



Chowan County Board of Commissioners

Regular Meeting

Monday, November 20, 2023

Chowan County Public Safety Center

305 West Freemason Street

6:00pm

AGENDA

Regular Meeting

- a. Call to Order
- b. Pledge
- c. Invocation Commissioner McLaughlin

1. Approval of Draft Agenda

2. Public Comment

In accordance with NCGS 153A-52.1 The Board will allow a maximum of 3 minutes per speaker during the Public Comment Period.

3. Consent Agenda

All items on the Consent Agenda are considered to be routine and may be enacted by one motion. If a County Commissioner requests discussion on an item, the item will be removed from the Consent Agenda and considered separately.

- a. Tax Refund/Release
Pederson, S. \$4,880.54 Paid Twice

4. Recreation Items

Registration Software

Recreation Director Shannon Ray has provided the Board with a cost analysis for registration software. The Board will consider approval of the purchase.

5. John A. Holmes High School Items

- Public Hearing

The Board of Commissioners is considering entering into an interim installment financing contract with PNC Bank, National Association in a principal amount not to exceed \$34,998,500, under which the County will make certain installment payments, to finance a portion of the costs of constructing a new John A. Holmes High School, and pay the costs associated with entering into the contract. The Project will be located 600 Woodard Street, Edenton, North Carolina 27932. In connection with the Contract, the County will secure its obligations under the Contract by a deed of trust that grants a security interest on the site of the Project and the improvements thereon for the benefit of the Lender. The Contract and the Deed of Trust permit the County to enter into amendments to finance additional projects and refinance projects using the Mortgaged Property as collateral and the County may grant additional collateral in connection with such amendments. On the County's payment of all installment payments due under the Contract,

including any future amendments to finance or refinance projects, the lien created in the Project will terminate and any security interest granted to the Lender under the Contract will be released. Pursuant to Sections 160A-20 of the General Statutes of North Carolina, that on November 20, 2023 at 6:00pm, or as soon as practicable after that, in the Chowan County Public Safety Center, 305 West Freemason Street Edenton, NC, the Board will conduct a public hearing concerning the approval of the execution and delivery of the Contract as described above. All interested parties are invited to present comments at the public hearing on the Contract.

- Interim Financing Contract and Deed of Trust

The Board will consider an approving resolution that authorizes an interim installment financing contract with PNC Bank and a Deed of Trust for the subject property.

- Lease Agreement

The Board will consider approval of a lease agreement between Chowan County and the Edenton-Chowan Board of Education for the John A. Holmes High School project.

6. Teacher Supplement Update

Mr. Howard will provide the Board with an update on the monies budgeted for teacher supplement which exceeds what was needed due to a decrease in the state budget for salary increases.

7. Appointment

VAD Board

Cary Parrish and Joey Byrum are eligible and request reappointment to the Voluntary Ag. District Board.

8. Financial Items

Ms. Smith will present the following:

a. Budget Amendments

BA2024-028

BA2024-029

BA2024-030

BA2024-031

9. External Board/Committee Report

Board members are asked to report on the activities of the external boards to which they have been appointed.

NCACC Steering Committee Appointments

Chair Kirby has been appointed to General Government and Tax/Finance, Agriculture and Public Education and Commissioner Lawrence has been appointed to Agriculture and Public Education Steering Committees of the NCACC.

Broadband

Commissioner Lawrence has been appointed to manage a broadband grant for Elizabeth City State University.

10. Manager's Report

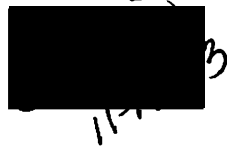
County Manager Kevin Howard will update the Board on any pending matters.

11. Timely and Important Matters

12. Adjourn

RUN DATE: 11/16/2023 10:00 AM

CHOWAN COUNTY REFUND REPORT



NAME	BILL NUMBER	PAYMENT TYPE	AMOUNT	OPER	DATE TIME
29402 DICKENS, DENNIS DEAN DICKENS, BELINDIA ELLEN 551 HAPPY HOME RD TYNER, NC 27980 Overpayment REFUND RECIPIENT:	2023-16193	RP: 790100288095	7.79	mkeeter	11/8/2023 9:19:58 AM
51310 MILBOURN, WILLIAM THOMAS 4713 KENNEBECK AVE NORFOLK, VA 23513 Overpayment REFUND RECIPIENT:	2023-4341	RP: 784500450153	5.50	mkeeter	11/13/2023 12:28:56 PM
50198 POWELL, STEPHANIE WAFF WAFF, CAMERON PAUL 172 SCHOONER LANDING DR Edenton, NC 27932 Overpayment REFUND RECIPIENT:	2022-14446	RP: 688400949506	620.78	IPAYMENTS	11/14/2023 8:02:49 AM
50435 PEDERSON, STEVEN J PEDERSON, DONNA-JEAN 358 BAY POINT DR Edenton, NC 27932 Pre. Paid by Ellis Law- refund to Leretalc REFUND RECIPIENT:	2023-11043	RP: 781301082585	4,880.54	LERETA	11/15/2023 8:52:49 AM
TOTAL REFUNDS PRINTED:		5,514.61			
TOTAL VOID REFUNDS:		-620.78			

Edenton-Chowan Recreation Department

Registration Software – Civic Plus

FY	Expense	Justification			Revenue	Justification	
		Amount	Line Item	Description		Amount	Line Item
FY 23-24	\$4737.67	\$2000	11-6130-299-00	Departmental Supplies (Tables & Chairs for DFW)	\$25,000	11-3612-482-00	Youth Registration Fees <u>Fee Structure</u> \$25 resident \$40 non-resident No late fee
FY 24-25	\$6087.67	\$6100	11-6130-441-00	Contract Services	\$36,000 (+11,000)	11-3612-482-00	Youth Registration Fees <u>Fee Structure Change</u> \$30 resident \$50 non-resident \$5 late fee
FY 25-26	\$6323.92	\$6400	11-6130-441-00	Same	\$36,000 (+11,000)	11-3612-482-00	same
FY 26-27	\$5209.31	\$5200	11-6131-441-00	Same	\$37,000 (+12,000)	11-3612-482-00	same
FY 27-28	\$5469.78	\$5500	11-6131-441-00	Same	\$37,000 (+12,000)	11-3612-482-00	same
Total Software Cost: \$28,008.34					Total Increase Youth Sports Registration : \$46,000		

RESOLUTION OF THE COUNTY OF CHOWAN, NORTH CAROLINA, APPROVING AN INTERIM INSTALLMENT FINANCING CONTRACT AND DELIVERY THEREOF AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS

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

WHEREAS, the County has the power, pursuant to Section 160A-20 of the General Statutes of North Carolina to (1) enter into installment contracts in order to purchase, or finance or refinance the purchase of, real or personal property and to finance or refinance the construction or repair of fixtures or improvements on real property and (2) create a security interest in some or all of the property financed or refinanced to secure repayment of the purchase price;

WHEREAS, the Board of Commissioners of the County (the “*Board*”) has previously determined that it is in the best interest of the County to enter into an interim installment financing contract (the “*Contract*”) with PNC Bank, National Association (the “*Lender*”) in an aggregate principal amount not to exceed \$34,998,500 to finance a portion of the costs of constructing a new high school, to be known as the John A. Holmes High School, in the County (the “*Project*”);

WHEREAS, the County has also received a Need-Based Public School Capital Fund grant to fund a portion of the cost of the Project;

WHEREAS, the County expects to discharge its obligations to pay the Lender under the Contract upon completion of the construction of the Project, at which time the County will enter into a long-term installment financing contract with the United States Department of Agriculture (the “*Long-Term Contract*”) and execute and deliver and execute and deliver a deed of trust, security agreement and fixture filing securing the County’s obligations under the Long-Term Contract;

WHEREAS, the obligation of the County to make Installment Payments (as defined in the Contract) under the Contract is a limited obligation of the County payable solely from currently budgeted appropriations of the County and does not constitute a pledge of the faith and credit of the County within the meaning of any constitutional debt limitation;

WHEREAS, to provide security for the County’s obligations under the Contract, the County will grant to the Lender a security interest under a deed of trust, security agreement and fixture filing (the “*Deed of Trust*”) in the County’s fee simple interest in the site on which John A. Holmes High School will be located, together with all improvements and fixtures located thereon (collectively, the “*Mortgaged Property*”);

WHEREAS, pursuant to a Lease Agreement, to be dated on or about December 7, 2023 (the “*Lease Agreement*”), between the Board of Education and the County, the Board of Education will lease the Mortgaged Property from the County through the duration of the Contract;

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

WHEREAS, there has been made available to the Board the forms of the Contract, the Deed of Trust, and the Lease (collectively, the “*Instruments*”) which the County proposes to approve, enter into and deliver, as applicable, to effectuate the proposed financing; and

WHEREAS, it appears that each of the Instruments is in appropriate form and is an appropriate instrument for the purposes intended;

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

Section 1. Approval, Authorization and Execution of Instruments. The Board hereby approves the financing of the Project in accordance with the terms of the Instruments, which will be valid, legal and binding obligations of the County in accordance with their respective terms. The Board hereby approves the amount to be advanced by the Lender to the County pursuant to the Contract in an aggregate principal amount not to exceed \$34,998,500, such amount to be repaid by the County to the Lender as provided in the Contract, including using the proceeds of the Long-Term Contract to make such repayment. The form, terms and content of the Instruments are in all respects authorized, approved and confirmed, and each of the County Manager, the Finance Officer, and the Clerk to the Board, or their respective designees (individually and collectively, the "*Authorized Officers*") are authorized, empowered and directed to execute and deliver the Instruments for and on behalf of the County, including necessary counterparts, in substantially the forms presented to the Board, but with such changes, modifications, additions or deletions therein as shall to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all such changes, modifications, additions or deletions, and that from and after the execution and delivery of the Instruments, each of the Authorized Officers are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Instruments as executed.

Section 2. Further Actions. Each of the Authorized Officers is hereby designated as the County's representatives to act on behalf of the County in connection with the transactions contemplated by the Instruments, and each of the Authorized Officers are authorized and directed to proceed with financing the Project in accordance with the terms of the Instruments and to seek opinions on matters of law from the County Attorney, which the County Attorney is authorized to furnish on behalf of the County, and opinions of law from such other attorneys for all documents contemplated hereby as required by law. Each of the Authorized Officers is hereby authorized to designate one or more employees of the County to take all actions which each of the Authorized Officers is authorized to perform under this Resolution, and each of the Authorized Officers, including their designees, is in all respects authorized on behalf of the County to supply all information pertaining to the transactions contemplated by the Instruments. Each of the Authorized Officers is authorized to execute and deliver for and on behalf of the County any and all additional certificates, documents, opinions or other papers and perform all other acts as may be required by the Instruments or as they may deem necessary or appropriate in order to implement and carry out the intent and purposes of this Resolution. Any and all acts of the Authorized Officers may be done individually or collectively.

Section 3. Related Actions. All acts and doings of officers, employees and agents of the County, whether taken prior to, on, or after the date of this Resolution, that are in conformity with and in furtherance of the purposes and intents of this Resolution as described above shall be, and the same hereby are, in all respects ratified, approved and confirmed.

Section 4. Repealer. All motions, orders, resolutions, ordinances and parts thereof, in conflict herewith are hereby repealed.

Section 5. Severability. If any section, phrase or provision of this Resolution is for any reason declared to be invalid, such declaration will not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

Section 6. Effective Date. This Resolution is effective on the date of its adoption.

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

I, SUSANNE STALLINGS, Clerk to the Board of Commissioners of the County of Chowan, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of a resolution entitled “**RESOLUTION OF THE COUNTY OF CHOWAN, NORTH CAROLINA, APPROVING AN INTERIM INSTALLMENT FINANCING CONTRACT AND DELIVERY THEREOF AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS**” adopted by the Board of Commissioners of the County of Chowan, North Carolina at a meeting held on the 20th day of November, 2023.

WITNESS my hand and the corporate seal of the County of Chowan, North Carolina, this the ____ day of November, 2023.

[SEAL]

Susanne Stallings
Clerk to the Board of Commissioners
County of Chowan, North Carolina

INSTALLMENT FINANCING CONTRACT

between

COUNTY OF CHOWAN, NORTH CAROLINA
as the County

and

PNC BANK, NATIONAL ASSOCIATION
as the Bank

Dated: December 7, 2023

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INSTALLMENT FINANCING CONTRACT

THIS INSTALLMENT FINANCING CONTRACT, dated as of December 7, 2023 (the “*Contract*”), by and between the **COUNTY OF CHOWAN, NORTH CAROLINA**, a political subdivision of the State of North Carolina (the “*County*”) and **PNC BANK, NATIONAL ASSOCIATION**, a national banking association existing under the laws of the United States of America (the “*Bank*”);

WITNESSETH:

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

WHEREAS, the County has the power, pursuant to Section 160A-20 of the General Statutes of North Carolina, to (1) enter into installment contracts in order to purchase, or finance or refinance the purchase of real or personal property and to finance or refinance the construction or repair of fixtures or improvements on real property and (2) create a security interest in some or all of the property financed or refinanced to secure repayment of the purchase price;

WHEREAS, the Bank desires to advance certain funds to enable the County to finance a portion of the costs of constructing a new high school, to be known as the John A. Holmes High School, in the County (the “*Project*”);

WHEREAS, the County desires to obtain such advance from the Bank pursuant to the terms and conditions hereinafter set forth;

WHEREAS, the obligation of the County to make Installment Payments, as hereinafter defined, and other payments required under Section 3 hereof shall constitute a limited obligation payable solely from currently budgeted appropriations of the County and shall not constitute a pledge of the faith and credit of the County within the meaning of any constitutional debt limitation or as otherwise prohibited by the North Carolina Constitution;

WHEREAS, the County has received approval of this Contract and the financing of the Project from the North Carolina Local Government Commission;

WHEREAS, the County has held a public hearing with respect to this Contract providing for the financing of the Project;

WHEREAS, in order to further secure the obligations of the County hereunder, the County has executed the Deed of Trust (as hereinafter defined) to a trustee named therein, for the benefit of the Bank;

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

WHEREAS, the Bank and the County each have duly authorized the execution and delivery of this Contract;

NOW, THEREFORE, for and in consideration of the premises and of the covenants hereinafter contained, and other valuable consideration, the parties hereto agree as follows:

SECTION 1. DEFINITIONS

1.1 For purposes of this Contract, the following definitions will apply:

“*Board of Commissioners*” means the Board of Commissioners of the County.

“*Business Day*” means a day other than (a) a day on which the Bank or the County is authorized by law to remain closed or (b) a day on which the New York Stock Exchange is closed.

“*Cost of Prepayment*” means an amount equal to the present value, if positive, of the product of (a) the difference between (i) the yield, on the beginning date of the applicable interest period, of a U.S. Treasury obligation with a maturity similar to the applicable interest period, minus (ii) the yield on the prepayment date, of a U.S. Treasury obligation with a maturity similar to the remaining maturity of the applicable interest period, and (b) the principal amount to be prepaid, and (c) the number of years, including fractional years, from the prepayment date to the end of the applicable interest period. The yield on any U.S. Treasury obligation shall be selected by reference to Federal Reserve Statistical Release H.15 (519) “Selected Interest Rates.” For purposes of making present value calculations, the yield to maturity of a similar maturity U.S. Treasury obligation on the prepayment date shall be deemed the discount rate. The Cost of Prepayment shall also apply to any payments made after acceleration of the Installment Payments, pursuant to Section 11 hereof or pursuant to the exercise of prepayment rights in Section 7.2(b)(ii) or 7.3(b)(ii) hereof if such acceleration or prepayment occurs prior to November 7, 2025.

“*County*” means the County of Chowan, North Carolina, a political subdivision of the State of North Carolina, acting through its Board of Commissioners.

“*Deed of Trust*” means the Deed of Trust, Security Agreement, and Fixture Filing dated as of the date hereof from the County to the deed of trust trustee named therein for the benefit of the Bank securing its obligations hereunder.

“*Default Rate*” means the greatest of (i) the Prime Rate plus 3.00%; (ii) the Overnight Bank Funding Rate plus 3.50%; and (iii) 9.00%.

