BOARD OF COMMISSIONERS REGULAR MEETING MARCH 29, 2021 5:00 PM

R. Jay Foster Hall of Justice Womack Building Columbus, NC

1. Call to Order - Chairman Melton
2. Invocation - Vice-Chairman Beiler
3. Pledge of Allegiance - Commissioner Overholt
4. Chairman and Commissioner Comments
5. Approval of Agenda - Motion needed to approve or amend agenda.
6. Consent Agenda - Motion needed to approve or amend the consent agenda.
   - A. March 15, 2021 regular meeting minutes.
   - B. Tax refund requests through March 2021 in the amount of $113.45.
   - C. Sheriff Department Monthly Activity Report for February 2021
   - D. Authorization for County Manager to sign Memorandum of Understanding with Henderson County regarding shared radio communication.
   - E. FY 2022 NCDOT Grant Certs & Assurances (application approved 10/5/2020).
   - F. Budget Amendment to appropriate $15,000 fund balance to increase the EMS part-time salary line due to the need of part-time coverage of full-time staffers that were out on FMLA unrelated to COVID.
7. Citizen Comments on Agenda Items
8. Community Child Protection Team (CCPT) Annual Report & April 2021 Child Abuse & Neglect Prevention Proclamation - Lynn Barnette, VAYA Health, CCPT member.

   Motion to adopt the proclamation.
9. Windstream Rural Digital Opportunity Fund (RDOF) Expansion - Sarah Hardin Vice President – State Government Affairs Windstream.
10. St. Luke's Contract for Employee Services - Tommy Oakman, Human Resources Officer.

    Motion to approve the St. Luke's contract.
11. April 2021 Spring Litter Cleanup Proclamation - Commissioner Moore will present the proclamation.

    Motion to adopt the proclamation.
12. Kudzu Grant Update - Jamie Davidson, Appearance Commission.

13. General Statute 160D Land Use Ordinance Update Timeline and Public Hearing Requirement - Cathy Ruth, Planning Director.

    Motion to approve ordinance review timeline, and schedule a public hearing on Monday, May 3, 2021 at 5:00 pm to take citizen comments on changes to the Polk County Ordinances as required by General Statute 160D.

14. Resolution Authorizing the Execution and Delivery of an Installment Financing Agreement, a Security Agreement, an Escrow Agreement and Related Documents in Connection with the Financing of School Improvements for the County of Polk, North Carolina - (Lowest Proposal Bank of America, 2.186%) Chairman Melton will present the resolution.

    Motion to adopt the Resolution Authorizing the Execution and Delivery of an Installment Financing Agreement, a Security Agreement, an Escrow Agreement and Related Documents in Connection with the Financing of School Improvements for the County of Polk, North Carolina.

15. Volunteer Board Applications

    A. The following applications are being presented for consideration: Appearance Commission - Kristen Powell; Isothermal Community College Board of Trustees- Don Hofmann; Library Board of Trustees - Theodore Hiley.

       Motion to appoint applicants.

16. Citizen Comments on Non-Agenda Items

17. Adjournment

POLK COUNTY BOARD OF COMMISSIONERS

AGENDA ITEM

March 29, 2021 Regular Meeting

Agenda Item#: A.

ATTACHMENTS:

Description	Type	Upload Date
draft minutes	Cover Memo	3/25/2021

POLK COUNTY BOARD OF COMMISSIONERS
March 15, 2021 - 5:00 PM
R. Jay Foster Hall of Justice Womack Building Columbus, NC
Columbus, NC
MINUTES

PRESENT: Chairman Melton, Vice-Chairman Beiler, Commissioner Moore, Commissioner Overholt, and Commissioner Yoder. Also in attendance were County Manager Pittman, Attorney Berg, Clerk to the Board High, media and citizens. Commissioner Yoder participated remotely.

1. Call to Order - Chairman Melton.

2. Invocation - Commissioner Yoder.

   Commissioner Yoder introduced Nelson Coblentz who led the invocation.

3. Pledge of Allegiance - Vice-Chairman Beiler.

4. Chairman and Commissioner Comments

   The Commissioners did not comment at this time.

5. Approval of Agenda

   A. Vice-Chairman Beiler moved to approve the agenda as written, seconded by Commissioner Moore and the motion carried unanimously.

6. Consent Agenda

   Vice-Chairman Beiler moved to approve the consent agenda, seconded by Commissioner Overholt and the motion carried unanimously.

   A. March 1, 2021 pubic hearings and regular meeting minutes.

7. Citizen Comments for Agenda Items

   There were seven public comments on agenda item 8, Memorandum of Understanding YMCA. Chairman Melton thanked the citizens for coming to the meeting to speak in support of the collaboration. He said the County Manager and Commissioners have been sent over thirty other messages of support from citizens. He said anyone who would like to review the comments received should contact Clerk High in the the County Administration Office.

8. Memorandum of Understanding (MOU) YMCA of Greater Spartanburg.

   Vice-Chairman Beiler said he is excited for the partnership between Polk County Local Government and the YMCA of Greater Spartanburg. He said the "Y" brand is worth over eight billion dollars, and will bring the ability to enhance local health, wellness and recreational opportunities for the community, especially our children. He thanked everyone who worked to bring the partnership to fruition, and thanked everyone for coming to the meeting. He then introduced Rick Callebs, Chief Executive Officer (CEO), YMCA of Greater Spartanburg. Mr. Callebs said they are also excited about the opportunity to partner with Polk County and expand programs. He said Polk County will have an advisory board, and representation on the Spartanburg board, but success and growth will come through community support from churches, schools, civic groups, and citizens.

Chairman Melton opened the floor for questions from those in attendance. One of the main questions from different citizens in the audience was about a new facility. Manager Pittman and Mr. Callebs both said the possibility of building any new facilities in Polk County, including a new swimming pool, will be evaluated and determined based on community participation and fundraising support. One citizen asked how the "Y" is feasible now when it wasn't in the past. Manager Pittman said this collaboration is a different way of addressing the county recreation needs. He said now the County leadership, and the citizens in the County are both interested in in the partnership, and for the collaboration to work, everyone needs to be committed, and on the same page, which is where we are today.

Other questions referenced program affordability, and diversity and inclusion. Mr. Callebs said no one is ever turned away for inability to pay due to scholarships, and other program offerings. He said diversity and inclusion are very important to the organization. He discussed different things they have done in Spartanburg with their programs, and even outside the four walls of the YMCA in the community to ensure the programs are available to everyone, and they would look for similar opportunities in Polk County.

Commissioner Yoder thanked Vice-Chairman Beiler for all his efforts working with the Recreation Advisory Board, and staff to get this done. He said he can feel the excitement of the citizens, and fully supports something citizens feel is a need and a want. He thanked everyone for coming to the meeting to show their support.

Commissioner Overholt thanked Mr. Callebs for coming to the meeting, and recognized the Polk County recreation staff who were present for all they have done. He said during citizen comments the St. Luke's Hospital CEO, the Polk County Schools Superintendent, and the Polk County Sheriff all publicly endorsed the YMCA and Polk County partnership, and he is also in full support of moving forward with the collaboration for programming. He said when it comes time to discuss new facilities in the future, there will need to be many more discussions.

Commissioner Moore thanked everyone for working to make the partnership happen. He said it's great to see community partners and the county come together, all working for the betterment of the citizens.

Attorney Berg read the Memorandum of Understanding (MOU) between Polk County and the YMCA of Greater Spartanburg. She said if the Board decides to approve the MOU, the partnership will begin and the everything will get started She said she will present a lease agreement for their approval at a later date.

Commissioner Moore moved to approve the Memorandum of Understanding between Polk County and the YMCA of Greater Spartanburg, seconded by Vice-Chairman Beiler and the motion carried unanimously.

9. Polk County Requested Audit Proposals fiscal years ending June 30, 2021- June 30, 2023.

Manager Pittman, and Sandra Hughes, Finance Director, presented two proposals. Mrs. Hughes said she thoroughly reviewed both proposals, and looked at other counties they represent. Her recommendation is for Martin Starnes & Associates, Manager Pittman agreed.
Vice-Chairman Beiler moved to award Martin Starnes & Associates the FY 2021 contract to audit in the amount of $64,200, seconded by Commissioner Overholt and the motion carried unanimously.

10. Polk County Board of Commissioners' Meeting Schedule

Chairman Melton said the the meeting schedule was revised to add a work session on April 12, 2021, and to change the regular meeting time to 5:00 pm. He asked if there were any comments, and there were none.

Vice-Chairman Beiler moved to approve the revised meeting schedule, and updating all approved meeting schedules to reflect the new regular meeting time as 5:00 pm, including the budget calendar, seconded by Commissioner Moore and the motion carried unanimously.

11. Volunteer Board Application(s) for Vote

A. Vice-Chairman Beiler moved to appoint Anita Williamson to the Animal Control Board, seconded by Commissioner Moore and the motion carried unanimously.

12. Citizen Comments Non-Agenda Items

No citizens spoke during the non-agenda item comment period.

13. Adjournment

Vice-Chairman Beiler moved to to adjourn, seconded by Commissioner Moore and the motion carried unanimously.

Attest:	POLK COUNTY BOARD OF COMMISSIONERS
______________________________	______________________________
Ange High Clerk to the Board	Tommy W. Melton Chairman

POLK COUNTY BOARD OF COMMISSIONERS

AGENDA ITEM

March 29, 2021 Regular Meeting

Agenda Item#: B.

ATTACHMENTS:

Description	Type	Upload Date
Tax Refund Requests	Cover Memo	3/24/2021

Memorandum

To: Polk County Board of Commissioners

From: Melissa Bowlin, Polk County Tax Administrator

Date: 3/31/2021

Re: Refund Request

Taxpayer	Parcel	Amount	Reason
Raines Jessica Ann Spivey	P52-113	$113.45	Double Payment- Employer paid after Taxpayer

TOTAL:	**$**	**113.45**

POLK COUNTY BOARD OF COMMISSIONERS

AGENDA ITEM

March 29, 2021 Regular Meeting

Agenda Item#: C.

ATTACHMENTS:

Description	Type	Upload Date
Sheriff Report	Cover Memo	3/24/2021

Monthly Activity Report
February 2021

CALLS FOR SERVICE				
Alarms (Residential/Commercial)	34		Involuntary Commitment/Mental Subject	10
Animal Complaint/Livestock	102		Juvenile Complaint	3
Assault/Abuse	5		Larceny Report/Shoplifting	7
Assist FD/EMS/Rescue	19		Missing Person Report	2
Assist Law Enforcement Agency	49		911 Follow Up/Hang up	43
Assist Motorist/Public	27		Noise Complaint	1
Assist Outside/Other Agency	17		Property Damage/Hit & Run	3
Breaking & Entering	3		Property (Recovered/Found/Abandoned)	1
Citizen Contact/Call by Phone	92		Shots Fired (Report/Complaint)	2
Civil Related/Custody Dispute	13		Stolen Vehicle	2
Communicating Threats	5		Suicide (Threat/Attempt/Report)	2
D.O.A.	3		Suspicious Activity	4
Disturbance/Dispute/Fight	19		Suspicious Person/Prowler	32
Domestic Related	24		Suspicious Vehicle	49
Drug Related	6		Traffic Control/Complaint/C&R Driver	6
Escort (Funeral/Public)	3		Trespassing	8
Follow-Up Investigation	24		Vandalism	1
Fraud/Forgery Report	4		Vehicle Pursuit	2
Harassment/Stalking	1		Warrant/Process Service/Search Warrant	36

Intoxicated Person	2		Welfare Check	19

CIVIL	
Civil Summons & Complaint	11
Domestic Protection Order	8
Order to Appear & Show Cause	1
Order to Appear/Show Cause-Child Support	8
Other	30
TOTAL	58

SECURITY CHECKS	
Residence	382
Business	429
Church	268
School	85
TOTAL	**1164**

ARRESTS	
Misdemeanor	34
Felony	18

ANIMAL CONTROL	
Animals Picked up **see notes below*	33
Bite Report	2
*24 Dogs, 8 Cats, 1 Raccoon	

LOBBY	
Fingerprinting	39
Telephone Calls	588
In Person	379

DETENTION CENTER	
Inmates Admitted	80

Weapons Seized	4
Traffic Stops	223
Citations Issued	57
Charges by Citation	79
Checkpoint	3

TRAINING	
Investigations	218 Training Hours
Detention	483 Hours (not including 2021 in service) Sgt. Jim Cantrell completed the Detention Officer Certification Course. Sgt. Sam Bradley Completed Pepper Ball Instructor & Armorer. Ofc. Kelly Greene Completed Pepper Ball Instructor & Armorer.

OUTREACH/OTHER	
	- Began producing monthly digital and print newsletter “Polk County Sheriff.” - Provided $12,800 check to Polk County School Board, money resulting from court orders and firearm auction. - Graduated first class of the Citizens Academy.

POLK COUNTY BOARD OF COMMISSIONERS

AGENDA ITEM

March 29, 2021 Regular Meeting

Agenda Item#: D.

ATTACHMENTS:

Description	Type	Upload Date
MOU - Henderson County Radio Communications	Cover Memo	3/24/2021

MEMORANDUM OF UNDERSTANDING
BETWEEN
HENDERSON COUNTY, NC AND POLK COUNTY, NC

In order to serve the interests of the citizens of both Henderson County, NC and Polk County, NC the local governments of each respective county desire to enter into this agreement to facilitate improved Emergency Responder Communications. Each respective County wishes to operate on a shared radio system to enable emergency responders to have the ability to communicate and share radio coverage seamlessly. This MOU is mutually agreed upon in a spirit of cooperation, commencing as of March 17th, 2021 which may be reviewed annually as needed by both parties. Each party agrees to the following conditions:

Polk County agrees to the following:

- Working in conjunction with JVC/Kenwood and Kimball Communications, the existing manufacturer and service provider for the system in Henderson County, complete the necessary design and engineering to expand the NXDN trunking system in similar setup and operation as Henderson County's existing system so that the systems maybe will operate seamlessly.
- Purchase and have installed the necessary equipment within Polk County to operate system as mentioned above. Provide and maintain the necessary microwave link(s) to establish connectivity to the Henderson County radio network.
- Utilize Henderson County's System Code for assignment of the system components for programming.
- All equipment, FCC licenses and software licenses purchased by Polk County will remain property of Polk County.

Henderson County agrees to the following:

- Provide the necessary access to the design and engineering specifications for the Henderson County NXDN trucking radio system.
- Provide space for the necessary hardware to link the respective networks by microwave or other means necessary as determined by system engineers.

Both parties mutually agree to the following:

- Each County will retain ownership for equipment purchased to the system respectively and may remove said equipment provided adequate time is allowed for system engineering and demobilization.
- Each County is responsible for the maintenance and repair of their respectively owned equipment and sites. Maintenance may include programming, installation and consumables such as batteries, belt clips and antennas.
- All subscriber devices to include base stations, mobile and handheld radios must operate in accordance with the manufacturer's specifications and all users should be trained for the proper use and care of devices.
- Maintain access to the system for emergency responder subscriber units and remove devices from the system as requested or required when deemed lost, stolen or compromised in some manner.
- There is no expectation nor responsibility by either County to provide a certain level of radio coverage for the other County's respective agencies.

Henderson County and Polk County agree to communicate on an ongoing basis about the utility of this MOU and any changes that may be needed. Such communication may be initiated by either party.

Henderson County	Polk County
______________________________	______________________________
Steve Wyatt, County Manager	Marche Pittman, County Manager
Date: 3.17.21	Date: ______________________

POLK COUNTY BOARD OF COMMISSIONERS

AGENDA ITEM

March 29, 2021 Regular Meeting

Agenda Item#: E.

ATTACHMENTS:

Description	Type	Upload Date
FY 2022 Special Section 5333 (b) Warranty	Cover Memo	3/23/2021
Certification of Equivalent Service	Cover Memo	3/23/2021
CERTIFICATION AND RESTRICTIONS ON LOBBYING	Cover Memo	3/23/2021

Special Section 5333(b) Warranty
For Application to the Nonurbanized Area Formula Program

The following language shall be made part of the contract of assistance with the State or other public body charged with allocation and administration of funds provided under the Community Transportation Program (CTP):

A. General Application

The Public Body (The North Carolina Department of Transportation) agrees that the terms and conditions of this warranty, as set forth below, shall apply for the protection of the transportation related employees of any employer providing transportation services assisted by the project,

Polk County Local Government

(Legal Name of Applicant) and the transportation related employees of any other surface public transportation providers in the transportation service area of the project.

