

**REQUEST FOR BOARD ACTION**

**HENDERSON COUNTY  
BOARD OF COMMISSIONERS**

**PUBLIC HEARING  
TO CONSIDER**

**APPROVAL OF THE EXECUTION AND DELIVERY OF AN INSTALLMENT  
FINANCING CONTRACT TO PAY FOR THE CAPITAL COSTS FOR THE  
CONSTRUCTION OF A NEW SCALEHOUSE INCLUDING THE ACQUISITION OF  
RELATED EQUIPMENT, A NEW RECYCLING CONVENIENCE CENTER AND,  
CERTAIN ROAD IMPROVEMENTS LOCATED AT THE SOLID WASTE LANDFILL**

**SEPTEMBER 21, 2011 9:00 A.M.**

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

**ATTACHMENTS:**

- 1) Extract of Public Hearing Minutes
- 2) Newspaper Notice
- 3) BB&T Governmental Finance Proposal
- 4) Draft Installment Financing Contract

**SUMMARY OF REQUEST:**

A public hearing to hear comments on the execution and delivery of a proposed installment financing contract is required by the State of North Carolina pursuant to N.C.G.S. 160A-20. A notice of the public hearing shall be published once at least 10 days before the hearing. This notice was duly advertised in the Hendersonville Tribune on Thursday, September 8, 2011.

The proposed contract being considered is to finance the capital costs for the construction of a new scalehouse with new scales, a new recycling convenience center and road improvements including new entrances to the solid waste transfer station and the new recycling center located at the solid waste landfill.

The financing proposal from BB&T Governmental Finance is attached for the Board's information. Their proposal is to finance \$2 million for the project over a 15 year term at a not to exceed interest rate of 3.20 percent. The first annual payment will not be due until Fiscal Year 2013.

A draft of the proposed installment financing contract is attached to this agenda item. Financing documents in substantially final form will be presented to the Board of Commissioners at a future regularly scheduled meeting for consideration and approval.

**BOARD ACTION REQUESTED:**

No Board action is required for this public hearing.

*Motion Suggested:*

*No motion suggested.*

A Regular Meeting of the Board of Commissioners (the "*Board*") of the County of Henderson, North Carolina (the "*County*") was held on Wednesday, September 21, 2011 at 9:00 a.m. in the Commissioners' Meeting Room, Henderson County Historic Courthouse, 1 Historic Courthouse Square, Hendersonville, North Carolina after proper notice, and was called to order by the Chairman, and upon the roll being called, the following members of the Board answered present:

The following members of the Board were absent:

Also present:

At 9:00 a.m., the Clerk to the Board reported to the Board that notice of a public hearing regarding the construction of a new scalehouse (the "*Scalehouse*") and a new recycling convenience center, construction of road improvements related to an existing solid waste transfer station and the new recycling convenience center and acquisition of related equipment (collectively, the "*Project*"), pursuant to an installment financing contract (the "*Contract*") in a principal amount not to exceed \$2,000,000 and the giving, in connection with the Contract, as grantor, of a deed of trust and security agreement (the "*Deed of Trust*") on the real property on which the Scalehouse will be located, was published on September 8, 2011 stating that the Board would hold a public hearing thereon on September 21, 2011 at 9:00 a.m.

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

Commissioner \_\_\_\_\_ moved that the public hearing be closed.

*HELD* the 21st day of September, 2011.

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

**The Hendersonville Tribune**

**Affidavit of Publication**

**HENDERSON COUNTY, NORTH CAROLINA**

Before the undersigned, a Notary public of Henderson County, North Carolina, duly commissioned, qualified and authorized by law to administer oaths, personally appeared

Angela Georgi of

**The Hendersonville Tribune**, a newspaper published, issued and entered as second-class mail in the City of Hendersonville, in said County and State; that he/she is authorized to make this affidavit and sworn statement; that the notice or other legal advertisement, a true copy of which is displayed hereto, was published in **The Hendersonville Tribune**, on the following date or dates:

9/8 2011

Said newspaper in which such notice, paper, document, or legal advertisement was published was, at the time of each and every such publication, a newspaper meeting all of the requirements and qualifications of Section 1-597 of the General Statutes of North Carolina and is a qualified newspaper within the meaning of Section 1-597 of the General Statutes of North Carolina.

The 9 day of September 2011

Angela Georgi

Sworn and subscribed before me, this 9 day of September 2011.

\_\_\_\_\_

Notary Public, My commission expires August 18, 2012

**NOTICE OF PUBLIC HEARING**

At its September 6, 2011 meeting, the Board of Commissioners (the "Board of Commissioners") of the County of Henderson, North Carolina (the "County") adopted a resolution which:

1. Authorized the County to proceed to pay the capital costs of construction of a new scalehouse (the "Scalehouse") and a new recycling convenience center, construction of road improvements (the "Road Improvements") related to an existing solid waste transfer station and the new recycling convenience center, and acquisition of related equipment (the "Equipment") (collectively, the "Project"), pursuant to an installment financing contract (the "Contract"), in a principal amount not to exceed \$2,000,000 under which the County will make certain installment payments, in order to make the Project available to the County;

2. Authorized the County to proceed to provide, in connection with the Contract, as grantor, a deed of trust and security agreement (the "Deed of Trust") under which the real property on which the Scalehouse will be located (the "Site"), as set forth below (the "Mortgaged Property"), will be mortgaged by the County to create a lien thereon for the benefit of the entity, or its assigns, providing the funds to the County under the Contract. The Scalehouse will be located at the intersection of Stony Mountain Road and Transfer Station Drive. The Mortgaged Property will be subject to the mortgage provided in the Deed of Trust. On payment by the County of all installment payments due under the Contract, the Deed of Trust and any lien created thereunder will terminate and the County's title to the Mortgaged Property will be unencumbered. NOTICE IS HEREBY GIVEN pursuant to Sections 160A-20 of the General Statutes of North Carolina, that on September 21, 2011 at 9:00 a.m. in the Commissioners'

Meeting Room, Henderson County Historic Courthouse, 1 Historic Courthouse Square, Hendersonville, North Carolina, a public hearing will be conducted concerning the approval of the execution and delivery of the Contract and the County's acquisition of the Project. All interested parties are invited to present comments at the public hearing regarding the execution and delivery of the Contract and the Project to be financed thereby. /s/ Teresa Wilson Clerk to the Board of Commissioners County of Henderson, North Carolina (HL621) 9/8

# BB&T

Governmental Finance Group  
5130 Parkway Plaza, Bldg 9  
Charlotte, North Carolina 28217

August 29, 2011

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

Re: Henderson County 2011 Solid Waste Capital Improvements Financing Proposal

Dear Mr. McLelland:

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

- (1) **Project:** Construction of capital improvements to the landfill.
- (2) **Amount To Be Financed:** \$ 2,000,000.00
- (3) **Interest Rates, Financing Terms and Corresponding Payments:**

<u>Term</u>	<u>Bank Qualified</u>
15 years	3.20% not to exceed

Payments shall be annual in arrears with level principal as requested. See the attached amortization schedule(s) for information on payments.

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

The interest rates stated above are valid for a closing not later than 67 days after today. Closing of the financing is contingent upon completing documentation acceptable to BB&T and upon the condition of the property acceptable to BB&T.

Remuneration for our legal review expenses and underwriting for this financing transaction shall be \$2,900.00 All applicable taxes, surveys, zoning, permits, costs of environmental studies, title insurance premiums, LGC approval fees, costs of counsel for the County and any other costs shall be the County's responsibility and separately payable by the County. The financing documents shall allow prepayment of the principal balance in whole without a prepayment premium after year seven.

The stated interest rates assume that the County expects to borrow less than \$10,000,000 in calendar year 2011 and that the County shall comply with IRS Code Sections 141, 148 and 149(e). BB&T reserves the right to terminate its interest in this bid or to negotiate a mutually acceptable rate if the financing is not qualified tax-exempt financing.

**(4) Security:**

This financing shall be secured by a first lien security interest on (a) all personal property acquired with financing proceeds, (b) all improvements to real estate that are constructed or improved with financing proceeds, and all associated real estate, and (c) all real estate acquired with financing proceeds.

**(5) Financing Documents:**

BB&T and its counsel shall prepare a Deed of Trust and all documentation for the County. We shall provide a sample of those documents to you should BB&T be the successful proposer.

\* \* \* \* \*

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

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

Should we become the successful proposer, we have attached the form of a resolution that your governing board can use to award the financing to BB&T. If your board adopts this resolution, then BB&T shall not require any further board action prior to closing the transaction.