“*Electronic Means*” means delivery via the following communications methods: e-mail or secure electronic transmission containing applicable authorization codes and passwords and/or authentication keys.

“*Environmental Laws*” means any federal, state or local law, rule, regulation, permit, order or ordinance relating to the protection of the environment or human health or safety now or hereafter in effect, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. Section 9601, *et seq.*) (together with the regulations promulgated thereunder, “*CERCLA*”), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, *et seq.*) (together with the regulations promulgated thereunder, “*RCRA*”), the Oil Pollution Act of 1990 (33 U.S.C. Section 2701, *et seq.*) (together with the regulations promulgated thereunder, “*OPA*”), the Emergency Planning and Community Right-to-Know Act, as amended (42 U.S.C. Section 11001, *et seq.*) (together with the regulations promulgated thereunder, “*Title III*”), the Clean Water Act, as amended (33 U.S.C. Section 1321, *et seq.*) (together with the regulations promulgated thereunder, “*CWA*”), the Clean Air Act, as amended (42 U.S.C. Section 7401, *et seq.*) (together with the regulations promulgated thereunder,

“CAA”) and the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601 *et seq.*) (together with the regulations promulgated thereunder, “TSCA”), and any state or local similar laws and regulations and any so-called local, state or federal “superfund” or “superlien” law.

“*Hazardous Materials*” means any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials, asbestos or any materials containing asbestos or petroleum, petroleum hydrocarbons, or any other substance or material as defined by (or for purposes of) any federal, state or local environmental law, ordinance, rule or regulation including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. sections 9601 *et seq.*), the Hazardous Materials Transportation Act, as amended (49 U.S.C. sections 1801 *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. sections 9601 *et seq.*), and the regulations adopted and publications promulgated pursuant thereto. Hazardous Materials shall not include materials used by the County in connection with its operation of any of its public works or water/sewer system, provided such materials are properly handled and contained in accordance with applicable federal and state laws.

“*Installment Payments*” means those payments made by the County to the Bank as described in Section 3 of this Contract and in the Payment Schedule.

“*LGC*” means the Local Government Commission of North Carolina established pursuant to Chapter 159 of the North Carolina General Statutes.

“*Loan Amount*” means \$34,998,500, as described in **Exhibit B** hereto, which will be advanced by the Bank to enable the County to finance the Project.

“*Maximum Rate*” means the maximum rate of interest permitted by applicable law.

“*Mortgaged Property*” means the site of John A. Holmes High School, together with the improvements thereon, as more specifically identified in the Deed of Trust.

“*Net Proceeds*,” when used with respect to any proceeds from policies of insurance required hereunder or proceeds of any condemnation award arising out of the condemnation of all or any portion of the Mortgaged Property, means the amount remaining after deducting from the gross proceeds thereof all expenses (including, without limitation, attorneys’ fees and costs) incurred in the collection of such proceeds.

“*Overnight Bank Funding Rate*” shall mean, for any day, the rate comprised of both overnight federal funds and overnight Eurocurrency borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the Federal Reserve Bank of New York (“NYFRB”), as set forth on its public website from time to time, and as published on the next succeeding Business Day as the overnight bank funding rate by the NYFRB (or by such other recognized electronic source (such as Bloomberg) selected by the Bank for the purpose of displaying such rate); provided, that if such day is not a Business Day, the Overnight Bank Funding Rate for such day shall be such rate on the immediately preceding Business Day; provided, further, that if such rate shall at any time, for any reason, no longer exist, a comparable replacement rate determined by the Bank at such time (which determination shall be conclusive absent manifest error). If the Overnight Bank Funding Rate determined as above would be less than zero, then such rate shall be deemed to be zero. The rate of interest charged shall be adjusted as of each Business Day based on changes in the Overnight Bank Funding Rate.

“*Payment Schedule*” means the document labeled “*Payment Schedule*” attached hereto as **Exhibit A** and incorporated herein by reference, which describes the County’s Installment Payments.

“*Prime Rate*” means the rate publicly announced by the Bank from time to time as its prime rate. The Prime Rate is determined from time to time by the Bank as a means of pricing some loans to its borrowers. The Prime Rate is not tied to any external rate of interest or index and does not necessarily reflect the lowest rate of interest actually charged by the Bank to any particular class or category of customers.

“*Project*” means the construction of a new high school, to be known as the John A. Holmes High School, in the County.

“*USDA*” means the United States Department of Agriculture.

SECTION 2. ADVANCE OF LOAN AMOUNT; CONSTRUCTION OF PROJECT

2.1 ***Advance of Loan Amount.*** The Bank agrees to advance the Loan Amount to the County and the County agrees to borrow the Loan Amount from the Bank to be applied in accordance with the terms and conditions of this Contract. The County will use the proceeds of the Loan Amount to pay, or reimburse itself for, the costs of the Project and the costs incurred in connection with the execution and delivery of this Contract. The Loan Amount may be invested pending disbursement. The County shall pay any additional sums necessary to finance the Project and shall provide evidence of the payment of such additional sums to the Bank upon request.

2.2 ***Construction of Project.*** The County shall cause the construction of the Project to be in compliance with all applicable ordinances and statutes and requirements of the USDA and all regularly constituted authorities having jurisdiction over the County.

2.3 ***Construction Fund.*** There is hereby created a separate fund to be held by the Bank designated as the “*County of Chowan 2023 Installment Financing Construction Fund*” (the “*Construction Fund*”). The Bank shall deposit the proceeds of the Loan Amount in the Construction Fund, together with interest earned thereon. The County hereby grants to the Bank a security interest in the funds and investments held on deposit to the credit of the Construction Fund from time to time.

2.4 ***Disbursements.*** Money held in the Construction Fund is to be disbursed to the County for payment of the costs of the Project. If amounts held to the credit of the Construction Fund are insufficient to pay the costs of the Project, the County shall provide any balance of funds necessary to do so. The County shall transfer any money remaining in the Construction Fund after completion of the Project to the Bank to be applied as a credit against the Installment Payments due from the County on the next date or succeeding dates an Installment Payment comes due.

2.5 ***Termination.*** The Construction Fund shall be terminated at the earliest of (1) the final distribution of amounts held in the Construction Fund or (2) the termination of this Contract.

SECTION 3. INSTALLMENT PAYMENTS AND OTHER PAYMENTS

3.1 *Amounts and Times of Installment Payments and Other Payments.*

(a) Subject to the provisions of Section 13 hereof, the County shall repay the Loan Amount in installments as provided in Payment Schedule attached as **Exhibit A** to this Contract.

Each installment shall be deemed to be an Installment Payment and shall be paid in the amount and at the time set forth in the Payment Schedule except as provided herein. Installment Payments shall be sufficient in the aggregate to repay the Loan Amount together with interest thereon at a per annum rate equal to the rate per annum described in **Exhibit A** hereto.

(b) Interest on the Loan Amount as set forth on **Exhibit A** is based upon a 360-day year, with twelve (12) thirty (30) day months. The amortization schedule is based on the Bank receiving all payments on the scheduled due date. Interest shall continue to accrue on any payment that is not paid when due until such payment is made.

(c) Notwithstanding subsections (a) and (b) of this Section 3.1, the interest rate applicable to the Loan Amount will equal the Default Rate beginning on the effective date of an Event of Default and continuing for so long as the Event of Default remains in effect.

(d) Notwithstanding anything in this Contract to the contrary, in no event will the interest rate applicable to the Loan Amount exceed the Maximum Rate.

3.2 **Place of Payments.** All payments required to be made to the Bank hereunder shall be made to the Bank (1) at the address set forth in Section 15.4 in immediately available funds, (2) as wire transfers to the Bank on the payable date as directed by the Bank, or (3) as may be otherwise directed in writing by the Bank.

3.3 **Abatement of Installment Payments.** Subject to Section 13 hereof, there shall be no abatement or reduction of the Installment Payments or other payments by the County for any reason, including but not limited to, any failure by the County to appropriate sufficient funds for the payment of the Installment Payments or other payments, any defense, recoupment, setoff, counterclaim, or any claim (real or contingent) arising out of or related to the Mortgaged Property or the Project. The County assumes and shall bear the entire risk of loss and damage to the Mortgaged Property from any cause whatsoever, it being the intention of the parties that the Installment Payments and other payments shall be made in all events unless the obligation to make such Installment Payments and other payments is terminated as otherwise provided herein.

3.4 **Prepayment of Installment Payments.** The County may, at its option, prepay the Loan Amount in whole from the proceeds of an obligation of the USDA at any time upon giving the Bank not less than thirty (30) days written notice thereof at a prepayment price equal to 100% of the outstanding Loan Amount, together with interest accrued to the prepayment date, without premium, provided that if the County prepays the Loan Amount as permitted in this Section 3.4 prior to November 7, 2025, the County agrees to pay the Bank, in addition to the prepayment price set forth in this Section 3.4, on the prepayment date, a prepayment premium equal to the Cost of Prepayment.

SECTION 4. NATURE OF CONTRACT

This Contract is an installment contract pursuant to Section 160A-20 of the General Statutes of North Carolina and a security agreement pursuant to Article 9 of Chapter 25 of the General Statutes of North Carolina.

SECTION 5. RESPONSIBILITIES AND COVENANTS OF THE COUNTY

5.1 **Maintenance, Care and Use.** The County shall use the Mortgaged Property in a careful and proper manner, in compliance with all applicable laws and regulations, and shall take no action to

adversely affect the Mortgaged Property, and shall take all reasonable action to preserve the Mortgaged Property in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear excepted, including, without limitation, at its sole cost and expense, to repair and maintain the Mortgaged Property, and to replace any part of the Mortgaged Property as may from time to time become worn out, lost, stolen, destroyed or damaged or unfit for use. Any and all additions to or replacements of the Mortgaged Property and all parts thereof shall constitute accessions to the Mortgaged Property and shall be subject to all terms and conditions of this Contract and the Deed of Trust.

5.2 **Inspection.** The Bank shall have the right upon reasonable prior notice to the County to enter into and upon the Mortgaged Property to inspect the Mortgaged Property or any part thereof during normal business hours.

5.3 **Encumbrances.** Except as permitted by the Deed of Trust, the County shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Mortgaged Property, or the rights of the County and the Bank therein, except with the prior written consent of the Bank.

5.4 **Utilities.** The County shall pay, when due, all charges for utility services used in connection with the Mortgaged Property. There shall be no abatement of the Installment Payments on account of interruption of any such services.

5.5 **Taxes.** The County shall pay, when due, any and all taxes levied by any governmental body as a direct or indirect result of the County's ownership, possession, or use of the Mortgaged Property.

5.6 **Risk of Loss.** Subject to the provisions of Section 13 hereof, the County shall bear all risk of loss to and condemnation of the Mortgaged Property. In the event of loss or damage to the Mortgaged Property, the County shall either (a) continue to make the Installment Payments due hereunder and repair, reconstruct and restore the applicable portion of the Mortgaged Property to the satisfaction of the Bank, or (b) prepay in full the principal components of the outstanding Installment Payments in accordance with Section 7 hereof.

5.7 **Performance by the Bank of the County's Responsibilities.** Any performance required of the County or any payments required to be made by the County may, if not timely performed or paid, be performed or paid by the Bank, and, in that event, the Bank shall be immediately reimbursed by the County for such payments and for any costs and expenses, legal or otherwise, associated with the payments or other performance by the Bank, with interest thereon at a per annum rate equal to the Prime Rate in effect on the last business day of the calendar month preceding the payment (but not exceeding the Maximum Rate).

5.8 **Financial Statements.** The County agrees that it will furnish to the Bank current audited financial statements within 210 days of the end of such fiscal year, and permit the Bank or its agents and representatives to inspect the County's books and records and make extracts therefrom at its own expense during regular business hours and in a manner which will not disrupt the normal business routine of the County. The County shall furnish to the Bank current financial statements at such reasonable times as the Bank may request. The County represents and warrants to the Bank that all financial statements which have been delivered to the Bank in connection with this Contract fairly and accurately reflect the County's financial condition and there has been no material adverse change in the County's financial condition as reflected in the financial statements since the respective dates thereof.

5.9 **Environmental Covenants.** To the best of the County's knowledge, the Mortgaged Property is not now and has not ever been used to generate, manufacture, refine, transport, treat, store,

handle, dispose, transfer, produce or process Hazardous Materials and no Hazardous Materials have ever been installed on the Mortgaged Property. The County covenants that the Mortgaged Property shall be kept free of Hazardous Materials and shall not be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in connection with the normal construction, maintenance and operation of the Mortgaged Property and in compliance with all Environmental Laws. The County shall not cause or permit as a result of any intentional or unintentional act or omission on the part of the County or any lessee, tenant, subtenant, licensee, guest, invitee, employee, agent or contractor, the installation of Hazardous Materials on the Mortgaged Property or a release of Hazardous Materials onto the Mortgaged Property or suffer the presence of Hazardous Materials on the Mortgaged Property, except in connection with the normal construction, maintenance and operation of the Mortgaged Property and in compliance with all Environmental Laws. The County shall comply with and ensure compliance by all sublessees, tenants, subtenants, licensees, guests, invitees, employees, agents and contractors with all applicable federal, state and local laws, ordinances, rules and regulations with respect to Hazardous Materials and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to such laws, ordinances, rules and regulations. The County has not received any notice from any governmental agency, entity or any other person who receives any notices from any governmental agency, entity or any other person with regard to Hazardous Materials on, from or affecting the Mortgaged Property. In the event the County does receive any such notices, the County shall immediately notify the Bank. The County, at no expense to the Bank, shall conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to comply with all applicable Environmental Laws.

5.10 ***Special Tax Covenants.*** The County covenants that: (a) it will make no use of the money advanced by the Bank (the “*Proceeds*”) which would cause this Contract to be an “arbitrage bond” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the “*Code*”), or the Treasury Regulations promulgated thereunder; (b) so long as the Contract remains in effect, the County will comply with the requirements of the Code and the applicable Treasury Regulations promulgated thereunder and will not take or omit to take any action which will cause the interest component of the Installment Payments paid or payable under this Contract to be includable in the gross income of the Bank; (c) the Project shall be used exclusively for essential governmental purposes of the County and no use shall be made of the Proceeds or of the Project, directly or indirectly, which would cause this Contract to be a “private activity bond” within the meaning of Section 141 of the Code; (d) no part of the payment of Installment Payments under this Contract is or shall be guaranteed, in whole or in part, by the United States or any agency or instrumentality thereof; (e) no portion of the Proceeds shall be used, directly or indirectly, in making loans the payment of principal or interest with respect to which are to be guaranteed, in whole or in part, by the United States or any agency or any instrumentality thereof; and (f) the County shall not lease or otherwise make any of the Project available to any entity if such lease or other availability would cause the interest component of the Installment Payments to be included in the gross income of the Bank under the Code for income tax purposes.

The County shall file on or before its due date IRS Form 8038-G. The County shall not take or omit to take any action that may cause a loss of the federal, state or local tax-exempt status of this Contract or the interest thereon.

5.11 ***Appropriations of Payments.***

(a) The County reasonably believes that funds sufficient to make all Installment Payments during the term of this Contract can be obtained. While recognizing that it is not empowered to make any binding commitment to make Installment Payments or any other payments beyond its current fiscal year, the Board

of Commissioners of the County in authorizing the execution of this Contract has stated its intent to make annual appropriations sufficient to make the Installment Payments when due.

(b) The County Manager or Finance Officer of the County shall include in the initial proposal for each of the County's annual budgets the amount of all Installment Payments coming due during the fiscal year to which such budget is applicable. Notwithstanding that the County Manager or Finance Officer includes an appropriation for Installment Payments in a proposed budget, the County may terminate all its obligations hereunder by not appropriating sufficient funds to make the scheduled Installment Payments. In the event the Board of Commissioners determines not to appropriate in its budget an amount sufficient to pay all Installment Payments coming due in the applicable fiscal year, the Board of Commissioners shall adopt a resolution specifically deleting such appropriation from the proposed budget for that fiscal year. Such resolution shall state the reasons for such deletion, shall be adopted by a vote identifying those voting for and against and abstaining from the resolution, and shall be recorded in the minutes of the Board of Commissioners. A copy of such resolution shall be promptly sent to the Bank. Such failure to appropriate shall constitute an Event of Default.