The Public Body shall provide to the U. S. Department of Labor and maintain at all times during the Project an accurate, up-to-date listing of all existing transportation providers which are eligible Recipients of transportation assistance funded by the Project, in the transportation service area of the Project, and any labor organizations representing the employees of such providers.

Certification by the Public Body to the U. S. Department of Labor that the designated Recipients have indicated in writing acceptance of the terms and conditions of the warranty arrangement will be sufficient to permit the flow of CTP funding in the absence of a finding of noncompliance by the Department of Labor.

B. Standard Terms and Conditions

(1) The Project shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees of the Recipient and of any other surface public transportation provider in the transportation service area of the Project. It shall be an obligation of the Recipient to assure that any and all transportation services assisted by the Project are contracted for and operated in such a manner that they do not impair the rights and interests of affected employees. The term "Project," as used herein, shall not be limited to the particular facility, service, or operation assisted by Federal funds, but shall include any changes, whether organizational, operational, technological, or otherwise, which are a result of the assistance provided. The phrase "as a result of the Project," shall, when used in this arrangement, include events related to the Project occurring in anticipation of, during, and subsequent to the Project and any program of efficiencies or economies related thereto; provided, however, that volume rises and falls of business, or changes in volume and

character of employment brought about solely by causes other than the Project (including any economies or efficiencies unrelated to the Project) are not within the purview of this arrangement.

An employee covered by this arrangement, who is not dismissed, displaced or otherwise worsened in his/her position with regard to employment as a result of the Project, but who is dismissed, displaced or otherwise worsened solely because of the total or partial termination of the Project or exhaustion of Project funding shall not be deemed eligible for a dismissal or displacement allowance within the meaning of paragraphs (6) and (7) of this arrangement.

(2) Where employees of a Recipient are represented for collective bargaining purposes, all Project services provided by that Recipient shall be provided under and in accordance with any collective bargaining agreement applicable to such employees which is then in effect. This Arrangement does not create any collective bargaining relationship where one does not already exist or between any Recipient and the employees of another employer. Where the Recipient has no collective bargaining relationship with the Unions representing employees in the service area, the Recipient will not take any action which impairs or interferes with the rights, privileges, and benefits and/or the preservation or continuation of the collective bargaining rights of such employees.

(3) All rights, privileges, and benefits (including pension rights and benefits) of employees covered by this arrangement (including employees having already retired) under existing collective bargaining agreements or otherwise, or under any revision or renewal thereof, shall be preserved and continued; provided, however, that such rights, privileges and benefits which are not foreclosed from further bargaining under applicable law or contract may be modified by collective bargaining and agreement by the Recipient and the Union involved to substitute other rights, privileges and benefits. Unless otherwise provided, nothing in this arrangement shall be deemed to restrict any rights the Recipient may otherwise have to direct the working forces and manage its business as it deemed best, in accordance with the applicable collective bargaining agreement.

(4) The collective bargaining rights of employees covered by this arrangement, including the right to arbitrate labor disputes and to maintain union security and checkoff arrangements, as provided by applicable laws, policies and/or existing collective bargaining agreements, shall be preserved and continued. Provided, however, that this provision shall not be interpreted so as to require the Recipient to retain any such rights which exist by virtue of a collective bargaining agreement after such agreement is no longer in effect.

The Recipient agrees that it will bargain collectively with the Union or otherwise arrange for the continuation of collective bargaining, and that it will enter into agreements with the Union or arrange for such agreements to be entered into, relative to all subjects which are or may be proper subjects of collective bargaining. If, at any time, applicable law or contracts permit or grant to employees covered by this arrangement the right to utilize any economic measures, nothing in this arrangement shall be deemed to foreclose the exercise of such right.

(5)(a) The Recipient shall provide to all affected employees sixty (60) days' notice of intended actions which may result in displacements or dismissals or rearrangements of the working forces as a result of the Project. In the case of employees represented by a Union, such notice shall be provided by certified mail through their representatives. The notice shall contain a full and adequate statement of the proposed changes, and an estimate of the number of employees affected by the intended changes, and the number and classifications of any jobs within the jurisdiction and control of the Recipient, including those in the employment of any entity bound by this arrangement pursuant to paragraph (21), available to be filled by such affected employees.

(5)(b) The procedures of this subparagraph shall apply to cases where notices involve employees represented by a Union for collective bargaining purposes. At the request of either the Recipient or the representatives of such employees, negotiations for the purposes of reaching agreement with respect to the application of the terms and conditions of this arrangement shall commence immediately. These negotiations shall include determining the selection of forces from among the mass transportation employees who may be affected as a result of the Project, to establish which such employees shall be offered employment for which they are qualified or can be trained. If no agreement is reached within twenty (20) days from the commencement of negotiations, any party to the dispute may submit the matter to dispute settlement procedures in accordance with paragraph (15) of this arrangement. Unless the parties otherwise mutually agree in writing, no change in operations, services, facilities or equipment within the purview of this paragraph (5) shall occur until after either: 1) an agreement with respect to the application of the terms and conditions of this arrangement to the intended change(s) is reached; 2) the decision of the arbitrator has been rendered pursuant to this subparagraph (b); or 3) an arbitrator selected pursuant to Paragraph (15) of this arrangement determines that the intended change(s) may be instituted prior to the finalization of implementing arrangements.

(5)(c) In the event of a dispute as to whether an intended change within the purview of this paragraph (5) may be instituted at the end of the 60-day notice period and before an implementing agreement is reached or a final arbitration decision is rendered pursuant to subparagraph (b), any involved party may immediately submit that issue to arbitration under paragraph (15) of this arrangement. In any such arbitration, the arbitrator shall rely upon the standards and criteria utilized by the Surface Transportation Board (and its predecessor agency, the Interstate Commerce Commission) to address the “preconsummation” issue in cases involving employee protections pursuant to 49 U.S.C. Section 11326 (or its predecessor, Section 5(2)(f) of the Interstate Commerce Act, as amended). If the Recipient demonstrates, as a threshold matter in any such arbitration, that the intended action is a trackage rights, lease proceeding or similar transaction, and not a merger, acquisition, consolidation, or other similar transaction, the burden shall then shift to the involved labor organization(s) to prove that under the standards and criteria referenced above, the intended action should not be permitted to be instituted prior to the effective date of a negotiated or arbitrated implementing agreement. If the Recipient fails to demonstrate that the intended action is a trackage rights, lease proceeding, or similar transaction, it shall be the burden of the Recipient to prove that under the standards and criteria referenced above, the intended action should be permitted to be instituted prior to the effective date of a negotiated or arbitrated implementing agreement. For purposes of any such arbitration, the time period within which the parties are to respond to the list of potential arbitrators submitted by the American Arbitration Association Service shall be five (5) days, the notice of hearing may be given orally or by facsimile, the hearing will be held promptly, the award of the arbitrator shall be rendered promptly and, unless otherwise agreed to by the parties, no later than fourteen (14) days from the date of closing the hearings, with five (5) additional days for mailing if posthearing briefs are requested by either party. The intended change shall not be instituted during the pendency of any arbitration proceedings under this subparagraph (c).

(5)(d) If an intended change within the purview of this paragraph (5) is instituted before an implementing agreement is reached or a final arbitration decision is rendered pursuant to subparagraph (b), all employees affected shall be kept financially whole, as if the noticed and implemented action has not taken place, from the time they are affected until the effective date of an implementing agreement or final arbitration decision. This protection shall be in addition to the protective period defined in paragraph (14) of this arrangement, which period shall begin on the effective date of the implementing agreement or final arbitration decision rendered pursuant to subparagraph (b).

An employee selecting, bidding on, or hired to fill any position established as a result of a noticed and implemented action prior to the consummation of an implementing agreement or final arbitration decision shall accumulate no benefits under this arrangement as a result thereof during that period prior to the consummation of an implementing agreement or final arbitration decision pursuant to subparagraph (b).

(6)(a) Whenever an employee, retained in service, recalled to service, or employed by the Recipient pursuant to paragraphs (5), (7)(e), or (18) hereof is placed in a worse position with respect to compensation as a result of the Project, the employee shall be considered a "displaced employee", and shall be paid a monthly "displacement allowance" to be determined in accordance with this paragraph. Said displacement allowance shall be paid each displaced employee during the protective period so long as the employee is unable, in the exercise of his/her seniority rights, to obtain a position producing compensation equal to or exceeding the compensation the employee received in the position from which the employee was displaced, adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

(6)(b) The displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee, including vacation allowances and monthly compensation guarantees, and his/her total time paid for during the last twelve (12) months in which the employee performed compensated service more than fifty per centum of each such months, based upon the employee’s normal work schedule, immediately preceding the date of his/her displacement as a result of the Project, and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and the average monthly time paid for. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for. If the displaced employee's compensation in his/her current position is less in any month during his/her protective period than the aforesaid average compensation (adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for), the employee shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that the employee is not available for service equivalent to his/her average monthly time, but the employee shall be compensated in addition thereto at the rate of the current position for any time worked in excess of the average monthly time paid for. If a displaced employee fails to exercise his/her seniority rights to secure another position to which the employee is entitled under the then existing collective bargaining agreement, and which carries a wage rate and compensation exceeding that of the position which the employee elects to retain, the employee shall thereafter be treated, for the purposes of this paragraph, as occupying the position the employee elects to decline.

(6)(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his/her employment.

(7)(a) Whenever any employee is laid off or otherwise deprived of employment as a result of the Project, in accordance with any collective bargaining agreement applicable to his/her employment, the employee shall be considered a "dismissed employee" and shall be paid a monthly dismissal allowance to be determined in accordance with this paragraph. Said dismissal allowance shall first be paid each dismissed employee on the thirtieth (30th) day following the day on which the employee is "dismissed" and shall continue during the protective period, as follow:

Employee's length of Service prior to adverse effect	Period of protection
1 day to 6 years	equivalent period
6 years or more	6 years

The monthly dismissal allowance shall be equivalent to one-twelfth (1/12th) of the total compensation received by the employee in the last twelve (12) months of his/her employment in which the employee performed compensation service more than fifty per centum of each such month based on the employee's normal work schedule to the date on which the employee was first deprived of employment as a result of the Project. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

(7)(b) An employee shall be regarded as deprived of employment and entitled to a dismissal allowance when the position the employee holds is abolished as a result of the Project, or when the position the employee holds is not abolished but the employee loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of the Project or as a result of the exercise of seniority rights by other employees brought about as a result of the Project, and the employee is unable to obtain another position, either by the exercise of the employee's seniority rights, or through the Recipient, in accordance with subparagraph (e). In the absence of proper notice followed by an agreement or decision pursuant to paragraph (5) hereof, no employee who has been deprived of employment as a result of the Project shall be required to exercise his/her seniority rights to secure another position in order to qualify for a dismissal allowance hereunder.

(7)(c) Each employee receiving a dismissal allowance shall keep the Recipient informed as to his/her current address and the current name and address of any other person by whom the employee may be regularly employed, or if the employee is self-employed.

(7)(d) The dismissal allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished when the employee is absent from service, the employee will be entitled to the dismissal allowance when the employee is available for service. The employee temporarily filling said position at the time it was abolished will be given a dismissal allowance on the basis of that position, until the regular employee is available for service, and thereafter shall revert to the employee's previous status and will be given the protections of the agreement in said position, if any are due him/her.

(7)(e) An employee receiving a dismissal allowance shall be subject to call to return to service by the employee's former employer; notification shall be in accordance with the terms of the then-existing collective bargaining agreement if the employee is represented by a union. Prior to such call to return to work by his/her employer, the employee may be required by the Recipient to accept reasonably comparable employment for which the employee is physically and mentally qualified, or for which the employee can become qualified after a reasonable training or retraining period, provided it does not require a change in residence or infringe upon the employment rights of other employees under then-existing collective bargaining agreements.

(7)(f) When an employee who is receiving a dismissal allowance again commences employment in accordance with subparagraph (e) above, said allowance shall cease while the employee is so reemployed, and the period of time during which the employee is so reemployed shall be deducted from the total period for which the employee is entitled to receive a dismissal allowance. During the time of such reemployment, the employee shall be entitled to the protections of this arrangement to the extent they are applicable.

(7)(g) The dismissal allowance of any employee who is otherwise employed shall be reduced to the extent that the employee's combined monthly earnings from such other employment or self-employment, any benefits received from any unemployment insurance law, and his/her dismissal allowance exceed the amount upon which the employee's dismissal allowance is based. Such employee, or his/her union representative, and the Recipient shall agree upon a procedure by which the Recipient shall be kept currently informed of the earnings of such employee in employment other than with the employee's former employer, including self-employment, and the benefits received.

(7)(h) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the failure of the employee without good cause to return to service in accordance with the applicable labor agreement, or to accept employment as provided under subparagraph (e) above, or in the event of the employee's resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his/her employment.

(7)(i) A dismissed employee receiving a dismissal allowance shall actively seek and not refuse other reasonably comparable employment offered him/her for which the employee is physically and mentally qualified and does not require a change in the employee's place of residence. Failure of the dismissed employee to comply with this obligation shall be grounds for discontinuance of the employee's allowance; provided that said dismissal allowance shall not be discontinued until final determination is made either by agreement between the Recipient and the employee or his/her representative, or by final arbitration decision rendered in accordance with paragraph (15) of this arrangement that such employee did not comply with this obligation.

(8) In determining length of service of a displaced or dismissed employee for purposes of this arrangement, such employee shall be given full service credits in accordance with the records and labor agreements applicable to him/her and the employee shall be given additional service credits for each month in which the employee receives a dismissal or displacement allowance as if the employee were continuing to perform services in his/her former position.

(9) No employee shall be entitled to either a displacement or dismissal allowance under paragraphs (6) or (7) hereof because of the abolishment of a position to which, at some future time, the employee could have bid, been transferred, or promoted.

(10) No employee receiving a dismissal or displacement allowance shall be deprived, during the employee's protected period, of any rights, privileges, or benefits attaching to his/her employment, including, without limitation, group life insurance, hospitalization and medical care, free transportation for the employee and the employee's family, sick leave, continued status and participation under any disability or retirement program, and such other employee benefits as Railroad Retirement, Social Security, Workmen's Compensation, and unemployment compensation, as well as any other benefits to which the employee may be entitled under the same conditions and so long as such benefits continue to be accorded to other employees of the bargaining unit, in active service or furloughed as the case may be.

(11)(a) Any employee covered by this arrangement who is retained in the service of his/her employer, or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his/her employment in order to retain or secure active employment with the Recipient in accordance with this arrangement, and who is required to move his/her place of residence, shall be reimbursed for all expenses of moving his/her household and other personal effects, for the traveling expenses for the employee and members of the employee's immediate family, including living expenses for the employee and the employee's immediate family, and for his/her own actual wage loss during the time necessary for such transfer and for a reasonable time thereafter, not to exceed five (5) working days. The exact extent of the responsibility of the Recipient under this paragraph, and the ways and means of transportation, shall be agreed upon in advance between the Recipient and the affected employee or the employee's representatives.

(11)(b) If any such employee is laid off within three (3) years after changing his/her point of employment in accordance with paragraph (a) hereof, and elects to move his/her place of residence back to the original point of employment, the Recipient shall assume the expenses, losses and costs of moving to the same extent provided in subparagraph (a) of this paragraph (11) and paragraph (12)(a) hereof.

(11)(c) No claim for reimbursement shall be paid under the provisions of this paragraph unless such claim is presented to the Recipient in writing within ninety (90) days after the date on which the expenses were incurred.

(11)(d) Except as otherwise provided in subparagraph (b), changes in place of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(12)(a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the employer (or who is later restored to service after being entitled to receive a dismissal allowance), who is required to change the point of his/her employment as a result of the Project, and is thereby required to move his/her place of residence.

If the employee owns his/her own home in the locality from which the employee is required to move, the employee shall, at the employee's option, be reimbursed by the Recipient for any loss suffered in the sale of the employee's home for less than its fair market value, plus conventional fees and closing costs, such loss to be paid within thirty (30) days of settlement or closing on the sale of the home. In each case, the fair market value of the home in question shall be determined, as of a date sufficiently prior to the date of the Project, so as to be unaffected thereby. The Recipient shall, in each instance, be afforded an opportunity to purchase the home at such fair market value before it is sold by the employee to any other person and to reimburse the seller for his/her conventional fees and closing costs.

