially prepaid, then the Trustee shall recalculate the Payment Schedule as necessary in the manner required by Section 3.7 of the Indenture.

[END OF ARTICLE III]

## ARTICLE IV ACQUISITION AND CONSTRUCTION

**Section 4.1 Acquisition and Construction Fund.** As provided in Section 3.1 of the Indenture, the Corporation has caused \$[ ] to be deposited in the Acquisition and Construction Fund.

**Section 4.2 Disbursements.** The Trustee shall disburse money held to the credit of the Acquisition and Construction Fund in payment of the Cost of Acquisition and Construction on receipt of written requisition from the County Representative substantially in the form set forth in Exhibit A, attached hereto, together with any documents or other items as the Trustee may reasonably determine to be necessary.

**Section 4.3 Termination.** The Trustee shall terminate the Acquisition and Construction Fund at the earlier of (a) the final distribution of money held in the Acquisition and Construction Fund or (b) the termination of this Contract.

**Section 4.4 Reliance of Trustee on Documents.** The Trustee may act in reliance on any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Trustee 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 its duties hereunder are limited to the receipt of such money, instruments or other documents received by it as the Trustee, and for the disposition of the same in accordance herewith.

**Section 4.5 Discretion of the Trustee to File Civil Action in the Event of Dispute.** If the County and the Trustee disagree about the interpretation of this Contract, or about the rights and obligations, or the propriety of any action contemplated by the Trustee hereunder, the Trustee may, but is not required to, file an appropriate civil action in the State to resolve the disagreement. The Trustee will be indemnified, to the extent permitted by applicable law and subject to Article XIV, for all costs, including reasonable attorneys' fees, in connection with such civil action and shall be fully protected in suspending all or part of its activities under this Contract until a final judgment in such action is received.

**Section 4.6 Consultation with Counsel.** The Trustee may consult with qualified counsel of its own choice and has full and complete authorization and protection to rely on the opinion of such counsel. The Trustee is otherwise not liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its negligence or misconduct.

**Section 4.7 Compensation of Trustee.** The County shall pay to the Trustee reasonable compensation for all services performed by the Trustee hereunder and under the Indenture and also for all reasonable expenses, charges and other disbursements and those of the Trustee's attorneys, agents and employees incurred in and about the administration and execution of the Indenture and the performance of the Trustee's powers and duties hereunder and under the Indenture, as an Additional Payment.

**Section 4.8 Construction.** The County shall comply with the provisions of Article 8 of Chapter 143 of the General Statutes of North Carolina and enter into construction contracts in accordance with Section 143-128.1 of the General Statutes of North Carolina. The County shall cause the Project to be carried on expeditiously in accordance with the plans and specifications therefor, all applicable ordinances and statutes, and in accordance with the requirements of all regularly constituted authorities having jurisdiction over same. The County shall ensure that (a) the Project does not encroach on nor overhang any easement or right of way and (b) the portions of the Project, when erected, will be wholly within the site of the Project and 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 or cause to be corrected any structural defect in the improvements or any departure from the plans and specifications.

**Section 4.9 Right of Entry and Inspection.** The Corporation, the Trustee and their representatives and agents have the right to enter on the property on which the Project is located and inspect the Project from time to time, during and after acquisition, construction and equipping, and the County shall cause the construction manager at risk or any first-tier subcontractor to cooperate with the Corporation, the Trustee and their representatives and agents during such inspections. No right of inspection or approval contained herein imposes on the Corporation or the Trustee any duty or obligation whatsoever to undertake any inspection or to give any approval.

**Section 4.10 Completion of Construction.** The County shall proceed with reasonable diligence to complete the Project in a timely manner. On completion of the acquisition, construction and equipping of the Project, a County Representative shall deliver to the Trustee (a) a certificate of a County Representative 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 Cost has been paid less specified claims which are subject to dispute and for which a retention in the Acquisition and Construction Fund is to be maintained in the full amount of such claims until such dispute is resolved), and (b) proof of the insurance coverage required by Section 5.10, if any. If, on the basis of such certificate, the accounting of the Acquisition and Construction Fund by the Trustee shows that money in the Acquisition and Construction Fund will remain unexpended for the Cost of Acquisition and Construction, then the County shall direct the Trustee in writing either (1) to move such unexpended funds to another account within the Acquisition and Construction Fund or (2) to transfer such unexpended funds to the Bond Fund to be applied in accordance with Section 3.5 of the Indenture as a credit against the Installment Payments in the order in which they are due.

**Section 4.11 Payment and Performance Bonds.** Each contractor, or the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk, related to the Project is required to furnish a performance bond and a separate labor and material payment bond as required by North Carolina General Statutes, Article 3, Chapter 44A, copies of which must be provided to the Trustee. In lieu of furnishing a performance bond and a separate labor and material payment bond, each contractor, or the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk, may furnish collateral in an amount of its construction contract securing the County, copies of the evidence of such collateral which shall be provided to the Trustee.