(c) If the amount equal to the Installment Payments which will be due during the next fiscal year has not been appropriated by the County in its budget, the County Manager or Finance Officer shall deliver to the Bank, within ten (10) days after the adoption of the County's budget for such fiscal year, but not later than fifteen (15) days after the start of such fiscal year, a certificate from the Finance Officer of the County stating that the County did not make such appropriation.

SECTION 6. TITLE; LIENS

6.1 **Title.** Title to the Mortgaged Property and any and all additions, repairs, replacements or modifications thereto shall be in the County from and after the date hereof. On the date hereof, the Deed of Trust will be in full force and effect and no events of default shall have occurred thereunder. On payment or provision for payment in full of all of the County's obligations hereunder, including the principal components of the Installment Payments then outstanding and all other payments due hereunder, the Bank or its assignee, at the County's expense and request, shall cancel the Deed of Trust and this Contract will terminate.

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

SECTION 7. INSURANCE AND UNFORESEEN LOSSES

7.1 **Insurance.**

(a) The County shall obtain and maintain, at its expense, at all times until termination of this Contract a policy of insurance covering the Mortgaged Property and providing the insurance protection described in this Section. The County shall maintain at its own expense fire, casualty, public liability, property damage and theft insurance, and such other insurance in such amounts and with such deductibles, if permitted, as required by the Bank from time to time. The Mortgaged Property shall be insured in an amount equal to the total replacement value of the Mortgaged Property or the Loan Amount, whichever is less. All such insurance shall be maintained with an insurance company or companies licensed to do business in North Carolina and shall contain a standard mortgagee clause designating the Bank as additional insured as its interest may appear. The County shall deliver to the Bank the policies of insurance or duplicates thereof or other evidence satisfactory to the Bank of such insurance coverage. Each insurer shall agree by endorsement upon the policy or policies issued by it that it will give thirty (30) days prior written notice to the Bank of the cancellation or material modification of such policy. The County agrees to cooperate fully in all accident insurance investigations, claims and litigation proceedings. The County shall cooperate fully with the Bank in filing any proof of loss with respect to any insurance policy described above. In no event shall the County voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim with respect to the Mortgaged Property without the written consent of the Bank.

(b) If any buildings, fixtures or other improvements are located on any portion of the Mortgaged Property that is located in a special flood hazard area according to the Federal Emergency Management Agency (“*FEMA*”), then the County must maintain a flood insurance policy on the Mortgaged Property. If at any time during the term of the Contract, such portion of the Mortgaged Property is classified by FEMA as being located in a special flood hazard area, flood insurance will be mandatory. Should this occur, federal law requires the Bank to notify the County of the reclassification. If, within 45 days of receipt of notification from the Bank that any portion of the Mortgaged Property has been reclassified by FEMA as being located in a special flood hazard area, the County has not provided sufficient evidence of flood insurance, the Bank is mandated under federal law to purchase flood insurance on behalf of the County, and any amounts so expended shall immediately become debts of the County, shall bear interest at the rate specified in Section 5.7 of the Contract, and payment thereof shall be secured by the Deed of Trust.

(c) The County shall obtain, and cause to be maintained, a mortgagee's title insurance policy on the Mortgaged Property insuring the County's fee simple interest in the Mortgaged Property, subject only to Permitted Encumbrances, in an amount equal to the lesser of the value of the Mortgaged Property as constructed, as such value is estimated as of the time of this Contract, and as agreed on by the County and the Bank, or the Loan Amount, naming the Bank as the named insured.

(d) In lieu of policies of insurance written by commercial insurance companies meeting the requirements of this Section 7.1, the County may maintain a program of self-insurance or participate in group risk financing programs, risk pools, risk retention groups, purchasing groups and captive insurance companies, and in state or federal insurance programs.

7.2 *Damage or Destruction.*

(a) The County shall notify the Bank immediately in the event (i) of any damage to or destruction from fire or other casualty of any portion of the Mortgaged Property or (ii) that a material defect in the construction of the Mortgaged Property becomes apparent, if the County determines in good faith that such damage, destruction or loss will cost more than \$250,000 to repair, replace and restore.

(b) If any portion of the Mortgaged Property is damaged or destroyed as provided herein, to an extent that the County determines in good faith that the cost of repairing, replacing and restoring such

damage or destruction will exceed \$250,000, then the County shall deposit the Net Proceeds with the Bank and shall, within 90 days after the date the County becomes aware that such damage or destruction occurs, elect one of the following two options by giving notice of such election to the Bank, and the Bank shall disburse such Net Proceeds in accordance with the option so elected:

(i) **Option A – Repair and Restoration.** The County may elect to repair, reconstruct and restore that portion of the Mortgaged Property so lost, damaged or destroyed. If the County elects this Option A, then the County shall proceed forthwith to repair, reconstruct and restore the applicable portion of the Mortgaged Property to substantially the same condition as had existed prior to the event causing such damage or destruction, with such alterations and additions as the County may determine to be necessary or desirable and as will not impair the capacity or character of the applicable portion of the Mortgaged Property for the purposes for which it had been used prior to such damage or destruction or is intended to be used. So long as no Event of Default has occurred and is continuing under this Contract, the Bank, upon receipt of a request made by the County, shall apply so much as may be necessary of such Net Proceeds to payment of the cost of such repair, reconstruction and restoration, either on completion thereof or as the work progresses. Any such request may provide for Net Proceeds to be paid directly to third-party vendors or to be paid to the County for reimbursement of costs incurred in such repair, replacement or restoration. If such Net Proceeds are not sufficient to pay in full the cost of such repair, replacement and restoration, the County shall, subject to Section 13 herein, pay so much of the cost thereof as may be in excess of such Net Proceeds. The County shall not by reason of the payment of such excess cost be entitled to any (A) reimbursement from the Bank, or (B) abatement or diminution of the Installment Payments.

(ii) **Option B – Prepayment of Installment Payments.** The County may elect to have the Net Proceeds of insurance payable as a result of such loss, damage or destruction, together with other money provided by the County, applied to the prepayment of Installment Payments. Notwithstanding anything to the contrary, in the event that the County elects to make partial prepayment under this Option B, the County shall first provide to the Bank a certificate signed by the County Manager to the effect that (A) the Mortgaged Property has been restored to its condition prior to the damage, or (B) such damage will not impair the County's use of the Mortgaged Property for its intended purposes.

(c) If the County determines in good faith that such cost will not exceed \$250,000, the County shall (1) retain the Net Proceeds with respect to such damage or destruction, (2) forthwith repair, reconstruct and restore the Mortgaged Property so damaged or destroyed to substantially the same condition as it had existed prior to the event causing such damage or destruction, and (3) apply Net Proceeds retained by it to the payment or reimbursement of the costs of such repair, replacement and restoration. If such Net Proceeds are not sufficient to pay in full the cost of such repair, replacement and restoration, the County shall, subject to Section 13, pay so much thereof as is in excess of such Net Proceeds.

7.3 **Condemnation; Loss of Title.** (a) In the case of a taking of all or any part of the Mortgaged Property or any right therein under the exercise of the power of eminent domain or any loss of all or any part of the Mortgaged Property because of loss of title thereto, or the commencement of any proceedings or negotiations which might result in such a taking or loss, the party upon whom notice of such taking is served or with whom such proceedings or negotiations are commenced or who learns of a loss of title shall give prompt notice to the other. Each such notice shall describe generally the nature and extent of such condemnation, taking, loss, proceedings or negotiations. All obligations of the County under this Contract (except obligations to make Installment Payments when due) shall terminate as to the portion of the Mortgaged Property as to which there is a loss of title or which is condemned or taken when such loss of

title is finally adjudicated or when title thereto vests in the party condemning or taking the same, as the case may be (hereinafter referred to as the “*Takings Date*”). The County shall pay over to the Bank (and hereby irrevocably assigns, transfers and sets over to the Bank) all right, title and interest of the County in and to any Net Proceeds (up to the amount of its outstanding obligations hereunder) payable as to any such loss of title, condemnation or taking during the term of this Contract.

(b) In the event of any such loss of title, condemnation or taking, the County shall deliver the Net Proceeds from the condemnation proceeding to the Bank, and, within 90 days after the Takings Date for such proceeding, elect either or both of the following two options by giving notice of such election to the Bank, and the Bank shall disburse the Net Proceeds in accordance with the option so elected:

(i) ***Option A – Restoration.*** The County may elect to have the Net Proceeds as to such loss of title, condemnation or taking used to restore the applicable portion of the Mortgaged Property as to which there has been a loss of title, condemnation or taking to substantially its condition prior to such loss of title, condemnation or taking. So long as no Event of Default has occurred and is continuing under this Contract, the Bank, upon receipt of a request made by the County, shall apply so much as may be necessary of such Net Proceeds to payment of the cost of such restoration, either on completion thereof or as the work progresses. If such Net Proceeds are not sufficient to pay in full the cost of such restoration, the County shall, subject to Section 13, pay so much of the cost thereof as may be in excess of such Net Proceeds. The County shall not, by reason of the payment of such excess cost, be entitled to any (A) reimbursement from the Bank, or (B) abatement or diminution of the Installment Payments.

(ii) ***Option B – Prepayment of Installment Payments.*** The County may elect to have the Net Proceeds payable as to any such loss of title, condemnation or taking, together with other monies provided by the County, applied to the prepayment of the Installment Payments. Notwithstanding anything to the contrary, in the event that the County elects to make partial prepayment pursuant to this Option B, the County shall first provide to the Bank a certificate signed by the County Manager to the effect that such loss of title, condemnation or taking has not impaired the County’s use of the Mortgaged Property for its intended purpose.

(c) The Bank shall, at the expense of the County, cooperate fully with the County in the contest of any prospective or pending condemnation proceedings or in any contest over title with respect to the Mortgaged Property or any part thereof and shall, to the extent it may lawfully do so, permit the County to litigate, at the expense of the County, in any such proceeding in the name and on behalf of the Bank. In no event shall the Bank voluntarily settle, or consent to the settlement of, any prospective or pending condemnation proceedings, or proceedings as to title, with respect to the Mortgaged Property or any part thereof without the consent of the County.

SECTION 8. WARRANTIES AND REPRESENTATIONS OF THE COUNTY AND THE BANK

8.1 ***Warranties and Representations of the County.*** The County warrants and represents to the Bank (all such representations and warranties being continuing) as follows:

(a) The County is a political subdivision duly created and existing under the laws of the State of North Carolina as a political subdivision of the State of North Carolina, and has all powers necessary to enter into the transactions contemplated by this Contract and to carry out its obligations hereunder;

(b) This Contract and all other documents relating hereto, have been duly and validly authorized, approved, executed and delivered by the County, and the performance by the County of its obligations under such documents has been approved and authorized under all laws, regulations and procedures applicable to the County, including, but not limited to, compliance with all applicable public meeting and bidding requirements, and the transactions contemplated by this Contract and all other documents relating hereto constitute a public purpose for which public funds may be expended pursuant to the Constitution and laws of the State of North Carolina, and, assuming due authorization, execution and delivery hereof by the Bank, constitute valid, legal and binding obligations of the County, enforceable in accordance with their respective terms, except as enforcement thereof may be limited by general principles of equity or by bankruptcy, insolvency and other laws affecting the enforcement of creditors' rights generally and as those other laws may be further limited by the provisions of Section 160A-20 of the General Statutes of North Carolina, as amended;

(c) No approval or consent is required from any governmental authority with respect to the entering into or performance by the County of this Contract and the transactions contemplated hereby, or, if any such approval is required, it has been duly obtained, including any applicable approval of the LGC as evidenced by the Secretary's certificate hereon;

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

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

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

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

8.2 ***Warranties and Representations of the Bank.*** The Bank warrants and represents to the County (all such representations and warranties being continuing) as follows:

(a) The Bank is a national banking association duly organized and existing under the laws of the United States of America and has the power and authority to enter into this Contract; and

(b) Neither the execution and delivery of this Contract nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the

transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of the organizational documents of the Bank or any restriction or any agreement or instrument to which the Bank is now a party or by which the Bank is bound.

SECTION 9. INDEMNIFICATION

To the extent permitted by applicable law, the County hereby agrees to indemnify protect and save the Bank and the LGC and the members and employees of each of the foregoing harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including attorney's fees, arising out of, connected with, or resulting directly or indirectly from the Project, including without limitation, the possession, condition or use thereof. The indemnification arising under this section shall continue in full force and effect notwithstanding the payment in full of all obligations under this Contract.

SECTION 10. DISCLAIMER OF WARRANTIES

10.1 ***No Representations by the Bank.*** The County acknowledges that it has inspected the Project and found the Project to be satisfactory and acknowledges and agrees that it selected the Project based upon its own judgment and disclaims any reliance upon any statements or representations made by the Bank with respect thereto.

10.2 ***Disclaimer By the Bank.*** THE BANK MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROJECT OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROJECT.

SECTION 11. DEFAULT AND REMEDIES

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

(a) The County shall fail to make any Installment Payment or fail to pay any other sum hereunder when due, in either case, within ten (10) days after receipt of written notice of such failure; or

(b) The County fails to budget and appropriate money sufficient to pay all Installment Payments and any reasonably estimated other payments coming due in the following fiscal year of the County;

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

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

(e) Proceedings under any bankruptcy, insolvency, reorganization or similar litigation shall be instituted by or against the County, or a receiver, custodian or similar officer shall be

appointed for the County or any of its property, and such proceedings or appointments shall not be vacated or fully stayed within 90 days after the institution or occurrence thereof; or

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

(g) An attachment, levy or execution of a security interest or lien, except for the lien and security interest of the Bank or any encumbrances permitted by Section 5.3, is levied upon or with respect to the Mortgaged Property.

11.2 **Remedies on Default.** Subject to Section 13 hereof, upon the occurrence of any Event of Default, the Bank may exercise any one or more of the following remedies as the Bank in its sole discretion shall elect:

(a) Declare the entire principal amount of the Installment Payments and all accrued interest and other charges then outstanding immediately due and payable without notice or demand to the County;

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

(c) Exercise all the rights and remedies of a secured party or creditor under the Deed of Trust, Uniform Commercial Code of the State of North Carolina and the general laws of the State of North Carolina with respect to the enforcement of the security interest granted or reserved hereunder and under the Deed of Trust, including, without limitation, to the extent permitted by law, take possession of any collateral without any court order or other process of law and without liability for entering the Mortgaged Property and sell, lease, sublease or make other disposition of the same in a commercially reasonable manner for the account of the County, and apply the proceeds of any such sale, lease, sublease or other disposition, after deducting all costs and expenses, including court costs and attorneys' fees, incurred with the recovery, repair, storage and other sale, lease, sublease or other disposition costs, toward the balance due under this Contract and, thereafter, shall pay any remaining proceeds to the County;

(d) Take possession of any proceeds of the Mortgaged Property, including Net Proceeds; or

(e) Pursue any other remedy available at law or equity to the Bank.

11.3 **Further Remedies.** All remedies of the Bank are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy. The County agrees to pay to the Bank all court costs and reasonable attorneys' fees incurred by Bank in enforcing the Bank's rights and remedies under this Contract.

SECTION 12. ASSIGNMENT

12.1 **Assignment by the County.** The County agrees not to sell, assign, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance upon or against any interest in this Contract or the Mortgaged Property (except for the lien and security interest of the Bank or as permitted by Section 5.3)

without the Bank's prior written consent, which consent shall not be unreasonably delayed, conditioned or denied.