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

Sincerely,

BRANCH BANKING AND TRUST COMPANY



F. Louis Loyd III/BAS  
Senior Vice President

Compound Period: Annual

Nominal Annual Rate: 3.200%

## AMORTIZATION SCHEDULE - Normal Amortization, 360 Day Year

	Date	Payment	Interest	Principal	Balance
Loan	8/30/2011				2,000,000.00
2011 Totals		0.00	0.00	0.00	
1	8/30/2012	197,333.33	64,000.00	133,333.33	1,866,666.67
2012 Totals		197,333.33	64,000.00	133,333.33	
2	8/30/2013	193,066.66	59,733.33	133,333.33	1,733,333.34
2013 Totals		193,066.66	59,733.33	133,333.33	
3	8/30/2014	188,800.00	55,466.67	133,333.33	1,600,000.01
2014 Totals		188,800.00	55,466.67	133,333.33	
4	8/30/2015	184,533.33	51,200.00	133,333.33	1,466,666.68
2015 Totals		184,533.33	51,200.00	133,333.33	
5	8/30/2016	180,266.66	46,933.33	133,333.33	1,333,333.35
2016 Totals		180,266.66	46,933.33	133,333.33	
6	8/30/2017	176,000.00	42,666.67	133,333.33	1,200,000.02
2017 Totals		176,000.00	42,666.67	133,333.33	
7	8/30/2018	171,733.33	38,400.00	133,333.33	1,066,666.69
2018 Totals		171,733.33	38,400.00	133,333.33	
8	8/30/2019	167,466.66	34,133.33	133,333.33	933,333.36
2019 Totals		167,466.66	34,133.33	133,333.33	
9	8/30/2020	163,200.00	29,866.67	133,333.33	800,000.03
2020 Totals		163,200.00	29,866.67	133,333.33	
10	8/30/2021	158,933.33	25,600.00	133,333.33	666,666.70
2021 Totals		158,933.33	25,600.00	133,333.33	
11	8/30/2022	154,666.66	21,333.33	133,333.33	533,333.37
2022 Totals		154,666.66	21,333.33	133,333.33	
12	8/30/2023	150,400.00	17,066.67	133,333.33	400,000.04
2023 Totals		150,400.00	17,066.67	133,333.33	

13	8/30/2024	146,133.33	12,800.00	133,333.33	266,666.71
2024 Totals		146,133.33	12,800.00	133,333.33	
14	8/30/2025	141,866.66	8,533.33	133,333.33	133,333.38
2025 Totals		141,866.66	8,533.33	133,333.33	
15	8/30/2026	137,600.00	4,266.62	133,333.38	0.00
2026 Totals		137,600.00	4,266.62	133,333.38	
Grand Totals		2,511,999.95	511,999.95	2,000,000.00	

Prepared By and  
Return After Recording To:

F. Louis Loyd, III  
Senior Vice President  
Branch Banking and Trust Company  
5130 Parkway Plaza Boulevard, Building 9  
Charlotte, NC 28217

This instrument has been pre-audited in the  
manner required by The Local Government  
Budget and Fiscal Control Act.

By: \_\_\_\_\_  
Finance Director  
Henderson County, North Carolina

**FINANCING AGREEMENT AND DEED OF TRUST**

**STATE OF NORTH CAROLINA                     )**      **COLLATERAL IS OR**  
  **)**      **INCLUDES FIXTURES**  
**HENDERSON COUNTY                            )**

**THIS FINANCING AGREEMENT AND DEED OF TRUST** (this "Agreement") is dated as of October \_\_, 2011, and is granted by **HENDERSON COUNTY, NORTH CAROLINA**, a public body of the State of North Carolina (the "County"), to F. Louis Loyd, III, a citizen and resident of Mecklenburg County, North Carolina (the "Deed of Trust Trustee"), for the benefit of **BRANCH BANKING AND TRUST COMPANY** ("BB&T").



**RECITALS:**

The County has the power, pursuant to Section 160A-20 of the North Carolina General Statutes, to enter into installment contracts to finance the purchase or improvement of real or personal property, and to secure its obligations under such contracts by security interests in all or a portion of the property purchased or improved. This Agreement provides for BB&T to advance \$2,000,000.00 to the County to enable the County to acquire and construct the Facilities (as defined below) on and for the Site (as defined below), and provides for securing the County's obligations under this Agreement by creating certain security interests in favor of BB&T.

This Agreement secures current advances of \$2,000,000.00. The current scheduled date for final repayment is on or about October \_\_\_\_, 2026.

**NOW, THEREFORE,**

- (1) in consideration of the execution and delivery of this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged;
- (2) to secure the County's performance of all its covenants under this Agreement, including the repayment of amounts advanced and to be advanced, together with interest on all such advances as provided in this Agreement or any amendments hereto, and all charges and expenses of collection (including court costs and reasonable attorneys' fees and expenses); and
- (3) to charge the Mortgaged Property, as defined below, with such payment and performance,

the County hereby sells, grants and conveys to the Deed of Trust Trustee, his heirs and assigns forever, in trust, with power of sale, the following (collectively, the "Mortgaged Property"):

- (a) (i) the property described in Exhibit A, (ii) any other real property acquired by the County with the proceeds made available to the County pursuant to this Agreement, and (iii) all real property hereafter acquired by the County in exchange for, or in consideration of the exchange of, or with the proceeds from any disposition of, all or any part of any property described in this subparagraph, and in all cases together with all easements, rights, liberties, rights-of-way and appurtenances belonging to any such property (collectively, the "Site");
- (b) the improvements described in Exhibit B and all other improvements and fixtures now or hereafter attached or appurtenant to or used in or on those improvements or the Site, including (i) all renewals and replacements thereof and all additions thereto, (ii) all articles in substitution thereof, (iii) all building materials for construction or repair of such improvements upon their delivery to the Site, and (iv) all proceeds of all the foregoing in whatever form resulting from the loss or disposition of the foregoing, including all proceeds of and unearned premiums for any insurance policies covering the Site and such improvements, proceeds of title insurance and payments related to the exercise of condemnation or eminent domain authority, and all judgments or settlements in lieu of any

of the foregoing (collectively, the "Facilities");

(c) the Equipment, as defined in Section 2.03; and

(d) the moneys on deposit from time to time in the Project Fund, as provided in Sections 2.02 and 2.03.

**TO HAVE AND TO HOLD** the Mortgaged Property with all privileges and appurtenances thereunto belonging, to the Deed of Trust Trustee, his heirs and assigns forever, upon the trusts, terms and conditions and for the purposes set out below, in fee simple in trust;

**SUBJECT, HOWEVER,** to the encumbrances described in Exhibit C (the "Existing Encumbrances");

**BUT THIS CONVEYANCE IS MADE UPON THIS SPECIAL TRUST:** if the Required Payments (as defined below) are paid in full in accordance with this Agreement, and the County shall comply with all of the terms, covenants and conditions of this Agreement, this conveyance shall be null and void and shall be canceled of record at the County's request and cost, and title shall revert as provided by law.

**BUT IF, HOWEVER, THERE SHALL OCCUR AN EVENT OF DEFAULT UNDER THIS AGREEMENT,** then BB&T shall have the remedies provided for in this Agreement, including directing the Deed of Trust Trustee to sell the Mortgaged Property under power of sale.

**THE COUNTY COVENANTS AND AGREES** with the Deed of Trust Trustee and BB&T (and their respective heirs, successors and assigns), in consideration of the foregoing, as follows:

## ARTICLE I

### DEFINITIONS; INTERPRETATION

Unless the context clearly requires otherwise, capitalized terms used in this Agreement and not otherwise defined shall have the following meanings:

"Additional Payments" means any of BB&T's reasonable and customary fees and expenses related to the transactions contemplated by this Agreement, any of BB&T's expenses (including attorneys' fees) in prosecuting or defending any action or proceeding in connection with this Agreement, any required license or permit fees, state and local sales and use or ownership taxes or property taxes which BB&T is required to pay as a result of this Agreement, inspection and re-inspection fees, and any other amounts payable by the County (or paid by BB&T on the County's behalf) as a result of its covenants under this Agreement (together with interest that may accrue on any of the above if the County shall fail to pay the same, as set forth in this Agreement).

"Amount Advanced" has the meaning assigned in Section 2.02.

“Bond Counsel Opinion” means a written opinion (in form and substance acceptable to BB&T) of an attorney or firm of attorneys acceptable to BB&T.

"Budget Officer" means the County officer from time to time charged with preparing the County's draft budget as initially submitted to the Governing Board for its consideration.

"Business Day" means any day on which banks in the State are not by law authorized or required to remain closed.

"Closing Date" means the date on which this Agreement is first executed and delivered by the parties.

"Code" means the Internal Revenue Code of 1986, as amended, including regulations, rulings and revenue procedures promulgated thereunder or under the Internal Revenue Code of 1954, as amended, as applicable to the County's obligations under this Agreement and all proposed (including temporary) regulations which, if adopted in the form proposed, would apply to such obligations. Reference to any specific Code provision shall be deemed to include any successor provisions thereto.

"Construction Agreements" means any contracts with contractors related to the construction of the Facilities.

“County” means Henderson County, North Carolina.

“County Representative” means the County’s finance officer or such other person or persons at the time designated, by a written certificate furnished to BB&T and signed on the County's behalf by the presiding officer of the County's Governing Board, to act on the County's behalf for any purpose (or any specified purpose) under this Agreement.

"Event of Default" means one or more events of default as defined in Section 8.01.

"Event of Nonappropriation" means any failure by the Governing Board to adopt, by the first day of any Fiscal Year, a budget for the County that includes an appropriation for Required Payments, or the Governing Board’s amendment of the annual budget to remove an appropriation for Required Payments, in each case as contemplated by Section 3.05.

“Existing Encumbrances” means the encumbrances described in Exhibit C.

"Fiscal Year" means the County's fiscal year beginning July 1, or such other fiscal year as the County may later lawfully establish.

"Governing Board" means the County's governing board as from time to time constituted.

"Installment Payments" means the payments payable by the County pursuant to Section 3.01.