In the event of any material default by a contractor, or the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk, 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 Trustee for deposit into the Acquisition and Construction Fund if received before the Completion Date therefor or if received thereafter, shall be deposited as otherwise provided in Section 7.2 or otherwise applied as provided in Section 7.3. The Net Proceeds of any performance or payment bond or insurance policy required by this

Section shall likewise be paid into the Acquisition and Construction Fund, if received before the Completion Date, or, if received thereafter, shall either be deposited as provided in Section 7.2 or otherwise applied as provided in Section 7.3.

**Section 4.12 Contractor's General Public Liability and Property Damage Insurance.** Each contractor, or the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk, entering into a construction contract related to the Project is required by the County to procure and maintain standard form (a) 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 (b) 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 must include the County, the Corporation and the Trustee as additional named insureds, and shall include a provision prohibiting cancellation or termination without 30 days' prior notice by certified mail to the County and the Trustee. A certificate evidencing such coverage shall be provided to the County and the Trustee or, if such insurance is provided by a private carrier, a completed certificate of insurance, in form acceptable to the County and the Trustee, shall be provided to the County and the Trustee with respect to each contractor entering into a construction contract or, in the case of a construction manager at risk, the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk. 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 4.13 Contractor's Builder's Risk Completed Value Insurance.** The County will procure and maintain, or will require each contractor, or the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk, entering into a construction contract related to the Project to procure and maintain property insurance (builder's risk) on all acquisition, construction and equipping related to the Project (excluding contractor's tools and equipment) at the Project at the full and insurable value thereof. This insurance will include the interest of the County, the Trustee and the contractor as additional insureds; and shall insure against "all risk" subject to standard policy conditions and exclusions. Each contractor, or the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk, shall purchase and maintain similar property insurance for portions of the work stored off the site on 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, or the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk, is responsible for the payment of any deductible amounts associated with this insurance.

**Section 4.14 Contractor's Worker's Compensation Insurance.** Each contractor, or the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk, entering into a construction contract related to the Project is 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, must contain a provision prohibiting cancellation or termination without 30 days' prior notice by certified mail to the County, the Corporation and the Trustee. A certificate evidencing such coverage shall be provided to the County, the Corporation and the Trustee or, if such insurance is provided by a private carrier, then a completed certificate of insurance, in form acceptable to the County, the Corporation and the Trustee, shall be provided to the County, the Corporation and the Trustee with respect to each contractor entering into a construction contract or, in the case of a construction manager at risk, to the construction manager at risk or any first-tier subcontractor entering into a construction contract with the construction manager at risk.

**Section 4.15    *Filing With the Trustee.*** The County shall provide on the closing date and each anniversary of the closing date, a certificate of a County Representative certifying compliance with Sections 4.11, 4.12, 4.13 and 4.14. In addition to this certificate, the Trustee may request at any time copies of all performance bonds and insurance contracts or approved bonds thereof, as required under Sections 4.11, 4.12, 4.13 and 4.14, to be delivered to the Trustee in a timely manner and in such form as to certify compliance with the provisions of the Sections referred to above.

[END OF ARTICLE IV]

## **ARTICLE V RESPONSIBILITIES OF THE COUNTY**

**Section 5.1     *Care and Use.*** Subject to the provisions of applicable law and Article XIV, the County shall use the Mortgaged Property 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 Mortgaged Property so as to keep the Mortgaged Property in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear excepted. The County shall replace any part of the Mortgaged Property as may from time to time become worn out, unfit for use, lost, stolen, destroyed or damaged. 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*” and as used in this Contract.

**Section 5.2     *Inspection.*** The Trustee, or its agent or representative, has the right on reasonable prior notice to the County, and subject to the reasonable direction and supervision of the County, to enter into and inspect the Mortgaged Property and observe their use during normal business hours.

**Section 5.3     *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 Mortgaged Property. There shall be no abatement of the Installment Payments on account of interruption of any such services.

**Section 5.4     *Taxes.***

(a) The County shall pay when due any and all taxes relating to the Mortgaged Property and the County’s obligations hereunder 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, licenses and utility charges of any type imposed on the ownership, possession or use of the Mortgaged Property by any governmental body or agency, together with any interest and penalties, other than taxes on or measured by the net income of the Corporation; *provided*, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the County is obligated to pay only such installments as are required to be paid as and when the same become due.

(b) The County may, at its expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom; *provided* that before such nonpayment it furnishes the Trustee with an opinion of counsel to the effect that, by nonpayment of any such items, the security interest held by the Trustee in the Mortgaged Property will not be materially endangered and the Mortgaged Property will not be subject to loss or forfeiture. Otherwise, the County shall promptly pay such taxes, assessments or charges or make provisions for the payment thereof.

**Section 5.5     *Title Insurance.*** The County agrees to obtain, at its own cost and expense, a policy of title insurance, in form satisfactory to the Corporation, at the time of and dated as of the date of execution and delivery of this Contract, payable to the Trustee, as its interest may appear, insuring fee title of the County to the Mortgaged Property.