12.2 **Assignment by the Bank.** (a) The Bank may, at any time and from time to time, assign all or any part of its interest in the Mortgaged Property or this Contract, including, without limitation, Bank's rights to receive Installment Payments payable to Bank hereunder or thereunder, in accordance with this Section 12.2. Any assignment made by the Bank or any subsequent assignee shall not purport to convey any greater interest or rights than those held by the Bank pursuant to this Contract. The Bank or its assignees may assign or reassign all or any part of this Contract, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Contract, or making this Contract part of a pool of obligations without the consent of the LGC, so long as such assignment or reassignment is to (i) a bank, insurance company or similar institution or any other entity approved by the LGC; or (ii) a trustee for the purpose of issuing certificates of participation or other forms of certificates evidencing an undivided interest in the Contract, provided such certificates are sold only to a bank, insurance company or similar financial institution or other entity approved by the LGC. Notwithstanding the foregoing, unless to an affiliate controlling, controlled by or under common control with Bank, no assignment or reassignment of the Bank's interest in the Contract shall be effective unless and until the County shall receive notice of such assignment or reassignment disclosing the name and address of each such assignee.

(b) The County further agrees that the Bank's interest in this Contract may be assigned in whole or in part (subject to the limitations on assignment contained in Section 12.2(a)) upon terms which provide in effect that the assignor or assignee will act as a collection and paying agent for any holders of certificates of participation in this Contract, provided the County receives notice of such assignment and such collection and paying agent covenants and agrees to maintain for the full remaining term of this Contract a written record of each assignment and reassignment of such certificates of participation.

(c) 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 LGC, 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.

(d) The Bank represents and warrants that it is familiar with federal and North Carolina legislation, rules and regulations as to limitations upon the public distribution of securities that have not been registered under the Securities Act of 1933, as amended, and that it is entering into this Contract for its own account and has no present intention of making any sale or other distribution of this Contract in violation of such legislation, rules or regulations. The Bank represents that it is familiar with the operations and financial condition of the County, based upon information furnished to the Bank by the County, and has made such inquiries as it deems appropriate in connection with the Loan Amount.

SECTION 13. LIMITED OBLIGATION OF THE COUNTY

NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS CONTRACT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A DELEGATION OF GOVERNMENTAL POWERS NOR AS A DONATION BY OR A LENDING OF THE CREDIT OF THE COUNTY WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE OF NORTH CAROLINA. THIS CONTRACT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE COUNTY TO MAKE

ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE SOLE DISCRETION OF THE COUNTY FOR ANY FISCAL YEAR IN WHICH THIS CONTRACT IS IN EFFECT; PROVIDED, HOWEVER, ANY FAILURE OR REFUSAL BY THE COUNTY TO APPROPRIATE FUNDS, WHICH RESULTS IN THE FAILURE BY THE COUNTY TO MAKE ANY PAYMENT COMING DUE HEREUNDER WILL IN NO WAY OBTAIN THE OCCURRENCE OF THE EVENT OF DEFAULT RESULTING FROM SUCH NONPAYMENT. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE COUNTY IN ANY ACTION FOR BREACH OF A CONTRACTUAL OBLIGATION UNDER THIS CONTRACT, AND THE TAXING POWER OF THE COUNTY IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY MONEY DUE UNDER THIS CONTRACT.

No provision of this Contract shall be construed to pledge or to create a lien on any class or source of the County's moneys other than money in the Construction Fund held at the Bank and related to this Contract. To the extent of any conflict between this Section and any other provision of this Contract, this Section shall take priority.

SECTION 14. TAX-EXEMPT INTEREST

14.1 ***Intent of Parties.*** It is the intention of the parties hereto that the interest component of the Installment Payments paid by the County to the Bank under this Contract shall be tax-exempt under Section 103 of the United States Internal Revenue Code.

14.2 ***Determination or Event of Taxability.*** If at any time there is a Determination of Taxability or Event of Taxability, as such terms are hereinafter defined, the principal portion of the indebtedness of the County to the Bank which is represented by the Installment Payments shall, from and after the Date of Taxability, as hereinafter defined, bear interest at a taxable rate that gives the Bank the same rate of return as contemplated under this Contract (the "*Alternative Rate of Interest*") payable from the Date of Taxability to such time. In such event, the County also shall be required to pay to the Bank all amounts, if any, which may be necessary to reimburse the Bank for any interest, penalties or other charges assessed by the Internal Revenue Service and the Department of Revenue of the State of North Carolina against the Bank by reason of the Bank's failure to include the interest components of the Installment Payments (hereinafter called "*Interest*") in its gross income for income tax purposes. Installment Payment amounts under this Contract shall be increased as a result of the increased interest rate and additional interest as a result of said rate increase on all previous payments shall be paid to the Bank upon demand therefor. The County shall pay to the Bank the Interest calculated at the above-mentioned Alternative Rate of Interest notwithstanding any transfer by the Bank or payment or prepayment by the County prior to the date such Determination of Taxability was made.

As used in this Section 14:

"*Date of Taxability*" shall mean the first date upon which Interest is included in the gross income of the Bank for federal income tax purposes as a result of an Event of Taxability or a Determination of Taxability.

"*Determination of Taxability*" shall mean a determination that the Interest is included in gross income of the Bank for federal income tax purposes, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following: (a) the date on which the Bank is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that, as a consequence of an action, or failure to act, by the County, the Interest is included in the gross income of the Bank for federal income tax purposes; (b) the date on which the County receives notice from the Bank that the Bank has been advised (i) in writing that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to the Bank which asserts, in effect, that Interest received by the Bank is

included in the gross income of the Bank for federal income tax purposes, as a result of an action, or failure to act, by the County, or (ii) by an opinion of nationally recognized tax counsel received by the Bank which concludes, in effect, that Interest is included in the gross income of the Bank for federal income tax purposes as a result of an action, or failure to act, by the County; (c) the day on which the County is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that there has been issued a public or private ruling of the Internal Revenue Service that the Interest is included in the gross income of the Bank for federal income tax purposes as a result of an action, or failure to act, by the County; or (d) the day on which the County is advised in writing by counsel to the Bank that a final determination, from which no further right of appeal exists, has been made by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the County has been given written notice and an opportunity to participate and defend that the Interest is included in the gross income of the Bank for federal income tax purposes, as a result of an action, or failure to act, by the County.

“*Event of Taxability*” shall mean any event, occurrence or situation, resulting from an action, or failure to act, by the County, the effect of which is to cause the interest component of the Installment Payments to be includable in the gross income of the Bank for federal income tax purposes.

14.3 ***Duty to Notify the Bank.*** The County agrees to give prompt written notice to the Bank upon the County’s receipt of any oral or written notice or information from any source whatsoever to the effect that an Event of Taxability or a Determination of Taxability has occurred.

SECTION 15. MISCELLANEOUS

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

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

15.3 ***Governing Law.*** This Contract shall be construed, interpreted and enforced in accordance with the laws of the State of North Carolina, without regard to conflict of law principles.

15.4 ***Notices.*** Any and all notices, requests, demands, and other communications given under or in connection with this Contract shall be effective only if in writing and either delivered by Electronic Means or personally delivered or mailed by registered or certified United States mail, postage prepaid, return receipt requested, addressed to the address of the recipient as described below, which shall be deemed to be received on the third day after the day it was deposited in the United States mail or on the day it was actually received, whichever is earlier.

County:

County of Chowan, North Carolina
305 Freemason St.
P.O. Box 1030
Edenton, North Carolina 27932
Attention: Finance Officer

Bank's Address: PNC Bank, National Association
301 Fayetteville Street, Suite 2100
Raleigh, North Carolina 27601
Attn: Kyle Huber

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

15.6 **Entire Contract.** This Contract, together with the Exhibits and attachments hereto, constitutes the entire Contract between the parties and this Contract shall not be modified, amended, altered or changed except by written agreement signed by the parties.

15.7 **Binding Effect.** Subject to the specific provisions of this Contract, this Contract shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

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

15.9 **Execution in Counterparts; Electronic Signature.** This Contract may be executed in any number of counterparts, by manual, digital, electronic or .pdf file signatures, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument. An executed copy of this Contract delivered by Electronic Means will be deemed to have the same legal effect as delivery of a manual signed copy of this Contract. This Contract and related documents may be sent and stored by Electronic Means.

15.10 **E-Verify.** The Bank understands that "E-Verify" is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with NCGS Section 64-25(5), as amended. The Bank uses E-Verify to verify the work authorization of its employees in accordance with NCGS Section 64-26(a), as amended. The Bank will require that any subcontractor that in uses in connection with the transactions contemplated by this Contract certify to such subcontractor's compliance with E-Verify.

15.11 **No Advisory Services.** The County acknowledges and agrees that: (i) the transaction contemplated by this Contract is an arm's length, commercial transaction between the County and the Bank in which the Bank is acting solely as a principal and is not acting as a municipal advisor, financial advisor or fiduciary to the County; (ii) Bank has not assumed any advisory or fiduciary responsibility to the County with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether Bank has provided other services or is currently providing other services to the County on other matters); (iii) the only obligations Bank has to the County with respect to the transaction contemplated hereby expressly are set forth in this Contract; and (iv) the County has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

15.12 **Dispute Resolution.**

(a) **Arbitration of Disputes.** The County and the Bank shall submit any and all disputes arising out of or relating to this Contract, a default thereunder or an Event of Default under this Resolution (a "Dispute") to binding arbitration pursuant to and in accordance with the AAA Commercial Arbitration Rules and, where applicable, the Supplementary Rules for Large, Complex

Commercial Disputes, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Such arbitration shall be conducted in a mutually acceptable location. Except as expressly set forth below, the procedures specified herein shall be the sole and exclusive procedures for the resolution of Disputes; provided, however, that the County or the Bank may seek provisional or ancillary remedies, such as preliminary injunctive relief, from a court having jurisdiction, before, during or after the pendency of any arbitration proceeding. The institution and maintenance of any action for such judicial relief, or pursuit of provisional or ancillary remedies, shall not constitute a waiver of the right or obligation of any party to submit any claim or dispute to arbitration. Nothing herein shall in any way limit or modify any remedies available to the Bank under this Contract or otherwise at law or in equity.

(b) *Motion Practice.* In any arbitration hereunder, the arbitrator(s) shall decide any pre-hearing motions which are substantially similar to pre-hearing motions to dismiss for failure to state a claim or motions for summary adjudication.

(c) *Discovery.* Discovery shall be limited to the pre-hearing exchange of all documents which the County and the Bank intend to introduce at the hearing and any expert reports prepared by any expert who will testify at the hearing.

(d) *Sequential Hearing Days.* At the administrative conference conducted by the American Arbitration Association (the "AAA"), the County and the Bank and the AAA shall determine how to ensure that the hearing is started and completed on sequential hearing days. Potential arbitrators shall be informed of the anticipated length of the hearing and they shall not be subject to appointment unless they agree to abide by the parties' intent that, absent exigent circumstances, the hearing shall be conducted on sequential days.

(e) *Award.* The award of the arbitrator(s) shall be accompanied by a statement of the reasons upon which such award is based.

(f) *Fees and Expenses.* The County and the Bank shall each bear equally all fees and costs and expenses of the arbitration, and each shall bear its own legal fees and expenses and the costs of its experts and witnesses; provided, however, that if the arbitration panel shall award to a party substantially all relief sought by such party, then, notwithstanding any applicable governing law provisions, the other party shall pay all costs, fees and expenses incurred by the prevailing party and such costs, fees and expenses shall be included in such award.

(g) *Confidentiality of Disputes.* The entire procedure shall be confidential and none of the parties nor arbitrator(s) may disclose the existence, content, or results of any arbitration hereunder without the written consent of all parties to the Dispute, except (i) to the extent disclosure is required to enforce any applicable arbitration award or may otherwise be required by law and (ii) that either party may make such disclosures to its regulators, auditors, accountants, attorneys and insurance representatives. No conduct, statements, promises, offers, views, or opinions of any party involved in an arbitration hereunder shall be discoverable or admissible for any purposes in litigation or other proceedings involving the parties to the Dispute and shall not be disclosed to anyone not an agent, employee, expert, witness, or representative for any of such parties.

(h) *CLASS ACTION WAIVER.* THE COUNTY HEREBY WAIVES, WITH RESPECT TO ANY DISPUTE: (I) THE RIGHT TO PARTICIPATE IN A CLASS ACTION, PRIVATE ATTORNEY GENERAL ACTION OR OTHER REPRESENTATIVE ACTION IN COURT OR IN ARBITRATION, EITHER AS A CLASS REPRESENTATIVE OR CLASS

MEMBER; AND (II) THE RIGHT TO JOIN OR CONSOLIDATE CLAIMS WITH CLAIMS OF ANY OTHER PERSON. The foregoing waiver is referred to herein as the “class action waiver”. The Bank and the County agree that no arbitrator shall have authority to conduct any arbitration in violation of the class action waiver or to issue any relief that applies to any person or entity other than the County and/or the Bank individually. The parties acknowledge that this class action waiver is material and essential to the arbitration of any claims and is non-severable from this Section 15.12. If the class action waiver is voided, found unenforceable, or limited with respect to any claim for which the County seeks class-wide relief, then this Section 15.12 (except for this sentence) shall be null and void with respect to such claim, subject to the right to appeal the limitation or invalidation of the class action waiver. However, this Section 15.12 shall remain valid with respect to all other claims and Disputes. The parties acknowledge and agree that under no circumstances will a class action be arbitrated.

(i) *Applicability of Federal Arbitration Act.* This Contract and related documents, evidence transaction(s) in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this Section 15.12.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

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

COUNTY OF CHOWAN, NORTH CAROLINA

By: _____
Kevin Howard
County Manager

(SEAL)

Attest: _____
Susanne Stallings
Clerk to the Board of Commissioners

PNC BANK, NATIONAL ASSOCIATION

By: _____
Kyle Huber
Senior Vice President

[LOCAL GOVERNMENT COMMISSION
SIGNATURE PAGE FOR INSTALLMENT FINANCING CONTRACT IN THE
AMOUNT OF \$34,998,500 BY AND BETWEEN PNC BANK, NATIONAL ASSOCIATION AND
THE COUNTY OF CHOWAN, NORTH CAROLINA DATED DECEMBER 7, 2023]

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

By: _____
[Interim] Secretary
Local Government Commission

EXHIBIT A

PAYMENT SCHEDULE

Installment Financing Contract Date: December 7, 2023

County: County of Chowan, North Carolina

Loan Amount: \$34,998,500

Interest Rate/Payment Terms

Fixed Rate

The interest rate is []% per annum fixed. Interest is calculated and imposed on the unpaid balance of the Loan Amount based on the payment schedule below. The Loan Amount plus interest shall be repaid by the County to the Bank in quarterly installments of interest on each March 7, June 7, September 7, and December 7, commencing March 7, 2024, with the principal due on December 7, 2025, all as set forth on the Schedule attached hereto as Exhibit A-1. Any prepayment the County makes shall be subject to Section 3.4 of the Contract (as defined below).

In the event of an Event of Default, the Default Rate (as defined in the Contract) is the greatest of (i) the Prime Rate plus 3.00%; (ii) the Overnight Bank Funding Rate plus 3.50%; and (iii) 9.00%.

Capitalized terms used herein have the meanings set forth in the Installment Financing Contract dated December 7, 2023 (the “Contract”), between the County of Chowan, North Carolina and PNC Bank, National Association.

COUNTY OF CHOWAN, NORTH CAROLINA

By: _____
Cathy Smith, Finance Officer

EXHIBIT B

INCUMBENCY AND AUTHORIZATION CERTIFICATE

In connection with the execution and delivery by the County of Chowan, North Carolina (the “County”), a political subdivision existing under the laws of the State of North Carolina, of an Installment Financing Contract dated December 7, 2023 (the “Contract”) with PNC Bank, National Association, we, Cathy Smith and Susanne Stallings, do hereby certify that we are the duly appointed Finance Officer and Clerk to the Board of Commissioners, respectively, of the County, and that we have custody of the official minutes and other pertinent records of that body.

We further certify that:

(1) As of the date of this certificate, the persons named below are duly elected, qualified and acting incumbents of their respective offices of the County and as such are familiar with its books and corporate records.

(2) The County was duly established. At all times since its establishment, the County has continually exercised the powers given to counties by the Constitution and laws of North Carolina.