If the employee is under a contract to purchase his/her home, the Recipient shall protect the employee against loss under such contract, and in addition, shall relieve the employee from any further obligation thereunder.

If the employee holds an unexpired lease of a dwelling occupied as the employee's home, the Recipient shall protect the employee from all loss and cost in securing the cancellation of said lease.

(12)(b) No claim for loss shall be paid under the provisions of this paragraph unless such claim is presented to the Recipient in writing within one year after the effective date of the change in residence.

(12)(c) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through a joint conference between the employee, or his/her union, and the Recipient. In the event they are unable to agree, the dispute or controversy may be referred by the Recipient or the union to a board of competent real estate appraisers selected in the following manner: one (1) to be selected by the representatives of the employee, and one (1) by the Recipient, and these two, if unable to agree within thirty (30) days upon the valuation, shall endeavor by agreement with ten (10) days thereafter to select a third appraiser or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the State and local Board of Real Estate Commissioners to designate within ten (10) days a third appraiser, whose designation will be binding upon the parties and whose jurisdiction shall be limited to determination of the issues raised in this paragraph only. A decision of a majority of the appraisers shall be required and said decision shall be final, binding, and conclusive. The compensation and expenses of the neutral appraiser including expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(12)(d) Except as otherwise provided in paragraph (11)(b) hereof, changes in place of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(12)(e) "Change in residence" means transfer to a work location which is either (A) outside a radius of twenty (20) miles of the employee's former work location and farther from the employee’s residence than was his/her former work location, or (B) is more than thirty (30) normal highway route miles from the employee’s residence and also farther from his/her residence than was the employee’s former work location.

(13)(a) A dismissed employee entitled to protection under this arrangement may, at the employee's option within twenty-one (21) days of his/her dismissal, resign and (in lieu of all other benefits and protections provided in this arrangement) accept a lump sum payment computed in accordance with section (9) of the Washington Job Protection Agreement of May 1936:

Length of Service	Separation Allowance
1 year and less than 2 years	3 months' pay
2 years and less than 3 years	6 months' pay
3 years and less than 5 years	9 months' pay
5 years and less than 10 years	12 months' pay
10 years and less than 15 years	12 months' pay
15 years and over	12 months' pay

In the case of an employee with less than one year's service, five days' pay, computed by multiplying by 5 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payments) received by the employee in the position last occupied, for each month in which the employee performed service, will be paid as the lump sum.

Length of service shall be computed as provided in Section 7(b) of the Washington Job Protection Agreement, as follows:

For the purposes of this arrangement, the length of service of the employee shall be determined from the date the employee last acquired an employment status with the employing carrier and the employee shall be given credit for one month's service for each month in which the employee performed any service (in any capacity whatsoever) and twelve (12) such months shall be credited as one year's service. The employment status of an employee shall not be interrupted by furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization, the employee will be given credit for performing service while so engaged on leave of absence from the service of a carrier.

(13)(b) One month's pay shall be computed by multiplying by 30 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payments) received by the employee in the position last occupied prior to time of the employee's dismissal as a result of the Project.

(14) Whenever used herein, unless the context requires otherwise, the term "protective period" means that period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of six (6) years therefrom, provided, however, that the protective period for any particular employee during which the employee is entitled to receive the benefits of these provisions shall not continue for a longer period following the

date the employee was displaced or dismissed than the employee's length of service, as shown by the records and labor agreements applicable to his/her employment prior to the date of the employee's displacement or dismissal.

(15)(a) In the event that employee(s) are represented by a Union, any dispute, claim, or grievance arising from or relating to the interpretation, application or enforcement of the provisions of this arrangement, not otherwise governed by paragraph 12(c), the Labor-Management Relations Act, as amended, the Railway Labor Act, as amended, or by impasse resolution provisions in a collective bargaining or protective arrangement involving the Recipient and the Union, which cannot be settled by the parties thereto within thirty (30) days after the dispute or controversy arises, may be referred by any such party to any final and binding disputes settlement procedure acceptable to the parties. In the event they cannot agree upon such procedure, the dispute, claim, or grievance may be submitted at the written request of the Recipient or the Union to final and binding arbitration. Should the parties be unable to agree upon the selection of a neutral arbitrator within ten (10) days, any party may request the American Arbitration Association to furnish, from among arbitrators who are then available to serve, five (5) arbitrators from which a neutral arbitrator shall be selected. The parties shall, within five (5) days after the receipt of such list, determine by lot the order of elimination and thereafter each shall, in that order, alternately eliminate one name until only one name remains. The remaining person on the list shall be the neutral arbitrator. Unless otherwise provided, in the case of arbitration proceedings, under paragraph (5) of this arrangement, the arbitration shall commence within fifteen (15) days after selection or appointment of the neutral arbitrator, and the decision shall be rendered within forty-five (45) days after the hearing of the dispute has been concluded and the record closed. The decision shall be final and binding. All the conditions of the arrangement shall continue to be effective during the arbitration proceedings.

(15)(b) The compensation and expenses of the neutral arbitrator, and any other jointly incurred expenses, shall be borne equally by the Union(s) and Recipient, and all other expenses shall be paid by the party incurring them.

(15)(c) In the event that employee(s) are not represented by a Union, any dispute, claim, or grievance arising from or relating to the interpretation, application or enforcement of the provisions of this arrangement which cannot be settled by the Recipient and the employee(s) within thirty (30) days after the dispute or controversy arises, may be referred by any such party to any final and binding dispute settlement procedure acceptable to the parties, or in the event the parties cannot agree upon such a procedure, the dispute or controversy may be referred to the Secretary of Labor for a final and binding determination.

(15)(d) In the event of any dispute as to whether or not a particular employee was affected by the Project, it shall be the obligation of the employee or the representative of the employee to identify the Project and specify the pertinent facts of the Project relied upon. It shall then be the burden of the Recipient to prove that factors other than the Project affected the employee. The claiming employee shall prevail if it is established that the Project had an effect upon the employee even if other factors may also have affected the employee. (See Hodgson's Affidavit in Civil Action No. 825-71).

(16) The Recipient will be financially responsible for the application of these conditions and will make the necessary arrangements so that any employee covered by this arrangement may file a written claim of its violation, through the Union, or directly if the employee is outside the bargaining unit, with the Recipient within sixty (60) days of the date the employee is terminated or laid off as a result of the Project, or within eighteen (18) months of the date the employee’s position with respect to his/her employment is otherwise worsened as a result of the Project. In the latter case, if the events giving rise to the claim have occurred over an extended period, the 18-month limitation shall be measured from the last such event. No benefits shall be payable for any period prior to six (6) months from the date of the filing of any claim. Unless such claims are filed with the Recipient within said time limitations, the Recipient shall thereafter be relieved of all liabilities and obligations related to the claim.

The Recipient will fully honor the claim, making appropriate payments, or will give notice to the claimant or his/her representative of the basis for denying or modifying such claim, giving reasons therefore. If the Recipient fails to honor such claim, the Union or non-bargaining unit employee may invoke the following procedures for further joint investigation of the claim by giving notice in writing. Within ten (10) days from the receipt of such notice, the parties shall exchange such factual material as may be requested of them relevant to the disposition of the claim and shall jointly take such steps as may be necessary or desirable to obtain from any third party such additional factual materials as may be relevant. In the event the Recipient rejects the claim, the claim may be processed to arbitration as hereinabove provided by paragraph (15).

(17) Nothing in this arrangement shall be construed as depriving any employee of any rights or benefits which such employee may have under existing employment or collective bargaining agreements or otherwise; provided that there shall be no duplication of benefits to any employee, and, provided further, that any benefit under this arrangement shall be construed to include the conditions, responsibilities, and obligations accompanying such benefit. This arrangement shall not be deemed a waiver of any rights of any Union or of any represented employee derived from any other agreement or provision of federal, state or local law.

(18) During the employee's protective period, a dismissed employee shall, if the employee so requests, in writing, be granted priority of employment or reemployment to fill any vacant position within the jurisdiction and control of the Recipient reasonably comparable to that which the employee held when dismissed, including those in the employment of any entity bound by this arrangement pursuant to paragraph (21) herein, for which the employee is, or by training or retraining can become, qualified; not, however, in contravention of collective bargaining agreements related thereto. In the event such employee requests such training or re-training to fill such vacant position, the Recipient shall provide for such training or re-training at no cost to the employee. The employee shall be paid the salary or hourly rate provided for in the applicable collective bargaining agreement or otherwise established in personnel policies or practices for such position, plus any displacement allowance to which the employee may be otherwise entitled. If such dismissed employee who has made such request fails, without good cause, within ten (10) days to accept an offer of a position comparable to that which the employee held when dismissed for which the employee is qualified, or for which the employee has satisfactorily completed such training, the employee shall, effective at the expiration of such ten-day period, forfeit all rights and benefits under this arrangement.

As between employees who request employment pursuant to this paragraph, the following order where applicable shall prevail in hiring such employees:

(a) Employees in the craft or class of the vacancy shall be given priority over employees without seniority in such craft or class;

(b) As between employees having seniority in the craft or class of the vacancy, the senior employees, based upon their service in that craft or class, as shown on the appropriate seniority roster, shall prevail over junior employees;

(c) As between employees not having seniority in the craft or class of the vacancy, the senior employees, based upon their service in the crafts or classes in which they do have seniority as shown on the appropriate seniority rosters, shall prevail over junior employees.

(19) The Recipient will post, in a prominent and accessible place, a notice stating that the Recipient has received federal assistance under the Federal Transit statute and has agreed to comply with the provisions of 49 U.S.C., Section 5333(b). This notice shall also specify the terms and conditions set forth herein for the protection of employees. The Recipient shall maintain and keep on file all relevant books and records in sufficient detail as to provide the basic information necessary to the proper application, administration, and enforcement of this arrangement and to the proper determination of any claims arising thereunder.

(20) In the event the Project is approved for assistance under the statute, the foregoing terms and conditions shall be made part of the contract of assistance between the federal government and the applicant for federal funds and between the applicant and any recipient of federal funds; provided, however, that this arrangement shall not merge into the contract

of assistance, but shall be independently binding and enforceable by and upon the parties thereto, and by any covered employee or his/her representative, in accordance with its terms, nor shall any other employee protective agreement merge into this arrangement, but each shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms.

(21) This arrangement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by reason of the arrangements made by or for the Recipient to manage and operate the system.

Any person, enterprise, body, or agency, whether publicly - or privately-owned, which shall undertake the management, provision and/or operation of the Project services or the Recipient's transit system, or any part or portion thereof, under contractual arrangements of any form with the Recipient, its successors or assigns, shall agree to be bound by the terms of this arrangement and accept the responsibility with the Recipient for full performance of these conditions. As a condition precedent to any such contractual arrangements, the Recipient shall require such person, enterprise, body or agency to so agree.

(22) In the event of the acquisition, assisted with Federal funds, of any transportation system or services, or any part or portion thereof, the employees of the acquired entity shall be assured employment, in comparable positions, within the jurisdiction and control of the acquiring entity, including positions in the employment of any entity bound by this arrangement pursuant to paragraph (21). All persons employed under the provisions of this paragraph shall be appointed to such comparable positions without examination, other than that required by applicable federal, state or federal law or collective bargaining agreement, and shall be credited with their years of service for purposes of seniority, vacations, and pensions in accordance with the records of their former employer and/or any applicable collective bargaining agreements.

(23) The employees covered by this arrangement shall continue to receive any applicable coverage under Social Security, Railroad Retirement, Workmen's Compensation, unemployment compensation, and the like. In no event shall these benefits be worsened as a result of the Project.

(24) In the event any provision of this arrangement is held to be invalid, or otherwise unenforceable under the federal, state, or local law, in the context of a particular Project, the remaining provisions of this arrangement shall not be affected and the invalid or unenforceable provision shall be renegotiated by the Recipient and the interested Union representatives, if any, of the employees involved for purpose of adequate replacement under Section 5333(b). If such negotiation shall not result in mutually satisfactory agreement any party may invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements for application only to the particular

Project, which shall be incorporated in this arrangement only as applied to that Project, and any other appropriate action, remedy, or relief.

(25) If any employer of the employees covered by this arrangement shall have rearranged or adjusted its forces in anticipation of the Project, with the effect of depriving an employee of benefits to which the employee should be entitled under this arrangement, the provisions of this arrangement shall apply to such employee as of the date when the employee was so affected.

C. Acceptance of Special Section 5333(b) Warranty

I, (Name and Title) Tommy Melton, Chairman
(Name and Title)

do hereby certify that

Polk County Local Government
(Legal Name of Applicant/Recipient)

has agreed to the terms and conditions of this Warranty; will accept this agreement as part of the contract of assistance with the North Carolina Department of Transportation; and **will post, in a prominent and accessible place, the terms and conditions of the Warranty with a notice stating that the Recipient has received federal assistance under the Federal Transit statute and has agreed to comply with these terms.**

Signature of Authorized Official

Date

(Required of all Applicants that plan to procure inaccessible vehicles or have them in their fleet)

CERTIFICATION OF EQUIVALENT SERVICE

Polk County Local Government *(Legal Name of Applicant)* certifies that its demand responsive service offered to individuals with disabilities
(as defined in 49 CFR 37.3), including individuals who use wheelchairs, is equivalent to the level and quality of service offered to individuals without disabilities. Such service, when viewed in its entirety, is provided in the most integrated setting feasible and is equivalent with respect to:

1) Response time;
2) Fares;
3) Geographic service area;
4) Hours and days of service;
5) Restrictions or priorities based on trip purpose;
6) Availability of information and reservation capability; and
7) Constraints on capacity or service availability.

In accordance with 49 CFR 37.77, public funded entities operating demand responsive systems for the general public which receive financial assistance under section 18 of the Federal Transit Act must file this certification with the appropriate state program office before procuring any inaccessible vehicle. NCDOT also requires state funded entities that do not receive Federal Transit Administration (FTA) funds to file this certification as well. **This certification is valid for no longer than one year from its date of filing.**

The NCDOT Public Transportation Division requires all participants to certify equivalent service when requesting to purchase non-ADA accessible vehicles. By signing this certification, the above-named agency is certifying that it has a mechanism in place to provide rides to individuals with disabilities. The ride must be provided in a manner equivalent to the service provided by the above-named agency to individuals without disabilities. Verification must include the attached form entitled *Measuring and Monitoring Equivalency for a General Public Demand Responsive Transportation Service*.

____
Signature of Authorized Official

Seal Subscribed and sworn to me
(*date*) ____________________

____
Notary Public

____

____
Printed Name and Address

My commission expires
(*date*) ____________________

Affix Notary Seal Here

Measuring and Monitoring Equivalency for a General Public Demand Responsive Transportation Service

Criteria/Requirement	Data and Analysis to Ensure Equivalency
Service Area	
Response Time	
Fares	
Days and Hours	
Trip Purposes	
Capacity Constraints:	
Trip Denials	
Trip Caps	
Waiting Lists	
Missed Trips	
On-Time Performance	
Travel Time	

Comparison of ADA Regulatory Requirements for General Public Demand Responsive Services versus ADA Complementary Paratransit Services

Criteria/Requirement	**General Public Demand Responsive Transportation Services (Equivalency)**	**ADA Complementary Paratransit Services (Comparable to Fixed Route)**
Type of Service (DTD v CTC)	Whatever policy you set. Same for everyone.	Origin-to-destination
Service Area	Same as everyone else	¾ of a mile of all non-commuter fixed routes
Response Time	Same as everyone else	Next-day service
Fares	Same for all	2 times base fixed route fare
Days and Hours	Same for all	All the fixed route hours
Trip Purpose	Can set policy ; same for all	All trip purposes; no priorities
Capacity Constraints	Same for all	No capacity constraints
Information and Communication Access	Provide accessible information and communications	Provide accessible information and communications

(Required of all Applicants)

CERTIFICATION AND RESTRICTIONS ON LOBBYING

I, **Tommy Melton** , on behalf of
Name of Authorized Official

Polk County Local Goverment ,
Legal Name of Applicant

Hereby certifies that:

No Federal/State appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal/State agency, a Member of Congress or State Legislature, an employee of a member of Congress or State Legislature, or an officer or employee of Congress or State Legislature in connection with the awarding of any Federal/State contract, the making of any Federal/State grant, the making of any Federal/State loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal/State contract, grant, loan, or cooperative agreement.