"LGC" means the North Carolina Local Government Commission.

"Mortgaged Property" means the Mortgaged Property, as defined above.

"Net Proceeds," when used with respect to any amounts derived from claims made on account of insurance coverages required under this Agreement, any condemnation award arising out of the condemnation of all or any portion of the Mortgaged Property, payments on any bonds required by Section 5.03, any amounts recovered from any contractor on an action for default or breach, as described in Section 5.03, or any amounts received in lieu or in settlement of any of the foregoing, means the amount remaining after deducting from the gross proceeds thereof all expenses (including attorneys' fees and costs) incurred in the collection of such proceeds, and after reimbursement to the County or BB&T for amount previously expended to remedy the event giving rise to such payment or proceeds.

"Payment Dates" means the dates indicated in Exhibit D.

"Permitted Encumbrances" means, as of any particular time, (a) the Existing Encumbrances, (b) liens for taxes and assessments not then delinquent, (c) this Agreement, and (d) easements, rights-of-way and other such minor defects or restrictions as normally exist with respect to property of the same general character as the Mortgaged Property which will not impair the County's intended use of the Mortgaged Property.

"Plans and Specifications" means all plans and specifications for the Facilities prepared by architects, engineers and other consultants.

"Prime Rate" means the interest rate so denominated and set by Branch Banking & Trust Company (whether or not such Bank, or any affiliate thereof, is at any time the beneficiary under this Agreement) as its "Prime Rate," as in effect from time to time.

"Project Costs" means all costs of the design, planning, constructing, acquiring, installing and equipping of the Facilities as determined in accordance with generally accepted accounting principles and that will not adversely affect the exclusion from gross income for federal income tax purposes of the designated interest component of Installment Payments payable by the County under this Agreement, including (a) sums required to reimburse the County or its agents for advances made for any such costs, (b) interest during the construction process and for up to six months thereafter, and (c) all costs related to the financing of the Facilities through this Agreement and all related transactions

"Project Fund" has the meaning assigned in Section 2.02.

"Project Fund Agreement" has the meaning assigned in Section 2.02.

"Required Payments" means Installment Payments and Additional Payments.

"Section 160A-20" means Section 160A-20 of the North Carolina General Statutes, as amended, or any successor provision of law.

"State" means the State of North Carolina.

“UCC” means the Uniform Commercial Code or any successor law as in effect from time to time in the State, currently Chapter 25 of the North Carolina General Statutes.

All references in this Agreement to designated "Sections" and other subdivisions are to the designated sections and other subdivisions of this Agreement. The words "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision unless the context indicates otherwise. Words importing the singular number shall include the plural number and vice versa.

## ARTICLE II

### SECURITY PROVIDED BY THIS AGREEMENT; ADVANCE

**2.01. Security for Payment and Performance.** This Agreement secures the County's payment, as and when the same shall become due and payable, of all Required Payments and the County's timely compliance with all terms, covenants and conditions of this Agreement.

**2.02. Advance.** BB&T advances \$2,000,000.00 (the "Amount Advanced") to the County on the Closing Date, and the County hereby accepts the Amount Advanced from BB&T. BB&T is advancing the Amount Advanced by making a deposit to a Project Fund (the "Project Fund") as provided in a Project Fund Agreement of even date (the "Project Fund Agreement") between the County and BB&T. All amounts on deposit from time to time in the Project Fund, including the Amount Advanced and all investment earnings, shall be used only for Project Costs until the Project Fund is terminated as provided under the Project Fund Agreement.

**2.03. UCC Security Agreement.**

(a) This Agreement is intended as and constitutes a security agreement pursuant to the UCC with respect to the following:

- (i) all moneys on deposit from time to time in the Project Fund; and
- (ii) all personal property acquired by the County with funds advanced by BB&T pursuant to this Agreement, all personal property obtained in substitution or replacement therefore, and all personal property obtained in substitution or replacement for any portion of the Mortgaged Property, and all proceeds of the foregoing (collectively, the "Equipment").

The County hereby grants to BB&T a security interest in the Equipment and in the moneys on deposit from time to time in the Project Fund to secure the Required Payments.

(b) The security interest in the Equipment granted in this Section shall be in addition to, and not in lieu of, any lien upon or security interest in the Equipment acquired by real property law.

(c) The County shall execute, deliver and file, or cause to be filed, in such place or places

as may be required by law, financing statements (including any continuation statements required by the UCC or requested by BB&T) in such form as BB&T may reasonably require to perfect and continue the security interest in the Equipment and in the moneys on deposit from time to time in the Project Fund.

**2.04. County's Limited Obligation.** (a) THE PARTIES INTEND THAT THIS TRANSACTION COMPLY WITH SECTION 160A-20. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE COUNTY'S FAITH AND CREDIT WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS A DELEGATION OF GOVERNMENTAL POWERS OR AS AN IMPROPER DONATION OR A LENDING OF THE COUNTY'S CREDIT WITHIN THE MEANING OF THE STATE CONSTITUTION. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE COUNTY IN VIOLATION OF SECTION 160A-20. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the County's moneys (other than the funds held under the Project Fund Agreement or this Agreement), nor shall any provision of this Agreement restrict the future issuance of any of the County's bonds or obligations payable from any class or source of the County's moneys (except to the extent this Agreement restricts the incurrence of additional obligations secured by the Mortgaged Property). To the extent of any conflict between this Section 2.04, any provision of Section 160A-20 and any other provision of this Agreement, this Section shall take priority.

(b) Nothing in this Section is intended to impair or prohibit foreclosure on this Agreement if the Required Payments are not paid when due or otherwise upon the occurrence of an Event of Default under this Agreement or the Project Fund Agreement, and in any such event BB&T may request the Deed of Trust Trustee to foreclose on the Mortgaged Property as provided in this Agreement.

**2.05. County's Continuing Obligations.** The County shall remain liable for full performance of all its covenants under this Agreement (subject to the limitations described in Section 2.04), including payment of all Required Payments, notwithstanding the occurrence of any event or circumstances whatsoever, including any of the following:

- (a) BB&T's waiver of any right granted or remedy available to it;
- (b) The forbearance or extension of time for payment or performance of any obligation under this Agreement, whether granted to the County, a subsequent owner of the Facilities or the Equipment or any other person;
- (c) The release of all or part of the Mortgaged Property or the release of any party who assumes all or any part of such performance;
- (d) Any act or omission by BB&T (but this provision does not relieve BB&T of any of its obligations under this Agreement or the Project Fund Agreement);
- (e) The sale of all or any part of the Mortgaged Property; or

- (f) Another party's assumption of the County's obligations under this Agreement.

**2.06. Construction Mortgage.** The security interest evidenced hereby is a "construction mortgage".

**2.07. Security Interest in Utility Equipment; Grant of Easements and Other Rights.**

(a) The County hereby grants BB&T a security interest in any pipes, valves, fittings, wires and poles or any other utility-type property to be financed with the proceeds made available to the County pursuant to this Agreement, as well as in all substitutions, replacements and proceeds therefore or thereof (for the purposes of this Agreement, the "Utility Equipment"). The parties agree and intend that, even if all or any part of the Utility Equipment is installed in or on the ground, all the Utility Equipment shall be and remain personal property subject to the security interest granted in this Section. This Agreement is intended as and constitutes a security agreement pursuant to the UCC with respect to the Utility Equipment and the security interest therein. The Utility Equipment is part of the Equipment and therefore part of the Mortgaged Property.

(b) The County may install the Utility Equipment over or across property as to which the County owns only an easement interest or some other limited interest, such as rights under an encroachment agreement with the North Carolina Department of Transportation. The County hereby sells and grants to BB&T (in connection with effecting remedies on default) such licenses or other rights as may be necessary or desirable for BB&T or its agents to enter the real estate that is subject to such easements and other interests to remove, construct, operate, maintain and inspect the Utility Equipment. The County grants these licenses in connection with the other interests granted under this Agreement to BB&T with the intent that such licenses thereby qualify as licenses coupled with an interest so as to be irrevocable.

(c) The County hereby makes a collateral assignment to BB&T of its rights under such easements and other interests. If any Event of Default shall be continuing, then to the extent permitted by law, BB&T shall have the County's rights under the easements and other interests.

**ARTICLE III**

**COUNTY'S PAYMENT OBLIGATION AND RELATED MATTERS**

**3.01. Installment Payments.** The County shall repay the Amount Advanced by making Installment Payments to BB&T in lawful money of the United States at the times and in the amounts set forth in Exhibit D, except as otherwise provided in this Agreement. As indicated in Exhibit D, the Installment Payments reflect the repayment of the Amount Advanced and include designated interest components.

**3.02. Additional Payments.** The County shall pay all Additional Payments on a timely basis directly to the person or entity to which such Additional Payments are owed in lawful money of the United States.

**3.03. Prepayment.** After year seven, the County may prepay the outstanding principal component of the Amount Advanced, at its option on any regularly scheduled Payment Date, in whole but not in part, by paying (a) all Additional Payments then due and payable, (b) all interest accrued and unpaid to the prepayment date, and (c) 100% of the outstanding principal amount.

**3.04. Late Payments.** If the County fails to pay any Installment Payment when due, the County shall pay additional interest on the principal component of the late Installment Payment (as permitted by law) at an annual rate equal to the Prime Rate from the original due date.

