

REQUEST FOR BOARD ACTION

HENDERSON COUNTY  
BOARD OF COMMISSIONERS

**PUBLIC HEARING  
TO CONSIDER  
FINAL APPROVAL OF THE FINANCING CONTRACT FOR THE  
MUD CREEK SEWER INTERCEPTOR PROJECT  
4 September 2018 at 5:30 o'clock p.m.**

ATTACHMENT(S): Proposed resolution approving financing (contained in the form of proposed Board minute extract)

SUMMARY:

A public hearing has been scheduled on 4 September 2018 in the above matter.

At the conclusion of the public hearing, the Board may choose to take action, delay action to a subsequent meeting, or take no action.

The Board gave notice that this hearing would be conducted concerning the approval of the execution and delivery of the Financing Contract and the County's the acquisition, construction and equipping of the Project. Under the proposal, the County would pay the capital costs of acquisition and construction a new sanitary sewer interceptor line running from Fletcher Academy and Park Ridge Hospital to existing Cane Creek Water and Sewer District sanitary sewer lines near the confluence of Mud Creek with the French Broad River (the "Project"), pursuant to an installment financing contract (the "Contract"), in a principal amount not to exceed \$3,000,000 under which the County will make certain installment payments in order to make the Project available to the County.

EXTRACTS FROM MINUTES OF BOARD OF COMMISSIONERS

A regular meeting of the Board of Commissioners (the “*Board*”) of the County of Henderson, North Carolina (the “*County*”) was held on Tuesday, September 4, 2018, at 5:30 p.m. in the Commissioners’ Meeting Room, Henderson County Historic Courthouse, 1 Historic Courthouse Square, Hendersonville, North Carolina 28792, J. Michael Edney, Chairman of the Board presiding and the following Commissioners present:

Commissioners Absent:

Also Present:

\* \* \* \* \*  
\* \* \*

Commissioner \_\_\_\_\_ introduced the following resolution, a summary of which had been provided to each Commissioner, a copy of which was available with the Clerk to the Board and which was read by title:

**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF HENDERSON,  
NORTH CAROLINA, APPROVING AN INSTALLMENT FINANCING CONTRACT AND  
PROVIDING FOR CERTAIN OTHER RELATED MATTERS**

*WHEREAS*, the County of Henderson, North Carolina (the “*County*”) is a validly existing political subdivision of the State of North Carolina, existing as such under and by virtue of the Constitution, statutes and laws of the State of North Carolina (the “*State*”);

*WHEREAS*, the County has the power, pursuant to the General Statutes of North Carolina to (1) purchase real and personal property, (2) enter into installment financing contracts in order to finance and refinance the purchase of real and personal property used, or to be used, for public purposes and (3) grant a security interest in some or all of the property purchased to secure repayment of the purchase price;

*WHEREAS*, the Board of Commissioners of the County (the “*Board*”) hereby determines that it is in the best interest of the County to finance (a) gravity sewer service to Fletcher Academy and Park Ridge Hospital, and certain nearby areas (the “*Project*”) and (b) certain costs related to the execution and delivery of the Contract;

*WHEREAS*, the Board hereby determines that it is in the best interest of the County to enter into an Installment Financing Contract to be dated as of October 1, 2018 (the “*Contract*”) between the County and ZB, N.A. (the “*Bank*”) in order to (1) finance the costs of the Project and (2) pay certain costs incurred in connection with the execution and delivery of the Contract;

*WHEREAS*, the County hereby determines that construction of the Project is essential to the County’s proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the Project will provide an essential use and will permit the County to carry out public functions that it is authorized by law to perform; and that entering into the Contract is necessary and expedient for the County by virtue of the findings presented herein;

*WHEREAS*, the County hereby determines that the Contract would allow the County to purchase the Project and take title thereto at a favorable interest rate currently available in the financial marketplace and on terms advantageous to the County;

*WHEREAS*, the County hereby determines that the estimated cost of construction of the Project is an amount not to exceed \$3,000,000 and that such cost exceeds the amount that can be prudently raised from currently available appropriations, unappropriated fund balances and non-voted bonds that could be issued by the County in the current fiscal year pursuant to Article V, Section 4 of the Constitution of the State;