If any funds other than Federal/State appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any Federal/State agency, a Member of Congress or State Legislature, an employee of a member of Congress or State Legislature, or an officer or employee of Congress or State Legislature in connection with the Federal/State contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

____
Signature of Authorized Official

Seal Subscribed and sworn to me
(*date*) ______________

____
Notary Public

____
Printed Name and Address

My commission expires
(*date*) ______________

Affix Notary Seal Here

POLK COUNTY BOARD OF COMMISSIONERS

AGENDA ITEM

March 29, 2021 Regular Meeting

Agenda Item#: F.

ATTACHMENTS:

Description	Type	Upload Date
Budget Amendment	Cover Memo	3/24/2021

POLK COUNTY FINANCE

BUDGET AMENDMENT: APPROPRIATE FUND BALANCE

DATE: 3/29/2021 BOC Meeting BATCH #: ____________ LINE__________

Dept.: EMS

Amendment # : :8-F Fund balance

INCREASE EXPENSE				REDUCE FUND BALANCE APPROPRIATED			
GL ACCOUNT #				GL ACCOUNT #			
10-4370-1240-0	Part-time Salary	$	15,000	10-3991-0000	Fund Balance Approp	$	(15,000)

EXPLANATION: To appropriate fund balance to increase the EMS part-time salary line due to the need of part-time coverage of full-time staffers that were out on FMLA unrelated to COVID.

____
Date approved & entered into the BOC minutes

____
COUNTY MANAGER

____
FINANCE OFFICER

POLK COUNTY BOARD OF COMMISSIONERS

AGENDA ITEM

March 29, 2021 Regular Meeting

Agenda Item#: 8.

ATTACHMENTS:

Description	Type	Upload Date
Annual Report	Cover Memo	3/24/2021
Proclamation	Cover Memo	3/24/2021

Suggested Motion:
Motion to adopt the proclamation.

2020
ANNUAL REPORT
TO THE
POLK COUNTY BOARD OF COMMISSIONERS
FROM THE
POLK COUNTY COMMUNITY
CHILD FATALITY PREVENTION AND PROTECTION TEAM

TEAM MEMBERS

Dr. John Kornmayer, Team Chair
Crystal Gonzales, Polk County Division of Public Health
Josh Kennedy, Director, Polk County HHSA
Thomas Adkin, Consolidated Human Services Board
Lee Bradley, District Administrator GAL Program
Mike Melton, Polk County Schools
Dr. Gordon Schneider, LifeSpan Psychological
Lynne Barnette, Vaya
Greg Newman, District Attorney
Kelly Pittman, Western Carolina Community Action
Cathy Brooks, Partnership for Children of the Foothills
Mary Edwards, Be A Voice 4 Kids
Cindy Wicklund, Steps to Hope
Dawn Cronan, Juvenile Court Counselor
Peggy Franklin, Polk County Schools Head Start
Michael Crater, Emergency Medical Services
Pam Cannon, Polk County Sheriff's Dept
Dr. George Kim

DSS Staff
Josh Kennedy, Director
Kim Wilson, Senior Program Manager
Robin Elliott, Service Supervisor
Melani Lainhart, Services Supervisor

Submitted – March 2021

POLK COUNTY COMMUNITY
CHILD FATALITY PREVENTION AND PROTECTION TEAM

2020 REPORT TO THE COUNTY COMMISSIONERS

History of the Team:

In response to Executive Order 142 issued in May 1991, the North Carolina General Assembly established the "Child Fatality Prevention System" as codified in Chapter 7B Juvenile Code Article 14. The General Assembly found that the prevention of the abuse, neglect, and death of juveniles is a community responsibility; that professionals from different disciplines have responsibilities for children or juveniles and have expertise that can promote their safety and well-being; and that multidisciplinary reviews of the abuse, neglect and death of juveniles can lead to a greater understanding of the causes and methods of preventing these deaths.

The purpose of the Child Fatality Prevention and Protection System is to assess the records of selected cases in which children are being served by child protective services and the records of all deaths of children in North Carolina from birth to age 18 in order to:

(i) Develop a communitywide approach to the problem of child abuse and neglect;
(ii) Understand the causes of childhood deaths;
(iii) Identify any gaps or deficiencies that may exist in the delivery of services to children and their families by public agencies that are designed to prevent future child abuse, neglect, or death; and
(iv) Make and implement recommendations for changes to laws, rules and policies that will support the safe and healthy development of our children and prevent future child abuse, neglect and death.

Community Child Protection Teams and Child Fatality Prevention Teams were established in every North Carolina County in 1993. The Director of the Polk County Division of Social Services established the local Community Child Protection Team. The Health Director for the Rutherford / Polk / McDowell Health District established a separate Child Fatality Prevention Team. The Polk County Community Child Protection and Child Fatality Prevention Teams combined into one team in 1994 for meetings to cover both mandates. Team membership and operating procedures were updated during 2013 when the team officially combined into one team.

Purpose of the Team:

The Polk County Community Child Fatality Prevention and Protection Team is an interdisciplinary group of community representatives who meet to promote a community-wide approach to the problem of child abuse, neglect and dependency. Through collaboration and advocacy, the community is engaged to look within itself to access how resources and services promote child protection and help keep our children safe and healthy. Both families and communities have benefited from the community approach to child protection.

The local purpose of reviewing child abuse and neglect cases is to identify whether gaps and deficiencies exist in the child protective service system; identify needed resources in the community; and to assist the County Director of Social Services in planning for needed services to prevent further abuse or neglect. The team reviews substantiated cases of abuse and severe neglect when it seems there were gaps in services that could have prevented the problem and all deaths of children under the age of 18.

The Polk County Community Child Fatality Prevention and Protection Team meet bi monthly and met five (5) times during 2020: January 14, May 20, July 15, September 16 and November 18. No meeting was held in March due to the Covid 19 pandemic, and all meetings since March have been held virtually. The Annual Report to the Commissioners was presented March 29, 2021.

During 2020, the Team accomplished the following:

- Welcomed new Team members:
    - Dr. George Kim, physician and Lee Bradley GAL District Administrator.

- Community Awareness
    - April – Child Abuse Awareness Month
        - Proclamations of April as Child Abuse Awareness
        - Child Abuse Awareness Walk was planned for April 13th , but was cancelled due to Covid 19 restrictions
        - Planted Pinwheel Gardens

Case Reviews

During 2020, three hundred fifty four (354) Child Protection reports were made to Polk County Division of Social Services. Of these reports, two hundred forty seven (247) met the legal criteria for an assessment / investigation to be conducted on the allegations of abuse, neglect or dependency by a parent or caretaker. Polk County Division of Social Services provided Child Protective Services to an average of one hundred thirty two (132) children each month.

The Community Child Fatality Prevention and Protection Team reviewed four (4) Child Protective Services cases during 2020. There were no State Child Fatality Prevention Cases.

The (4) Child Protective Services case reviews included 1 case involving allegations of sexual abuse, 3 cases involving allegations of physical abuse, 3 cases involving neglect and 2 cases involving allegations of dependency and abandonment. Specifically, the cases included allegations of domestic violence, substance use/abuse of alcohol, marijuana, methamphetamine, and prescribed opioids, lack of child development knowledge, physical & sexual abuse and a belief in abusive/harsh discipline.

During the reviews, the following were identified by the Team relating to child maltreatment:

Contributory Factors

- Substance Abuse
- Peers/Friends misuse/abuse substances
- Failure to seek appropriate medical care
- Belief in harsh/abusive discipline
- Family moving b/w states to avoid DSS
- Lack of appropriate family and social supports
- Under /unemployment
- Lack of child development knowledge
- Minimal parenting knowledge/skills
- Domestic Violence
- Anger management skills
- Failure to report abuse and neglect

Gaps in Services, system deficiencies or other barriers to child protection

- Comprehensive community awareness and education on substance use disorder and domestic violence including the link between domestic violence and sexual abuse.
- Inadequate substance misuse treatment services including but not limited to peer support, aftercare, and affordable inpatient treatment for individuals without a pay source.

- Community case management for individuals involved in services provided by multiple agencies.
- Funding to creatively develop local services addressing substance misuse issues.
- Jurisdictional and coordination of Child Protective Services across state lines due to differences in law and policy.
- A universal EMR to track health needs and health history of children to ensure appropriate care is provided when parents change providers or when a child has a change of caregiver/parent.
- Lack of court oversight to ensure legal transfer of custody to an appropriate caregiver in all situations.
- Education about safe touch and consistent screening for sexual abuse.
- There is inadequate access to comprehensive mental health and substance abuse services within Polk County, due in part to a shortage of mental health professionals.
  Additionally, there is not sufficient integration of care between medical and mental health providers. Coordination of treatment between separate health care and treatment providers is often hampered by privacy protections and the absence of routine processes for coordinating parallel care for individuals with co-occurring disorders and/or conditions.
- Polk County would benefit from enhanced evidenced-based family planning services, health, and sex education for children and adolescents.
- Polk County needs trauma prevention or reduction services, and services to foster resilience from adverse childhood experiences. Primary care providers and other trained professionals commonly screen young children for trauma symptoms using the Adverse Childhood Experiences (ACE) inventory. In follow-up, interventions are needed to mitigate some potential harmful outcomes that the screening identifies.
- County child welfare services need increased funding to support prevention, family preservation and reunification services for parents and other caretakers whose children are in foster care or at risk of entering care.

<u>Strategies to address gaps in services, system deficiencies, or other barriers to child protection</u>

- The Polk County Joint Community Child Protection Fatality Prevention Team will explore a county-wide campaign to reduce stigma associated with mental health and substance use disorders. Additionally, the team should continue conversations with Vaya Health about the need to recruit more behavioral health programs and providers to Polk County to ensure a more comprehensive continuum of care from education and prevention through high intensity services.

- The Department of Health and Human Services (DHHS) should continue its work to integrate physical, behavioral health provide continuity of care for clients over time. The workgroup should further explore a universal system for sharing electronic medical records between healthcare providers, allowing physicians and clinicians to quickly access patient information and facilitate better clinical decision-making.

- In conjunction with other community agencies and partners provide community education of mandating reporting laws, how to report, signs of child maltreatment, and the impact of child abuse and neglect across micro, mezzo, and macro levels.

- Support distribution of Stewards of Children and Darkness to Light Training

- Polk County's network of health care providers and educators are encouraged to provide evidence-based health and sex education for all community members. Curriculum should teach youth and adults about safe touch, how to create and sustain safe, healthy and respectful relationships, what consent looks like, how certain factors influence sexual risk behavior, the benefits of being sexually abstinent, the efficacy of contraceptives, the importance of using contraceptives consistently and correctly, the importance of using a condom at the same time as another form of contraception to prevent both sexually transmitted infections (STIs) and pregnancy, healthy communication and negotiation skills, goal-setting and decision-making skills, how HIV and other STIs are transmitted and the health consequences of each, how to influence and support others to avoid or reduce sexual risk behaviors, the importance of limiting the number of sexual partners, and how to access valid and reliable information, products and services related to sexual health and preventive care.

- The Polk County Joint Community Child Protection Fatality Prevention Team should consider and evaluate ways to educate the public about the need for comprehensive health and sex education and explore ways to increase access to a range of birth control options.

- Engage the local District Attorney's Office in having treatment ordered as a part of sentencing for persons who are convicted for offenses that involve substance abuse.

- DHHS should consider re-implementing a service definition and funding for at-risk case management services for individuals with high ACES scores needing evidence-based interventions.

- Advocate for resources and a process for civil custody cases to undergo a more thorough evaluation of the parents, or prospective custodian.

- The Polk County Joint Community Child Protection Fatality Prevention Team should consider advocating for, recruiting, and supporting the implementation and sustainability of evidence-based behavioral health interventions, such as parenting education, family therapy, and individualized treatment for children and families facing adversities and adults suffering from the effects of adverse childhoods. The team should additionally explore a public awareness campaign to build awareness of trauma and foster resilience within the community.

- DSS should consider advocating expanding state funding for prevention, preservation and reunification services, especially in rural counties where resources are scarce.

The Team developed these recommendations as a guide to improve local systems of care and highlight areas in which services could be improved for children and families state-wide to protect children better in the future. It cannot be known, however, what impact, if any, these recommendations could have had on the reviewed case if they had been in place at the time.

Conclusion

The issues presented in previous Reports to Commissioners remain the same. Substance abuse, mental health, unstable living situations, inadequate parenting, domestic violence, etc., all impact the health and wellness of families affected by child abuse and neglect and thus our entire community. In your role as Polk County Commissioner, we ask each of you to join us in a serious commitment this year to make actual changes in the lives of our children and families.

An investment in prevention NOW and for the next several years will be much more cost effective than waiting until after abuse or adverse experiences occur. The benefits of prevention far outweigh the costs of remediation when our society continues to pay for the results of child abuse and neglect.

Our children are the future, and their vision for Polk County will be a reflection of our efforts.

Every child deserves to wake up to a loving family, play in a safe community, and fall asleep with a smile as they dream about the wonders of tomorrow.
(Prevent Child Abuse North Carolina)

April 2021
Child Abuse & Neglect Prevention Month
Proclamation

WHEREAS, our children are our most valuable resources and will shape the future of Polk County; and

WHEREAS, every child deserves to be loved, cared for, secure, and safe and it is the responsibility of our communities to promote every child's right to a safe, happy and healthy environment; and

WHEREAS, in 2020, 354 reports were made to Polk County Child Protective Services; and

WHEREAS, child abuse and neglect not only cause immediate harm to children, but can have long-term psychological, emotional, and physical effects that can have lifelong consequences for victims of abuse and can increase the likelihood of criminal behavior, substance abuse, health problems and risky behavior; and

WHEREAS, preventing child abuse and neglect is a community responsibility affecting both the current and future quality of life of Polk County and finding solutions depends on involvement among all people; and

WHEREAS, protective factors are conditions that reduce or eliminate risk and promote the social, emotional, and developmental well-being of children; and

WHEREAS, we must make every effort to promote programs and activities that benefit children and their families; and

WHEREAS, effective child abuse prevention programs succeed because of partnerships among child welfare, citizens, agencies, schools, religious organizations, law enforcement agencies, and the business community; and

WHEREAS, we acknowledge that we must work together and that all citizens should become involved to provide safe, nurturing environments for children in all areas of their lives – at home, in school, and in the community – offering them the opportunity to grow up to be caring, contributing members of the community; and

WHEREAS, **PREVENTION** remains the best defense for our children and families.

NOW, THEREFORE, BE IT PROCLAIMED that the Polk County Board of Commissioners declares April 2021 as **"CHILD ABUSE and NEGLECT PREVENTION MONTH"** and call upon all citizens, community agencies, faith groups, medical facilities, elected leaders and businesses to recognize this month by dedicating ourselves to the task of improving the quality of life for all children and families, thereby preventing child abuse and neglect and strengthening the community in which we live.

Adopted this the 29^TH day of March, 2021.

ATTEST:	POLK COUNTY BOARD OF COMMISSIONERS
______________________________	___________________________
Angé High, Clerk to the Board	Tommy W. Melton, Chairman

POLK COUNTY BOARD OF COMMISSIONERS

AGENDA ITEM

March 29, 2021 Regular Meeting

Agenda Item#: 10.

ATTACHMENTS:

Description	Type	Upload Date
Contract	Cover Memo	3/25/2021

Suggested Motion:
Motion to approve the St. Luke's contract.

AGREEMENT FOR PROVISION OF OUTPATIENT SERVICES

This agreement is entered into on the 29th day of March, 2021, by St. Luke's Hospital, Inc (hereinafter known as "Hospital") and Polk County (hereinafter known as "Client"). Both parties agree to the following provisions:

I. Hospital will assume responsibility for performing Sheriff's Department Physicals, Drug screens (Pre-employment and random), Occupational health and injury visits and employee health testing for applicants and employees of Client as mutually agreed upon by both.

II. Client will be responsible for scheduling appointments with Foothills Medical Associates/Saluda Family Medicine for DOT Physicals/Sheriff's Package visits and Employee Injury visits which may be performed Monday through Thursday between the hours of 8 AM to 12:00 Noon and 1:00 PM to 5:00PM and on Fridays between the hours of 8AM to 12 Noon. Appointments may be scheduled by calling Foothills at 828-894-5627. Individual Drug Screening and Laboratory Testing may be scheduled via St Luke's Hospital and will be provided routinely Monday through Friday between the hours of 8 AM to 12:00 Noon and 1:00 PM to 5:00PM. There is also limited night and weekend availability for this testing as well. To schedule the individual test, please call the lab at 828-894-0909.