**3.05. Appropriations.** (a) The Budget Officer shall include in the initial proposal for each of the County's annual budgets the amount of all Installment Payments and estimated Additional Payments coming due during the Fiscal Year to which such budget applies. Notwithstanding that the Budget Officer includes such an appropriation for Required Payments in a proposed budget, the Governing Board may determine not to include such an appropriation in the County's final budget for such Fiscal Year.

(b) The Budget Officer shall deliver to BB&T, within 15 days after the beginning of each Fiscal Year, a certificate stating whether an amount equal to the Installment Payments and estimated Additional Payments coming due during the next Fiscal Year has been appropriated by the County in such budget for such purposes. If such amount has not been so appropriated, the Budget Officer shall send a copy of such certificate to the LGC, to the attention of its Secretary, at the Albemarle Building, 325 North Salisbury St., Raleigh NC 27603-1385.

(c) The actions required of the County and its officers pursuant to this Section shall be deemed to be and shall be construed to be in fulfillment of ministerial duties, and it shall be the duty of each and every County official 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 actions required pursuant to this Section and the remainder of this Agreement to be carried out and performed by the County.

(d) The County reasonably believes that it can obtain funds sufficient to pay all Required Payments when due.

**3.06. No Abatement.** There shall be no abatement or reduction of the Required Payments for any reason, including, but not limited to, any defense, recoupment, setoff, counterclaim, or any claim (real or imaginary) arising out of or related to the Site or of the Facilities, except as expressly provided in this Agreement. The County assumes and shall bear the entire risk of completion, loss and damage to the Site and the Facilities from any cause whatsoever. The Installment Payments shall be made in all events unless the County's obligation to make Installment Payments is terminated as otherwise provided in this Agreement.

**3.07. Interest Rate and Payment Adjustment.** (a) "Rate Adjustment Event" means any action by the Internal Revenue Service (including the delivery of a deficiency notice) or any other federal court or administrative body determining (i) that the interest component of Installment Payments, or any portion thereof, is includable in any beneficiary's gross income for federal income tax purposes or (ii) that the County's obligations under this Agreement are not "qualified tax-exempt obligations" within the meaning of Code Section 265 (a "265 Event"), in any



case as a result of any misrepresentation by the County or as a result of any action the County takes or fails to take.

(b) Upon any Rate Adjustment Event, (i) the unpaid principal portion of the Amount Advanced shall continue to be payable on dates and in amounts as set forth in Exhibit D, but (ii) the interest components of the Installment Payments shall be recalculated, at an interest rate equal to an annualized interest rate equal to the Prime Rate plus 2% (200 basis points), to the date (retroactively, if need be) determined pursuant to the Rate Adjustment Event to be the date interest became includable in any beneficiary's gross income for federal income tax purposes (in the case of a 265 Event, retroactively to the Closing Date).

(c) The County shall pay interest at such adjusted rate (subject to credit for interest previously paid) to each affected beneficiary, notwithstanding the fact that any particular beneficiary may not be a beneficiary under this Agreement on the date of a Rate Adjustment Event. The County shall additionally pay to all affected beneficiaries any interest, penalties or other charges assessed against or payable by such beneficiary and attributable to a Rate Adjustment Event notwithstanding the prior repayment of the entire Amount Advanced or any transfer to another beneficiary.

## ARTICLE IV

### COUNTY'S COVENANTS, REPRESENTATIONS AND WARRANTIES

**4.01. Warranties of Title.** The County covenants with the Deed of Trust Trustee and BB&T that the County is seized of and has the right to convey the Mortgaged Property in fee simple, that the Mortgaged Property is free and clear of all liens and encumbrances other than the Permitted Encumbrances, that title to the Mortgaged Property is marketable, and that the County will forever warrant and defend title to the Mortgaged Property against the claims of all persons.

**4.02. Indemnification.** To the extent permitted by law, the County shall indemnify, protect and save the Deed of Trust Trustee, BB&T and its officers and directors, and the LGC's members and employees, 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 Mortgaged Property or the transactions contemplated by this Agreement, including without limitation the possession, condition, construction or use of the Facilities or the Equipment. The indemnification arising under this Section shall survive the Agreement's termination.

**4.03. Covenant as to Tax Exemption.** (a) The County shall not take or permit, or omit to take or cause to be taken, any action that would cause its obligations under this Agreement to be "arbitrage bonds" or "private activity bonds" within the meaning of the Code, or otherwise adversely affect the exclusion from gross income for federal income tax purposes of the designated interest component of Installment Payments to which such components would otherwise be entitled and, if it should take or permit, or omit to take or cause to be taken, any such action, the County shall take or cause to be taken all lawful actions within its power necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

(b) In particular, the County covenants that it shall not permit the Amount Advanced, plus the investment earnings thereon (the "Proceeds"), to be used in any manner that would result in 5% or more of the Installment Payments being directly or indirectly secured by an interest in property, or derived from payments in respect of property or borrowed money, being in either case used in a trade or business carried on by any person other than a governmental unit, as provided in Code Section 141(b), or result in 5% or more of the Proceeds being used directly or indirectly to make or finance loans to any persons other than a governmental unit, as provided in Code Section 141(c); provided, however, that if the County receives a Bond Counsel Opinion that compliance with any such covenant is not required to prevent the interest components of Installment Payments from being includable in the beneficiary's gross income for federal income tax purposes under existing law, the County need not comply with such covenant.

(c) Unless the County qualifies for one or more exceptions to the arbitrage rebate requirement with respect to this financing, the County shall provide for the rebate to the United States of (i) at least 90% of the required rebate amount (A) on or before 60 days after the date that is five years from the Closing Date, and (B) at least once during each five years thereafter while the Obligations remain outstanding, and (ii) the entire required rebate amount on or before 60 days after the date of final payment of the Obligations. Payments shall be made in the manner prescribed by the Internal Revenue Service. The County shall cause the required rebate amount to be recomputed as of each fifth anniversary of the Closing Date, and again as of the date of final payment of the Obligations. The County shall provide BB&T with a copy of the results of such computation within 20 days after the end of each computation period or final payment of the Obligations. Each computation shall be prepared or approved, at the County's expense, by a person with experience in matters of accounting for federal income tax purposes, a bona fide arbitrage rebate calculating and reporting service, or nationally-recognized bond counsel, in any case reasonably acceptable to BB&T. The County shall engage such rebate consultant to perform the necessary calculations not less than 60 days prior to the date of the required payment.

(d) The County acknowledges that its personnel must be familiar with the arbitrage rebate rules, because the tax-exempt status of the interest on the Obligations depends upon continuing compliance with such rules. The County therefore covenants to take all reasonable action to assure that County personnel responsible for the investment of and accounting for financing proceeds comply with such rules.

**4.04. Validity of Organization and Acts.** The County is validly organized and existing under State law, has full power to enter into this Agreement and has duly authorized and has obtained all required approvals and all other necessary acts required prior to the execution and delivery of this Agreement. This Agreement is a valid, legal and binding obligation of the County.

**4.05. Maintenance of Existence.** The County shall maintain its existence, shall continue to be a local governmental unit of the State, validly organized and existing under State law, and shall not consolidate with or merge into another local governmental unit of the State, or permit one or more other local governmental units of the State to consolidate with or merge into it, unless the local governmental unit thereby resulting assumes the County's obligations under this Agreement.

**4.06. Acquisition of Permits and Approvals.** All permits, consents, approvals or authorizations of all governmental entities and regulatory bodies, and all filings and notices required

on the County's part to have been obtained or completed as of today in connection with the authorization, execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the acquisition and construction of the Facilities have been obtained and are in full force and effect, and there is no reason why any future required permits, consents, approvals, authorizations or orders cannot be obtained as needed.

**4.07. No Breach of Law or Contract.** Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, (a) to the best of the County's knowledge, constitutes a violation of any provision of law governing the County or (b) results in a breach of the terms, conditions or provisions of any contract, agreement or instrument or order, rule or regulation to which the County is a party or by which the County is bound.

**4.08. No Litigation.** There is no litigation or any governmental administrative proceeding to which the County (or any official thereof in an official capacity) is a party that is pending or, to the best of the County's knowledge after reasonable investigation, threatened with respect to (a) the County's organization or existence, (b) its authority to execute and deliver this Agreement or to comply with the terms of this Agreement, (c) the validity or enforceability of this Agreement or the transactions contemplated hereby, (d) the title to office of any Governing Board member or any other County officer, (e) any authority or proceedings relating to the County's execution or delivery of this Agreement, or (f) the undertaking of the transactions contemplated by this Agreement.

**4.09. No Current Default or Violation.** (a) The County is not in violation of any existing law, rule or regulation applicable to it, (b) the County is not in default under any contract, other agreement, order, judgment, decree or other instrument or restriction of any kind to which the County is a party or by which it is bound or to which any of its assets are subject, including this Agreement, and (c) no event or condition has happened or existed, or is happening or existing, under the provisions of any such instrument, including this Agreement, which constitutes or which, with notice or lapse of time, or both, would constitute an event of default hereunder or thereunder.

**4.10. No Misrepresentation.** No representation, covenant or warranty by the County in this Agreement is false or misleading in any material respect.