**Section 5.6 Survey.** The County shall provide a foundation survey covering the Mortgaged Property such that the policy of title insurance delivered under Section 5.5 will insure matters of survey to and including the date of such survey.

**Section 5.7 Risk of Loss.** The County shall bear all risk (1) of loss or damage to the Mortgaged Property and (2) of the condemnation of any of the Mortgaged Property or any portion thereof.

**Section 5.8 Performance by the Trustee of the County's Responsibilities.** Any performance required of the County or any payments required to be made by the County may, but are not required to, if not timely performed or paid, be performed or paid by the Trustee, and, in that event, the Trustee shall be immediately reimbursed by the County for these payments or other performance by the Trustee, with interest thereon at a rate equal to the prime rate of the Trustee at the time the payment is made and as adjusted from time to time thereafter until so reimbursed.

**Section 5.9 Financial Statements.** If such information is not otherwise publicly available, the County agrees that it will furnish annually to the Trustee and at such reasonable times as the Trustee may request, current financial statements (including, without limitation, the County's annual budget as submitted or approved) and further agrees that it will permit the Trustee or its respective agent and representative to inspect the County's books and records and make extracts therefrom. The County represents and warrants to the Trustee that (1) all financial statements which have been or may be delivered or otherwise made available to the Trustee do and will fairly and accurately reflect the County's financial condition and (2) there has been no material adverse change, as of the date of execution of this Agreement, in the County's financial condition from the condition as reflected in the financial statements for the Fiscal Year ended June 30, 2014. The County further agrees that it will furnish a copy of its most recent audited financial statements to any Owner of the Bonds on written request therefor.

**Section 5.10 Property Insurance.** The County shall continually maintain or cause to be maintained insurance to the full insurable value of the Mortgaged Property against loss by fire, wind damage, hazards customarily included in the term "extended coverage" with responsible and reputable insurance companies and shall promptly pay all premiums therefor when due. All insurance policies and renewals thereof shall name the Corporation and the Trustee as parties insured thereunder, as the respective interests of each of such parties may appear, and have attached thereto a mortgagee long form loss payable clause in favor of the Trustee, and provide that no such policy can lapse or be canceled, substantially modified or terminated without at least 30 days prior notice to the Trustee and that any loss payable thereunder shall be made payable and shall be applied as provided in Article VII. In the event of loss, the County shall give immediate notice by mail to the Trustee, who may, but shall not be obligated to, make proof of loss. In the event of a foreclosure of the Deed of Trust or other transfer of title to the Mortgaged Property, all right, title and interest of the County in any insurance policies then in force shall pass to the Trustee. Additionally, during the term of this Contract, the County shall continually maintain standard liability insurance as is customarily maintained by like entities with respect to facilities similar to the Mortgaged Property.

The County may provide for and maintain the insurance required under this Contract partially or wholly by means of an adequate risk retention fund. Reserves for a risk retention fund shall be determined by using actuarial principles. Any risk retention fund shall be reviewed annually by the County's risk manager or an independent insurance consultant or actuarial consultant. The Trustee may rely on a letter of the County's risk manager or an independent insurance consultant or actuarial consultant as to the adequacy of any risk retention fund.

[END OF ARTICLE V]

**ARTICLE VI**  
**TITLE; LIENS**

**Section 6.1 Title.** Title to the Mortgaged Property 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. The County shall own the Mortgaged Property free and clear of any lien or security interest created by this Contract and the Deed of Trust, as applicable, on the repayment in full of the Purchase Price and the payment of all other amounts due hereunder. The County shall deliver to the Trustee the Deed of Trust simultaneously with the execution and delivery of this Contract and shall cause the Deed of Trust to be recorded in the Henderson County Registry. On payment in full of all of the County's obligations hereunder, including the Purchase Price and all other payments due hereunder, the Corporation or its assignee, at the County's expense and request, shall discharge the Indenture and release the lien on the Deed of Trust, at which time this Contract will terminate.

**Section 6.2 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 Mortgaged Property or any interest therein, except for (1) the lien and security interest of the Corporation and the Trustee therein; (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) any lease permitted by Section 13.1 of this Contract; 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 to the Mortgaged Property. 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 Corporation for any expense incurred by it to discharge or remove any such mortgage, pledge, lien, security interest, charge, encumbrance or claim.

[END OF ARTICLE VI]

**ARTICLE VII**  
**DAMAGE, DESTRUCTION AND LOSS OR THEFT OF**  
**MORTGAGED PROPERTY; NET PROCEEDS**

**Section 7.1     *Damage, Destruction or Condemnation.*** If, during the term hereof, (1) any portion of the Mortgaged Property is destroyed or damaged by fire or other casualty; (2) title to or the temporary or permanent use of any portion of the Mortgaged Property or the estate of the County or the Corporation or its assignee in any portion of the Mortgaged Property is taken under the power of eminent domain by any governmental authority; (3) a material defect in construction of any portion of the Mortgaged Property becomes apparent; or (4) title to or the use of any portion of the Mortgaged Property is lost by reason of a defect in title thereto, then the County continues to be obligated, subject to the provisions of Section 7.2, to pay the amounts specified in Section 3.1 at the respective times required.