(3) The persons named below were authorized by resolutions of the Board of Commissioners of County passed in a regular meeting held on November 20, 2023, to execute and deliver on behalf of the County the Contract and the Deed of Trust to evidence the obligation of the County in connection with the financing of the Project (as defined in the Contract), together with all other documents and instruments required and contemplated by the Contract, and to carry out the terms of all of the foregoing, all under and pursuant to the provisions of Section 160A-20 of the General Statutes of North Carolina, as amended. Such resolution was adopted at a meeting duly called and held on such date, at which meeting a quorum was present and acting throughout. Such resolution has not been amended, rescinded, terminated or otherwise revoked and is in full force and effect.

(4) The persons named below were on the date or dates of the execution of the Contract and the Deed of Trust and are on the date hereof the duly elected and qualified incumbents of the offices of the County appearing at the right of their respective names and the signatures appearing at the right of their respective names are their genuine signatures:

(5) The signatures set opposite the names and positions of the persons named below are such persons’ true and authentic signatures.

NAME	POSITION	SIGNATURE
Kevin Howard	County Manager	_____
Cathy Smith	Finance Officer	_____
Susanne Stallings	Clerk to the Board of Commissioners	_____

(6) The seal of the County is the same seal of which an impression appears below and on the Contract.

(7) No litigation of any kind is now pending or, to the best of our information, knowledge and belief, threatened to restrain or enjoin the execution or delivery of the Contract or the Deed of Trust, or in any manner questioning the proceedings and authority under which the Contract and the Deed of Trust have been executed and delivered, or affecting the validity of such documents.

(8) The County has obtained the proper authorization to execute and deliver the Contract, the Deed of Trust and all related documents necessary to complete the transaction contemplated thereby.

(9) The County has duly authorized, executed and delivered the Contract and the Deed of Trust. Assuming the due authorization, execution and delivery of the other signatories to the such documents, as applicable, each such document constitutes a legal, valid and binding agreement of the County enforceable against the County in accordance with its terms. Such obligation does not constitute a pledge of the faith and credit of the State of North Carolina or of any city, county or other political subdivision of the State, including the County. The rights and enforceability of the obligations of the County under such agreements may be limited or otherwise affected by (a) bankruptcy, insolvency, reorganization, moratorium or other laws affecting the rights of creditors generally and (b) principles of equity, whether considered at law or in equity.

There has been no material adverse change in the financial condition of the County since the date of the last annual financial statement of the County provided to the Bank.

IN WITNESS WHEREOF, we have duly executed this certificate and have affixed to it the seal of the County of Chowan, North Carolina on this 7th day of December, 2023.

Cathy Smith
Finance Officer
County of Chowan, North Carolina

[SEAL]

Susanne Stallings
Clerk to the Board of Commissioners
County of Chowan, North Carolina

EXHIBIT C

[TO BE PLACED ON LETTERHEAD]

OPINION OF COUNSEL TO THE COUNTY

December 7, 2023

PNC Bank, National Association
Raleigh, North Carolina

County of Chowan, North Carolina
Edenton, North Carolina

Parker Poe Adams & Bernstein LLP
Raleigh, North Carolina

\$34,998,500
Installment Financing Contract
between PNC Bank, National Association
and the County of Chowan, North Carolina

Ladies and Gentlemen:

We have acted as Counsel to the County of Chowan, North Carolina (the “*County*”), in connection with the authorization, execution and delivery by the County of the Installment Financing Contract, dated as of December 7, 2023 (the “*Contract*”), between PNC Bank, National Association (the “*Bank*”) and the County. We have reviewed (1) the Constitution and laws of the State of North Carolina, (2) certain proceedings taken by the Board of Commissioners for the County, (3) an executed copy of the Contract, (4) an executed copy of the Deed of Trust, Security Agreement and Fixture Filing dated as of December 7, 2023 (the “*Deed of Trust*”), from the County, as grantor, to the deed of trust trustee named therein, for the benefit of the Bank, and (5) such other information and documents as we have deemed relevant in order to render the opinions hereinafter expressed.

Pursuant to the Contract, the Bank has agreed to advance to the County an aggregate principal amount of \$34,998,500. The County has entered into the Contract under the authority of the General Statutes and other laws of North Carolina, as amended, to finance a portion of the costs of constructing a new high school, to be known as the John A. Holmes High School, in the County (the “*Project*”). A portion of the Project is located on certain real property owned by the County as more particularly described in Exhibit A of the Deed of Trust (together with all improvements thereon, the “*Mortgaged Property*”). All capitalized undefined terms used herein have the meanings given thereto in the Contract.

On the basis of the foregoing, we are of the opinion, under existing law, that:

1. The County is a political subdivision of the State of North Carolina, validly existing under and by virtue of the Constitution, statutes and laws of the State of North Carolina, and has full legal right, power and authority to enter into and perform its obligations under the Contract, the Deed of Trust, to finance the Project, and to conduct its operations.

2. The Contract and the Deed of Trust (collectively, the “*Financing Documents*”) have been duly authorized, executed and delivered by the County and, assuming due authorization, execution and delivery by the other parties thereto, constitute valid and binding agreements of the County, enforceable in accordance with their terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting the enforcement of creditors’ rights generally, now or hereafter in effect, or by equitable principles.

3. The obligation of the County to make payments under the Contract is a limited obligation of the County payable solely from currently budgeted appropriations of the County and does not constitute a pledge of the faith and credit of the County within the meaning of any constitutional debt limitation, as more particularly described in the Contract.

4. All consents, approvals or authorizations of any governmental entity and all filings required on the part of the County in connection with the authorization, execution and delivery of the Financing Documents and the consummation of the transactions contemplated thereby have been obtained and are in full force and effect.

5. To the best of our knowledge after reasonable investigation, the execution and delivery of the Financing Documents and compliance with the provisions thereof, under the circumstances contemplated thereby, do not and will not in any material respect conflict with, constitute on the part of the County a breach of or default under, or result in the creation of a lien on any property of the County (except as contemplated therein) pursuant to, any agreement or other instrument to which the County is a party, or any existing law, regulation, court order or consent decree to which the County is subject.

6. There is no action, suit, proceeding or governmental investigation at law or in equity before or by any court, public board or body, pending of which the County has been served with a summons, summons and complaint or other notice of commencement, or, to the best of our knowledge after reasonable investigation, threatened against the County challenging the validity of the Financing Documents or contesting the power and authority of the County to execute and deliver the Financing Documents or to consummate the transactions contemplated therein.

7. The Deed of Trust has been recorded in accordance with North Carolina law.

Respectfully submitted,

EXHIBIT D

[TO BE PLACED ON LETTERHEAD]

OPINION OF SPECIAL COUNSEL

December 7, 2023

PNC Bank, National Association
Raleigh, North Carolina

County of Chowan, North Carolina
Edenton, North Carolina

\$34,998,500
Installment Financing Contract
between PNC Bank, National Association
and the County of Chowan, North Carolina

Ladies and Gentlemen:

We have acted as Special Counsel in connection with the execution and delivery of the Installment Financing Contract, dated as of December 7, 2023 (the “*Contract*”), between PNC Bank, National Association (the “*Bank*”) and the County of Chowan, North Carolina (the “*County*”), and have examined the record of proceedings relating thereto. Pursuant to the Contract, the Bank will make available an aggregate principal amount of \$34,998,500 to the County, such amount representing the Loan Amount under the Contract. The County has entered into the Contract and the Deed of Trust to finance a portion of the costs of constructing a new high school, to be known as the John A. Holmes High School, in the County (the “*Project*”) The County has secured its obligations under the Contract by entering into a Deed of Trust, Security Agreement, and Fixture Filing dated as of December 7, 2023 (the “*Deed of Trust*”), from the County, as grantor, to the deed of trust trustee named therein, for the benefit of the Bank, granting a lien on the real property on which the Project will be located, and the improvements thereon, as more particularly described in Exhibit A of the Deed of Trust. All capitalized undefined terms used herein have the meanings given thereto in the Contract.

In such capacity, we have examined executed copies of the Contract, the Deed of Trust and such law, certified proceedings, instruments, opinions and other documents as we have deemed necessary to render the opinions hereinafter expressed. As to questions of fact material to the opinions hereinafter expressed, we have relied on representations of the County contained in the Contract, the Deed of Trust and the related documents thereto, the certified proceedings and other certifications of public officials and others furnished to us, including certifications furnished to us by or on behalf of the County, without undertaking to verify the same by independent investigation. We have also relied upon the opinion of Hornthal, Riley, Ellis & Maland, LLP, as counsel to the County, dated the date hereof, as to the due authorization, execution and delivery of the Contract and the Deed of Trust by the County, without undertaking to verify the same by independent investigation. We have assumed the accuracy and truthfulness of all public records and of all certifications, documents and other proceedings examined by us that have been executed or certified by public officials acting within the scope of their official capacities and have not verified the accuracy or

truthfulness thereof. We have also assumed the genuineness of the signatures appearing on such public records, certifications, and documents and proceedings.

On the basis of the foregoing, we are of the opinion, under existing law, that:

1. The Contract has been duly authorized, executed and delivered and constitutes a valid and legally binding obligation of the County, enforceable against the County in accordance with its terms.

2. The Deed of Trust has been duly authorized, executed and delivered and constitutes a valid and legally binding obligation of the County, enforceable against the County in accordance with its terms.

3. The interest component of the Installment Payments paid under the Contract is excludable from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal individual alternative minimum tax, although we observe that, for tax years beginning after December 31, 2022, the interest component of the Installment Payments paid under the Contract included in adjusted financial statement income of certain corporations is not excluded from the federal corporate alternative minimum tax. The opinion set forth in the preceding sentence is subject to the condition that the County complies with all requirements of the Internal Revenue Code of 1986, as amended (the “Code”), that must be satisfied subsequent to the initial execution and delivery of the Contract in order that the interest component of the Installment Payments paid under the Contract be, or continue to be, excludable from gross income for federal income tax purposes. The County has covenanted to comply with all such requirements. Failure to comply with certain of such requirements may cause the interest component of the Installment Payments paid under the Contract to be included in gross income for federal income tax purposes retroactive to the date of the initial execution and delivery of the Contract. We express no opinion regarding other federal tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on the Contract.

4. The interest component of each Installment Payment paid under the Contract is exempt from all present State of North Carolina income taxation.

The rights of the owners of the Contract and the enforceability of the Contract and the Deed of Trust may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, liquidation, readjustment of debt, and other similar laws affecting creditors’ rights and remedies generally, and by general principles of equity, whether such principles are considered in a proceeding at law or in equity.

Our services as Special Counsel in connection with execution and delivery of the Contract have been limited to rendering the opinions expressed above. We express no opinion relating to the financial resources of, or the creditworthiness of, the County, or any other matters relating to an evaluation of the likelihood or the ability of the County to make the Installment Payments under the Contract. This opinion is given as of the date hereof, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law that may hereafter occur. We are furnishing the opinions expressed above to you solely for your benefit and the benefit of the Bank’s permitted successors and assigns under the Contract (each, an “Assignee” and, collectively, “Assignees”); provided, however, such reliance by any such Assignee must be actual and reasonable under the circumstances existing at the time such Assignee becomes an Assignee, including any changes in law, facts or any other developments known to or reasonably knowable by such Assignee at such time. No other person is entitled to rely on such opinions without our prior written consent. Such opinions are not to be used, circulated, quoted or otherwise referred to for any other purpose without our prior written consent.

Very truly yours,

Drafted By and Return To:

Rebecca B. Joyner, Esq.
Parker Poe Adams & Bernstein LLP
301 Fayetteville Street, Suite 1400
Raleigh, North Carolina 27601

STATE OF NORTH CAROLINA

COUNTY OF CHOWAN

**DEED OF TRUST, SECURITY AGREEMENT, AND FIXTURE FILING
(FUTURE ADVANCES)
Pursuant to N.C. Gen. Stat. Section 160A-20
(COLLATERAL IS OR INCLUDES FIXTURES)**

THIS DEED OF TRUST, SECURITY AGREEMENT, AND FIXTURE FILING (the “*Deed of Trust*”) is made and entered into as of this 7th of December, 2023 by and between the **COUNTY OF CHOWAN, NORTH CAROLINA**, a political subdivision duly created and validly existing under the laws of the State of North Carolina, whose address is 305 W Freemason St., Edenton, North Carolina 27932 (hereinafter called the “*Grantor*”), to **CB SERVICES CORP.**, as Trustee (hereinafter called the “*Trustee*”), for the benefit of **PNC BANK, NATIONAL ASSOCIATION**, whose address is 301 Fayetteville Street, Raleigh, North Carolina 27601 (hereinafter called the “*Beneficiary*”);

WITNESSETH:

WHEREAS, in accordance with the provisions of N.C. Gen. Stat. Section 160A-20, the Beneficiary has agreed pursuant to an Installment Financing Contract by and between the Beneficiary and the Grantor, dated of even date (hereinafter called the “*Contract*”), to lend to or for the benefit of the Grantor up to the principal sum of \$34,998,500;

AND WHEREAS, all principal sums to be advanced to or for the benefit of the Grantor and secured by this Deed of Trust shall be evidenced by the Contract, which Contract may contain provisions for the adjustment of the interest rate, adjustments in the payments, extension or renewal of the term, among other things, the terms of which are incorporated herein by reference and the final payment date for which if not sooner paid and if payment thereof is not extended, is December 7, 2025;

AND WHEREAS, the Grantor is thereby, or shall hereafter become, indebted to the Beneficiary in an amount equal to the sum of all outstanding advances made under the Contract, as provided therein together with and payable with interest as, and at the rate or rates, specified in the Contract;

AND WHEREAS, the Grantor desires to secure the payment of the obligations under the Contract with interest and any extensions, renewals, modifications or amendments thereof, or substitutions or replacements therefore, in whole or in part, the payment of all other sums, with interest thereon, advanced in accordance with the Contract, or herewith, to protect the security of this Deed of Trust, or advanced to protect the rights of the Beneficiary hereunder or under the Contract, and to secure the performance of the covenants and agreements of the Grantor contained herein, by a conveyance of the lands and a grant of the security interests hereinafter described;

AND WHEREAS, all obligations of the Grantor hereunder are expressly made subject to the limitation of liability set forth in Section 14 of this Deed of Trust and Section 13 of the Contract.

NOW, THEREFORE, in consideration of the premises and in further consideration of the sum of One Dollar (\$1) paid to the Grantor by the Trustee, the receipt and sufficiency of which is hereby acknowledged, the Grantor has given, granted, bargained, and sold, and by these presents does give, grant, bargain, sell and convey unto the Trustee, its successors and assigns, the following described parcel of land and all improvements now or hereafter located thereon, lying and being in the County of Chowan, State of North Carolina, and more particularly described as follows:

**SEE EXHIBIT A ATTACHED HERETO AND BY THIS
REFERENCE INCORPORATED HEREIN**

Such parcel of land together with all structures, buildings and other improvements (hereinafter called the “*Improvements*”), now or hereafter located thereon being hereinafter called the “*Mortgaged Property*.”

TOGETHER WITH all fixtures, equipment and other articles of personal property acquired by the Grantor with funds advanced by the Beneficiary pursuant to the Contract, whether now owned or hereafter acquired, all personal property obtained in substitution or replacement therefore, and all personal property obtained in substitution or replacement for any portion thereof, and all proceeds of the foregoing (hereinafter called the “*Collateral*”).

TO HAVE AND TO HOLD the Mortgaged Property and Collateral, with all the rights, privileges, and appurtenances thereunto belonging or appertaining to the Trustee, his heirs, successors and assigns, in fee simple forever, upon the trusts and for the uses and purposes hereinafter set out;

And the Grantor covenants with the Trustee that it is seized of the Mortgaged Property and Collateral in fee and has the right to convey the same in fee simple; that title is marketable and free and clear of all encumbrances except for the Permitted Encumbrances shown on **Exhibit B** and such other encumbrances as may be approved by the Beneficiary in writing as provided in the Contract; and that it will warrant and defend the title to the Mortgaged Property and Collateral against the lawful claims of all persons whomsoever.