*WHEREAS*, although the cost of construction of the Project pursuant to the Contract is expected to exceed the cost thereof pursuant to a bond financing for the same undertaking, the County hereby determines that the cost of construction of the Project pursuant to the Contract and the obligations of the County thereunder are preferable to a general obligation bond financing or revenue bond financing for several reasons, including but not limited to the following: (1) the cost of a special election necessary to approve a general obligation bond financing, as required by the laws of the State, would result in the expenditure of significant funds; (2) the time required for a general obligation bond election would cause an unnecessary delay which would thereby decrease the financial benefits of constructing the Project; and (3) insufficient revenues are produced by the Project so as to permit a revenue bond financing;

*WHEREAS*, the County has determined and hereby determines that the estimated cost of construction of the Project pursuant to the Contract reasonably compares with an estimate of similar costs under a bond financing for the same undertaking as a result of the findings delineated in the above preambles;

*WHEREAS*, the County does not anticipate a future property tax increase to pay installment payments falling due under the Contract;

*WHEREAS*, the sums to fall due under the Contract will be adequate but not excessive for its proposed purpose;

*WHEREAS*, Parker Poe Adams & Bernstein LLP, as bond counsel, will render an opinion to the effect that entering into the Contract and the transactions contemplated thereby are authorized by law;

*WHEREAS*, no deficiency judgment may be rendered against the County in any action for its breach of the 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 the Contract;

*WHEREAS*, the County is not in default under any of its debt service obligations;

*WHEREAS*, the County's budget process and Annual Budget Ordinance are in compliance with the Local Government Budget and Fiscal Control Act, and external auditors have determined that the County has conformed with generally accepted accounting principles as applied to governmental units in preparing its Annual Budget Ordinance;

*WHEREAS*, past audit reports of the County indicate that its debt management and contract obligation payment policies have been carried out in strict compliance with the law, and the County has not been censured by the North Carolina Local Government Commission (the "LGC"), external auditors or any other regulatory agencies in connection with such debt management and contract obligation payment policies;

*WHEREAS*, a public hearing on the Contract and the Project after publication of a notice with respect to such public hearing must be held and the Board conducted such public hearing at this meeting;

*WHEREAS*, the County has filed an application with the LGC for approval of the LGC with respect to the County entering into the Contract in an aggregate principal amount of not to exceed \$3,000,000, and the County hereby determines that all findings, conclusions and determinations of the County in this Resolution are subject to such approval by the LGC;

*WHEREAS*, there has been described to the Board the form of the Contract, a copy of which has been made available to the Board, which the Board proposes to approve, enter into and deliver, as applicable, to effectuate the proposed installment financing; and

*WHEREAS*, it appears that the Contract is in appropriate form and is an appropriate instrument for the purposes intended;

*NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF HENDERSON, NORTH CAROLINA, AS FOLLOWS:*

Section 1.     ***Ratification of Prior Actions.*** All actions of the County, the County Manager, the Finance Director and the Clerk to the Board and their respective designees in effectuating the proposed financing of the Project are hereby approved, ratified and authorized pursuant to and in accordance with the transaction contemplated by the Contract.

Section 2.     ***Financing Team.*** The financing team of Parker Poe Adams & Bernstein LLP, as bond counsel, George K. Baum & Company, as loan arranger, and ZB, N.A., as Bank, is hereby approved.

Section 3.     ***Approval, Authorization and Execution of Contract.*** The County hereby approves the financing of the Project in accordance with the terms of the Contract, which will be a valid, legal and binding obligation of the County in accordance with its terms. The County hereby approves the amount advanced by the Bank to the County pursuant to the Contract in an aggregate principal amount not to exceed \$3,000,000, such amount to be repaid by the County to the Bank as provided in the Contract. The form, terms and content of the Contract are in all respects authorized, approved and confirmed, and the Chairman, the County Manager, the Finance Director and the Clerk to the Board or their respective designees are authorized, empowered and directed, individually and collectively, to execute and deliver the Contract for and on behalf of the County, including necessary counterparts, in substantially the form presented to the Board, but with such changes, modifications, additions or deletions therein as they may deem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all such changes, modifications, additions or deletions. From and after the execution and delivery of the Contract, the Chairman, the County Manager, the Finance Director and the Clerk to the Board or their respective designees are hereby authorized, empowered and directed, individually and collectively, to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Contract as executed.