**Section 7.2     *Obligation of the County to Repair and Replace the Mortgaged Property.*** Subject to the provisions of Section 7.3, the Trustee shall cause the Net Proceeds of any insurance policies, performance or payment bonds, if any, condemnation awards or Net Proceeds made available by reason of any occurrence described in Section 7.1, to be deposited in a separate fund held by the Trustee. Except as set forth in Section 7.3, all Net Proceeds so deposited shall be applied to the prompt repair, restoration, modification, improvement or replacement of the Mortgaged Property on receipt of requisitions approved by a County Representative stating with respect to each payment to be made: (a) the requisition number; (b) the name and address of the person, firm or corporation to whom payment is due; (c) the amount to be paid; and (d) that each obligation mentioned therein has been properly incurred, is a proper charge against such separate fund, and has not been the basis of any previous withdrawal and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation. The Trustee shall cooperate with the County in the administration of such separate fund and shall not unreasonably withhold its approval of requisitions under this Section 7.2. 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 Mortgaged Property, 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 the provisions of this Section 7.2, the County is not entitled to any reimbursement therefor from the Corporation, the Trustee or the Owners nor is the County entitled to any diminution of the amounts payable under Section 3.1. 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 to the Deed of Trust to the extent it relates to the Mortgaged Property, and shall be included as part of the Mortgaged Property under this Contract.

**Section 7.3     *Discharge of the Obligation of the County to Repair the Mortgaged Property.*** On the occurrence of an event described in Section 7.1 with respect to the Mortgaged Property, the County may elect not to repair, restore, improve or replace the affected portion of the Mortgaged Property if (1) the Net Proceeds are less than \$500,000 and (2) a County Representative certifies to the Corporation that such Net Proceeds are not necessary to restore the affected portion of the Mortgaged Property to its intended use. In such event, the County shall direct the Trustee to deposit such Net Proceeds in the Bond Fund to be applied toward the next payment of principal and interest with respect to the Bonds.

Within 90 days of the occurrence of an event specified in Section 7.1, the County shall commence the repair, restoration, modification, improvement or replacement of the Mortgaged Property, or shall elect, by written notice to the Trustee, to proceed under the provisions of the immediately preceding paragraph. 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 Mortgaged Property.

**Section 7.4      *Cooperation of the Corporation.*** The Corporation shall cooperate fully with the County and the Trustee in filing any proof of loss with respect to any insurance policy covering the events described in Section 7.1, and hereby assigns to the Trustee any interest it may have in such policies or rights of action for such purposes. In no event shall the Corporation or the County voluntarily settle, or consent to the settlement of, any proceeding arising out of any such insurance claim with respect to the Mortgaged Property without the written consent of the other.

[END OF ARTICLE VII]

**ARTICLE VIII**  
**REPRESENTATIONS, WARRANTIES AND COVENANTS OF**  
**THE COUNTY AND THE CORPORATION**

**Section 8.1**     *Representations, Warranties and Covenants of the County.*     The County warrants and represents to the Corporation and to the Trustee for the benefit of the Owners (all such representations and warranties being continuing) that:

(a)     The County is a duly organized and validly existing political subdivision 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 subdivisions of the State to consolidate with or merge into it, unless 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 the performance of the County's obligations hereunder and thereunder have been or will be duly and validly authorized, executed and delivered by the County and approved under all laws, regulations and procedures applicable to the County and, assuming due authorization, execution and delivery thereof by the other parties 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 jurisdiction may impose;

(d)     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 thereto and the transactions contemplated hereby and thereby or if such approvals are required, they will be duly obtained;

(e)     Except as disclosed by the County in writing to the Corporation and the Trustee, 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)     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 herein is false, misleading or erroneous in any material respect;

(g) The County vested with fee simple title to the Mortgaged Property free and clear of any liens or encumbrances other than the lien created by the Deed of Trust and the other liens permitted hereby and thereby;

(h) 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;

(i) The Project is essential to the proper, efficient and economical operation of the County and the delivery of its services, and the Project provides an essential use and permits the County to carry out public functions that it is authorized by law to perform;

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

(k) The County shall (1) cause its Budget Officer, as statutorily defined, to include the Installment Payments and the reasonably estimated Additional Payments coming due in each Fiscal Year in the corresponding annual budget request, (2) require that the deletion of such funds from the County's final budget or any amended budget be made only pursuant to an express resolution of the Board which explains the reason for such action and (3) deliver notice to the Trustee, S&P, Moody's and the LGC within five days after the adoption by the Board of the resolution described in clause (2) above. Nothing contained in this paragraph (k) obligates the County to appropriate money contained in the proposed budget for the payment of Installment Payments and reasonably estimated Additional Payments coming due under this Contract;