THIS CONVEYANCE IS MADE UPON THIS SPECIAL TRUST, that if the Grantor shall pay all obligations under the Contract in accordance with its terms, together with interest thereon, and any renewals, extensions, modifications, amendments, substitutions or replacements thereof in whole or in part, shall pay all sums advanced under the Contract or hereunder to protect the security of this Deed of Trust or the rights of the Beneficiary, together with interest thereon, and shall comply with all the covenants, terms

and conditions of the Contract, this Deed of Trust and all other documents and agreements entered into in connection therewith and herewith, then this conveyance shall be null and void and may be canceled of record at the request and at the cost of the Grantor.

Section 1. Events of Default. The occurrence of any one or more of the following events shall constitute an “*Event of Default*” hereunder:

- (a) The occurrence of any “*Event of Default*” under the Contract; or
- (b) Failure by the Grantor to perform or observe any term, condition or covenant of this Deed of Trust on its part to be observed or performed, other than as referred to in (a) above, or breach of any warranty by the Grantor herein contained, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the Grantor by the Trustee or the Beneficiary unless the Trustee or the Beneficiary agrees in writing to an extension of such time before its expiration; provided, however, that if the failure cannot be corrected within the stated period, the Trustee or the Beneficiary will not unreasonably withhold consent for an extension.

Section 2. Remedies Upon Default. Upon the occurrence of an Event of Default, the Beneficiary and Trustee shall have the following rights and remedies:

- (a) The Beneficiary shall have the right, at its option, to declare all amounts payable under the Contract to be immediately due and payable, whereupon the same shall become immediately due and payable, regardless of the maturity date thereof.
- (b) On the application of the Beneficiary, if the Beneficiary shall have declared the outstanding principal balance under the Contract to be immediately due and payable, the Beneficiary may foreclose the lien of this Deed of Trust pursuant to the power of sale hereby granted or by judicial proceeding. The Trustee is hereby granted a power of sale and may sell the Mortgaged Property or such part or parts thereof or interest therein as the Beneficiary may select after first having given such notice of hearing as to commencement of foreclosure proceedings and obtained such findings or leave of court as then may be required by law and then having given such notice and advertised the time and place of such sale in such manner as then may be provided by law, and upon such sale and any resale and upon compliance with the law then relating to foreclosure proceedings, to convey title to the purchaser.

Upon such sale(s), the Trustee shall convey title to the purchaser in fee simple. The Beneficiary shall have the right to bid at any sale thereunder. The Trustee may require the successful bidder at any sale to deposit immediately with the Trustee cash or certified check in an amount not to exceed twenty-five percent (25%) of the bid, provided notice of such requirement is contained in the advertisement of the sale. The Trustee may reject the bid if the deposit is not immediately made, and thereupon the Trustee may declare the next highest bidder to be the Purchaser. Such deposit shall be refunded in case a resale is had; otherwise, it shall be applied to the purchase price. If Collateral is sold hereunder, it need not be at the place of sale. The published notice of public sale, however, shall state the time and place where the Collateral may be inspected prior to sale.

In the event a proceeding to exercise the power of sale contained herein is begun but not completed, the Grantor shall pay all expenses incurred by the Trustee and a partial commission computed as follows: one-fourth of the hereinafter-specified commission prior to the Trustee’s issuance of a notice of hearing on the right to foreclose and one-half of the hereinafter-specified commission after the issuance of such notice and prior to sale. Such expenses and partial commission may be paid by the Beneficiary on behalf of the Grantor but, in any event, shall be secured by this Deed of Trust.

The foregoing shall in no way be construed to limit the powers of sale or restrict the discretion the Trustee may have under the provisions of Article 2A of Chapter 45 of the General Statutes of North Carolina, as the same may be from time to time amended, or such other laws as the Beneficiary or Trustee may be proceeding under, including the laws relating to judicial foreclosure if such is determined to be either the necessary or appropriate process to follow in foreclosing on the lien of this Deed of Trust. Except as provided in Section 13 herein, each legal, equitable or contractual right, power or remedy of the Beneficiary or Trustee now or hereafter provided herein or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power and remedy. The exercise or beginning of the exercise of any one or more of such rights, powers and remedies shall not preclude the simultaneous or later exercise of any or all such other rights, powers and remedies and without limiting the foregoing, the Trustee may sell the Mortgaged Property and Collateral separately or together, as a whole or in parts or parcels, at one or more sales conducted at different times and places.

(c) The Beneficiary shall have the right to collect rents, issues, profits and revenues according to the terms of Section 7 hereof.

(d) The Grantor and the Beneficiary have contemporaneously entered into the Contract and upon the occurrence of an Event of Default thereunder, the Beneficiary shall be entitled to exercise such rights and remedies as are contained in such Contract. The Beneficiary shall have the right to the appointment of a receiver to collect the rents and profits from the Mortgaged Property and Collateral without consideration of the value thereof or the solvency of any person liable for the payment of the amounts then owing. The Beneficiary at its option, in lieu of an appointment of a receiver, shall have the right to do all those things the receiver could have done. If such receiver should be appointed, or if there should be a sale of the Mortgaged Property and Collateral by foreclosure, as provided above, the Grantor or any person in possession of the Mortgaged Property and Collateral, as tenant or otherwise, shall become a tenant at will of the receiver or of the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

(e) The Trustee may proceed against the Collateral as provided in and in accordance with the applicable provisions of the Uniform Commercial Code as adopted by the State of North Carolina. The Beneficiary may require the Grantor to assemble the Collateral, or evidence thereof, and make them reasonably available to the Beneficiary at one or more places to be designated by the Beneficiary which are reasonably convenient to the Beneficiary. The Beneficiary may take possession of the Collateral and hold, prepare for sale, lease or other disposition and sell, lease or otherwise dispose of the Collateral at public or private sale, for cash or on credit, as a whole or in part.

(f) The exercise by the Beneficiary of any right or remedy granted to the Beneficiary or Trustee in law or equity, or by this or any other document shall not be deemed an irrevocable election of remedies thereby precluding the Beneficiary or the Trustee from exercising or pursuing any other right or remedy granted to the Trustee or the Beneficiary under this Deed of Trust, the Contract, or any other document or at law or in equity. All remedies contained herein in the Contract or in any other separate agreement executed contemporaneously with the execution of this Deed of Trust are intended to be cumulative.

Section 3. Application of Proceeds. Unless otherwise required by law, proceeds derived from the exercise of either the power of sale or the collection of rents and profits shall be applied to pay, **first**, costs and expenses, including the Trustee's commission in the amount of one-half of one percent (.5%) of the bid in the event of sale, reasonable attorney's fees for legal services actually performed, and reasonable auctioneer's fees if such expenses have been incurred and any other expenses or advances made or incurred in the protection of the rights of the Trustee or in the pursuit of any remedy hereunder; **second**, to taxes and assessments due and unpaid, if the Trustee deems it appropriate to do so; **third**, to the payment

of any indebtedness, including principal and interest under the Contract, secured by this Deed of Trust; and **fourth**, the balance, if any, to the person or persons entitled thereto.

Section 4. Payment of Amounts Due Under the Contract. The Grantor covenants and agrees that it will pay when due the Installment Payments due under the Contract when due, including both the principal and interest components thereof.

Section 5. Payment of Taxes, Assessments and Other Amounts; Maintenance of Insurance.

(a) The Grantor shall pay, when due, all charges for utility services used in connection with the Mortgaged Property and Collateral. The Grantor shall pay, when due, any and all taxes levied by any governmental body as a result of the Grantor's ownership, possession, or use of the Mortgaged Property and Collateral.

(b) The Grantor shall obtain and maintain, at its expense, at all times a policy of insurance covering the Improvements on the Mortgaged Property and the Collateral and providing the insurance protection described Section 7.1 of the Contract. All such insurance shall be maintained with an insurance company or companies licensed to do business in North Carolina and shall contain a standard mortgagee clause designating the Beneficiary as additional insured as its interest may appear. The Grantor shall deliver to the Beneficiary the policies of insurance or duplicates thereof or other evidence satisfactory to the Beneficiary of such insurance coverage. Each insurer shall agree by endorsement upon the policy or policies issued by it that (i) it will give thirty (30) days prior written notice to the Beneficiary of the cancellation or material modification of such policy; and (ii) the coverage of the Beneficiary shall not be terminated, reduced or affected in any manner regardless of any breach or violation by the Grantor of any warranties, declarations and conditions of such insurance. The Grantor agrees to cooperate fully in all accident insurance investigations, claims and litigation proceedings. The Grantor shall cooperate fully with the Beneficiary in filing any proof of loss with respect to any insurance policy described above. In no event shall the Grantor voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim with respect to the Mortgaged Property or the Collateral without the written consent of the Beneficiary.

Section 6. Maintenance of the Mortgaged Property. The Grantor shall use the Mortgaged Property and the Collateral in a careful and proper manner, in compliance with all applicable laws and regulations, and shall take no action to adversely affect the Mortgaged Property or the Collateral, and shall take all reasonable action to preserve the Mortgaged Property and the Collateral in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear excepted, including, without limitation, at its sole cost and expense, to repair and maintain the Mortgaged Property and the Collateral, and to replace any part of the Mortgaged Property and the Collateral as may from time to time become worn out, lost, stolen, destroyed or damaged or unfit for use. Any and all additions to or replacements of the Mortgaged Property and the Collateral and all parts thereof shall constitute Improvements and shall be subject to all the terms and conditions of this Contract.

Section 7. Damage, Destruction or Condemnation. Pursuant to Section 7.2 of the Contract, in the event of any damage or destruction to the Improvements on the Mortgaged Property and the Collateral, the Grantor shall have the option to repair and restore the Improvements on the Mortgaged Property and the Collateral, or to prepay the unpaid balance of principal and interest due under the Contract. Pursuant to Section 7.3 of the Contract, in the event of a loss of title, condemnation or taking of all or any part of the Mortgaged Property, the Grantor shall have the option to restore the Mortgaged Property or to prepay the unpaid balance of principal and interest due under the Contract.

Section 8. Security Agreement. With respect to the Collateral, this Deed of Trust is hereby made and declared to be a security agreement in favor of Beneficiary encumbering each and every item of such property included herein as a part of the Mortgaged Property, in compliance with the provisions of the Uniform Commercial Code as enacted in the State of North Carolina, and the Grantor hereby grants a security interest to Beneficiary in and to all of such Collateral. This Deed of Trust shall constitute a financing statement filed as a fixture filing in accordance with N.C. Gen. Stat. §25-9-502 (or any amendment thereto). For purposes of complying with the requirements of N.C. Gen. Stat. §25-9-502, the name of Grantor, as Debtor, and Beneficiary, as Secured Party, and the respective addresses of Grantor, as Debtor, and Beneficiary, as Secured Party, are set forth on the first page of this Deed of Trust. The Grantor authorizes the Beneficiary to effect any filing or recording of any additional financing statements relating to the Collateral or amendments thereto where appropriate to perfect and continue the security interest in, and to protect and preserve, the Collateral. Subject to Section 14 herein, the remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Deed of Trust shall be (1) as prescribed herein, or (2) as prescribed by general law, or (3) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at the Beneficiary's sole election. The mention in any such financing statement or statements of the rights in and to (1) the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) the Grantor's interest as lessor in any present or future lease or rights to rents, issues or awards growing out of the use and/or occupancy of the Mortgaged Property, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of the Beneficiary as determined by this Deed of Trust or affect the priority of the Beneficiary's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement or statements is solely for the protection of the Beneficiary in the event any court shall at any time hold with respect to the foregoing clauses (1), (2) or (3) of this sentence, that notice of the Beneficiary's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records.

Section 9. Environmental Covenants.

(a) To the best of the Grantor's knowledge, the Mortgaged Property is not now and has not ever been used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials and that no Hazardous Materials have ever been installed on such Mortgaged Property except as otherwise disclosed to the Beneficiary as required by the Contract. The Grantor covenants that such Mortgaged Property shall be kept free of Hazardous Materials and shall not be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in connection with the normal construction, maintenance and operation of the Project and in compliance with all Environmental Laws. The Grantor shall not cause or permit as a result of any intentional or unintentional act or omission on the part of the Grantor or any lessee, tenant, subtenant, licensee, guest, invitee, employee, agent or contractor, the installation of Hazardous Materials in the Project or a release of Hazardous Materials onto the Mortgaged Property or suffer the presence of Hazardous Materials on the Mortgaged Property, except in connection with the normal construction, maintenance and operation of the Project and in compliance with all Environmental Laws. The Grantor shall comply with and ensure compliance by all sublessees, tenants, subtenants, licensees, guests, invitees, employees, agents and contractors with all applicable federal, state and local laws, ordinances, rules and regulations with respect to Hazardous Materials and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to such laws, ordinances, rules and regulations. The Grantor has not received any notice from any governmental agency, entity or any other person who receives any notices from any governmental agency, entity or any other person with regard to Hazardous Materials on, from or affecting the Mortgaged Property. In the event the Grantor does receive any such notices, the Grantor shall immediately notify the Beneficiary. The Grantor, at no expense to the Beneficiary, shall conduct and complete all investigations, studies,

sampling and testing and all remedial, removal and other actions necessary to comply with all applicable Environmental Laws.

(b) Notwithstanding the description of Collateral contained in this Deed of Trust, all Hazardous Materials (as defined in this Section) are specifically excluded from Collateral subject to this Deed of Trust. In addition, any and all underground storage tanks and piping located on the Mortgaged Property described above are specifically [check one]:

_____ included as part of the Mortgaged Property. x excluded as part of the Mortgaged Property.

Section 10. Release of Mortgaged Property. (a) Notwithstanding any other provisions of this Deed of Trust, at any time so long as there is no Event of Default, the Trustee must release the Mortgaged Property or any part thereof from the lien and security interest of this Deed of Trust when and if the following requirements have been fulfilled:

(i) In connection with any release of the Mortgaged Property, or any part thereof, there shall be filed with the Trustee and the Beneficiary a certified copy of the resolution of the Board of Commissioners of the Grantor stating the purpose for which the Grantor desires such release of the Mortgaged Property, giving an adequate legal description of the part of the Mortgaged Property to be released, requesting such release and providing for the payment by the Grantor of all expenses in connection with such release.

(ii) In connection with the release of any part of the Mortgaged Property constituting less than the entire Mortgaged Property, either (1) the tax, insured or appraised value of the Mortgaged Property remaining after the proposed release is not less than 50% of the aggregate principal component of the Installment Payments then outstanding under the Contract or (2) the Grantor (i) provides for the substitution of other real property therefor and the tax, insured or appraised value of the Mortgaged Property remaining after the proposed substitution is not less than the replacement value of the Mortgaged Property (as determined above) immediately before the proposed substitution, (ii) delivers to the Trustee and the Beneficiary an opinion of nationally recognized bond counsel to the effect that the substitution (A) is permitted by law and under this Deed of Trust and (B) will not adversely affect the tax treatment of the Installment Payments due under the Contract, and (iii) records a modification to this Deed of Trust reflecting such substitution of the Mortgaged Property.

(iii) In connection with the release of any part of the Mortgaged Property constituting less than the entire Mortgaged Property, such release shall not prohibit Grantor's ingress, egress and regress to and from the remainder of the Mortgaged Property not being released, or materially interfere with the use of the remainder of the Mortgaged Property not being released and evidence of such shall be filed with the Trustee.

(iv) In connection with the release of all property constituting the entire Mortgaged Property, there is paid to the Trustee an amount sufficient to provide for the payment in full of all Installment Payments in accordance with Section 3 of the Contract.

Section 11. Grant and Release of Easements and Fixtures. (a) Notwithstanding any other provisions of this Deed of Trust, at any time so long as there is no Event of Default, with the consent of the Trustee, the Grantor may at any time or times grant easements, licenses, rights of way and other rights and privileges in the nature of easements with respect to any part of the Mortgaged Property and the Grantor may release existing interests, easements, licenses, rights of way and other rights or privileges with or

without consideration. The Beneficiary agrees that it shall execute and deliver and will cause, request or direct the Trustee to execute and deliver any instrument reasonably necessary or appropriate to grant or release any such interest, easement, license, right of way or other right or privilege but only upon receipt of (a) a copy of the instrument of grant or release, (b) a written request of the Grantor requesting such instrument and (c) a certificate executed by the Grantor that the grant or release is not detrimental to the proper conduct of the operations of the Grantor at the Mortgaged Property and will not impair the effective use, nor decrease the value, of the Mortgaged Property.