**4.11. Environmental Warranties and Indemnification.** (a) The County warrants and represents to BB&T as follows:

(i) The County has no knowledge of, and after reasonable inquiry no reason to believe (A) that any industrial use has been made of the Mortgaged Property, (B) that the Mortgaged Property has been used for the storage, treatment or disposal of chemicals or any wastes or materials that are classified by federal, State or local laws as hazardous or toxic substances, or (C) that any manufacturing, landfilling or chemical production has occurred on the Mortgaged Property.

(ii) The Mortgaged Property is in compliance with all federal, State and local environmental laws and regulations, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Public

Law No. 96-510, 94 Stat. 2767, 42 USC 9601 et seq., and the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Public Law No. 99-499, 100 Stat. 1613.

(iii) The County has fully disclosed to BB&T in writing the existence, extent and nature of any hazardous materials, substances, wastes or other environmentally regulated substances (including without limitation, any materials containing asbestos), which the County is legally authorized and empowered to maintain on, in or under the Mortgaged Property or use in connection therewith, and the County has obtained and will maintain all licenses, permits and approvals required with respect thereto, and is in compliance with all of the terms, conditions and requirements of such licenses, permits and approvals.

(iv) The County will promptly notify BB&T of any change in the nature or extent of any hazardous materials, substances or wastes maintained on, in or under the Mortgaged Property or used in connection therewith, and will promptly send to BB&T copies of any citations, orders, notices or other material governmental or other communication received with respect to any other hazardous materials, substances, wastes or other environmentally regulated substances affecting the Mortgaged Property.

(b) To the extent permitted by law, the County shall indemnify and hold BB&T and the Deed of Trust Trustee harmless from and against (i) any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including clean-up costs), judgments and expenses (including attorneys', consultants' or experts' fees and expenses) of every kind and nature suffered by or asserted against the Deed of Trust Trustee or BB&T as a direct or indirect result of any warranty or representation made by the County in subsection (a) above being false or untrue in any material respect, or (ii) any requirement under any law, regulation or ordinance, local, State or federal, which requires the elimination or removal of any hazardous materials, substances, wastes or other environmentally regulated substances by the Deed of Trust Trustee, BB&T or the County or any transferee or assignee of the Deed of Trust Trustee, BB&T or the County.

(c) The County's obligations under this Section shall continue in full effect notwithstanding full payment of the Required Payments or foreclosure under this Agreement or delivery of a deed in lieu of foreclosure.

**4.12. Further Instruments.** Upon BB&T's request, the County shall execute, acknowledge and deliver such further instruments reasonably necessary or desired by BB&T to carry out more effectively the purposes of this Agreement or any other document related to the transactions contemplated hereby, and to subject to the liens and security interests hereof and thereof all or any part of the Mortgaged Property intended to be given or conveyed hereunder or thereunder, whether now given or conveyed or acquired and conveyed subsequent to the date of this Agreement.

**4.13. BB&T's Advances for Performance of County's Obligations.** If the County fails to perform any of its obligations under this Agreement, BB&T is hereby authorized, but not obligated, to perform such obligation or cause it to be performed. All expenditures incurred by BB&T (including any advancement of funds for payment of taxes, insurance premiums or other costs of maintaining the Mortgaged Property, and any associated legal or other expenses), together with interest thereon at the Prime Rate, shall be secured as Additional Payments under this Agreement. The County promises to pay all such amounts to BB&T immediately upon demand.

**4.14. Facilities Will Be Used and Useful.** The acquisition and construction of the Facilities is necessary and expedient for the County, and will perform essential functions of the County appropriate for units of local government. The County has an immediate need for, and expects to make immediate use of, all of the Facilities, and does not expect such need or use to diminish in any material respect during the term of the Agreement. The Facilities will not be used in any private business or put to any private business use.

**4.15. Financial Information.** (a) The County shall send to BB&T a copy of the County's audited financial statements for each Fiscal Year within 30 days of the County's acceptance of such statements, but in any event within 120 days of the completion of such Fiscal Year.

(b) The County shall furnish BB&T, at such reasonable times as BB&T shall request, all other financial information (including, without limitation, the County's annual budget as submitted or approved) as BB&T may reasonably request. The County shall permit BB&T or its agents and representatives to inspect the County's books and records and make extracts therefrom.

**4.16. Taxes and Other Governmental Charges.** The County shall pay, as Additional Payments, the full amount of all taxes, assessments and other governmental charges lawfully made by any governmental body during the term of this Agreement. With respect to special assessments or other governmental charges which may be lawfully paid in installments over a period of years, the County shall be obligated to provide for Additional Payments only for such installments as are required to be paid during the Agreement term. The County shall not allow any liens for taxes, assessments or governmental charges with respect to the Mortgaged Property or any portion thereof to become delinquent (including, without limitation, any taxes levied upon the Mortgaged Property or any portion thereof which, if not paid, will become a charge on any interest in the Mortgaged Property, including BB&T's interest, or the rentals and revenues derived therefrom or hereunder).

**4.17. County's Insurance.** (a) From and after substantial completion of each principal portion of the Facilities, the County shall, at its own expense, acquire, carry and maintain broad-form extended coverage property damage insurance with respect to all improvements in or on the Site or otherwise related to the Facilities in an amount equal to the estimated replacement cost of such improvements. Such property damage insurance shall include standard mortgagee coverage in favor of BB&T. The County shall provide evidence of such coverage to BB&T promptly upon such substantial completion. Any Net Proceeds of the insurance required by this subsection (a) shall be payable as provided in Section 6.10.

(b) The County shall, at its own expense, acquire, carry and maintain comprehensive general liability insurance in an amount not less than \$2,000,000 for personal injury or death and \$2,000,000 for property damage.

(c) The County shall also maintain workers' compensation insurance issued by a responsible carrier authorized under State law to insure the County against liability for compensation under applicable State law as in effect from time to time.

(d) All insurance shall be maintained with generally recognized responsible insurers and may carry reasonable deductible or risk-retention amounts. All such policies shall be deposited with

BB&T, provided that in lieu of such policies there may be deposited with BB&T a certificate or certificates of the respective insurers attesting the fact that the insurance required by this Section is in full effect. Prior to the expiration of any such policy, the County shall furnish BB&T evidence satisfactory to BB&T that the policy has been renewed or replaced or is no longer required by this Agreement.

(e) No County agent or employee shall have the power to adjust or settle any property damage loss greater than \$50,000 with respect to the Mortgaged Property, whether or not covered by insurance, without BB&T's prior written consent.

(f) BB&T shall not be responsible for the sufficiency or adequacy of any required insurance and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by BB&T.

(g) The County shall deliver to BB&T annually by June 30 of each year a certificate stating that the risk coverages required by this Agreement are in effect, and stating the carriers, policy numbers, coverage limits and deductible or risk-retention amounts for all such coverages.

## ARTICLE V

### TERMS OF CONSTRUCTION

**5.01. Construction; Changes.** (a) The County shall comply with the provisions of Article 8 of Chapter 143 of the North Carolina General Statutes and enter into the Construction Agreements. The County shall cause the construction to be carried on continuously in accordance with the Plans and Specifications and all applicable State and local laws and regulations. The County shall cause the Facilities to be constructed on the Site and shall insure (i) that the Facilities do not encroach upon nor overhang any easement or right-of-way and (ii) that the Facilities, when erected, will be wholly within any applicable 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 Site to be completed in accordance with health department standards and other applicable regulations of any governmental agency having jurisdiction.

(b) The County may approve changes to the Plans and Specifications and the Construction Agreements in its discretion except that the County may not, without BB&T's consent, approve any changes which (i) result in the Facilities' use for purposes substantially different from those initially proposed or (ii) which increase total estimated Project Costs beyond amounts previously identified and designated for such purpose.

**5.02. Construction within Funds Available.** The County represents that, based upon its examination of the Site and of the Plans and Specifications, estimated construction and equipment costs provided by licensed architects and engineers and the Facilities' anticipated configuration, the Facilities can be constructed, acquired and equipped for a total price within the total amount of funds to be available therefore in the Project Fund, income anticipated to be derived from the investment thereof and other funds previously identified and designated for such purposes. If the total amount

available for such purposes in the Project Fund shall be insufficient to pay the entire cost of constructing, acquiring and equipping the Facilities, the County promises to pay any such excess costs, with no resulting reduction or offset in the amounts otherwise payable by the County under this Agreement.

**5.03. Contractors' Performance and Payment Bonds.** The County shall require each contractor entering into a Construction Agreement to furnish a performance bond and a separate labor and material payment bond as required by Article 3, Chapter 44A of the North Carolina General Statutes. The County shall provide copies of all such bonds to BB&T promptly upon the County's receipt of each such bond. Each such bond shall include BB&T as a dual obligee.

Upon any material default by a contractor under any Construction Agreement, or upon any 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 or against the surety of any bond securing the performance of such Construction Agreement.

**5.04. Contractors' General Public Liability and Property Damage Insurance.** The County shall require each contractor entering into a Construction Agreement to procure and maintain standard form (a) comprehensive general public liability and property damage insurance, at such contractor's own cost and expense, during the duration of such contractor's construction contract, in the amount of at least \$2,000,000, and (b) comprehensive automobile liability insurance on owned, hired and non-owned vehicles for not less than \$2,000,000. Such policies shall include BB&T as an additional named insured. The County shall provide to BB&T a certificate of insurance in a form acceptable to BB&T with respect to each contractor. 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 (explosive, collapse and underground damage), where applicable.