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

(m) The County agrees, in accordance with Rule 15c2-12 (the "*Rule*") promulgated by the Securities and Exchange Commission (the "*SEC*"), to provide to the Municipal Securities Rulemaking Board (the "*MSRB*");

(1) by not later than seven months after the end of each Fiscal Year, beginning with the Fiscal Year ended June 30, 2015, the audited financial statements of the County for the preceding Fiscal Year, if available, prepared in accordance with Section 159-34 of the General Statutes of North Carolina, as it may be amended from time to time, or any successor statute, or if such audited financial statements are not then available, unaudited financial statements of the County for such Fiscal Year to be replaced subsequently by audited financial statements of the County to be delivered within 15 days after such audited financial statements become available for distribution;

(2) by not later than seven months after the end of each Fiscal Year, beginning with the Fiscal Year ended June 30, 2015, (a) the financial and statistical data as of a date not earlier than the end of the preceding Fiscal Year for the type of information included under the captions "**THE COUNTY - Debt Information**" and "**-Tax Information**" (including subheadings thereunder) in Appendix A to the Official Statement dated [OS Date], 2015 with respect to the 2015 Bonds (excluding, in each case, any information on overlapping or underlying units) and (b) the combined budget of

the County for the current Fiscal Year, to the extent such items are not included in the audited financial statements referred to in paragraph (1) above;

(3) in a timely manner not in excess of 10 Business Days after the occurrence of the event, notice of any of the following events with respect to the 2015 Bonds:

- (A) principal and interest payment delinquencies;
- (B) non-payment related defaults, if material;
- (C) unscheduled draws on the debt service reserves reflecting financial difficulties;
- (D) unscheduled draws on any credit enhancements reflecting financial difficulties;
- (E) substitution of any credit or liquidity providers, or their failure to perform;
- (F) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the 2015 Bonds or other material events affecting the tax status of the 2015 Bonds;
- (G) modification of the rights of the Beneficial Owners of the 2015 Bonds, if material;
- (H) call of any of the 2015 Bonds, if material, and tender offers;
- (I) defeasance of any of the 2015 Bonds;
- (J) release, substitution or sale of any property securing repayment of the 2015 Bonds, if material;
- (K) rating changes;
- (L) bankruptcy, insolvency, receivership or similar event of the County;
- (M) the consummation of a merger, consolidation, or acquisition involving the County or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to such actions, other than pursuant to its terms, if material;
- (N) appointment of a successor or additional trustee or the change of name of a trustee, if material; and

(4) in a timely manner, notice of a failure of the County to provide required annual financial information described in (1) or (2) above on or before the date specified.

The County agrees that its undertaking under this paragraph is intended to be for the benefit of the Owners and the beneficial owners of the 2015 Bonds and is enforceable by the Trustee or by any of them, including an action for specific performance of the County's obligations under this paragraph, but a failure to comply will not be an Event of Default under Section 12.1 of this Contract and will not result in acceleration of the principal component of Installment Payments. An action must be instituted, had and maintained in the manner provided in this paragraph for the benefit of all of the Owners and beneficial owners of the 2015 Bonds.

The County may modify from time to time, consistent with the Rule, the information provided or the format of the presentation of such information, to the extent necessary or appropriate in the judgment of the County, but:

(1) any such modification may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law or change in the identity, nature or status of the County;

(2) the information to be provided, as modified, would have complied with the requirements of the Rule as of the date of the Official Statement, after taking into account any amendments or interpretations of the Rule as well as any changes in circumstances;

(3) any such modification does not materially impair the interest of the Owners or the beneficial owners, as determined by nationally recognized bond counsel or by the approving vote of the Owners of a majority in principal amount of the 2015 Bonds pursuant to Section 9.5 of the Indenture as may be amended from time to time.

Any annual financial information containing modified operating data or financial information will explain, in narrative form, the reasons for the modification and the impact of the change in the type of operating data or financial information being provided.

All documents provided to the MSRB as described above are to be provided in an electronic format as prescribed by the MSRB and accompanied by identifying information as prescribed by the MSRB. The County may discharge its undertaking described above by transmitting those documents or notices in a manner subsequently required by the U.S. Securities and Exchange Commission in lieu of the manner described above.

The provisions of this paragraph terminate on payment, or provision having been made for payment in a manner consistent with the Rule, in full of the principal of and interest with respect to the 2015 Bonds.

**Section 8.2 Warranties and Representations of the Corporation.** The Corporation warrants and represents to the County (all such warranties and representations continuing) that:

(a) The Corporation is a nonprofit corporation duly organized, existing and in good standing under and by virtue of the laws of the State, has the power to enter into this Contract and the Indenture, and has duly authorized the execution and delivery of this Contract and the Indenture;



(b) The Corporation has duly authorized this Contract and the Indenture and has caused each to be executed on its behalf in accordance with the laws of the State;

(c) Neither the execution and delivery of this Contract or the Indenture, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of the charter or bylaws of the Corporation or any agreement or instrument to which the Corporation is now a party or by which the Corporation is bound, or constitutes a default under any of the foregoing; and

(d) To the best of the Corporation's knowledge after due and reasonable investigation, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board, or body pending or threatened against or affecting the Corporation challenging the validity or enforceability of this Contract, the Indenture or any other documents relating hereto and the performance of the Corporation's obligations hereunder and thereunder.