III. Reports of test results will be faxed from Hospital to Client Secure Fax at 828-722-5222.

IV. Hospital will invoice the Client for services on a monthly basis. Services to be provided and the associated charge(s) are described in Attachment 1 to this Agreement. Client will submit payment to Hospital within 30 days of receipt of the monthly invoice.

V. In accordance with Title VI of the Civil Rights Act of 1964, Hospital does not refuse, limit, or terminate services to patients based on race, color, sex, national origin, or disability. Services will be provided to all patients equally based on the individual need for service.

VI. Changes may be made to this Agreement only in writing with the agreement of both parties.

VII Hospital will maintain books, documents, and records related to services provided in accordance with applicable laws and regulations. Hospital and its staff will maintain the confidentiality of all patient information as required by HIPAA. Hospital and Agency agree that uses and disclosures of protected health information (PHI) under the terms and conditions of this agreement are characterized as treatment, payment, or healthcare operations under HIPAA and therefore a Business Associate Agreement (BAA) is not required.

VIII. In performing the services herein specified, Client and Hospital will be acting as independent contractors. Nothing contained in this Agreement shall be construed to create a partnership or a joint venture between Client and Hospital, nor to authorize either Client or Hospital to act as a general or special agent of the other party in any respect, except as specifically set forth in this agreement.

IX. This agreement shall remain in effect for a term of one (1) year from the date hereinafter first written and shall renew automatically for renewal terms of one (1) year, provided however that either party may terminate upon thirty (30) days prior written notice to be given to the other at the address indicated herein.

All notices hereunder shall be in writing, addressed to the other party at its respective address stated below.

If to Hospital:
St. Luke's Hospital, Inc.
Attn: CEO
101 Hospital Drive
Columbus, NC 28722

If to Client:
Polk County
Attn: Human Resources Dept
PO Box 308
Columbus, NC 28722

X. No party to this agreement shall be liable for failure to perform any duty or obligation that said party may have under the agreement where such failure has been occasioned by any act of God, fire, strike, inevitable accident, war or any cause outside the reasonable control of the party who had the duty to perform.

In witness whereof, the parties hereunto have duly executed this agreement the day and year first above written.

St. Luke's Hospital, Inc.

BY:____________________
Michelle Fortune
Chief Executive Officer

Polk County

BY:____________________
Marche Pittman
County Manager

Attachment 1

Services & Charge

- DOT Drug Test (Regulated 5 Panel Drug Screen) -$35
- Drug - Non-Regulated Urine 5 Panel (done in house)- $20
- Blood Alcohol Testing- $28
- Breathalyzer- (not available)
- TB Test (Single Step)-$28
- Sheriff's Package- $141
  (Sheriff's Form Physical, TB Test, In house 5 Panel Drug Screen)

POLK COUNTY BOARD OF COMMISSIONERS

AGENDA ITEM

March 29, 2021 Regular Meeting

Agenda Item#: 11.

ATTACHMENTS:

Description	Type	Upload Date
Proclamation	Cover Memo	3/29/2021

Suggested Motion:
Motion to adopt the proclamation.

PROCLAMATION
SPRING LITTER CLEANUP MONTH
APRIL 2021

Whereas, Polk County is rich in beauty and natural resources; and

Whereas, the Board of Commissioners of Polk County strive to improve the quality of life in our community through enhanced awareness, education and public/private partnerships, working together on projects that keep our environment clean and free of debris, beautify our neighborhoods and public spaces, and instill pride and a sense of ownership in our community; and

Whereas, Polk County citizens realize a cleanup effort is needed to display respect for our community, ourselves, our visitors, and our businesses; and

Whereas, all residents of Polk County have a citizenship responsibility to protect and care for the magnificent landscape, and natural resources of Polk County, and are encouraged to participate in the areas of litter prevention, waste reduction, recycling, and beautification; and

Whereas, the Spring Litter Cleanup will be a part of educating children of the importance of a clean environment, and will encourage all citizens, civic, and professional groups, to take an active role ensuring litter free communities in Polk County; and

Whereas, the Town of Columbus and the Discover Columbus Committee jointly sponsored April as "Columbus Proud" Litter Awareness Month, and the North Carolina Department of Transportation (NCDOT) has designated April 10-24, 2021 as their statewide roadside litter removal initiative known as LITTER SWEEP, and April 10, 2021 will be the Green River and Lake Adger Spring Clean Up Day, a community event organized by MountainTrue with work provided by volunteers of the community.

NOW, THEREFORE, BE IT PROCLAIMED that the Polk County Board of Commissioners declares April 2021 as **"SPRING LITTER CLEANUP MONTH"** in Polk County, North Carolina.

Adopted this the 29TH day of March, 2021.

ATTEST:

POLK COUNTY BOARD
OF COMMISSIONERS

____
Angé High, Clerk to the Board

____
Tommy W. Melton, Chairman

POLK COUNTY BOARD OF COMMISSIONERS

AGENDA ITEM

March 29, 2021 Regular Meeting

Agenda Item#: 12.

ATTACHMENTS:

Description	Type	Upload Date
Grant Information	Cover Memo	3/24/2021
Kudzu Article	Cover Memo	3/25/2021

Polk County Appearance Commission

Kudzu Matching Grants FY 2020-2021

$8,500	Budgeted Amount				
Date Received	**Applicant Name**	**Description (brief)**	**Grant Request Amount**	**Project cost**	**Status of Application**
9/25/2020	Town of Tryon: Harmon Field	Kudzu removal	$1,650	$3,300	Project Completed
02/03/2021 REVISED 03-07-2021	Town of Tryon: Vaughans Creek	Kudzu Removal	1000	2002.39	
2/18/2021	Conserving Carolina	Backpack sprayer	115	230	
02/23/2021 REVISED 03-05-2021	Saluda Community Land Trust	Reclamation Park kudzu removal	1000	2121.46	
2/26/2021 REVISED 3/5/2021	Lake Adger Property Owners Association, Inc.	Common Areas kudzu removal	675	1350	Pending County Approval
2/26/2021	Conserving Carolina	Kudzu Removal Area 2 - second spraying	600	1200	
2/26/2021	Conserving Carolina	Kudzu Removal - Area 3	1000	2200	
2/22/2021 REVISED 3/5/2021	City of Saluda	Dog Park kudzu removal	562	1124	Pending County Approval
		Requested Amount	$6,602		
		Funds remaining if all grants are approved	$1,898		
https://www.beautifulfoothills.org/kudzu-matching-grants		Expense	-12	TDB article	
AS OF: 3/24/2021			$1,886		

Kudzu matching grants available

On September 21 of last year, the Polk County Board of Commissioners granted a budget for kudzu eradication. The Polk County Appearance Commission (PCAC) was given oversight for the 50-50 matching grant applications and disbursement of grant monies. Applicants eligible for this grant include towns, non-profits and homeowners' associations. Requirements for the application can be found on the Polk County Appearance Commission's website under the Grants menu item: www.beautifulfoothills.org/kudzu-matching-grants

PCAC will seek to award kudzu eradication grants in diverse locations throughout the geographic area of Polk County. The deadline for applications for the first round of grants is Feb 28, 2021.

polk county
CLEAN • BEAUTIFUL • INVITING
beautifulfoothills.org

The kudzu application requires an assessment by a qualified individual, County Extension Agent, or a company who has expressed a willingness to do kudzu control. You may contact the Polk County Extension Director, Scott Wellborn at 828-894-8218, who will provide an assessment and guidance for kudzu control or one of the companies willing to do kudzu control as listed on the PCAC website.

Methods of controlling kudzu can be performed in the spring via removal of the vines then daubing the cut vine from where it emerges from the ground with an herbicide, or removal of the kudzu crown. In the kudzu growing season in the summer and fall, chemical methods are most effective as long as the treatment is done at least two weeks before the first frost. The first frost is normally around the middle of October.

The deadline for completion of grant approved projects will be October 31, 2021. A final report from grant recipients is required as part of the grant process. The final report will be due no later than November 30, 2021. The Final Report form can be found on our website as well.

A link to many websites with information on kudzu, methods of removal, as well as a list of landscapers willing to perform kudzu control can be found on the PCAC website. For those not interested in the grants, we urge those wishing to obtain information on kudzu control to review these weblinks.

For more information or questions regarding the matching grants please contact the PCAC via our email at beautifulfoothills@gmail.com or leave a message at the Polk County Manager's office at 828-894-3301, Extension 8. Please include your contact information: name, phone number and email address.

Let's all work together to make Polk County a more beautiful landscape by controlling the kudzu problem that exists in our county.

Submitted by
The Polk County
Appearance Commission

POLK COUNTY BOARD OF COMMISSIONERS

AGENDA ITEM

March 29, 2021 Regular Meeting

Agenda Item#: 13.

ATTACHMENTS:

Description	Type	Upload Date
Meeting Schedule	Cover Memo	3/25/2021

Suggested Motion:

Motion to approve ordinance review timeline, and schedule a public hearing on Monday, May 3, 2021 at 5:00 pm to take citizen comments on changes to the Polk County Ordinances as required by General Statute 160D.

Polk County - Ordinance Update

March 29, 2021	Present schedule to Board of Commissioners - request workshop and public hearing	Monday 5:00 pm
April 12, 2021	Board of Commissioners Workshop - Ordinance Update Review	Monday 5:00 pm
April 19, 2021	Public Information Session - Open House	Monday 4:30-5:30 pm
April 26, 2021	Public Information Session - Open House	Monday 5:00-6:00 pm
May 3, 2021	Public Hearing and Vote on Ordinances	Monday 5:00 pm

draft.3.11.2021

POLK COUNTY BOARD OF COMMISSIONERS

AGENDA ITEM

March 29, 2021 Regular Meeting

Agenda Item#: 14.

ATTACHMENTS:

Description	Type	Upload Date
Resolution	Cover Memo	3/24/2021
Escrow agreement	Cover Memo	3/24/2021
Financing Agreement	Cover Memo	3/24/2021
Security Agreement	Cover Memo	3/24/2021

Suggested Motion:

Motion to adopt the Resolution Authorizing the Execution and Delivery of an Installment Financing Agreement, a Security Agreement, an Escrow Agreement and Related Documents in Connection with the Financing of School Improvements for the County of Polk, North Carolina.

The Board of Commissioners of the County of Polk, North Carolina met in a regular meeting in the R. Jay Foster Hall of Justice in the Womack Building located at 40 Courthouse Street in Columbus, North Carolina, the regular place of meeting, at 5:00 p.m. on March 29, 2021.

Present: Chair Tommy Melton, presiding, and Commissioners ____________________

____

Absent: Commissioners ____

____

Also Present: ____

____

* * * * * *

__________________ introduced the following resolution, the title of which was read and a copy of which had been distributed to each Commissioner:

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT FINANCING AGREEMENT, A SECURITY AGREEMENT, AN ESCROW AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH THE FINANCING OF SCHOOL IMPROVEMENTS FOR THE COUNTY OF POLK, NORTH CAROLINA

BE IT RESOLVED by the Board of Commissioners (the "Board") for the County of Polk, North Carolina (the "County") as follows:

Section 1. The Board does hereby find and determine as follows:

(a) There exists in the County a need to finance the costs of acquiring and installing certain HVAC, lighting and other equipment at Polk County High School, a public school owned and used by the Polk County Board of Education (the "Project").

(b) The County has determined that the most efficient manner of financing the Project will be through the entering of an Installment Financing Agreement, to be dated as of the date of delivery thereof (the "Agreement"), with Bank of America, N.A. (the "Lender") pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended. Pursuant to the Agreement, the Lender will advance moneys to the County in an amount sufficient to pay the costs of financing the Project and paying certain financing costs relating thereto, and the County will repay the advancement in installments, with interest (the "Installment Payments").

(c) In order to secure the County's obligations under the Agreement, the County will enter into a Security Agreement, to be dated as of the date of delivery thereof (the "Security Agreement"), among the County, the Polk County Board of Education and the Lender, in which the County and the Polk County Board of Education will grant to the Lender a security interest in all or a portion of the equipment being financed in connection with the Project.

(d) In order to provide for the custody, investment and disbursement of the amounts advanced by the Lender under the Installment Financing Agreement, the County and Bank of America, N.A., in the capacities as the Lender and as Escrow Agent, will enter into an Escrow and Account Control Agreement (the "Escrow Agreement"), to be dated as of April 21, 2021.

(e) There has been presented to the Board at this meeting drafts of the Agreement, the Security Agreement and the Escrow Agreement.

Section 2. In order to provide for the financing of the Project, the County is hereby authorized to enter into the Agreement and receive an advancement pursuant thereto in the principal amount not to exceed $6,200,000. The County shall repay the advancement in installments due in the amounts and at the times set forth in the Agreement, with the final Installment Payment due under the Agreement due May 1, 2036. The payments of the installment payments shall be designated as principal and interest as provided in the Agreement, with the interest computed at the interest rate of 2.186% per annum (subject to adjustment as provided in the Agreement).

Section 3. The Board hereby approves the Agreement, and the Security Agreement and the Escrow Agreement in substantially the forms presented at this meeting. The Chairman of the Board, the County Manager and the Finance Director of the County are each hereby authorized to execute and deliver on behalf of the County said documents in substantially the forms presented at this meeting, containing such modifications as the person executing such documents shall approve, such execution to be conclusive evidence of approval by the Board of any such changes. The Clerk to the Board or any Deputy or Assistant Clerk to the Board for the County is hereby authorized and directed to affix the official seal of the County to said documents and to attest the same to the extent so required.

Section 4. No deficiency judgment may be rendered against the County in any action for breach of any contractual obligation authorized pursuant to this resolution, and the taxing power of the County is not and may not be pledged directly or indirectly to secure any moneys due under any contract herein authorized.

Section 5. The Chairman of the Board, the County Manager, the Finance Director, the County Attorney and the Clerk to the Board for the County, and any other officers, agents and employees of the County, are hereby authorized and directed to execute and deliver such closing certificates, opinions and other items of evidence as shall be deemed necessary to consummate the transactions described above.

Section 6. The County hereby represents that it reasonably expects that it, all subordinate entities thereof and all issuers issuing obligations on behalf of the County will not issue in the aggregate more than $10,000,000 of tax-exempt obligations (not counting certain current refunding obligations and private-activity bonds except for qualified 501(c)(3) bonds, as defined in the Internal Revenue Code of 1986, as amended (the “Code”)) during calendar year 2021. In addition, the County hereby designates each of the installment payments under the Agreement as a "qualified tax-exempt obligation" for the purposes of the Code.

Section 7. This resolution shall take effect immediately upon its adoption.

Upon motion of Commissioner ____________________, seconded by Commissioner ___________________, the foregoing resolution entitled "RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT FINANCING AGREEMENT, A SECURITY AGREEMENT, AN ESCROW AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH THE FINANCING OF SCHOOL IMPROVEMENTS FOR THE COUNTY OF POLK, NORTH CAROLINA" was adopted by the following vote:

Ayes:____

____

Noes:____

____

* * * * * *

I, Angé High, Clerk to the Board of Commissioners for the County of Polk, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of the Board for said County at a regular meeting held on March 29, 2021, as it relates in any way to the adoption of the foregoing resolution and that said proceedings are to be recorded in the minutes of said Board.

I DO HEREBY FURTHER CERTIFY that proper notice of such regular meeting was given as required by North Carolina law.

WITNESS my hand and official seal of said County this 29th day of March, 2021.

____

Clerk to the Board

[SEAL]

Escrow and Account Control Agreement

This Escrow and Account Control Agreement (this "Agreement"), dated as of April 21, 2021 by and among Bank of America, National Association, a national banking association (together with its successors and assigns, hereinafter referred to as "Lender"), the County of Polk, North Carolina, a political subdivision duly organized and validly existing under the laws of the State of North Carolina (the "County"), and Bank of America, National Association, a national banking association organized under the laws of the United States of America "Escrow Agent").

Reference is made to that certain Installment Financing Agreement dated as of April 21, 2021 between Lender and County (hereinafter referred to as the "IFA"), relating to the financing of the acquisition of certain Equipment described therein (the "Equipment"). It is a requirement of the IFA that the Advancement ($6,200,000) be deposited into a segregated escrow account under terms satisfactory to Lender, for the purpose of fully funding the IFA, and providing a mechanism for the application of such amounts to the purchase of and payment for the Equipment.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Creation of Escrow Account.