**5.05. Contractors' Builder's Risk Completed Value Insurance.** The County shall require each contractor entering into a Construction Agreement to purchase and maintain property insurance (builder's risk) upon all construction, acquisition, installation and equipping of the Facilities (excluding contractor's tools and equipment) at the site thereof at the full insurable value thereof. This insurance shall include a lender's loss payable endorsement in favor of BB&T, and shall insure against "all risk" subject to standard policy conditions and exclusions. The contractor shall purchase and maintain similar property insurance for portions of the work stored off the Site or in transit when such portions of the work are to be included in an application for payment. The contractor shall be responsible for the payment of any deductible amounts associated with this insurance.

**5.06. Contractors' Workers' Compensation Insurance.** The County shall require each contractor entering into a Construction Agreement to procure and maintain workers' compensation insurance during the term of such Construction Agreement, covering his or her employees working thereunder. A certificate of insurance evidencing such coverage, in form acceptable to BB&T, shall be provided to the County with respect to each contractor entering into a Construction Agreement. Each Construction Agreement shall also provide that each subcontractor of any contractor who is a party to such Construction Agreement shall be required to furnish similar workers' compensation

insurance.

**5.07. Disclaimer of Warranties.** The County agrees that BB&T has not designed the Facilities, that BB&T has not supplied any plans or specifications with respect thereto and that BB&T (a) is not a manufacturer of, nor a dealer in, any of the component parts of the Facilities or similar facilities, (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 Facilities 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 Facilities or any component part thereof or any property or rights relating thereto at any stage of the acquisition, construction and equipping thereof, (c) has not at any time had physical possession of the Facilities or any component part thereof or made any inspection thereof or of any property or rights relating thereto, and (d) has not made any warranty or other representation, express or implied, that the Facilities 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 results which the County intends therefore, or (iii) is safe in any manner or respect.

BB&T MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE FACILITIES OR ANY COMPONENT PART THEREOF, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE, and further including the design or condition thereof; the safety, quality or capacity thereof; compliance thereof with the requirements of any law, rule, specification or contract pertaining thereto; any latent defect; the Facilities' ability to perform any function; that the Amount Advanced will be sufficient to pay all costs of the acquisition, construction and equipping of the Facilities; or any other characteristic of the Facilities; it being agreed that the County is to bear all risks relating to the Facilities, the completion thereof and the transactions contemplated hereby, and the County hereby waives the benefits of any and all implied warranties and representations of BB&T.

The provisions of this Section shall survive the Agreement's termination.

**5.08. Right of Entry and Inspection.** BB&T and its representatives and agents shall have the right to enter upon the Site and inspect the Mortgaged Property from time to time during construction and after the completion of construction, and the County shall cause any vendor, contractor or sub-contractor to cooperate with BB&T and its representatives and agents during such inspections.

No right of inspection or approval granted in this Section shall be deemed to impose upon BB&T any duty or obligation whatsoever to undertake any inspection or to make any approval. No inspection made or approval given by BB&T shall be deemed to impose upon BB&T any duty or obligation whatsoever to identify or correct any defects in the Facilities or to notify any person with respect thereto, and no liability shall be imposed upon BB&T, and no warranties (either express or implied) are made by BB&T as to the quality or fitness of any improvement, any such inspection and approval being made solely for BB&T's benefit.



## ARTICLE VI

### CARE AND USE OF FACILITIES

**6.01. Compliance with Requirements.** (a) The County shall cause the Facilities to be designed and constructed in compliance with all applicable legal requirements, including subdivision, building and zoning regulations. The County shall not initiate or acquiesce in a change in the Site's zoning classification, except with respect to any change that may be appropriate to conform the actual zoning to that appropriate for the use of the Facilities contemplated as of the Closing Date.

(b) The County shall observe and comply promptly with all current and future requirements relating to the Mortgaged Property's use or condition imposed by (i) any judicial, governmental or regulatory body having jurisdiction over the Facilities or any portion thereof or (ii) any insurance company writing a policy covering the Facilities or any portion thereof, whether or not any such requirement shall necessitate structural changes or improvements or interfere with the use or enjoyment of the Mortgaged Property.

(c) The County shall obtain and maintain in effect all licenses and permits required for the Facilities' operation.

(d) The County shall in no event use the Mortgaged Property or any part thereof, nor allow the same to be used, for any unlawful purpose, or suffer any act to be done or any condition to exist with respect to the Mortgaged Property or any part thereof, nor any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private, or which may make void or voidable any insurance then in force with respect thereto.

**6.02. Use and Operation.** The County shall use and operate the Facilities and related facilities as a landfill, and for no other purpose unless required by law. The County shall be solely responsible for the Facilities' operation, and shall not contract with any other person or entity for the Facilities' operation.

**6.03. Maintenance and Repairs; Additions.** (a) The County shall keep the Mortgaged Property in good order and repair (reasonable wear and tear excepted) and in good operating condition, shall not commit or permit any waste or any other thing to occur whereby the value or usefulness of the Mortgaged Property might be impaired, and shall make from time to time all necessary or appropriate repairs, replacements and renewals.

(b) The County may, also at its own expense, make from time to time any additions, modifications or improvements to the Mortgaged Property that it may deem desirable for its governmental or proprietary purposes and that do not materially impair the effective use, nor materially decrease the value or substantially alter the intended use, of the Mortgaged Property. The County shall do, or cause to be done, all such things as may be required by law in order fully to protect the security of and all BB&T's rights under this Agreement.

(c) Any and all additions to or replacements of the Facilities and all parts thereof shall

constitute accessions to the Facilities and shall be subject to all the terms and conditions of this Agreement and included in the "Facilities" for the purposes of this Agreement.

(d) Notwithstanding the provisions of subsection (c) above, however, the County may, from time to time in its sole discretion and at its own expense, install machinery, equipment and other tangible property in or on the Facilities. All such property shall remain the County's sole property in which BB&T shall have no interest; provided, however, that any such property which becomes permanently affixed to the Facilities shall be subject to the lien and security interest arising under this Agreement if BB&T shall reasonably determine that the Facilities would be damaged or impaired by the removal of such machinery, equipment or other tangible property.

**6.04. Security.** The County shall take all reasonable steps necessary to safeguard the Equipment against theft. The security afforded the Equipment shall at all times be equal to or better than the security afforded the County's personal property that is not subject to this Agreement.

**6.05. Utilities.** The County shall pay all charges for utility services furnished to or used on or in connection with the Site and the Facilities.

**6.06. Risk of Loss.** The County shall bear all risk of loss to and condemnation of the Site and the Facilities.

**6.07. Condemnation.**

(a) The County shall immediately notify BB&T if any governmental authority shall institute, or shall notify the County of any intent to institute, any action or proceeding for the taking of, or damages to, all or any part of the Mortgaged Property or any interest therein under the power of eminent domain, or if there shall be any damage to the Mortgaged Property due to governmental action, but not resulting in a taking of any portion of the Mortgaged Property. The County shall file and prosecute its claims for any such awards or payments in good faith and with due diligence and cause the same to be collected and paid over to BB&T, and to the extent permitted by law hereby irrevocably authorizes and empowers BB&T or the Deed of Trust Trustee, in the County's name or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claims. If the County receives any Net Proceeds arising from any such action, the County shall apply such Net Proceeds as provided in Section 6.10.

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

**6.08. Title.** Title to the Site and the Facilities and any and all additions, repairs, replacements or modifications thereto shall at all times be in the County, subject to the lien of this Agreement. Upon the County's payment in full of all Required Payments, BB&T, at the County's expense and request, shall cancel this Agreement.

**6.09. No Encumbrance, Mortgage or Pledge of Site or Facilities.**

(a) The County shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics' and materialmen's liens), charge, encumbrance or other claim in the nature of a lien on or with respect to the Mortgaged Property, except Permitted Encumbrances. The County shall promptly, at its own expense, take such action as may be duly necessary to discharge any such mortgage, pledge, lien, charge, encumbrance or claim not excepted above which it shall have created, incurred or suffered to exist.

(b) The County shall reimburse BB&T for any expense incurred by BB&T to discharge or remove any such mortgage, pledge, lien, security interest, encumbrance or claim, with interest thereon at the Prime Rate.

**6.10. Damage and Destruction; Use of Net Proceeds.** (a) The County shall promptly notify BB&T if (i) the Mortgaged Property or any portion thereof is stolen or is destroyed or damaged by fire or other casualty, (ii) a material defect in the construction of the Facilities shall become apparent, or (iii) title to or the use of all or any portion of the Mortgaged Property shall be lost by reason of a defect in title. Each notice shall describe generally the nature and extent of such damage, destruction or taking.

(b) If the Net Proceeds arising from any single event, or any single substantially related sequence of events, is not more than \$50,000, the County shall retain such Net Proceeds and apply the same to the prompt completion, repair or restoration of the Mortgaged Property, and shall promptly thereafter report to BB&T regarding the use of such Net Proceeds.