[END OF ARTICLE VIII]

**ARTICLE IX**  
**TAX COVENANTS AND REPRESENTATIONS**

The County covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest portion of the Installment Payments created by this Contract under Section 103 of the Code.

The County will not directly or indirectly use or permit the use of any proceeds of any fund created under the Indenture, or take or omit to take any action that would cause the obligation created by this Contract to be an “arbitrage bond” within the meaning of Section 148(a) of the Code. To that end, the County and the Corporation have executed the Arbitrage and Tax Regulatory Agreement and will comply with all requirements of Section 148 of the Code to the extent applicable. The County further represents and covenants that the Installment Payments created by this Contract are not and will not constitute a “private activity bond” as defined in Section 141 of the Code.

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 by this Contract from time to time. This covenant shall survive the payment in full of all Installment Payments under this Contract.

Notwithstanding any provision of this Article, if the County shall provide to the Trustee an opinion of nationally recognized bond counsel to the effect that any action required under this Section or the Arbitrage and Tax Regulatory Agreement is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of the interest on the obligations created by this Contract pursuant to Section 103 of the Code, the County, the Corporation and the Trustee may rely conclusively on such opinion in complying with the provisions hereof.

[END OF ARTICLE IX]

**ARTICLE X**  
**INDEMNIFICATION**

To the extent permitted by applicable law and Article XIV, the County hereby agrees to indemnify, protect and save the Corporation, the LGC, the Trustee and any member, director, officer, agent or employee of the foregoing harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including attorneys' fees, arising out of, connected with, or resulting, directly or indirectly, from the Project, or from the Indenture, the Deed of Trust and this Contract or from the County's performance under each of said documents, including, without limitation, the possession, condition or use of the Project. The indemnification arising under this Article shall continue in full force and effect notwithstanding the payment in full of all obligations under this Contract.

[END OF ARTICLE X]

**ARTICLE XI**  
**DISCLAIMER OF WARRANTIES**

THE CORPORATION AND THE TRUSTEE MAKE NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROJECT OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROJECT.

[END OF ARTICLE XI]

## **ARTICLE XII DEFAULT AND REMEDIES**

**Section 12.1 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 make any Installment Payment on the date such Installment Payment is due hereunder;

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

(c) 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 (a) or (b) 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 Trustee unless the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure cannot be corrected within the stated period, Trustee will not unreasonably withhold consent for an extension not longer than 180 days;

(d) 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; or

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

**Section 12.2 Remedies on Default.** On the occurrence of any Event of Default, the Trustee may, and if required by a majority in aggregate principal amount of the Owners of the Bonds, the Trustee shall, to the extent permitted by applicable law and Article XIV, exercise any one or more of the following remedies as the Trustee shall elect or as shall be directed by a majority in aggregate principal amount of the Owners of the Bonds:

(a) Declare the unpaid portion of the principal and interest components of Installment Payments immediately due and payable without notice or demand to the County;

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

(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 under this Contract and 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 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, shall pay any remaining proceeds to the County.

Notwithstanding any other provisions herein, it is the intent of the parties hereto to comply with General Statutes of North Carolina Section 160A-20. No deficiency judgment may be rendered against the County in violation of Section 160A-20 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. To the extent of any conflict between this paragraph and any other provision of this Article XII, this paragraph shall take priority. This Section 12.2 in no way limits the provisions of Article XIV.

**Section 12.3 Further Remedies.** Notwithstanding the occurrence of an Event of Default hereunder and the exercise of any or all of the remedies listed in Section 12.2, this Contract shall remain in full force and effect and the County, to the extent permitted by applicable law and subject to Article XIV, shall be and remain liable for the full performance of all its obligations hereunder. All remedies of the Trustee 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 XII]

## **ARTICLE XIII ASSIGNMENT**

**Section 13.1    *Assignment by the County.*** The County may 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 Permitted Encumbrances under Section 6.2) without the prior written consent of the Trustee. Notwithstanding the foregoing, the County may lease all or a portion of the Mortgaged Property subject to the following conditions:

- (a) the obligation of the County to make Installment Payments and Additional Payments under this Contract will remain obligations of the County;
- (b) the County will furnish or cause to be furnished to the Trustee a true and complete copy of such lease at least 30 days before the execution and delivery of any such lease;
- (c) no lease will cause the interest component of Installment Payments relating to any Bonds intended to be excludable from gross income of the recipient thereof for federal income tax purposes to become includable in gross income for federal income tax purposes; and
- (d) the Trustee may request to receive an opinion of Counsel to the County to the effect that such lease is subordinate in all respects to the lien of the Deed of Trust and that such lease is subject to immediate termination at the direction of the Trustee following an Event of Default by the County under this Contract.