Section 4.     ***Further Actions.*** The County Manager, the Chairman of the Board and the Finance Director are each hereby designated as the County's representatives to act on behalf of the County in connection with the transaction contemplated by the Contract. The County Manager, the Chairman of the Board and the Finance Director are authorized and directed, individually and collectively, to proceed with the financing of the Project in accordance with the terms of the Contract and to seek opinions on matters of law from the County Attorney, which the County Attorney is authorized to

furnish on behalf of the County, and opinions of law from such other attorneys for all documents contemplated hereby as required by law. The Chairman, the County Manager and the Finance Director are hereby authorized to designate one or more employees of the County to take all actions which the Chairman, the County Manager or the Finance Director is authorized to perform under this Resolution, and the Chairman, the County Manager, the Finance Director or their designees are in all respects authorized on behalf of the County, individually and collectively, to supply all information pertaining to the transaction contemplated by the Contract. The Chairman of the Board, the County Manager, the Finance Director and the Clerk to the Board are authorized, individually and collectively, to execute and deliver for and on behalf of the County any and all additional certificates, documents, opinions or other papers and perform all other acts as may be required by the Contract or as they may deem necessary or appropriate to implement and carry out the intent and purposes of this Resolution.

Section 5. **Official Declaration of Intent.** The County presently intends, and reasonably expects, to reimburse itself for the purchase of expenditures associated with the Project (the “*Original Expenditures*”) incurred and paid by the County on or after the date occurring 60 days prior to the date of adoption of this resolution from a portion of the proceeds of the Contract. The County reasonably expects to execute and deliver the Contract to finance all or a portion of the costs of the Project and the maximum principal amount of the Contract to be executed and delivered by the County to pay for all or a portion of the costs of the Project is \$3,000,000.

Section 6. **Repealer.** All motions, orders, resolutions, ordinances and parts thereof in conflict herewith are hereby repealed.

Section 7. **Severability.** If any section, phrase or provision of this Resolution is for any reason declared to be invalid, such declaration will not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

Section 8. **Effective Date.** This Resolution is effective on the date of its adoption.

On motion of Commissioner \_\_\_\_\_, the foregoing resolution entitled “**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF HENDERSON, NORTH CAROLINA, APPROVING AN INSTALLMENT FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS**” was duly adopted by the following vote:

AYES:

NAYS:

STATE OF NORTH CAROLINA            )  
  )  
COUNTY OF HENDERSON            )            ss:

I, TERESA WILSON, Clerk to the Board of Commissioners of the County of Henderson, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of a resolution entitled “**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF HENDERSON, NORTH CAROLINA, APPROVING AN INSTALLMENT FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS**” adopted by the Board of Commissioners of the County of Henderson, North Carolina at a meeting held on the 4th day of September, 2018.

***WITNESS*** my hand and the corporate seal of the County of Henderson, North Carolina, this the \_\_\_ day of September, 2018.

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

**INSTALLMENT FINANCING CONTRACT**

BETWEEN

**ZB, N.A.**

AND

**COUNTY OF HENDERSON, NORTH CAROLINA**

DATED AS OF  
OCTOBER 9, 2018

**INSTALLMENT FINANCING CONTRACT**

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and is not part of the Installment Financing Contract.)

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## INSTALLMENT FINANCING CONTRACT

This **INSTALLMENT FINANCING CONTRACT**, dated as of October 9, 2018 (this “**Contract**”), is between **ZB, N.A.** (the “**Bank**”), and its successors and assigns, and the **COUNTY OF HENDERSON, NORTH CAROLINA** (the “**County**”).

### **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 money advanced or made available for such construction;

**WHEREAS**, the Board of Commissioners of the County (the “**Board of Commissioners**”) has previously determined that it is in the best interests of the County (a) to finance gravity sewer service to Fletcher Academy and Park Ridge Hospital, and certain nearby areas (the “**Project**”), and (b) to place a security interest in the Project as described in Exhibit A;

**WHEREAS**, in order to obtain the funds to pay the costs of the Project, the Board of Commissioners 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 \$2,615,000 (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 of Commissioners by a resolution finally passed and adopted by the Board of Commissioners on September 4, 2018;

**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 of North Carolina (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 grants to the Bank security interests in the Project to be perfected by filing a financing

statement under Chapter 25 of the General Statutes of North Carolina, evidencing such perfected security interest; 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 \$2,615,000 advanced by the Bank to enable the County to acquire and install the Project under this Contract, as such amount advanced may be adjusted by amendment to this Contract.