(c) If the Net Proceeds arising from any single event, or any single substantially related sequence of events, is more than \$50,000, then the County shall cause such Net Proceeds to be paid to an escrow agent (which shall be a bank, trust company or similar entity exercising fiduciary responsibilities) for deposit in a special escrow fund to be held by such escrow agent. The County shall thereafter provide for the application of all Net Proceeds to the prompt completion, repair or restoration of the Facilities, as the case may be. The escrow agent shall disburse Net Proceeds for the payment of such costs upon receipt of requisitions in substantially the form of Exhibit A to the Project Fund Agreement. If the Net Proceeds shall be insufficient to pay in full the cost of completion, repair or restoration, the County shall either (i) complete the work and pay any cost in excess of the Net Proceeds, or (ii) not carry out such completion, repair or restoration, and instead apply the Net Proceeds, together with other available funds as may be necessary, to the prepayment of all outstanding Required Payments pursuant to Section 3.03.

(d) Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of Net Proceeds shall be the County's property and shall be part of the Facilities.

## ARTICLE VII

### THE DEED OF TRUST TRUSTEE

**7.01. Deed of Trust Trustee's Liability.** The Deed of Trust Trustee shall suffer no liability by virtue of his acceptance of this trust except such as may be incurred as a result of the Deed of Trust Trustee's failure to account for the proceeds of any sale under this Agreement.

**7.02. Substitute Trustees.** If the Deed of Trust Trustee, or any successor, shall die, become incapable of acting or renounce his trust, or if for any reason BB&T desires to replace the Deed of Trust Trustee, then BB&T shall have the unqualified right to appoint one or more substitute or successor Deed of Trust Trustees by instruments filed for registration in the office of the Register of Deeds where this Agreement is recorded. Any such removal or appointment may be made at any time without notice, without specifying any reason therefor and without any court approval. Any such appointee shall become vested with title to the Mortgaged Property and with all rights, powers and duties conferred upon the Deed of Trust Trustee by this Agreement in the same manner and to the same effect as though such Deed of Trust Trustee were named as the original Deed of Trust Trustee.

## ARTICLE VIII

### DEFAULTS AND REMEDIES; FORECLOSURE

**8.01. Events of Default.** An "Event of Default" is any of the following:

- (a) The County's failing to make any Installment Payment when due.
- (b) The occurrence of an Event of Nonappropriation.
- (c) The County's breaching or failing to perform or observe any term, condition or covenant of this Agreement or of the Project Fund Agreement on its part to be observed or performed, other than as provided in subsections (a) or (b) above, including payment of any Additional Payment, for a period of 15 days after written notice specifying such failure and requesting that it be remedied shall have been given to the County by BB&T, unless BB&T shall agree in writing to an extension of such time prior to its expiration.
- (d) The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law by or against the County as a debtor, or the appointment of a receiver, custodian or similar officer for the County or any of its property, and the failure of such proceedings or appointments to be vacated or fully stayed within 30 days after the institution or occurrence thereof.
- (e) Any warranty, representation or statement made by the County in this Agreement or the Project Fund Agreement is found to be incorrect or misleading in any material respect on the Closing Date (or, if later, on the date made).

(f) Any lien, charge or encumbrance (other than Permitted Encumbrances) prior to or affecting the validity of this Agreement is found to exist, or proceedings are instituted against the County to enforce any lien, charge or encumbrance against the Mortgaged Property and such lien, charge or encumbrance would be prior to the lien of this Agreement.

(g) The County's failing to pay when due any principal of or interest on any of its general obligation debt.

**8.02. Remedies on Default.** Upon the continuation of any Event of Default, BB&T may, without any further demand or notice, exercise any one or more of the following remedies:

(a) Declare the unpaid principal components of the Installment Payments immediately due and payable;

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

(c) As provided in the Project Fund Agreement, pay over any balance remaining in the Project Fund to be applied against outstanding Required Payments in any manner BB&T may reasonably deem appropriate; and

(d) Avail itself of all available remedies under this Agreement, including execution and foreclosure as provided in Sections 8.03 and 8.04, and recovery of attorneys' fees and other expenses.

Notwithstanding any other provision of this Agreement, County, the Deed of Trust Trustee and BB&T intend to comply with Section 160A-20. No deficiency judgment may be entered against the County in violation of Section 160A-20.

**8.03. Execution on Personal Property.** Upon the continuation of any Event of Default and in addition to all other remedies granted in this Agreement, BB&T shall have all the rights and remedies of a secured party under the UCC and may proceed as to the personal property portion of the Mortgaged Property in the same manner as provided in this Agreement for the real property portion, with BB&T having no obligation to proceed against real or personal property in preference to the other.

**8.04. Foreclosure; Sale under Power of Sale.**

(a) Right to foreclosure or sale. Upon the occurrence and continuation of an Event of Default, at BB&T's request, the Deed of Trust Trustee shall foreclose Mortgaged Property by judicial proceedings or, at BB&T's option, the Deed of Trust Trustee shall sell (and is hereby empowered to sell) all or any part of the Mortgaged Property (and if in part, any such sale shall in no way adversely affect the lien created hereby against the remainder) at public sale to the last and highest bidder for cash (free of any equity of redemption, homestead, dower, curtesy or other exemption, all of which the County expressly waives to the extent permitted by law) after compliance with applicable State laws relating to foreclosure sales under power of sale. The Deed of Trust Trustee shall, at BB&T's request, execute a proper deed or deeds to the successful purchaser at such sale.

(b) Bank's bid. BB&T may bid and become the purchaser at any sale under this Agreement, and in lieu of paying cash therefor may make settlement for the purchase price by crediting against the Required Payments the proceeds of sale net of sale expenses, including the Deed of Trust Trustee's commission, and after payment of such taxes and assessments as may be a lien on the Mortgaged Property superior to the lien of this Agreement (unless the Mortgaged Property is sold subject to such liens and assessments, as provided by State law).

(c) County's bid. The County may bid for all or any part of the Mortgaged Property at any foreclosure sale; provided, however, that the price bid by the County may not be less than an amount sufficient to provide for full payment of the Required Payments.

(d) Successful bidder's deposit. At any such sale the Deed of Trust Trustee may, at its option, require any successful bidder (other than BB&T) immediately to deposit with the Deed of Trust Trustee cash or a certified check in an amount equal to all or any part of the successful bid, and notice of any such requirement need not be included in the advertisement of the notice of such sale.

(e) Application of sale proceeds. The proceeds of any foreclosure sale shall be applied in the manner and in the order prescribed by State law, it being agreed that the expenses of any such sale shall include a commission to the Deed of Trust Trustee of five percent of the gross sales price for making such sale and for all services performed under this Agreement. Any proceeds of any such sale remaining after the payment of all Required Payments and the prior application thereof in accordance with State law shall be paid to the County.

**8.05 Possession of Mortgaged Property.** During the continuation of an Event of Default, the County shall immediately lose the right to possess, use and enjoy the Mortgaged Property (but may remain in possession of the Mortgaged Property as a tenant at will of BB&T), and thereupon the County (a) shall pay monthly in advance to BB&T a fair and reasonable rental value for the use and occupation of the Mortgaged Property (in an amount BB&T shall determine in its reasonable judgment), and (b) upon BB&T's demand, shall deliver possession of the Mortgaged Property to BB&T or, at BB&T's direction, to the purchaser of the Mortgaged Property at any judicial or foreclosure sale under this Agreement.

In addition, upon the continuation of any Event of Default, BB&T, to the extent permitted by law, is hereby authorized to (i) take possession of the Mortgaged Property, with or without legal action, (ii) lease the Mortgaged Property, (iii) collect all rents and profits therefrom, with or without taking possession of the Mortgaged Property, and (iv) after deducting all costs of collection and administration expenses, apply the net rents and profits first to the payment of necessary maintenance and insurance costs, and then to the County's account and in reduction of the County's corresponding Required Payments in such fashion as BB&T shall reasonably deem appropriate. BB&T shall be liable to account only for rents and profits it actually receives.

**8.06. Due on Sale Provision; Acceleration.** BB&T may, at its option, require the immediate payment in full of the Required Payments and the Amount Advanced and all other sums secured by this Financing Agreement upon the sale, transfer, conveyance or encumbrance of all or any part of the Mortgaged Property, or any legal or beneficial interest in the Mortgaged Property, without BB&T's prior written consent. This option applies whether the sale, transfer, conveyance or

encumbrance is voluntary, involuntary, by operation of law or otherwise, and includes (i) any creation of lien or encumbrance, whether or not subordinate to the lien created pursuant to this Financing Agreement, (ii) the creation of any easement, right-of-way or similar interest other than such as would constitute a Permitted Encumbrance, or (iii) the grant of any leasehold or similar interest or any option to purchase, right of first refusal or similar interest.

**8.07. No Remedy Exclusive; Delay Not Waiver.** All remedies under this Agreement 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. If any Event of Default shall occur and thereafter be waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed a waiver of any other breach under this Agreement.

**8.08. Payment of Costs and Attorney's Fees.** If BB&T employs an attorney to assist in the enforcement or collection of Required Payments, or if the Deed of Trust Trustee or BB&T voluntarily or otherwise shall become a party or parties to any suit or legal proceeding (including a proceeding conducted under any state or federal bankruptcy or insolvency statute) to protect the Mortgaged Property, to protect the lien of this Agreement, to enforce collection of the Required Payments or to enforce compliance by the County with any of the provisions of this Agreement, the County agrees to pay reasonable attorneys' fees and all of the costs that may reasonably be incurred (whether or not any suit or proceeding is commenced), and such fees and costs (together with interest at the Prime Rate) shall be secured as Required Payments.