**Section 13.2    *Assignment by the Corporation.*** The Corporation has assigned all of its interest in the Mortgaged Property and this Contract (other than its rights under Article X, certain notice rights and those Additional Payments payable to the Corporation under this Contract), including without limitation, the Corporation's rights to receive the Installment Payments, to the Trustee.

[END OF ARTICLE XIII]

**ARTICLE XIV**  
**LIMITED OBLIGATION OF THE COUNTY**

Notwithstanding any provision of this Contract, the Indenture or the Deed of Trust which may be to the contrary, no provision of this Contract, the Indenture or the Deed of Trust shall be construed or interpreted as creating a pledge of the faith and credit of the County within the meaning of the constitution of the State. No provision of this Contract, the Indenture or the Deed of Trust 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, the Indenture and the Deed of Trust shall not directly or indirectly or contingently obligate the County to make any payments beyond those appropriated in the sole discretion of the County for any Fiscal Year in which this Contract is in effect; provided, however, any failure or refusal by the County to appropriate funds which results in the failure by the County to make any payment coming due hereunder will in no way obviate 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 under this Contract, and the taxing power of the County is not and may not be pledged directly or indirectly or contingently to secure any moneys due under this Contract. No provision of this Contract or the Indenture shall be construed to pledge or to create a lien on any class or source of the County's money, nor shall any provision of this Contract, the Indenture or the Deed of Trust restrict the future issuance of any of the County's bonds or obligations payable from any class or source of the County's moneys. To the extent of any conflict between this Article XIV and any other provision of this Contract, the Indenture or the Deed of Trust, this Article shall take priority.

[END OF ARTICLE XIV]



**ARTICLE XV**  
**JOINDER BY THE TRUSTEE**

The Trustee hereby executes this Contract to signify its agreement to be bound by the terms of this Contract applicable to it. The County and the Corporation acknowledge and agree that the Trustee shall be entitled to enforce and to benefit from the terms and conditions of this Contract.

[END OF ARTICLE XV]

## **ARTICLE XVI MISCELLANEOUS**

**Section 16.1 Waiver.** No covenant or condition of this Contract can be waived except by the written consent of the Corporation and the Trustee. Any failure of the Corporation or the Trustee to require strict performance by the County or any waiver by the Corporation or the Trustee of any terms, covenants or contracts herein shall not be construed as a waiver of any other breach of the same or any other term, covenant or contract herein.

**Section 16.2 County's Acceptance of Rights and Responsibilities Under the Indenture.** The County accepts all responsibilities assigned to it under and pursuant to the Indenture.

**Section 16.3 Severability.** If any portion of this Contract other than Article XIV 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 16.4 Governing Law.** This Contract is to be construed, interpreted and enforced in accordance with the laws of the State.

**Section 16.5 Notices.** Any and all notices, requests, demands, and other communications given under or in connection with this Contract are effective only if in writing and either personally delivered or mailed by registered or certified mail, postage prepaid, return receipt requested, 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 Corporation:   Henderson County Governmental Financing Corporation  
                                  1 Historic Courthouse Square  
                                  Hendersonville, North Carolina 28792  
                                  Attention: President

If to the Trustee:        U.S. Bank National Association  
                                  214 N. Tryon Street, 27th Floor  
                                  Charlotte, NC 28202  
                                  Attention: Corporate Trust

The Corporation, the County and the Trustee may, by written notice to the others, designate any further or different addresses to which subsequent notices, certificates or other communications are to be sent.

**Section 16.6 Section Headings.** All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Contract.

**Section 16.7 Entire Contract.** This Contract, together with the schedules and Exhibits hereto, constitutes the entire contract between the parties and this Contract may not be modified, amended, altered or changed except by written contract signed by the parties.

**Section 16.8 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 Trustee).

**Section 16.9 Time.** Time is of the essence of this Contract and each and all of its provisions.

**Section 16.10 Payments.** If the date for making 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 16.11 Covenants of County, Corporation or LGC 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, director, agent, officer or employee of the County, the Corporation or the LGC in his individual capacity, and neither the members of the Board, the Board of Directors of the Corporation, the members of the LGC nor any other member, director, agent, officer or employee of the Board, the County, the Corporation or the LGC shall be subject to any personal liability or accountability by reason of the execution and delivery of the Bonds. No member of the Board, the Board of Directors of the Corporation, the LGC nor any agent, officer or employee of the County, the Corporation or the LGC shall incur any personal liability under this Contract.

**Section 16.12 Amounts Remaining in Funds.** It is agreed by the parties hereto that any amounts remaining in the Bond Fund, the Acquisition and Construction Fund, the Prepayment Fund or any other fund or account created under the Indenture other than the Rebate Fund, on termination of this Contract and the Indenture, and after payment in full of the Bonds (or provision for payment thereof having been duly made in accordance with the provisions of this Contract or the Indenture) and fees and expenses of the Trustee in accordance with this Contract and the Indenture, shall be paid to the County by the Trustee as an overpayment of Installment Payments in accordance with the terms of the Indenture.