(b) Notwithstanding any other provisions of this Deed of Trust, at any time so long as there is no Event of Default, with the consent of the Trustee, the Grantor may at any time or times release fixtures to be added to the Mortgaged Property from the security interest created hereby with or without consideration. The Beneficiary agrees that it shall execute and deliver and will cause, request or direct the Trustee to execute and deliver any instrument reasonably necessary or appropriate to release any such fixture but only upon receipt of (a) a copy of the instrument of release, (b) a written request of the Grantor requesting such instrument and (c) a certificate executed by the Grantor that the release is not detrimental to the proper conduct of the operations of the Grantor at the Mortgaged Property and will not impair the effective use, nor decrease the value, of the Mortgaged Property.

Section 12. Notices. All notices, certificates and other communications hereunder shall be deemed given when mailed by registered or certified mail, postage prepaid, return receipt requested, addressed as follows: if to the Grantor, County of Chowan, North Carolina, 305 W Freemason St., PO Box 1030, Edenton, North Carolina 27932, Attention: Finance Officer; if to the Beneficiary, PNC Bank, National Association, Attention: Kyle Huber, 301 Fayetteville Street, Raleigh, North Carolina 27601, and, if to the Trustee, CB Services Corp., PNC Bank, National Association, Attention: Kyle Huber, 301 Fayetteville Street, Raleigh, North Carolina 27601. The Grantor, the Trustee and the Beneficiary may, by written notice given hereunder, designate a different address where communications should be sent.

Section 13. Miscellaneous.

(a) No delay or forbearance by the Beneficiary in exercising any or all of its rights hereunder or rights otherwise afforded by law shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default as set forth herein or in the event of any subsequent default hereunder. In the event that the Beneficiary or the Trustee voluntarily or otherwise shall become a party to any suit or legal proceeding to protect the Mortgaged Property or to protect the title of the Trustee created by this Deed of Trust, the Trustee and the Beneficiary shall be saved harmless and shall be reimbursed by the Grantor for any amounts paid, including all reasonable costs, charges and attorney's fees incurred in any such suit or proceeding to the full extent permitted by law. These amounts together with interest on the amounts at the rate set forth in the Contract shall be secured by this Deed of Trust and their payment enforced as if they were a part of the original debt.

(b) It is specifically agreed that the parties hereto shall in no event be deemed to have contracted for a greater rate of interest than the maximum rate permitted by law. Should a greater amount be collected, it shall be construed as a mutual mistake of the parties and the excess shall be returned to the party making such a payment.

(c) The Beneficiary shall at any time have the irrevocable right to remove the Trustee herein named without notice or cause and to appoint his successor by an instrument in writing, duly acknowledged, in such form as to entitle such written instrument to be recorded in North Carolina. In the event of the death or resignation of the Trustee herein named, the Beneficiary shall have the right to appoint his successor by such written instrument. Any Trustee so appointed shall be vested with the title to the Mortgaged Property

and shall possess all the powers, duties and obligations herein conferred on the Trustee in the same manner and to the same extent as though such person were named herein as Trustee.

(d) All the terms and conditions of the Contract pursuant to which the obligations secured hereby are incurred, are incorporated by this reference and made a part hereof. To the extent of any conflict between this Deed of Trust and the Contract, the Contract shall take priority.

(e) The covenants, terms and conditions herein contained shall bind, and the benefits and powers shall inure to, the respective successors and assigns of the parties hereto. Whenever used herein, the singular number shall include the plural, the plural the singular. If two or more parties have joined as Grantor, each of the parties shall be jointly and severally obligated to perform the conditions and covenants herein contained. Notwithstanding the foregoing, any Grantor who executes this Deed of Trust but who does not execute the Contract hereby secured has executed the Deed of Trust only to subject whatever interest such Grantor has or may hereafter have in the Mortgaged Property, Improvements and Collateral to the lien and security interest created by this Deed of Trust. The term "*Beneficiary*" shall include any payee of the indebtedness hereby secured and any transferee or assignee thereof, whether by operation of law or otherwise.

Section 14. Limited Obligation of the Grantor.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, PURSUANT TO SECTION 160A-20 OF THE GENERAL STATUTES OF NORTH CAROLINA, NO DEFICIENCY JUDGMENT SHALL BE RENDERED AGAINST THE GRANTOR IN ANY ACTION FOR BREACH BY THE GRANTOR OF ITS OBLIGATIONS UNDER THE CONTRACT; THE REMEDIES PROVIDED UNDER THIS DEED OF TRUST, INCLUDING FORECLOSURE UNDER THIS DEED OF TRUST, BEING THE SOLE REMEDY GRANTED HEREBY. THE TAXING POWER OF THE GRANTOR IS NOT AND MAY NOT BE PLEDGED IN ANY WAY, DIRECTLY OR INDIRECTLY, TO SECURE THE PAYMENT OF ANY MONEY DUE UNDER THE CONTRACT, INCLUDING THE INSTALLMENT PAYMENTS OR ANY OTHER PAYMENTS UNDER THE CONTRACT, OR ANY OTHER INSTRUMENT CONTEMPLATED HEREBY OR THEREBY. No provision of this Deed of Trust shall be construed or interpreted as creating a pledge of the faith and credit of Grantor within the meaning of any Constitutional debt limitation. No provision of this Deed of Trust shall be construed or interpreted as creating a pledge of the faith and credit of Grantor within the meaning of the Constitution of the State of North Carolina. This Deed of Trust shall not directly or indirectly or contingently obligate Grantor to make any payments beyond the amount appropriated, if any, in the sole discretion of the Grantor for any fiscal year in which this Deed of Trust shall be in effect. The Grantor may at the end of any fiscal year terminate its future payment obligations under the Contract secured by this Deed of Trust if the Grantor has not appropriated sufficient funds to make the next fiscal year's scheduled payment obligations; however, during each fiscal year, Grantor shall exercise its best efforts to appropriate funds for such obligations due in the next fiscal year. **NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE GRANTOR IN ANY ACTION FOR BREACH OF A CONTRACTUAL OBLIGATION UNDER THE CONTRACT OR THIS DEED OF TRUST AND THE TAXING POWER OF THE GRANTOR IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY TO SECURE ANY MONEYS DUE THEREUNDER OR HEREUNDER.** No provision of this Deed of Trust shall be construed to pledge or to create a lien on any class or source of Grantor's money. In addition, any terms of this Deed of Trust which is, or may have the effect of being, a "*non-substitution clause*" is void and of no effect. To the extent of any conflict between this Section 14 and any other provision of this Deed of Trust, this Section 14 shall take priority. Notwithstanding the foregoing, nothing in this Section 14 is intended to impair or prohibit foreclosure under this Deed of Trust if the Installment Payments are not paid when due or otherwise upon the occurrence of any Event of Default, and in such event, the Beneficiary may request the Trustee to foreclose on the Mortgaged Property and Collateral as provided in this Deed of Trust.

Section 15. Future Advances. The obligations under the Contract secured by this Deed of Trust include present and future obligations of the Grantor to the Beneficiary, and this Deed of Trust is executed to secure all such obligations. The period in which future obligations may be incurred and secured by this Deed of Trust is the period between the date hereof and that date which is thirty (30) years from the date hereof. The amount of present obligations secured by this Deed of Trust is \$34,998,500, and the maximum principal amount, including present and future obligations, which may be secured by this Deed of Trust at any one time is \$70,000,000. Any additional amounts advanced by the Beneficiary pursuant to the provisions of this Deed of Trust shall be deemed necessary expenditures for the protection of the security. Each future advance need not be evidenced by a written instrument or notation signed by the Grantor stipulating that such advance is secured by this Deed of Trust. All future obligations shall be considered to be made pursuant to the requirements of North Carolina General Statutes Section 45-67, et seq., or any amendments thereto.

EXHIBIT A
LEGAL DESCRIPTION

John A. Holmes High School

[to come]

EXHIBIT B

PERMITTED ENCUMBRANCES

“*Permitted Encumbrances*” means, as of any particular time: (a) this Deed of Trust; (b) the Contract, as it may be amended from time to time, and as permitted under the Contract; (c) utility, access and other easements and rights of way, restrictions and exceptions which exist of record as of the date hereof which do not interfere with or impair the intended use of the Mortgaged Property; (d) [the Lease dated as of _____, 20____, between the Edenton-Chowan Board of Education and the County], and any other leases permitted by the Contract, (e) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property of the general character of the Mortgaged Property and as do not materially impair title to the Mortgaged Property, and (f) any other encumbrances described in Schedule B to the Title Insurance Commitment Number [_____ dated _____, 2023, issued by _____], which commitment is incorporated herein by this reference.

LEASE

by and between

COUNTY OF CHOWAN, NORTH CAROLINA

as Lessor

and

THE EDENTON-CHOWAN SCHOOLS BOARD OF EDUCATION

as Lessee

Dated as of December 7, 2023

This document was prepared by:
Rebecca Joyner, Esq.
Parker Poe Adams & Bernstein LLP
301 Fayetteville St., Suite 1400
Raleigh, North Carolina 27601

LEASE

THIS LEASE, dated as of December 7, 2023, and entered into by and between the **COUNTY OF CHOWAN, NORTH CAROLINA**, a political subdivision of the State of North Carolina, as lessor (the “*County*”), and **THE EDENTON-CHOWAN SCHOOLS BOARD OF EDUCATION**, a body politic and corporate and the governing board of the Chowan County local school administrative unit of the public school system of the State of North Carolina (the “*School System*”), and duly organized and existing under the laws of the State of North Carolina (the “*Board*”).

WITNESSETH:

WHEREAS, the County and the Board have determined to cooperate in a plan to finance the costs of constructing a new high school, to be known as the John A. Holmes High School (the “*Project*”), which is necessary and desirable to provide for sound basic education in the County; and

WHEREAS, the Board executed and delivered a General Warranty Deed conveying the site on which the Project will be located (the “*Project Site*”) to the County, as more particularly described in Exhibit A hereto, together with the improvements thereon;

WHEREAS, as a part of such plan, the County will enter into (1) an Installment Financing Contract, dated as of December 7, 2023 (the “*Contract*”), between the County and PNC Bank, National Association (the “*Lender*”) to finance the Project and (2) a Deed of Trust, Security Agreement and Fixture Filing, dated as of December 7, 2023 (the “*Deed of Trust*”), from the County for the benefit of the Lender, granting a security interest on the real property on the Project Site to secure the County’s obligations under the Contract;

WHEREAS, as a part of such plan, the County and the Board previously entered into a Cooperative Agreement Regarding the Improvement, Renovation, Construction and Equipping of John A. Holmes High School, dated September 9, 2021, (the “*Cooperative Agreement*”), which governs the respective duties of the Board and County in completing the Project, among other matters;

WHEREAS, the County proposes to enter into a lease with the Board to lease the Project Site and the improvements thereon (collectively, the “*Leased Property*”) to the Board and the Board has determined to lease the Leased Property from the County; and

WHEREAS, this Lease will be subordinate to the Deed of Trust;

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

ARTICLE I DEFINITIONS; RULE OF CONSTRUCTION

All capitalized terms used in this Lease and not otherwise defined herein have the meanings assigned to them in the Cooperative Agreement, the Contract and the Deed of Trust, unless the context clearly requires otherwise. In addition, the following terms have the meanings specified below, unless the context clearly requires otherwise:

“*Board Representative*” means the Board’s Superintendent or Finance Officer or any other person

at the time designated, by a written certificate furnished to the County and signed on the Board's behalf by its Chair, to act on the Board's behalf for the purpose of performing any act under this Lease.

"Closing Date" means December 7, 2023.

"Contract" means an Installment Financing Contract dated as of December 7, 2023 between the County and the Lender.

"County Representative" means the County Manager or the County's Finance Officer or their designees authorized to act on the County's behalf for the purpose of performing any act under this Lease.

"Event of Default" means one or more events of default as defined in Section 11.1.

"Lease" means this Lease, as it may be duly amended.

"Lease Term" means the term of this Lease as determined under Article IV.

"Lease Year" means, initially, from the Closing Date through June 30, 2024, and, thereafter, means the twelve-month period of each year commencing on July 1 and ending on the next June 30.

"Leased Property" means the real property on which the Project Site is located, as described in Exhibit A, and the improvements thereon.

All references to articles or sections are references to articles or sections of this Lease, unless the context clearly indicates otherwise.

ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

The County and the Board each represent, covenant and warrant for the other's benefit as follows:

(a) Neither the execution and delivery of this Lease, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated hereby, results or will result in a breach of the terms, conditions and provisions of any agreement or instrument to which either is now a party or by which either is bound, or constitutes a default under any of the foregoing.

(b) To the knowledge of each party, there is no litigation or proceeding pending or threatened against such party (or against any other person) affecting the rights of such party to execute or deliver this Lease or to comply with its obligations under this Lease. Neither the execution and delivery of this Lease by such party, nor compliance by such party with its obligations under this Lease, requires the approval of any regulatory body or any other entity the approval of which has not been obtained.

**ARTICLE III
DEMISING CLAUSE**

The County hereby leases the Leased Property to the Board and the Board hereby leases the Leased Property from the County, in accordance with the provisions of this Lease, to have and to hold for the Lease Term.

**ARTICLE IV
LEASE TERM**

Section 4.1. Commencement. The Lease Term commences on the Closing Date.

Section 4.2 Termination. The Lease Term terminates on the earlier of the following dates or events:

- (a) the date on which the County has paid or made provision for all Installment Payments (as defined in the Contract) and all other payments due under Contract in accordance with its terms; or
- (b) an Event of Default and termination of this Lease under Article XI.

**ARTICLE V
QUIET ENJOYMENT; TRANSFER**

Section 5.1 Quiet Enjoyment; Transfer. The County hereby covenants that the Board shall, during the Lease Term, peaceably and quietly have and hold and enjoy the Leased Property without suit, trouble or hindrance from the County, except as expressly required or permitted by this Lease. The County shall not interfere with the quiet use and enjoyment of the Leased Property during the Lease Term. The County shall, at the Board's request, join and cooperate fully in any legal action in which the Board asserts its right to such possession and enjoyment, or which involves the imposition of any taxes or other governmental charges on or in connection with the Leased Property. In addition, the Board may at its own expense join in any legal action affecting its possession and enjoyment of the Leased Property, and shall be joined (to the extent legally possible and at the Board's expense) in any action affecting its liabilities hereunder.

The provisions of this Section 5.1 are subject to rights to inspect the Leased Property granted to parties under the Contract and to the right hereby reserved to the County to inspect the Leased Property at any reasonable time.

If the Board deems any portion of the Leased Property no longer necessary for school purposes, the Board may request that the County transfer such portion of the Leased Property to the Board so that the Board may dispose of such property, provided that any transfer requires consent of the Lender so long as the Contract and Deed of Trust are in effect. The County agrees to consider such request in a timely manner and to not unreasonably withhold its approval of such transfer to the Board; provided, however, that both parties hereto recognize that the County may not be able to transfer any portion of the Leased Property that is subject to a security interest related to a financing for the Leased Property.

Section 5.2 Transfer Upon Lease Termination. At the end of the Lease Term under

Section 4.2(a) and upon confirmation from the County that the lien on the Leased Property has been released pursuant to the Deed of Trust, the County hereby agrees to execute, deliver and record a Limited Warranty Deed transferring title to the Leased Property to the Board, together with such other documents as are necessary to convey to the Board good and marketable title to the Leased Property, subject only to (a) Permitted Encumbrances and (b) any encumbrance or imperfection caused by or attributable to the Board.

ARTICLE VI CONSIDERATION FOR LEASE

Section 6.1 *Use of Leased Property; Assumption of Obligations.* The Board hereby agrees to use the Leased Property for public schools or other public education purposes in fulfillment of its obligation, shared by the County, to provide for sound basic education in the County. In addition, in consideration of its rights under this Lease, the Board undertakes the obligations imposed on it hereunder, including those imposed by Article VII.