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

**“Bank”** means ZB, N.A., and its successors and assigns.

**“Board of Commissioners”** 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 designated corporate office, is not required or authorized by law to remain closed.

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

**“Commission”** means the Local Government Commission of North Carolina.

**“Completion Date”** means the date on which completion of the acquisition and installation of the Project has occurred.

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

(1) obligations incurred or assumed in connection with the acquisition and installation of the Project;

(2) the cost of the acquisition and installation 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 Commission, 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 or perfection of the security interest in the Project; and

(3) all other costs which are considered to be a part of the costs of the acquisition and installation 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 acquisition and installation of the Project, and including the interest component of the Installment Payments prior to the Completion Date.

***“County”*** means the County of Henderson, North Carolina, a political subdivision validly existing under the Constitution, statutes and laws of the State, 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, the County Attorney, the Finance Officer or the Clerk to the Board of Commissioners, 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.

***“Default Rate”*** means the Interest Rate plus 4.0% per annum.

***“Event of Default”*** means any of the events of default as defined in Section 12.1.

***“Financing Statement”*** means a financing statement filed by the County pursuant to Article 9 of Chapter 25 of the General Statutes of North Carolina perfecting a first lien security interest in the Equipment created pursuant to this Contract for the benefit of the Bank.

***“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 3.40% per annum, calculated on a 30/360-day basis.

**“Net Proceeds”** means, 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, means 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 setting forth the County’s Installment Payments which is attached hereto and incorporated herein by reference.

**“Project”** means construction of gravity sewer service to Fletcher Academy and Park Ridge Hospital, and certain nearby areas.

**“State”** means the State of North Carolina.

[END OF ARTICLE I]

**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 County agrees to use the proceeds of the Advance to pay the Cost of Acquisition and Installation of the Project.

[END OF ARTICLE II]

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

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

(a) Subject to the provisions of Article XIV hereof entitled "Limited Obligation of the County," the County shall repay the Advance in annual Installment Payments consisting of an interest component and a principal component as provided in this Contract and the Payment Schedule. The County hereby approves the Advance by the Bank to the County pursuant to this Contract to be repaid by the County in Installment Payments at an interest rate per annum equal to the Interest Rate, subject to adjustment as provided herein.

(b) Each Installment Payment 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. 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 (1) at the address set forth in Section 15.1 in immediately available funds, (2) as wire transfers to the Bank on the payable date as directed by the Bank or (3) as may be otherwise directed in writing by the Bank.

Section 3.3 ***Late Charges.*** An Installment Payment that is not paid within 10 days of the due date thereof is subject to a late payment charge of 4% of the amount of the past due Installment Payment. Interest with respect to the principal component of such unpaid Installment Payment shall continue to accrue until paid.

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 acquisition and installation 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.*** The Advance may be optionally prepaid in whole or in part at any time on thirty Business Days prior written notice from the County to the Bank at a prepayment price equal to 100% of the par amount of the Advance to be prepaid plus

accrued interest to the prepayment date. In the event of a partial prepayment of the principal component of the Installment Payments then outstanding, such prepayment shall be deemed a prepayment on the principal component of the Installment Payments then outstanding in inverse order of maturity unless the County and the Bank shall agree otherwise.

[END OF ARTICLE III]



**ARTICLE IV**  
**ACQUISITION FUND**

Section 4.1 **Acquisition Fund.** There is hereby created a separate fund to be held by Regions Bank designated as the “**County of Henderson Installment Financing 2018 Acquisition Fund**” (the “**Acquisition Fund**”). The Bank will deposit the proceeds of the Advance in the Acquisition Fund in accordance with the written direction of the County. The funds in the Acquisition Fund will be disbursed in accordance with the provisions of this Article IV.

Section 4.2 **Investment.** The County shall invest and reinvest the money, and any interest thereon, held in the Acquisition Fund as permitted under Section 159-30 of the General Statutes of North Carolina, as amended.