**Section 16.13 Amendments to this Contract.** This Contract may not be amended by the parties hereto except in accordance with Article IX of the Indenture. In addition, no amendment to this Contract which would increase the amount or maturity of Bonds Outstanding or the interest rate with respect thereto is effective until it is approved by the LGC.

**Section 16.14 Execution in Counterparts.** This Contract may be executed in any number of counterparts, each of which is an original and all of which constitute but one and the same instrument.

[END OF ARTICLE XVI]

[SIGNATURES ON FOLLOWING PAGES]

***IN WITNESS WHEREOF***, the parties hereto have caused this Contract to be executed as of the day and year first above written.

**HENDERSON COUNTY GOVERNMENTAL  
FINANCING CORPORATION**

[SEAL]

By: \_\_\_\_\_  
Mark Williams  
President

Attest:

\_\_\_\_\_  
Steven D. Wyatt  
Secretary

[SIGNATURES CONTINUED ON FOLLOWING PAGES]

[COUNTERPART SIGNATURE PAGE TO THE INSTALLMENT FINANCING CONTRACT  
DATED AS OF AUGUST 15, 2015, BETWEEN  
HENDERSON COUNTY GOVERNMENTAL FINANCING CORPORATION  
AND THE COUNTY OF HENDERSON, NORTH CAROLINA]

**COUNTY OF HENDERSON, NORTH CAROLINA**

[SEAL]

By: \_\_\_\_\_  
Steven D. Wyatt  
County Manager

Attest:

\_\_\_\_\_  
Teresa Wilson  
Clerk to the Board of Commissioners

[SIGNATURES CONTINUED ON FOLLOWING PAGES]

[COUNTERPART SIGNATURE PAGE TO THE INSTALLMENT FINANCING CONTRACT  
DATED AS OF AUGUST 15, 2015, BETWEEN  
HENDERSON COUNTY GOVERNMENTAL FINANCING CORPORATION  
AND THE COUNTY OF HENDERSON, NORTH CAROLINA]

Consented to and Accepted:

**U.S. BANK NATIONAL ASSOCIATION,**  
as Trustee

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Vice President

[SIGNATURES CONTINUED ON FOLLOWING PAGES]

[COUNTERPART SIGNATURE PAGE TO THE INSTALLMENT FINANCING CONTRACT  
DATED AS OF AUGUST 15, 2015, BETWEEN  
HENDERSON COUNTY GOVERNMENTAL FINANCING CORPORATION  
AND THE COUNTY OF HENDERSON, NORTH CAROLINA]

THIS CONTRACT HAS BEEN  
APPROVED UNDER THE PROVISIONS  
OF THE NORTH CAROLINA GENERAL  
STATUTES, § 159-152.

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Secretary of the Local Government Commission

# INSTALLMENT PAYMENT SCHEDULE – 2015 BONDS

<b>DATE</b>	<b>PRINCIPAL COMPONENT</b>	<b>INTEREST COMPONENT</b>	<b>TOTAL PAYMENT</b>
11/25/2015			
5/26/2016			
11/25/2016			
5/26/2017			
11/25/2017			
5/26/2018			
11/25/2018			
5/26/2019			
11/25/2019			
5/26/2020			
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5/26/2031			
11/25/2031			
5/26/2032			
11/25/2032			
5/26/2033			
11/25/2033			
5/26/2034			
11/25/2034			
5/26/2035			
<b>TOTAL</b>			



**EXHIBIT A**  
**FORM OF REQUISITION**  
**ACQUISITION AND CONSTRUCTION FUND**

U.S. Bank National Association  
214 N. Tryon Street, 27th Floor  
Charlotte, NC 28202  
Attention: Corporate Trust

Re: Direction to Make Disbursements from the Acquisition and Construction Fund

Ladies and Gentlemen:

Pursuant to Section 3.11 of the Indenture of Trust dated as of August 15, 2015 (the "*Indenture*") between Henderson County Governmental Financing Corporation (the "*Corporation*") and U.S. Bank National Association, as trustee (the "*Trustee*"), and Section 4.2 of the Installment Financing Contract dated as of August 15, 2015 (the "*Contract*") between the Corporation and the County of Henderson, North Carolina (the "*County*"), you are hereby directed to disburse from the Acquisition and Construction Fund referred to in the Indenture (the "*Acquisition and Construction Fund*") the amount indicated below.

The undersigned hereby certifies:

1. This is requisition number \_\_\_\_\_ from the Acquisition and Construction Fund.
2. The name and address of the person, firm or corporation to whom the disbursement is due is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. The amount to be disbursed is \$\_\_\_\_\_.
4. The purpose of the disbursement is to \_\_\_\_\_.
5. The disbursement herein requested is for an obligation properly incurred, is a proper charge against the Acquisition and Construction Fund and has not been the basis of any previous disbursement.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**COUNTY OF HENDERSON, NORTH CAROLINA**

By: \_\_\_\_\_  
County Representative