(a) There is hereby created an escrow fund to be known as the "County of Polk 2021 IFA Escrow Account" (the "Escrow Account") to be held by the Escrow Agent for the purposes stated herein, for the benefit of Lender and County, to be held, disbursed and returned in accordance with the terms hereof.

(b) County may, from time to time, provide written instructions for Escrow Agent to use any available cash in the Escrow Account to purchase any money market fund or liquid deposit investment vehicle that Escrow Agent from time to time makes available to the parties hereto. Such written instructions shall be provided via delivery to Escrow Agent of a signed and completed Escrow Account Investment Selection Form (such form available from Escrow Agent upon request). All funds invested by Escrow Agent at the direction of County in such short-term investments (as more particularly described in Escrow Agent's Escrow account Investment Selection Form) shall be deemed to be part of the Escrow Account and subject to all the terms and conditions of this Agreement. If any cash is received for the Escrow Account after the cut-off time for the designated short-term investment vehicle, the Escrow Agent shall hold such cash uninvested until the next Business Day. In the absence of written instructions from County (on Escrow Agent's Escrow Account Investment Selection Form) designating a short-term investment of cash in the Escrow Account, cash in the Escrow Account shall remain uninvested and it shall not be collateralized except as required by law. Escrow Agent shall have no obligation to pay interest on cash in respect of any period during which it remains uninvested.

County shall be solely responsible for ascertaining that all proposed investments and reinvestments are Qualified Investments and that they comply with federal, state and local laws, regulations and ordinances governing investment of such funds and for providing appropriate notice to the Escrow Agent for the reinvestment of any maturing investment. Accordingly, neither the Escrow Agent nor Lender shall be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to the investment or reinvestment of all or any portion of the moneys on deposit in the Escrow Account, and County agrees to and does hereby release the Escrow Agent and Lender from any such liability, cost, expenses, loss or claim. Interest on the Escrow Account shall become part of the Escrow Account, and gains and losses on the investment of the moneys on deposit in the Escrow Account shall be borne by the Escrow Account. The Escrow Agent shall have no discretion whatsoever with respect to the management, disposition or investment of the Escrow Account. The Escrow Agent shall not be responsible for any market decline in the value of the Escrow Account and has no obligation to notify Lender and County of any such decline or take any action with respect to the Escrow Account, except upon specific written instructions stated herein. For purposes of this Agreement, "Qualified Investments" means any investments which meet the requirements of North Carolina General Statutes Section 159-30.

(c) Unless the Escrow Account is earlier terminated in accordance with the provisions of paragraph (d) below, amounts in the Escrow Account shall be disbursed by the Escrow Agent in payment of amounts described in Section 2 hereof upon receipt of written instruction(s) from Lender, as is more fully described in Section 2 hereof. If the amounts in the Escrow Account are insufficient to pay such amounts, County shall provide any balance of the funds needed to complete the acquisition of the Equipment. Any moneys remaining in the Escrow Account on or after the earlier of (i) the expiration of the period of eighteen (18) months from the date hereof, as such period may be extended with consent of the Lender (the "Acquisition Period") or (ii) the date on which County executes an Acceptance Certificate shall be applied as provided in Section 4 hereof.

(d) The Escrow Account shall be terminated at the earliest of (i) the final distribution of amounts in the Escrow Account, (ii) the date on which County executes an Acceptance Certificate or (iii) written notice given by Lender of the occurrence of an Event of Default under the IFA. Notwithstanding the foregoing, this Agreement shall not terminate nor shall the Escrow Account be closed until all funds deposited hereunder have been disbursed.

(e) The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Escrow Agent, and for the disposition of the same in accordance herewith. Notwithstanding and without limiting the generality of the foregoing, concurrent with the execution of this Agreement, County and Lender, respectively, shall deliver to the Escrow Agent an authorized signers form in the form of Exhibit A-1 (County) and Exhibit A-2 (Lender) attached hereto. Notwithstanding the foregoing sentence, the Escrow Agent is authorized to comply with and rely upon any notices, instructions or other communications believed by it to have been sent or given by the parties or by a person or persons authorized by the parties. The Escrow Agent specifically allows for receiving direction by written or electronic transmission from an authorized representative with the following caveat, County and Lender agree to indemnify and hold harmless the Escrow Agent against any and all claims, losses, damages, liabilities, judgments, costs and expenses (including reasonable attorneys' fees) (collectively, "Losses") incurred or sustained by the Escrow Agent as a result of or in connection with the Escrow Agent's reliance upon and compliance with instructions or directions given by written or electronic transmission given by each, respectively, provided, however, that such Losses have not arisen from the gross negligence or willful misconduct of the Escrow Agent, it being understood that forbearance on the part of the Escrow Agent to verify or confirm that the person giving the instructions or directions, is, in fact, an authorized person shall not be deemed to constitute gross negligence or willful misconduct.

In the event conflicting instructions as to the disposition of all or any portion of the Escrow Account are at any time given by Lender and County, the Escrow Agent shall abide by the instructions or entitlement orders given by Lender without consent of the County.

(f) Unless the Escrow Agent is guilty of gross negligence or willful misconduct with regard to its duties hereunder, County agrees to and does hereby release and indemnify the Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this Agreement; and in connection therewith, does to the extent permitted by law indemnify the Escrow Agent against any and all expenses; including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

(g) If County and Lender shall be in disagreement about the interpretation of the IFA, or about the rights and obligations, or the propriety of any action contemplated by the Escrow Agent hereunder, the Escrow Agent may, but shall not be required to, file an appropriate civil action including an interpleader action to resolve the disagreement. The Escrow Agent shall be reimbursed by County for all costs, including reasonable attorneys' fees, in connection with such civil action, and shall be fully protected in suspending all or part of its activities under the IFA until a final judgment in such action is received.

(h) The Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection with the opinion of such counsel. The Escrow Agent shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its willful misconduct.

(i) County shall reimburse the Escrow Agent for all reasonable costs and expenses, including those of the Escrow Agent's attorneys, agents and employees incurred for non-routine administration of the Escrow Account and the performance of the Escrow Agent's powers and duties hereunder in connection with any Event of Default under the IFA or in connection with any dispute between Lender and County concerning the Escrow Account.

(j) The Escrow Agent or any successor may at any time resign by giving mailed notice to County and Lender of its intention to resign and of the proposed date of resignation (the "Effective Date"), which shall be a date not less than 60 days after such notice is delivered to an express carrier, charges prepaid, unless an earlier resignation date and the appointment of a successor shall have been approved by the County and Lender. After the Effective Date, the Escrow Agent shall be under no further obligation except to hold the Escrow Account in accordance with the terms of this Agreement, pending receipt of written instructions from Lender regarding further disposition of the Escrow Account.

(k) The Escrow Agent shall have no responsibilities, obligations or duties other than those expressly set forth in this Agreement and no implied duties responsibilities or obligations shall be read into this Agreement.

2. Acquisition of Property.

(a) Acquisition Contracts. County will arrange for, supervise and provide for, or cause to be supervised and provided for, the acquisition of the Equipment, with moneys available in the Escrow Account. County represents the estimated costs of the Equipment are within the funds estimated to be available therefor, and Lender makes no warranty or representation with respect thereto. Lender shall have no liability under any of the acquisition or construction contracts. County shall obtain all necessary permits and approvals, if any, for the acquisition, equipping and installation of the Equipment, and the operation and maintenance thereof. Escrow Agent shall have no duty to monitor or enforce County's compliance with the foregoing covenant.

(b) Authorized Escrow Account Disbursements. It is agreed as between County and Lender that disbursements from the Escrow Account shall be made for the purpose of paying (including the reimbursement to County for advances from its own funds to accomplish the purposes hereinafter described) the cost of acquiring the Equipment.

(c) Requisition Procedure. No disbursement from the Escrow Account shall be made unless and until Lender has approved such requisition. Prior to disbursement from the Escrow Account there shall be filed with the Escrow Agent a requisition for such payment in the form of Disbursement Request attached hereto as Schedule 1, stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is due. All disbursements shall be made by wire transfer. The Escrow Agent is authorized to obtain and rely on confirmation of such Disbursement Request and payment instructions by telephone call-back to the person or persons designated for verifying such requests on Exhibit A-2 (such person verifying the request shall be different than the person initiating the request). The Lender and County hereby confirm that any call-back performed by Escrow Agent to verify a disbursement pursuant to a Disbursement Request submitted pursuant to this Section 2(c) before release, shall be made to Lender only and Escrow Agent shall have no obligation to call-back County.

Each such requisition shall be signed by an authorized representative of County (an "Authorized Representative") and by Lender, and shall be subject to the following conditions, which Escrow Agent shall conclusively presume have been satisfied at such time as a requisition executed by County and Lender is delivered to it:

1. Delivery to Lender of an executed Disbursement Request in the form attached hereto as Schedule 1; and

2. Delivery to Lender invoices (and proofs of payment of such invoices, if County seeks reimbursement) and bills of sale (if title to such Equipment has passed to County) therefor and any additional documentation reasonably requested by Lender; and

3. The disbursement shall occur during the Acquisition Period.

County and Lender agree that their execution of the form attached hereto as Schedule 1 and delivery of the executed form to Escrow Agent confirms that all of the requirements and conditions with respect to disbursements set forth in this Section 2 have been satisfied.

3. Deposit to Escrow Account. Lender will cause the Advancement to be deposited in the Escrow Account. County agrees to pay any costs with respect to the Equipment in excess of amounts available therefor in the Escrow Account.

4. Excessive Escrow Account. Upon receipt of written instructions from Lender including a representation that one of the following conditions has been satisfied (upon which representation Escrow Agent shall conclusively rely, any funds remaining in the Escrow Account on or after the earlier of (a) the expiration of the Acquisition Period or (b) the date on which County executes an Acceptance Certificate, or upon a termination of the Escrow Account as otherwise provided herein, shall be distributed by the Escrow Agent to the Lender in order for the Lender to apply such funds to amounts owed by County under the IFA in accordance with Section 3.3 of the IFA.

5. Security Interest. The Escrow Agent and County acknowledge and agree that the Escrow Account and all proceeds thereof are being held by Escrow Agent for disbursement or return as set forth herein. County hereby grants to Lender a first priority perfected security interest in the Escrow Account, and all proceeds thereof, and all investments made with any amounts in the Escrow Account. If the Escrow Account, or any part thereof, is converted to investments as set forth in this Agreement, such investments shall be made in the name of Escrow Agent and the Escrow Agent hereby agrees to hold such investments as bailee for Lender so that Lender is deemed to have possession of such investments for the purpose of perfecting its security interest.

6. Control of Escrow Account. In order to perfect Lender's security interest by means of control in (i) the Escrow Account established hereunder, (ii) all securities entitlements, investment property and other financial assets now or hereafter credited to the Escrow Account, (iii) all of County's rights in respect of the Escrow Account, such securities entitlements, investment property and other financial assets, and (iv) all products, proceeds and revenues of and from any of the foregoing personal property (collectively, the "Collateral"), Lender, County and Escrow Agent further agree as follows:

(a) All terms used in this Section 6 which are defined in the Commercial Code of the state of North Carolina ("Commercial Code") but are not otherwise defined herein shall have the meanings assigned to such terms in the Commercial Code, as in effect on the date of this Agreement.

(b) Escrow Agent will comply with all entitlement orders originated by Lender with respect to the Collateral, or any portion of the Collateral, without further consent by County.

(c) Provided that account investments shall be held in the name of the Escrow Agent, Escrow Agent hereby represents and warrants (a) that the records of Escrow Agent show that County is the sole owner of the Collateral, (b) that Escrow Agent has not been served with any notice of levy or received any notice of any security interest in or other claim to the Collateral, or any portion of the Collateral, other than Lender's claim pursuant to this Agreement, and (c) that Escrow Agent is not presently obligated to accept any entitlement order from any person with respect to the Collateral, except for entitlement orders that Escrow Agent is obligated to accept from Lender under this Agreement and entitlement orders that Escrow Agent, subject to the provisions of paragraph (e) below, is obligated to accept from County.

(d) Without the prior written consent of Lender, Escrow Agent will not enter into any agreement by which Escrow Agent agrees to comply with any entitlement order of any person other than Lender or, subject to the provisions of paragraph (e) below, County, with respect to any portion or all of the Collateral. Escrow Agent shall promptly notify Lender if any person requests Escrow Agent to enter into any such agreement or otherwise asserts or seeks to assert a lien, encumbrance or adverse claim against any portion or all of the Collateral.

(e) Except as otherwise provided in this paragraph (e) and subject to Section 1(b) hereof, County may effect sales, trades, transfers and exchanges of Collateral within the Escrow Account, but will not, without the prior written consent of Lender, withdraw any Collateral from the Escrow Account. Escrow Agent acknowledges that Lender reserves the right, by delivery of written notice to Escrow Agent, to prohibit County from effecting any withdrawals (including withdrawals of ordinary cash dividends and interest income), sales, trades, transfers or exchanges of any Collateral held in the Escrow Account. Further, Escrow Agent hereby agrees to comply with any and all written instructions delivered by Lender to Escrow Agent (once it has had a reasonable opportunity to comply therewith) and has no obligation to, and will not, investigate the reason for any action taken by Lender, the amount of any obligations of County to Lender, the validity of any of Lender's claims against or agreements with County, the existence of any defaults under such agreements, or any other matter.

(f) County hereby irrevocably authorizes Escrow Agent to comply with all instructions and entitlement orders delivered by Lender to Escrow Agent.

(g) Escrow Agent will not attempt to assert control, and does not claim and will not accept any security or other interest in, any part of the Collateral, and Escrow Agent will not exercise, enforce or attempt to enforce any right of setoff against the Collateral, or otherwise charge or deduct from the Collateral any amount whatsoever.

(h) Escrow Agent and County hereby agree that any property held in the Escrow Account shall be treated as a financial asset under such section of the Commercial Code as corresponds with Section 8-102 of the Uniform Commercial Code, notwithstanding any contrary provision of any other agreement to which Escrow Agent may be a party.

(i) Escrow Agent is hereby authorized and instructed, and hereby agrees, to send to Lender at its address set forth in Section 8 below, concurrently with the sending thereof to County, duplicate copies of any and all monthly Escrow Account statements or reports issued or sent to County with respect to the Escrow Account.

7. Information Required Under USA PATRIOT ACT. The parties acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the USA PATRIOT Act) all financial institutions are required to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. The parties to this Agreement agree that they will provide to the Escrow Agent such information as it may request, from time to time, in order for the Escrow Agent to satisfy the requirements of the USA PATRIOT Act, including but not limited to the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account and may also ask for formation documents such as articles of incorporation or other identifying documents to be provided.

8. Miscellaneous. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the IFA. This Agreement may not be amended except in writing signed by all parties hereto. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original instrument and each shall have the force and effect of an original and all of which together constitute, and shall be deemed to constitute, one and the same instrument. Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below.

Notices and other communications hereunder may be delivered or furnished by electronic mail provided that any formal notice be attached to an email message in PDF format and provided further that any notice or other communication sent to an e-mail address shall be deemed received upon and only upon the sender's receipt of affirmative acknowledgement or receipt from the intended recipient. For purposes hereof no acknowledgement of receipt generated on an automated basis shall be deemed sufficient for any purpose hereunder or admissible as evidence of receipt. **It is understood that Bank of America, National Association is party to this Agreement in two separate and distinct capacities, Lender and Escrow Agent, with its responsibilities in each respective capacity being administered in separate and distinct locations. It is understood and agreed that for no purpose shall notice to Bank of America, National Association in one such capacity hereunder constitute notice to Bank of America, National Association in its other capacity hereunder.**

If to Lender: Bank of America, National Association
11333 McCormick Road
Mail Code: MD5-032-07-05
Hunt Valley, MD 21031
Attn: Contract Administration
Fax: (443) 541-3057

If to County: County of Polk, North Carolina
40 Courthouse Street
Columbus, North Carolina 28722
Attention: County Manager
Fax: ____________________

If to Escrow Agent

Bank of America, National Association
Global Custody and Agency Services
135 S. LaSalle Street
Mail Code: IL4-135-18-51
Chicago, Illinois 60603
Attention: Norma Birts, or
Tatjana Brown
Telephone: (312) 992-3272
Fax: (312) 453-4443
Email address: gcas_amrs_escrow_client_service@baml.com

9. Tax Certification. County and Lender understand and agree that they are required to provide the Escrow Agent with a properly completed and signed Tax Certification (as defined below) and that the Escrow Agent may not perform its duties hereunder without having been provided with such Tax Certification. As used herein "Tax Certification" shall mean an IRS form W-9 or W-8 as described above. The Escrow Agent will comply with any U.S. tax withholding or backup withholding and reporting requirements that are required by law. With respect to earnings allocable to a foreign person, the Escrow Agent will withhold U.S. tax as required by law and report such earnings and taxes withheld, if any, for the benefit of such foreign person on IRS Form 1042-S (or any other required form), unless such earnings and withheld taxes are exempt from reporting under Treasury Regulation Section 1.1461-1(c)(2)(ii) or under other applicable law. With respect to earnings allocable to a United States person, the Escrow Agent will report such income, if required, on IRS Form 1099 or any other form required by law. The IRS Forms 1099 and/or 1042-S shall show the Escrow Agent as payor and the County as payee. Escrow Agent shall recognize the County as the designated party for regulatory reporting purposes.