## ARTICLE IX

### MISCELLANEOUS

**9.01. Notices.** (a) Any communication required or permitted by this Agreement must be in writing.

(b) Any communication under this Agreement shall be sufficiently given and deemed given when delivered by hand or on the date shown on a certified mail receipt, or delivery receipt from a national commercial package delivery service, if addressed as follows:

(i) if to the County, to 113 N. Main Street, Hendersonville, North Carolina 28792, Attention: Finance Director;

(ii) if to the Deed of Trust Trustee, to 5130 Parkway Plaza Boulevard, Building 9, Charlotte, North Carolina 28217; or

(iii) if to BB&T, to 5130 Parkway Plaza Boulevard, Building 9, Charlotte, North Carolina 28217, Attention: Account Administration/Municipal.

(c) Any communication to the Deed of Trust Trustee shall also be sent to BB&T.

(d) Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others.

**9.02. No Assignments by County.** The County shall not sell or assign any interest in this Agreement.

**9.03. Assignments by BB&T.** BB&T may, at any time and from time to time, assign all or any part of its interest in the Site, the Facilities or this Agreement, including, without limitation, BB&T's rights to receive Required Payments. Any assignment made by BB&T or any subsequent assignee shall not purport to convey any greater interest or rights than those held by BB&T pursuant to this Agreement.

The County agrees that this Agreement may become part of a pool of obligations at BB&T's or its assignee's option. BB&T or its assignees may assign or reassign all or any part of this Agreement, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Agreement. Any assignment by BB&T may be only to a bank, insurance company, or similar financial institution or any other entity approved by the LGC. Notwithstanding the foregoing, no assignment or reassignment of BB&T's interest in the Mortgaged Property or this Agreement 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 BB&T's interest in this Agreement 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 Agreement, 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 Agreement 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 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.

**9.04. Amendments.** No term or provision of this Agreement may be amended, modified or waived without the prior written consent of the County and BB&T.

**9.05. No Marshalling.** The County hereby waives any and all rights to require marshalling of assets in connection with the exercise of any remedies provided in this Agreement or as permitted by law.

**9.06. Governing Law.** The County, BB&T and the Deed of Trust Trustee intend that State law shall govern this Agreement.



**9.07. Liability of Officers and Agents.** No officer, agent or employee of the County shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers or agents shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve an officer, agent or employee of the County from the performance of any official duty provided by law.

**9.08. Covenants Running with the Land.** All covenants contained in this Agreement shall run with the real estate encumbered by this Agreement.

**9.09. Severability.** If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

**9.10. Non-Business Days.** If the date for making any payment or the last day for performance of any act or the exercising of any right shall not be a Business Day, such payment shall be made or act performed or right exercised on or before the next preceding Business Day.

**9.11. Entire Agreement.** This Agreement constitutes the County's entire agreement with respect to the general subject matter covered hereby.

**9.12. Binding Effect.** Subject to the specific provisions of this Agreement, and in particular Section 9.03, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

**IN WITNESS WHEREOF**, the County has caused this instrument to be executed as of the day and year first above written by duly authorized officers.

**(SEAL)**

**ATTEST:**

**HENDERSON COUNTY,  
NORTH CAROLINA**

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

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

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

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

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

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

\* \* \* \* \*

**STATE OF NORTH CAROLINA;  
HENDERSON COUNTY**

I, a Notary Public of such County and State, certify that \_\_\_\_\_ and \_\_\_\_\_ personally came before me this day and acknowledged that they are the \_\_\_\_\_ and Clerk, respectively, of Henderson County, North Carolina, and that by authority duly given and as the act of Henderson County, North Carolina, the foregoing instrument was signed in the County's name by such \_\_\_\_\_, sealed with its corporate seal and attested by such Clerk.

**WITNESS** my hand and official stamp or seal, this \_\_\_ day of October 2011.

**[NOTARY SEAL]**

\_\_\_\_\_  
Notary Public

Notary's Printed Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

*[Financing Agreement and Deed of Trust for \$2,000,000.00 from Henderson County, North Carolina, for the benefit of Branch Banking and Trust Company]*

**BRANCH BANKING AND  
TRUST COMPANY**

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

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

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

This contract has been approved under the provisions of Article 8, Chapter 159 of the General Statutes of North Carolina.

T. Vance Holloman  
Secretary, North Carolina  
Local Government Commission

By \_\_\_\_\_  
[T. Vance Holloman or  
Designated Assistant]

*[Financing Agreement and Deed of Trust for \$2,000,000.00 from Henderson County, North Carolina, for the benefit of Branch Banking and Trust Company]*

**EXHIBIT A -- SITE DESCRIPTION**

[COUNTY'S ATTORNEY TO PROVIDE LEGAL DESCRIPTION IN *WORD* FORMAT PRIOR TO CLOSING]

**EXHIBIT B -- IMPROVEMENTS DESCRIPTION**

[COUNTY'S ATTORNEY TO PROVIDE DESCRIPTION OF PROPOSED IMPROVEMENTS  
IN *WORD* FORMAT PRIOR TO CLOSING]

**EXHIBIT C -- EXISTING ENCUMBRANCES**

[FROM TITLE COMMITMENT; COUNTY'S ATTORNEY TO PROVIDE LIST OF ENCUMBRANCES IN *WORD* FORMAT PRIOR TO CLOSING]

**EXHIBIT D-- PAYMENT SCHEDULE**

**Payment Schedule to Financing Agreement and Deed of Trust dated as of October \_\_\_, 2011 (the "Financing Agreement"), granted by Henderson County, North Carolina, to F. Louis Loyd, III, Deed of Trust Trustee, for the benefit of Branch Banking and Trust Company**

Contract Number: 003-0803100-018

The payments required to repay the advance made pursuant to the Financing Agreement call for an amortization period of approximately fifteen (15) years. Payments are annually in arrears in variable amounts with a fixed principal component of \$133,333.33. A portion of each payment is paid as and represents payment of interest at an annual interest rate of 3.20%.

Payments are due beginning on October \_\_\_, 2012, and annually thereafter, with a final payment of all outstanding principal and accrued and unpaid interest due on October \_\_\_, 2026, all as set forth in the attached amortization schedule.

**Henderson County, North Carolina**  
 Landfill improvement project  
 003-0803100-018

Compound Period: Annual

Nominal Annual Rate: 3.200 %

**CASH FLOW DATA**

	<b>Event</b>	<b>Date</b>	<b>Amount</b>	<b>Number</b>	<b>Period</b>	<b>End Date</b>
1	Loan	10/25/2011	2,000,000.00	1		
2	Payment Fixed Principal (+Int.)	10/25/2012	133,333.33	15	Annual	10/25/2026

**AMORTIZATION SCHEDULE - Normal Amortization, 360 Day Year**

	<b>Date</b>	<b>Payment</b>	<b>Interest</b>	<b>Principal</b>	<b>Balance</b>
Loan	10/25/2011				2,000,000.00
2012 Totals		0.00	0.00	0.00	
1	10/25/2012	197,333.33	64,000.00	133,333.33	1,866,666.67
2013 Totals		197,333.33	64,000.00	133,333.33	
2	10/25/2013	193,066.66	59,733.33	133,333.33	1,733,333.34
2014 Totals		193,066.66	59,733.33	133,333.33	
3	10/25/2014	188,800.00	55,466.67	133,333.33	1,600,000.01
2015 Totals		188,800.00	55,466.67	133,333.33	
4	10/25/2015	184,533.33	51,200.00	133,333.33	1,466,666.68
2016 Totals		184,533.33	51,200.00	133,333.33	
5	10/25/2016	180,266.66	46,933.33	133,333.33	1,333,333.35
2017 Totals		180,266.66	46,933.33	133,333.33	
6	10/25/2017	176,000.00	42,666.67	133,333.33	1,200,000.02
2018 Totals		176,000.00	42,666.67	133,333.33	
7	10/25/2018	171,733.33	38,400.00	133,333.33	1,066,666.69
2019 Totals		171,733.33	38,400.00	133,333.33	
8	10/25/2019	167,466.66	34,133.33	133,333.33	933,333.36
2020 Totals		167,466.66	34,133.33	133,333.33	



9	10/25/2020	163,200.00	29,866.67	133,333.33	800,000.03
2021 Totals		163,200.00	29,866.67	133,333.33	
10	10/25/2021	158,933.33	25,600.00	133,333.33	666,666.70
2022 Totals		158,933.33	25,600.00	133,333.33	
11	10/25/2022	154,666.66	21,333.33	133,333.33	533,333.37
2023 Totals		154,666.66	21,333.33	133,333.33	
12	10/25/2023	150,400.00	17,066.67	133,333.33	400,000.04
2024 Totals		150,400.00	17,066.67	133,333.33	
13	10/25/2024	146,133.33	12,800.00	133,333.33	266,666.71
2025 Totals		146,133.33	12,800.00	133,333.33	
14	10/25/2025	141,866.66	8,533.33	133,333.33	133,333.38
2026 Totals		141,866.66	8,533.33	133,333.33	
15	10/25/2026	137,600.00	4,266.62	133,333.38	0.00
2027 Totals		137,600.00	4,266.62	133,333.38	
Grand Totals		2,511,999.95	511,999.95	2,000,000.00	