Section 4.3 **Disbursements.** The money held in the Acquisition Fund shall be disbursed by the County for payment of the Cost of Acquisition and Installation. If amounts held to the credit of the Acquisition Fund are insufficient to pay the Costs of Acquisition and Installation, the County shall provide any balance of funds necessary to complete the acquisition and installation of the Project. The County shall consult with its special counsel regarding the disposition of any money remaining in the Acquisition Fund after the Completion Date and, if so permitted by the Code, such amount shall be used to pay future Installment Payments coming due under this Contract in the order of their due dates.

Section 4.4 **Termination.** The Acquisition Fund shall be terminated at the earliest of (1) the final distribution of amounts held in the Acquisition 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 its duties under this Contract are limited to the receipt of such money, 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**  
**COVENANTS OF THE COUNTY**

Section 5.1 **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, and shall replace any part of the Project as may from time to time become worn out, unfit for use, lost, stolen, destroyed or damaged as the County deems necessary to fulfill the governmental function of the Project. Any and all additions to or replacements of the Project and all parts thereof shall constitute accessions to the Project and shall be subject to all the terms and conditions of this Contract and included in the term “**Project**,” as applicable, as used in this Contract.

Section 5.2 **Inspection.** The County shall authorize the Bank and its representatives and agents to enter onto the County’s property and inspect the Project from time to time and the County shall cause County staff 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 **Taxes.** The County agrees to pay when due any and all taxes relating to the Project.

Section 5.4 **Insurance.** The County shall obtain and maintain, at its expense, at all times until termination of this Contract a primary policy of insurance covering the Project and providing the insurance protection described in this Section. The County shall maintain at its own expense, to the extent applicable to this type of Project, fire, casualty, public liability, property damage and theft insurance, and such other insurance in such amounts and with such deductibles, if permitted, as reasonably required by the Bank from time to time. The Project shall be insured in an amount at least equal to its replacement value. All such insurance shall be maintained with an insurance company or companies as shall be reasonably satisfactory to the Bank and shall provide that losses shall be payable to the Bank and the Bank shall be named as an additional insured with respect to all such insurance. The County shall deliver to the Bank evidence satisfactory to the Bank of such insurance coverage. The County agrees to cooperate fully in all accident insurance investigations, claims and litigation proceedings. The County shall cooperate fully with the Bank in filing any proof of loss with respect to any insurance policy described above. In no event shall 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 Bank.

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 5.5 ***Risk of Loss.*** The County shall bear all risk of loss or damage to and condemnation of the Project.

Section 5.6 ***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 5.7 ***Financial Statements.*** The County shall furnish to the Bank (1) annually, within 270 days of the end of its Fiscal Year, current audited financial statements and (2) such other documents relating to the financial condition of the County as the Bank shall reasonably request. The County shall permit the Bank or its agents and representatives to inspect the County 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 V]

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

Section 6.1 ***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. 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, 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 the Project or any interest therein, except for: (1) the lien and security interest of the Bank in the Project; and (2) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property of the general character of the Project and as do not materially impair title thereto or the ability of the County to operate the Project. 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 6.3 ***Security Agreement.*** The County hereby grants to the Bank a security interest in the Project and in any and all additions, accessions, repairs, replacements, substitutions, and modifications to the Project, and all proceeds of all the foregoing, including any insurance proceeds paid because of loss or damage to the Project to the extent necessary to secure the County's payment obligations to the Bank under this Contract. The County shall cause to be filed, at the County's expense, Financing Statements and other related documents that are necessary to perfect a first lien security interest by filing and to maintain that first lien security interest in perfected form in the Project.

The Project is and shall throughout the term of this Contract be and remain personal property, regardless of whether the Project is now or may become in any manner affixed or attached to real estate or any building or fixtures on real estate.

[END OF ARTICLE VI]

**ARTICLE VII**  
**DAMAGE, DESTRUCTION, AND CONDEMNATION;**  
**USE OF NET PROCEEDS**

Section 7.1 ***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 is taken under the power of eminent domain by any governmental authority; or (3) a material defect in the Project becomes apparent, the County shall continue 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 Project.*** Subject to the provisions of Section 7.3, the Net Proceeds of any insurance policies, performance bonds, condemnation awards or Net Proceeds made available by reason of any occurrence described in Section 7.1, shall be applied to the prompt repair, restoration, modification, improvement or replacement of the damaged or destroyed portion of the 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 and shall be included as part of the Project under this Contract.