County and Lender agree that they are not relieved of their respective obligations, if any, to prepare and file information reports under Code Section 6041, and the Treasury regulations thereunder, with respect to amounts of imputed interest income, as determined pursuant to Code Sections 483 or 1272. The Escrow Agent shall not be responsible for determining or reporting such imputed interest.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina and the parties hereto consent to jurisdiction in the State of North Carolina and venue in any state or Federal court located in Polk County, North Carolina.

11. Merger and Consolidation. Any bank or corporation into which the Escrow Agent may be merged or with which it may be consolidated, or any bank or corporation to whom the Escrow Agent may transfer a substantial amount of its escrow business, shall be the successor to the Escrow Agent without the execution or filing of any paper or any further act on the part of any of the parties, anything herein to the contrary notwithstanding. Any bank or corporation into which the Lender may be merged or with which it may be consolidated, or any bank or corporation to whom the Lender may transfer a substantial amount of its business, shall be the successor to the Lender without the execution or filing of any paper or any further act on the part of any of the parties, anything herein to the contrary notwithstanding.

12. Amendments. This Agreement may be amended, modified, and/or supplemented only by an instrument in writing executed by all parties hereto.

13. Assignment. No party hereto shall assign its rights hereunder until its assignee has submitted to the Escrow Agent (i) Patriot Act disclosure materials and the Escrow Agent has determined that on the basis of such materials it may accept such assignee as a customer and (ii) assignee has delivered an IRS Form W-8 or W-9, as appropriate, to the Escrow Agent which the Escrow Agent has determined to have been properly signed and completed.

14. Confidentiality. Escrow Agent will treat information related to this Agreement as confidential but, unless prohibited by law, County and Lender authorize the transfer or disclosure of any information relating to the Agreement to and between the subsidiaries, officers, affiliates and other representatives and advisors of Escrow Agent and third parties selected by any of them, wherever situated, for confidential use in the ordinary course of business, and further acknowledge that Escrow Agent and any such subsidiary, officer, affiliate or third party may transfer or disclose any such information as required by any law, court, regulator or legal process.

Lender will treat information related to this Agreement as confidential but, unless prohibited by law, Escrow Agent and County authorize the transfer or disclosure of any information relating to the Agreement to and between the subsidiaries, officers, affiliates, other representatives and advisors of Lender and debt and equity sources and third parties selected by any of them, and to their prospective assignees wherever situated, for confidential use in the ordinary course of business, and further acknowledge that Lender and any such subsidiary, officer, affiliate, debt and equity source or third party or prospective assignee may transfer or disclose any such information as required by any law, court, regulator or legal process.

County will treat the terms of this Agreement as confidential except on a "need to know" basis to persons within or outside County’s organization (including affiliates of such party), such as attorneys, accountants, bankers, financial advisors, auditors and other consultants of such party and its affiliates, except as required by any law, court, regulator or legal process and except pursuant to the express prior written consent of the other parties, which consent shall not be unreasonably withheld.

15. <u>Iran Divestiture and E-Verify.</u> Escrow Agent hereby certifies that, as of the date hereof, it is not included on a list of persons engaged in investment activities in Iran created and maintained by the North Carolina Department of State Treasurer pursuant to the Iran Divestment Act of 2015, Article 6E, as amended, of Chapter 147 of the General Statutes of North Carolina. The Escrow Agent will not utilize any subcontractor that is listed on any such list in connection with the transactions contemplated by this Agreement.

(b) The Escrow Agent hereby certifies that the Lender understands that "E-Verify" is a federal program operated by the United States Department of Homeland Security and other federal agencies, to verify the work authorization of newly hired employees pursuant to federal law in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. The Escrow Agent uses E-Verify to verify the work authorization of its employees in accordance with Section 64-26(a) of the General Statutes of North Carolina, as amended. The Escrow Agent will require that any subcontractor that it uses in connection with the transactions contemplated by this Agreement certify to such subcontractor's compliance with E-Verify.

In Witness Whereof, the parties have executed this Escrow and Account Control Agreement as of the date first above written.

Bank of America, National Association as Lender	County of Polk, North Carolina as County
By: ______________________________	By: ______________________________
Name: ______________________________	Name: ______________________________
Title: ______________________________	Title: ______________________________

Bank of America, National Association
As Escrow Agent

By: ______________________________

Name: ______________________________

Title: ______________________________

SCHEDULE 1
to the Escrow and Account Control Agreement

FORM OF DISBURSEMENT REQUEST

Re: Installment Financing Agreement dated as of April 21, 2021 by and between Bank of America, National Association, as Lender and County of Polk, North Carolina, as County (the "IFA") (Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the IFA.)

In accordance with the terms of the Escrow and Account Control Agreement, dated as of April 21, 2021 (the "Escrow Account and Account Control Agreement") by and among Bank of America, National Association ("Lender"), the County of Polk, North Carolina ("County") and Bank of America, National Association, (the "Escrow Agent"), the undersigned hereby requests the Escrow Agent pay the following persons the following amounts from the Escrow Account created under the Escrow Account and Account Control Agreement for the following purposes:

Disbursement Amounts:

Payee's Name and Address (if disbursement via wire, must include wire transfer instructions)	Invoice Number	Dollar Amount	Purpose

County hereby represents, covenants and warrants for the benefit of Lender on the date hereof as follows:

(i) (a) Each obligation specified in the table herein titled as "Disbursement Amounts" has been incurred by County in the stated amount, (b) the same is a proper charge against the Escrow Account for costs relating to the Equipment identified in the IFA, and (c) has not been paid (or has been paid by County and County requests reimbursement thereof).

(ii) Each item of Equipment relating to an obligation specified in the table herein titled as "Disbursement Amounts" has been delivered, installed and accepted by County. Attached hereto is a copy of the invoice with respect to such obligation.

(iii) The undersigned, as Authorized Representative, has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made.

(iv) This requisition contains no item representing payment on account, or any retained percentages which County is, at the date hereof, entitled to retain (except to the extent such amounts represent a reimbursement to County).

(v) The Equipment is insured in accordance with the IFA.

(vi) No Event of Default, and no event which with notice or lapse of time, or both, would become an Event of Default, under the IFA has occurred and is continuing at the date hereof. No Event of Nonappropriation has occurred or is threatened with respect to the IFA.

(vii) The disbursement shall occur during the Acquisition Period.

(viii) The representations, warranties and covenants of County set forth in the IFA are true and correct as of the date hereof.

(ix) No material adverse change in the County's financial condition has occurred since the date of the execution and delivery of the IFA.

Dated: _________________

COUNTY OF POLK, NORTH CAROLINA

By: ______________________________
Name: ______________________________
Title: ______________________________

Disbursement of funds from the Escrow Account in accordance with the foregoing Disbursement Request hereby is authorized

BANK OF AMERICA, NATIONAL ASSOCIATION
as Lender under the IFA

By: ______________________________
Name: ______________________________
Title: ______________________________

[AN “EXHIBIT A-1” MUST BE COMPLETED AND EXECUTED AT TIME OF EXECUTION OF THE AGREEMENT]

EXHIBIT A-1

FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE

The undersigned, a duly elected or appointed and acting Clerk of the Board of Commissioners of the County of Polk, North Carolina (*“County”*) certifies as follows:

A. The following listed persons are duly elected or appointed and acting officials of the County (the *“Officials”*) in the capacity set forth opposite their respective names below and that the facsimile signatures are true and correct as of the date hereof;

B. The Officials are duly authorized, on behalf of the County, to negotiate, execute and deliver the Installment Financing Agreement dated as of April 21, 2021 by and between County and Bank of America, National Association (“*Lender*”), the Escrow and Account Control Agreement dated as of April 21, 2021 among Lender, County and Bank of America, National Association, as Escrow Agent, and all documents related thereto and delivered in connection therewith (collectively, the *“Agreements”*), and the Agreements each are the binding and authorized agreements of County, enforceable in all respects in accordance with their respective terms.

Name of Official	Title	Signature
______________________	______________________	______________________
______________________	______________________	______________________
______________________	______________________	______________________

Dated: ______________________________

By: ______________________________

Name: ______________________________

Title: ______________________________

(The signer of this Certificate cannot be listed above as authorized to execute the Agreements.)

[AN "EXHIBIT A-2" MUST BE COMPLETED AND EXECUTED AT TIME OF EXECUTION OF THE AGREEMENT]

EXHIBIT A-2
Escrow and Account Control Agreement dated as of April 21, 2021 by and between Bank of America, National Association as Lender, County of Polk, North Carolina, as County, and Bank of America, National Association, as Escrow Agent

Certificate of Authorized Representatives – [Lender]

Name: Terri Preston

Title: Authorized Agent

Phone: 443-541-3642

Facsimile: 443-541-3057

E-mail: Terri.Preston@baml.com

Signature: ______________________________

Fund Transfer / Disbursement Authority Level:

☐ Initiate
☐ Verify transactions initiated by others

Name: Nancy Nusenko

Title: Authorized Agent

Phone: 443-541-3646

Facsimile: 443-541-3057

E-mail: Nancy.a.nusenko@baml.com

Signature: ______________________________

Fund Transfer / Disbursement Authority Level:

☐ Initiate
☐ Verify transactions initiated by others

Name: Nancy K. Hepner

Title: Authorized Agent

Phone: 443-541-3645

Facsimile: 804-553-2407

E-mail: Nancy.k.hepner@baml.com

Signature: ______________________________

Fund Transfer / Disbursement Authority Level:

☐ Initiate
☐ Verify transactions initiated by others

Name: Arlene Sobieck

Title: Authorized Agent

Phone: 443-541-3643

Facsimile: 443-541-3057

E-mail: Arlene.sobieck@baml.com

Signature: ______________________________

Fund Transfer / Disbursement Authority Level:

☐ Initiate
☐ Verify transactions initiated by others

The Escrow Agent is authorized to comply with and rely upon any notices, instructions or other communications believed by it to have been sent or given by the person or persons identified above including without limitation, to initiate and verify funds transfers as indicated.

Banc of America Public Capital Corp

By: ______________________________
Name:
Title:
Date: _______________

Draft No. 2
March 22, 2021

INSTALLMENT FINANCING AGREEMENT

Dated as of April 21, 2021

between

COUNTY OF POLK, NORTH CAROLINA

and

BANK OF AMERICA, NATIONAL ASSOCIATION

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MISCELLANEOUS

This INSTALLMENT FINANCING AGREEMENT, dated as of April 21, 2021 (the "Agreement"), between COUNTY OF POLK, NORTH CAROLINA, a political subdivision duly organized and validly existing under the laws of the State of North Carolina (the "County"), and BANK OF AMERICA, NATIONAL ASSOCIATION (the "Lender");

WITNESSETH:

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

WHEREAS, pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended, the County may finance the purchase of personal property by installment contracts that create in some or all of the property purchased a security interest to secure payment of the purchase price to the entity supplying financing for the purchase transaction;

WHEREAS, after a public hearing and due consideration, the Board of Commissioners for the County has determined to finance the costs of acquiring and installing personal property improvements consisting of HVAC equipment, new lighting equipment and other equipment (the "Equipment") to be installed (the undertaking to acquire and install the Equipment is referred to as the "Project") at Polk County High School, a public school located in the County and owned and operated by the Polk County Board of Education, the local school administrative unit in the County (the "Board of Education");

WHEREAS, in order for the County to obtain the funds to pay the costs of the Project, the County has determined to enter into this Agreement whereby the Lender will advance funds to the County to pay the costs of the Project, and the County will repay such advancement with interest in installments pursuant to the terms of this Agreement;

WHEREAS, as security for the performance of its obligation under this Agreement, including the payment of the installment payments hereunder, the County, the Lender and the Board of Education will enter into a Security Agreement, dated as of the date hereof (the "Security Agreement"), pursuant to which the County will grant a security interest in the Equipment;

WHEREAS, the Lender is willing to advance moneys to the County for payment of the cost of the Project, and the County is willing to repay the moneys so advanced by the Lender in installments as more fully provided herein; and

WHEREAS, the County and the Lender have each duly authorized the execution and delivery of this Agreement.

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

ARTICLE I

DEFINITIONS AND EXHIBITS

SECTION 1.1. Definitions and Rules of Construction. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa. The words "hereby," "herein," "hereof," "hereto," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof. All references herein to "Articles", "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement unless some other reference is indicated.

"Act" means Section 160A-20 of the General Statutes of North Carolina, as amended.

"Advancement" means the advance being made by the Lender to the County pursuant to Section 3.1 of this Agreement.

"Agreement" means this Installment Financing Agreement, including any amendment or supplement hereto permitted herein.

"Board of Commissioners" means the Board of Commissioners for the County.

"Board of Education" means the Polk County Board of Education, a body corporate organized and existing under the laws of North Carolina, which body is vested with general control and supervision of all matters pertaining to public schools within the County.

"Closing" means the date on which the County executes and delivers this Agreement, and the Lender makes the Advancement to the County.

"Closing Costs" means and further includes all items of expense directly or indirectly payable by or reimbursable to the County relating to the financing of the Project, including, but not limited to, filing and recording costs, settlement costs, printing costs, word processing costs, reproduction and binding costs, legal fees and charges and financing and other professional consultant fees.

"Code" means the Internal Revenue Code of 1986, as amended.

"County" means the County of Polk, North Carolina, a political subdivision duly organized and validly existing under and by virtue of the Constitution and laws of the State of North Carolina, and any successor entity.

"Determination of Taxability" means a final decree or judgment of any federal court or a final action of the Internal Revenue Service determining that the County has taken an action, or failed to take an action, with the result that interest paid or payable on the Advancement is or was includable in the gross income of the Lender for federal income tax purposes; provided, that no such decree, judgment, or action will be considered final for this purpose unless the County has been given written notice and, if it is so desired and is legally allowed, has been afforded the opportunity to contest the same, either directly or in the name of the Lender, and until the conclusion of any appellate review, if sought. A Determination of Taxability does not include and is not triggered by a change in law by Congress that causes the interest to be includable in Lender's gross income.

"Enforcement Limitation" means the provisions of the Act that provide that no deficiency judgment may be rendered against the County in any action for breach of a contractual obligation incurred under the Act and that the taxing power of the County is not and may not be pledged directly or indirectly to secure any moneys due under this Agreement.

"Escrow Agreement" means the Escrow and Account Control Agreement, dated as of April 21, 2021, among the City, the Lender and Bank of America, National Association, as escrow agent, including any amendment or supplement thereto.

"Escrow Account" has the meaning set forth in the Escrow Agreement.

"Event of Nonappropriation" means (a) the failure by the Board of Commissioners to budget and appropriate in its budget for the ensuing Fiscal Year adopted on or about June 30 of each year moneys sufficient to pay all Installment Payments and any reasonably estimated additional payments under this Agreement coming due in the next ensuing Fiscal Year or (b) the Board of Commissioners' deletion from its duly adopted budget of any appropriation for the purposes specified in clause (a). In the event that during any Fiscal Year, any additional payments shall become due that were not included in the County's current budget, and if there are no moneys available to pay such additional payments prior to the date upon which such additional payments are due, an Event of Nonappropriation shall be deemed to have occurred on the date on which such additional payments were due and unpaid.

"Equipment" means the HVAC equipment, new lighting equipment and other equipment being financed with the Advancement.

"Fiscal Year" means the period beginning on July 1 of any year and ending on June 30 of the following year.