ARTICLE VII BOARD'S ASSUMPTION OF COUNTY'S OBLIGATIONS

Section 7.1 *Assumption of Obligations.* The Board hereby assumes all the County's obligations under the Contract regarding the maintenance of insurance with respect to the Leased Property. It is expressly understood that the Board does not assume the County's obligation under the Contract to pay the Installment Payments and that the Board does not indemnify the County or any other party to the Contract for third-party claims asserted against any party to the Contract relating to the payment of the Installment Payments.

Section 7.2 *Board's General Covenant.* The Board further undertakes not to take or omit to take any action the taking or omission of which would cause the County to be in default in any manner under the Contract. In particular, the Board covenants not to make any use of the Leased Property that would cause the County's obligations to make Installment Payments under the Contract to be "*private activity bonds*" within the meaning of the Internal Revenue Code of 1986, as amended. If the Board takes or omits to take any such action, then the Board shall proceed with all due diligence to take such action as may be necessary to cure such default.

Section 7.3 *County's Cooperation.* The County shall cooperate fully with the Board in filing any proof of loss or taking any other action under this Lease. Neither the County nor the Board may voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim with respect to the Leased Property without the other's written consent.

Section 7.4 *Advances; Performance of Obligations.* If the Board fails to pay any amount required to be paid by it under this Lease, or fails to take any other action required of it under this Lease, then the County may (but is under no obligation to) pay such amount or perform such other obligation. The Board agrees to reimburse the County for any such payment or for its costs incurred in connection with performing such other obligation.

ARTICLE VIII DISCLAIMER OF WARRANTIES; OTHER COVENANTS

Section 8.1 *Disclaimer of Warranties.* THE COUNTY MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR A PARTICULAR USE OF THE

LEASED PROPERTY OR ANY PART THEREOF OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED PROPERTY OR ANY PART THEREOF. The County is not liable for any direct or indirect, incidental, special or consequential damage in connection with or arising out of this Lease or the existence, furnishing, functioning or use by anyone of any item, product or service provided for herein.

Section 8.2 Further Assurances; Corrective Instruments. The Board and the County agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property hereby leased or intended so to be, or for otherwise carrying out the intention hereof.

Section 8.3 Board and County Representatives. Whenever under the provisions hereof the approval of the Board or the County is required to take some action at the request of the other, unless otherwise provided, such approval or such request is to be given for the Board by the Board Representative and for the County by the County Representative, and the Board and the County are authorized to act on any such approval or request of such representative of the other.

Section 8.4 Compliance with Requirements. During the Lease Term, the Board and the County shall observe and comply promptly with all current and future orders of all courts having jurisdiction over the Leased Property or any portion thereof (or be diligently and in good faith contesting such orders), and all current and future requirements of all insurance companies' written policies covering the Leased Property or any portion thereof.

ARTICLE IX

TITLE TO LEASED PROPERTY; LIMITATIONS ON ENCUMBRANCES

Except for personal property purchased or leased by the Board at its own expense, title to the Leased Property and any and all additions and modifications to or replacements of any portion of the Leased Property shall be held in the County's name, subject only to Permitted Encumbrances, until conveyed as provided in this Lease, notwithstanding (a) the occurrence of any event of damage, destruction, condemnation or construction or title defect or (b) the violation by the County of any provision of this Lease.

The Board has no right, title or interest in the Leased Property or any additions and modifications to or replacements of any portion of the Leased Property, except as expressly set forth in this Lease.

ARTICLE X

SUBLEASING AND INDEMNIFICATION

Section 10.1 Board's Subleasing. Unless otherwise agreed to between the County and the Board prior to the execution and delivery of this Lease and pursuant to Section 1.6 of the Deed of Trust, the Board may not assign or sublease the Leased Property, in whole or in part, without the prior written consent of the County, which consent shall not be unreasonably withheld.

Section 10.2 Indemnification. Except as provided in Section 7.1, to the extent permitted by law, the Board agrees to indemnify and save the County, its officers, employees and agents harmless against and from all claims by or on behalf of any person, firm, corporation or other legal entity arising from the operation or management of the Leased Property by the Board during the Lease Term, including any claims arising from: (a) any condition of the Leased Property, (b) any act of negligence of the Board or of any of

its agents, contractors or employees or any violation of law by the Board or breach of any covenant or warranty by the Board hereunder; or (c) the incurrence of any cost or expense in connection with the construction and other accomplishment of the Project in excess of the money available therefor in the Project Fund. The Board shall be notified promptly by the County of any action or proceeding brought in connection with any claims arising out of circumstances described in (a), (b) or (c) above.

ARTICLE XI EVENTS OF DEFAULT

Section 11.1 *Events of Default.* Each of the following is an “*Event of Default*” under this Lease and the term “*Default*” means, whenever it is used in this Lease, any one or more of the following events:

(a) The Board’s or the County’s failure to observe and perform any covenant, condition or agreement on its part to be observed or performed for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the defaulting party by the non-defaulting party, unless the non-defaulting party agrees in writing to an extension of such time before its expiration; but if the failure stated in such notice cannot be corrected within the applicable period, the non-defaulting party shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the defaulting party within the applicable period and diligently pursued until such failure is corrected and, further, if by reason of any event or occurrence constituting force majeure the defaulting party is unable in whole or in part to carry out any of its agreements contained herein (other than its obligations contained in Section 6.1 or 7.1 hereof), the defaulting party shall not be deemed in default during the continuance of such event or occurrence.

(b) The dissolution or liquidation of the Board, the School System or the County or the voluntary initiation by the Board or the County of any proceeding under any federal or state law relating to bankruptcy, insolvency, arrangement, reorganization, readjustment of debt or any other form of debtor relief, or the initiation against the Board or the County of any such proceeding which shall remain undismissed for 60 days, or the entry by the Board or the County into an agreement of composition with creditors.

Section 11.2 *Remedies on Default.* Whenever any Event of Default has happened and is continuing, the non-defaulting party may terminate this Lease or take whatever action at law or in equity may appear necessary or desirable, including the appointment of a receiver, to collect the amounts then due, or to enforce performance and observance of any obligation, agreement or covenants under this Lease.

Section 11.3 *No Remedy Exclusive.* No remedy herein conferred on or reserved is intended to be exclusive, and every such remedy is cumulative and in addition to every other remedy given hereunder and every remedy now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing on any default impairs any such right or power, and any such right and power may be exercised from time to time as may be deemed expedient. It is not necessary to give any notice in order to be entitled to exercise any remedy reserved in this Article XI, other than such notice as may be required in this Article XI.

Section 11.4 *Waivers.* If any agreement contained herein is breached by either party and thereafter waived by the other party, such waiver is limited to the particular breach so waived and will not be deemed to waive any other breach hereunder.

Section 11.5 *Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws.* The Board and County agree, to the extent permitted by law, that in the case of a termination of the Lease Term by reason of an Event of Default, neither the Board nor the County nor any one claiming through or under either of them shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force in order to prevent or hinder the enforcement of any remedy provided hereunder; and the Board and the County, for themselves and all who may at any time claim through or under either of them, each hereby waives, to the full extent that it may lawfully do so, the benefit of such laws.

**ARTICLE XII
MISCELLANEOUS**

Section 12.1 *Notices.* All notices, certificates or other communications hereunder are sufficiently given if given by United States mail in certified form, postage prepaid, and will be deemed to have been received upon the earlier of (i) actual receipt or (ii) five Business Days (as defined in the Contract) after deposit in the United States mail in certified form, postage prepaid, as follows:

- (a) If intended for the County, addressed to it at the following address:

County of Chowan, North Carolina
305 Freemason St.
P.O. Box 1030
Edenton, North Carolina 27932
Attention: Finance Officer

- (b) If intended for the Board, addressed to it at the following address:

Edenton-Chowan Schools Board of Education
800 N. Oakum Street
Edenton, NC 27932
Attention: Chair

Section 12.2 *Binding Effect.* This Lease is binding on and inures to the benefit of the Board and the County.

Section 12.3 *Net Lease.* This Lease is a “net lease,” and the Board shall pay absolutely net during the Lease Term all other payments required hereunder, free of any deductions, and without abatement or setoff.

Section 12.4 *Payments Due on 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, as provided in this Lease, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding day that is a Business Day with the same force and effect as if done on the nominal date provided in this Lease.

Section 12.5 *Severability.* If any provision of this Lease, other than the requirement of the County to provide quiet enjoyment of the Leased Property, is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12.6 *Execution in Counterparts; Electronic Signatures.* This Lease may be executed in any number of counterparts, by manual, facsimile, digital, electronic or .pdf file signatures, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument. An

executed copy of this Lease delivered by facsimile, email, or other electronic means will be deemed to have the same legal effect as delivery of a manual signed copy of this Lease. This Lease and related documents may be sent and stored by electronic means.

Section 12.7 *Applicable Law.* This Lease is governed by and to be construed in accordance with the laws of the State of North Carolina.

Section 12.8 *Captions.* The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

Section 12.9. *Amendments and Further Instruments.* The County and the Board may, from time to time, execute and deliver such amendments to this Lease and such further instruments as may be required or desired for carrying out the expressed intention of this Lease.

Section 12.10 *Memorandum of Lease.* The County and the Board shall, on or before the Closing Date, file this Lease or a memorandum of this Lease legally sufficient to comply with the relevant provisions of the North Carolina General Statutes with the Chowan County Register of Deeds.

Section 12.11 *Subordinate to Deed of Trust.* This Lease is subordinate to the Deed of Trust.

[Signatures Begin on Following Page]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed in their corporate names by their duly authorized officers, all as of the day and year first above written.

COUNTY OF CHOWAN, NORTH CAROLINA

[SEAL]

By: _____
Bob Kirby
Chairman, Board of Commissioners

Attest:

Susanne Stallings
Clerk to the Board of Commissioners

[Counterpart signature page to the Lease]

**THE EDENTON-CHOWAN SCHOOLS
BOARD OF EDUCATION**

By: _____
Gene Jordan
Chair

[SEAL]

Attest:

Clerk

EXHIBIT A

LEGAL DESCRIPTION OF THE LEASED PROPERTY

[legal description to come]

Chowan County
MANAGEMENT BUDGET AMENDMENT

To: FYI - Board of Commissioners

MBA #: 2024-028

From: Cathy Smith, *Finance Officer*

Date: November 7, 2023

RE: E-911 Fund Grant

Please authorize the finance officer to amend the 2024 budget for the **E-911 Fund** as follows:

Account Number	Account Description	Revenue (Inc+/Dec-)	Expense (Inc+/Dec-)
Central Comm			
11-4270-510-00	Capital Outlay - Equipment		(1,000.00)
Transfers Out			
11-9800-980-24	Transfer to E-911 Fund		1,000.00
E-911 Fund			
24-3431-360-00	Capital Grant	611,888.32	
24-3980-980-11	Transfer from General Fund	1,000.00	
24-3431-360-01	Funding Reconsideration	73,083.19	
24-3990-990-00	Fund Balance Appropriation	200,000.00	
24-4325-524-00	Motorola Radio Project		885,971.51
	Balanced	885,971.51	885,971.51

Justification:

To amend the 2024 budget to include Motorola Radio Project Grant received from the NC 911 Board for replacement of the radio system. The grant application was approved by BOCC on 09/18/23.

Approval Date: _____

Bd. Clerk's Init: _____

Initials: _____

Batch #: _____

Date: _____

Chowan County MANAGEMENT BUDGET AMENDMENT

To: FYI - Board of Commissioners

MBA #: 2024-029

From: Cathy Smith, *Finance Officer*

Date: November 14, 2023

RE: Discretionary Income

Please authorize the finance officer to amend the 2024 budget as follows:

Account Number	Account Description	Revenue (Inc+/Dec-)	Expense (Inc+/Dec-)
Register of Deeds			
11-3418-415-00	*Preservation/Automation	737.70	
11-4180-298-00	*Dept Supplies - Auto/Pres		245.90
11-4180-440-00	*Contr Svcs - Automation/Pres		245.90
11-4180-511-00	*C/O - Auto / Pres		245.90
Sheriff's Office			
11-3431-232-00	*Sheriff Donations	432.00	
11-4317-440-00	*Donation - Expense		432.00
11-3431-240-00	*Project Lifesaver	50.00	
11-4317-298-00	*Project Lifesaver		50.00
11-3431-245-00	*Safe Kids Program	50.00	
11-4317-445-00	*Safe Kids Expense		50.00
Animal Shelter			
11-3438-894-00	*Donations - Chowan	1,418.36	
11-3438-894-02	*Donations - Perquimans	1,251.00	
11-3438-894-03	*Donations - Other	100.00	
11-4381-600-00	*Donation - Expense		2,769.36
11-3438-895-00	*Adoption - Chowan	380.00	
11-3438-895-01	*Adoption - Gates	160.00	
11-3438-895-02	*Adoption - Perquimans	180.00	
11-3438-895-03	*Adoption - Other	500.00	
11-4381-441-00	*Contr Svcs - Spay/Neuter		1,220.00
Cooperative Ext:			
11-3495-370-00	*AG Program Fees Discretionary	20.00	
11-4953-440-00	*Ag Program Fees Discretionary		20.00
11-3495-378-00	*4-H Fees Discretionary	1,120.00	
11-4953-448-00	*4-H Fees Discretionary		1,120.00
Recreation			
11-3612-487-00	*Recreation Donations	750.00	
11-6130-299-01	*Donations - Dept Supplies		750.00
11-3612-504-00	*Recreation Special Events	1,525.00	

Account Number	Account Description	Revenue (Inc+/Dec-)	Expense (Inc+/Dec-)
11-6132-453-00	*Recreation Special Events		1,525.00
Senior Center			
11-3616-533-00	*Reg Fees - Trips	14,263.65	
11-4268-312-00	*TRIPS - Senior Citizens		14,263.65
11-3616-533-01	*Registration Fees Activities	192.00	
11-4268-299-01	*Activities - Dept. Supplies		192.00
11-3616-535-04	*Silver Sneakers	612.00	
11-3616-535-05	*Silver & Fit	105.00	
11-3616-535-06	*Renew Active	276.00	
11-4268-352-02	*Healthways		993.00
DSS			
12-3531-230-14	*DSS Special Events	225.00	
12-5310-450-00	*DSS Special Events		225.00
	Balanced	24,347.71	24,347.71

Total Discretionary Income Received FYE 2024

169,294.74

Justification:

To amend the 2024 budget to include Discretionary income for October 2023.

Approval Date: _____

Bd. Clerk's Init: _____

Initials: _____

Batch #: _____

Date: _____

Chowan County
MANAGEMENT BUDGET AMENDMENT

To: FYI - Board of Commissioners

MBA #: 2024-030

From: Cathy Smith, *Finance Officer*

Date: November 14, 2023

RE: Building Inspections

Please authorize the finance officer to amend the 2024 budget for **Building Inspections** as follows:

Account Number	Account Description	Revenue (Inc+/Dec-)	Expense (Inc+/Dec-)
Building Inspections			
11-3839-915-00	Bertie County - Building Inspections	3,482.38	
11-4350-251-00	Automotive Supplies		1,741.19
11-4350-353-00	Maint & Repairs - Vehicles		1,741.19
	Balanced	3,482.38	3,482.38

Justification:

To amend the 2024 budget for Building Inspections to include services provided to Bertie County for September and October.

Approval Date: _____

Bd. Clerk's Init: _____

Initials: _____

Batch #: _____

Date: _____

Chowan County BUDGET AMENDMENT

To: Board of Commissioners

BA #: 2024-031

From: Cathy Smith, *Finance Officer*

Date: November 15, 2023

RE: Opioid Settlement Funds

Please authorize the finance officer to amend the 2024 budget for **Opioid Settlement Funds** as follows:

Account Number	Account Description	Revenue (Inc+/Dec-)	Expense (Inc+/Dec-)
<i>Opioid Settlement Fund</i>			
28-3301-238-00	Opioid Settlement Revenue	54,720.83	
28-9930-995-00	Designated for Future Appropriations		54,720.83
	Balanced	54,720.83	54,720.83

Justification:

To amend the 2024 budget to include Opioid Settlement Fund payments received through 11/09/23.

Approval Date: _____

Bd. Clerk's Init: _____

Initials: _____

Batch #: _____

Date: _____