Section 7.3 ***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 7.2, the County may elect to proceed under either of the following options:

(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 7.2 may 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 as permitted under Section 3.5. If the Net Proceeds exceed the amount necessary to prepay the then outstanding principal component of the Installment Payments, such excess shall be paid to or retained by the County.

Within 120 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 Project, or shall elect, with the consent of the Bank, to proceed under the provisions of paragraph (b) above. For purposes of this Section, “***commence***” shall include the retention of an engineer in anticipation of repair, restoration, modification, improvement or replacement of the Project.

Section 7.4 ***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 7.1. 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 title to the Project without the written consent of the other.

[END OF ARTICLE VII]

**ARTICLE VIII**  
**REPRESENTATIONS AND WARRANTIES OF THE COUNTY**

Section 8.1 *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 validly existing under the Constitution, statutes and laws of the State and has all powers necessary to enter into the transactions contemplated by this Contract 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, 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 and all other documents relating hereto and the performance of the County's obligations hereunder 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 nor the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions hereof 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 or any other documents relating hereto and the performance of the County's obligations hereunder, and compliance with the provisions hereof, under the circumstances contemplated hereby, 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) 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 Installation is not less than \$2,615,000 and, other than permits or other procedural requirements which are a prerequisite to the acquisition and installation of the Project, no approval or consent is required from any governmental authority with respect to the entering into or performance by the County of this Contract and all other documents related hereto and the transactions contemplated hereby or if such approval is required, such approval has been duly obtained;

(g) The funds in the Acquisition 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 Project other than the liens created by this Contract and the other liens permitted hereby;

(i) The resolution relating to the performance by the County of this Contract and the transactions contemplated hereby has been duly adopted, is in full force and effect and has not been in any respect modified, revoked or rescinded;

(j) The acquisition and use of the Project are 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 that it is 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 of Commissioners which explains the reason for such action. This covenant on the part of the County contained in this Section 8.1(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 8.1(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;

(o) The County agrees and acknowledges that the Bank and its representatives are not registered municipal advisors and do not provide advice to municipal entities or obligated persons with respect to municipal financial products or the issuance of municipal securities (including regarding the structure, timing, terms and similar matters concerning municipal financial products or municipal securities issuances) or engage in the solicitation of municipal entities or obligated persons for the provision by non-affiliated persons of municipal advisory services and/or investment advisory services. With respect to this Contract and any other information, materials or communications provided by the Bank: (a) the Bank and its representatives are not recommending an action to any municipal entity or obligated person; (b) the Bank and its representatives are not acting as an advisor to any municipal entity or obligated person and do not owe a fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to any municipal entity or obligated person with respect to this Contract, information, materials or communications; (c) the Bank and its representatives are acting for their own interests; and (d) the County has been informed that the County should discuss this Contract and any such other information, materials or communications with any and all internal and external advisors and experts that the County deems appropriate before acting on this Contract or any such other information, materials or communications; and

(p) The County acknowledges that the Bank is entering into the Contract as a privately negotiated loan and the County's obligations under the Contract shall not be (i) assigned a separate rating by any municipal securities rating agency, (ii) registered with The Depository Trust Company or any other securities depository, (iii) issued pursuant to any type of offering document or official statement or (iv) assigned a CUSIP number by Standard & Poor's CUSIP Service.

[END OF ARTICLE VIII]

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

Section 9.1 *Tax Covenants and Representations.*

(a) The County covenants that it will not take any action, or fail to take any action, if any such action or failure to take such action would adversely affect the exclusion from gross income of the interest portion of the obligations created by this Contract for federal income tax purposes. The County will not directly or indirectly use or permit the use of any proceeds of any fund created under this Contract or any funds of the County, or take or omit to take any action that would cause the obligations created by this Contract to be an *“arbitrage bond”* within the meaning of Section 148(a) of the Code. 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. To that end, the County has executed and delivered the Arbitrage and Tax Regulatory Certificate, dated October 9, 2018 and will comply with all of the requirements of Section 148 of the Code to the extent applicable. The County further covenants that this Contract is not a *“private activity bond”* as defined in Section 141 of the Code.

(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 6.1.

(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 reasonably acceptable to the Bank to the effect that any action required under this Article IX is no longer required, or to the effect that some further action is required, to maintain tax-exempt status, the County and the Bank may rely conclusively on such opinion in complying with the provisions of this Article IX.

[END OF ARTICLE IX]

**ARTICLE X**  
**INDEMNIFICATION**

Section 10.1 *Indemnification*. To the fullest extent permitted by applicable law, the County hereby agrees to indemnify, protect and save 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 X shall continue in full force and effect notwithstanding the payment in full of all of the obligations under this Contract or the termination of this Contract for any reason.

[END OF ARTICLE X]

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

Section 11.1 *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; (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 11.2 *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 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 pay any Installment Payment or Additional Payment when due;
- (b) The County fails to budget and appropriate money 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 breaches any warranty by the County herein 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 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; or
- (g) An attachment, levy or execution is levied on or against any portion of the Project.

Section 12.2 ***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 all the rights and remedies of a secured party or creditor under Chapter 25 and Chapter 20 of the General Statutes of North Carolina and the general laws of the State with respect to the enforcement of the security interests granted or reserved hereunder 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) Pursue any other remedy available at law or equity to the Bank.

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 PROJECT IS INSUFFICIENT TO PRODUCE ENOUGH MONEY TO PAY IN FULL ALL REMAINING OBLIGATIONS UNDER THIS CONTRACT.

If an Event of Default occurs, and for as long as it is continuing, the Interest Rate will equal to the Default Rate.

Section 12.3 ***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 XII]

**ARTICLE XIII**  
**ASSIGNMENT**

Section 13.1 *Assignment.* Except pursuant to this Contract, 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, the Project (except for any permitted encumbrances under Section 6.2) 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.

Except as set forth below, the Bank may, at any time and from time to time, assign all or any part of its interest in 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 Commission, although the Banks or any assignee shall give written notice to the 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 Commission. Notwithstanding the foregoing, no assignment or reassignment of the Bank's interest in 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 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 XIII]

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

Section 14.1 *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 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 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 XIV and any other provision of this Contract, this Article XIV shall take priority.

[END OF ARTICLE XIV]



**ARTICLE XV  
MISCELLANEOUS**

Section 15.1 *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: ZB, N.A.  
One South Main Street, 17<sup>th</sup> Floor  
Salt Lake City, UT 84133  
Attn: Kirsi Hansen

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

Section 15.3 *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 15.4 *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 15.5 *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 15.6 *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 15.7 ***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 15.8 ***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 of Commissioners nor any other officer of the Board of Commissioners or the County shall be subject to any personal liability or accountability by reason of the execution of this Contract. No member of the Board of Commissioners 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 15.9 ***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 15.10 ***Governing Law.*** 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 Henderson County, North Carolina or the U.S. District Court for the Western District of North Carolina. Any attempt to contravene this Section shall be an express violation of this Contract.

To the extent permitted by applicable law, each of the County and the Bank irrevocably and voluntarily waives any right it may have to a trial by jury with respect to any controversy or claim between the County and the Bank, whether arising in contract or tort or by statute, including but not limited to any controversy or claim that arises out of or relates to this Contract or any related document. This provision is a material inducement for the Bank's determination to make the Advance and for the parties to enter into the Contract. As of the date of the execution of this Contract, any provision in a contract requiring a party to the contract to waive its right to a jury trial is unenforceable pursuant to North Carolina General Statute §22B-10.

Section 15.11 ***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.

Section 15.12 ***E-Verify.*** The Bank understands that "E-Verify" is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. The Bank uses E-Verify to verify the work authorization of its employees in accordance with Section 64-26(a) of the General Statutes of North Carolina, as amended. The Bank will not use any subcontractors in connection with this Contract.

[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**

By: \_\_\_\_\_  
County Manager

[COUNTY SIGNATURE PAGE TO THE INSTALLMENT FINANCING CONTRACT DATED AS OF OCTOBER 9, 2018 BETWEEN ZB, N.A. AND THE COUNTY OF HENDERSON, NORTH CAROLINA]

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

[COUNTERPART SIGNATURE PAGE TO THE INSTALLMENT FINANCING CONTRACT, DATED AS OF  
OCTOBER 9, 2018 BETWEEN ZB, N.A. AND THE COUNTY OF HENDERSON, NORTH CAROLINA]

**ZB, N.A.,**  
as Bank

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PAYMENT SCHEDULE**

**Advance**

<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 –DESCRIPTION OF PROPERTY SUBJECT TO SECURITY INTEREST**

[to be provided]