"Inclusion Date" means the effective date that the interest component of the Installment Payments made by the County under this Agreement is includable in the gross income of the Lender as a result of a Determination of Taxability.

"Installment Payment Date" means each of the dates set forth on the Installment Payment Schedule attached hereto as Exhibit A.

"Installment Payments" means the payments required to be paid by the County pursuant to Section 4.1 in order to repay the Advancement, as specified in Exhibit A.

"Installment Payment Schedule" means the schedule of the Installment Payments set forth in Exhibit A attached hereto, as it may be amended or substituted from time to time as contemplated by this Agreement.

"LGC" means the Local Government Commission of North Carolina, a division of the Department of the State Treasurer, and any successor thereto.

"Lender" means Bank of America, National Association and any successor thereto.

"Net Proceeds" means any proceeds of insurance or taking by eminent domain or condemnation paid with respect to the Equipment remaining after payment therefrom of any expenses (including attorneys' fees) incurred in the collection thereof.

"Permitted Encumbrances" means and includes (a) liens for taxes, assessments and other governmental charges due but not yet payable; (b) landlord's, warehouseman's, carrier's, worker's, vendor's, mechanic's and materialmen's liens and similar liens incurred in the ordinary course of business remaining undischarged for not longer than sixty (60) days from the filing thereof; (c) attachments remaining undischarged for not longer than sixty (60) days from the making thereof; (d) liens in respect of pledges or deposits under workers' compensation laws, unemployment insurance or similar legislation and in respect of pledges or deposits to secure bids, tenders, contracts (other than contracts for the payment of money), leases or statutory obligations, or in connection with surety, appeal and similar bonds incidental to the conduct of litigation; (e) the lien on the Equipment created by the Security Agreement, and (f) any other lien, security interest or encumbrance on the Equipment consented to in writing by the Lender.

"Project" has the meaning set forth in the recitals of this Agreement.

"Security Agreement" means the Security Agreement, of even date herewith, among the County, the Lender and the Board of Education, under which the County grants to the Lender a security interest in the Equipment to secure the Installment Payments and other obligations specified hereunder and thereunder, as supplemented and amended from time to time.

"State" means the State of North Carolina.

SECTION 1.2. Exhibits. The following exhibit is attached to, and by reference made a part of, this Agreement:

Exhibit A: Installment Payment Schedule

ARTICLE II

REPRESENTATIONS OF THE COUNTY AND THE LENDER

SECTION 2.1. Representations, Covenants and Warranties of the County. The County represents, covenants and warrants to the Lender as follows:

(a) The County is a political subdivision duly organized and validly existing under and by virtue of the Constitution and laws of the State of North Carolina.

(b) The Constitution and laws of the State authorize the County to execute and deliver this Agreement, the Security Agreement and the Escrow Agreement and to enter into the transactions contemplated by and to carry out its obligations under this Agreement and the Security Agreement.

(c) The County has duly authorized and executed this Agreement, the Security Agreement and the Escrow Agreement in accordance with the Constitution and laws of the State.

(d) Neither the execution and delivery of this Agreement, the Security Agreement or the Escrow Agreement, 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 or any charter provision, restriction or any agreement or instrument to which the County is now a party or by which the County is bound, or constitutes a default under any of the foregoing.

(e) No approval or consent is required from any governmental authority with respect to the entering into or performance by the County of this Agreement, the Security Agreement, the Escrow Agreement and all other documents related thereto and the transactions contemplated hereby and thereby, or if such approval is required, it has been duly obtained.

(f) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or threatened against or affecting the County challenging the validity or enforceability of this Agreement, the Security Agreement, the Escrow Agreement or any other documents relating hereto and the performance of the County's obligations hereunder and thereunder.

(g) The County acknowledges and agrees that this transaction is an arm's-length commercial transaction between the County and the Lender. In connection with this transaction, the Lender is (i) acting solely as a principal and for its own interest; (ii) not acting as a municipal advisor or financial advisor to the County; (iii) has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the County with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether the Lender or any of its affiliates has provided other services or is currently providing other services to the County on other matters); (iv) the only obligations the Lender has to the County with respect to this transaction are set forth in this Agreement, the Security Agreement and the Escrow Agreement; and (v) the Lender is not recommending that the County take an action with respect to the transaction described herein and the County has discussed this transaction with its own legal, accounting, tax, financial and other advisors as it has deemed appropriate.

(h) The County acknowledges that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), the Lender is required to obtain, verify and record information that identifies the County, which information includes the name and address of the County and other information that will allow the Lender to identify the County in accordance with the Patriot Act.

SECTION 2.2. Representations, Covenants and Warranties of the Lender. The Lender represents, covenants and warrants to the County as follows:

(a) The Lender is organized, existing and in good standing under and by virtue of the laws of the United States and has the power and authority to enter into this Agreement.

(b) Neither the execution and delivery of this Agreement 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 Lender or any restriction or any agreement or instrument to which the Lender is now a party or by which the Lender is bound.

(c) The Lender acknowledges and confirms the representations of the County set forth in Section 2.1(g).

ARTICLE III

ADVANCEMENT; ESCROW ACCOUNT

SECTION 3.1. Advancement; Creation of Escrow Account. In consideration of the covenants, warranties and representations contained herein, and in consideration of the County's agreement to repay the moneys advanced hereunder and interest thereon, the Lender hereby agrees to advance to the County at Closing moneys in the aggregate amount of $6,200,000 (the "Advancement"). On the date of Closing, the Lender shall deposit the proceeds of the Advancement into the Escrow Account established pursuant to the Escrow Agreement, which amount shall be applied in accordance with the provisions herein and in the Escrow Agreement.

SECTION 3.2. Acquisition and Installation of the Project. The County shall cause the Board of Education to enter into one or more contracts or purchase orders providing for the acquisition and installation of the Equipment. The County shall cause the acquisition and installation of the Equipment to be carried on expeditiously in accordance with the plans and specifications therefor and in compliance with all applicable ordinances and statutes and requirements of all regularly constituted authorities having jurisdiction over the same. The County shall cause the Board of Education to require each contractor for the Project to provide performance and labor and materials payment bonds in an amount not less than the minimum amount required by law and the Lender will be listed as co-obligee thereto. The net proceeds received by the County or the Board of Education from any such bond or bonds shall be paid to the Lender for deposit in the Escrow Account when received to be applied to pay costs of the Project in the same manner as the Advancement as herein provided.

When all of the equipment that make up the Project has been delivered and installed, the County shall promptly accept such Equipment and evidence such acceptance by executing and delivering to Lender an Acceptance Certificate in the form attached hereto as Exhibit B.

SECTION 3.3. Disbursements from Escrow Account. The moneys held in the Escrow Account shall be used by the County solely for the purpose of paying the Closing Costs and the costs of the Project. The amounts deposited to the Escrow Account shall be disbursed to pay Closing Costs and costs of the Project in accordance with the requisition and disbursement procedures set forth in the Escrow Agreement. The County shall be obligated to pay all Closing Costs and costs of the Project when the same become due and payable from the proceeds of the Advancement or other available funds of the County. If the moneys held in the Escrow Account are insufficient to pay all of the Closing Costs and the costs of the Project incurred by the County, the County shall provide any balance of the funds needed to complete the acquisition and installation of the Project.

Any moneys remaining in the Escrow Account after completion of the acquisition and installation of the Project, as evidenced by delivery of the Acceptance Certificate to the Lender, shall be applied to [the next maturing Installment Payments] until such time as such moneys are expended.

[We expect that the County would be fine in using any surplus proceeds (it is very doubtful that there will be any) to prepay the debt, but think that such prepayment should be without premium.]

SECTION 3.4. Investment of Escrow Account. Pending disbursement of amounts deposited in the Escrow Account to pay Closing Costs or the costs of the Project, the County shall invest and reinvest moneys deposited in the Escrow Account solely in investments permitted by Section 159-30 of the General Statutes of North Carolina, as amended, or any successor statute and as further provided in the Escrow Agreement. Investment earnings on the Escrow Account shall be retained in the Escrow Account pending disbursement in accordance with Section 3.3. The County shall be solely responsible for ascertaining that all proposed investments and reinvestments comply with federal, state and local laws, regulations and ordinances governing investment of funds held pursuant to a loan agreement similar in substance to the arrangement contemplated by this Agreement. Accordingly, the Lender shall not be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to investment or reinvestment of all or a portion of the moneys held in the Escrow Account.

SECTION 3.5. Disclaimer of Lender. The County acknowledges and agrees that the Lender (a) has not made any recommendation, given any advice nor taken any other action with respect to (i) the acquisition or installation of the Project or any component part thereof or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Project or any component part thereof or any property or rights relating thereto at any stage of the acquisition, construction or equipping thereof, (b) has not at any time had physical possession of the Project or any component part thereof or made any inspection thereof or any property or rights relating thereto, and (c) has not made any warranty or other representation, express or implied, that the Project or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly used, or will accomplish the results which the County intends therefor, or (iii) is safe in any manner or respect.

THE LENDER MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE PROJECT OR ANY COMPONENT PART THEREOF TO THE COUNTY OR ANY OTHER CIRCUMSTANCE WHATSOEVER WITH RESPECT THERETO, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY THEREOF FOR ANY PURPOSE; COMPLIANCE THEREOF WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO; ANY LATENT DEFECT; THE TITLE TO OR INTEREST OF THE LENDER THEREIN BEYOND THAT TITLE OR INTEREST WHICH THE COUNTY OBTAINS FROM THE LENDER PURSUANT HERETO; THE ABILITY THEREOF TO PERFORM ANY FUNCTION; THAT THE PROCEEDS DERIVED FROM THE ADVANCEMENT WILL BE SUFFICIENT, TOGETHER WITH ANY OTHER AVAILABLE FUNDS OF THE COUNTY, TO PAY THE COST OF ACQUIRING THE PROJECT; OR ANY OTHER CHARACTERISTICS OF THE PROJECT, IT BEING AGREED THAT ALL RISKS RELATING TO THE PROJECT, THE ACQUISITION THEREOF OR THE TRANSACTIONS CONTEMPLATED HEREBY ARE

TO BE BORNE BY THE COUNTY, AND THE BENEFITS OF ANY AND ALL IMPLIED WARRANTIES AND REPRESENTATIONS OF THE LENDER ARE HEREBY WAIVED BY THE COUNTY.

ARTICLE IV

REPAYMENT OF THE ADVANCEMENT; SECURITY FOR REPAYMENT

SECTION 4.1. Repayment of the Advancement. (a) The County shall repay the Advancement, with interest computed at a fixed rate per annum equal to 2.186% (calculated based upon a 360-day year consisting of twelve 30-day months), in installments due at the times and in the amounts set forth in Exhibit A attached hereto and made a part hereof.

(b) Unless otherwise directed by the Lender, all payments required to be made to the Lender hereunder shall be made:

(i) if by mail, to

Bank of America, National Association
11333 McCormick Road
Hunt Valley II
Mail Code: MD5-03-07-05
Hunt Valley, MD 21031
Attn: Agreement Administration

(ii) if by wire transfer, in accordance with wire instructions provided by the Lender.

(c) In the event of a Determination of Taxability, the interest rate payable under this Agreement, from and after the Inclusion Date, shall be adjusted upward to preserve the Lender's after-tax economic yield with respect to the interest components of the Installment Payments, taking into account any interest expense deductions lost by the Lender as a direct or indirect result of the County's actions. In the event of a Determination of Taxability, the Lender shall provide the County with a new Installment Payment Schedule which reflects the new fixed interest rate which will replace the Installment Payment Schedule set forth in Exhibit A. In addition, the County will indemnify and hold harmless the Lender from any cost and expense incurred as a result of a Determination of Taxability, including, without limitation, all administrative expenses arising in connection with the amendment of the Lender's income tax returns.

(d) The County represents that (i) it is a governmental unit with general taxing powers, (ii) the obligations represented by this Agreement do not constitute private activity bonds within the meaning of the Internal Revenue Code of 1986, as amended (the "Code"), (iii) 95% or more of the net proceeds advance to the County under this Agreement are to be used for local governmental activities of the County and (iv) the aggregate face amount of all tax-exempt obligations (not counting private-activity bonds except for qualified 501(c)(3) bonds, as defined in the Code) issued by the County (and all subordinate entities thereof) during calendar year 2021 does not, and will not, exceed $10,000,000 (not taking into account certain obligation described under Section 265(b)(3)(C)(ii) of the Code). The County also represents that it has designated each of the Installment Payments under this Agreement as a "qualified tax-exempt obligation" for the purposes of the Code.

In the event the County breaches the representations made in the preceding paragraph, the interest rate payable under this Agreement shall be adjusted to preserve the Lender's after-tax economic yield with respect to the interest component of the Installment Payments, taking into account any interest expense deductions lost by the Lender as a direct or indirect result of the County's actions. In addition, the County shall pay to the Lender (i) an amount necessary to reimburse the Lender for any interest, penalties, or other charges assessed by the Internal Revenue Service and the Department of Revenue by reason of such loss of bank qualification, and (ii) upon request of the Lender, additional interest as a result of the increase in the interest rate on all previous payments made by the County since the effective date of the loss of such interest expense deductions. In such event, the Lender shall provide the County with a new Installment Payment Schedule which reflects the new interest rate which will replace the Installment Payment Schedule set forth in Exhibit A.

SECTION 4.2. Budget and Appropriation. (a) The officer of the County at any time charged with the responsibility for formulating budget proposals shall include in the budget proposals for review and consideration by the Board of Commissioners in any Fiscal Year in which this Agreement shall be in effect, items for all Installment Payments and any additional payments required for such Fiscal Year under this Agreement or the Security Agreement. Any budget item referred to in this Section shall be deleted from the applicable budget by the Board of Commissioners only by the adoption of a resolution to such effect containing a statement of its reasons therefor, which resolution shall be adopted by roll-call vote and shall be spread upon the minutes of the Board of Commissioners. The County shall furnish the Lender with copies of its annual budget within thirty (30) days after its adoption and copies of any amended budget affecting appropriations for Installment Payments or additional payments required under this Agreement or the Security Agreement. The County shall promptly provide written notice to the Lender of any Event of Nonappropriation.

(b) NO PROVISION OF THIS AGREEMENT 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 AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A DELEGATION OF GOVERNMENTAL POWERS NOR AS A DONATION BY OR A LENDING OF THE CREDIT OF THE COUNTY WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE. THIS AGREEMENT 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 AGREEMENT IS IN EFFECT; PROVIDED, HOWEVER, THAT ANY FAILURE OR REFUSAL BY THE COUNTY TO APPROPRIATE FUNDS WHICH RESULTS IN THE FAILURE BY THE COUNTY TO MAKE ANY PAYMENT COMING DUE HEREUNDER WILL IN NO WAY OBVIATE THE OCCURRENCE OF THE EVENT OF DEFAULT RESULTING FROM SUCH NONPAYMENT. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE COUNTY IN ANY ACTION FOR BREACH OF A CONTRACTUAL OBLIGATION UNDER THIS AGREEMENT AND THE TAXING POWER OF THE COUNTY IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY MONEYS DUE UNDER THIS AGREEMENT.

No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the County's moneys, nor shall any provision of this Agreement restrict the future issuance of any of the County's bonds or moneys. To the extent of any conflict between this Section and any other provision of this Agreement, this Section shall take priority.

SECTION 4.3. Security Agreement. In order to secure its obligations under this Agreement, including its obligation to make the Installment Payments hereunder, the County will execute and deliver the Security Agreement simultaneously with the execution and delivery of this Agreement.

SECTION 4.4. No Set-Off; Recoupment, Etc. Subject to Section 4.2 and the Enforcement Limitation, the obligation of the County to make the Installment Payments hereunder and to perform and observe the other covenants of this Agreement shall be absolute and unconditional, and the County will pay without abatement, diminution or deduction all such amounts regardless of any cause or circumstance whatsoever, including, without limitation, any defense, set-off, recoupment or counterclaim that the County may have against the Lender.

ARTICLE V

INSURANCE

SECTION 5.1. Comprehensive General Liability. The County shall maintain or cause to be maintained throughout the term of this Agreement, a comprehensive general liability policy or policies in protection of the County, its officers, agents and employees. Said policy shall cover such losses and for such amounts and shall have such deductible amounts as shall be satisfactory to the Board of Commissioners and, in the judgment of the Board of Commissioners, shall protect the County against losses not protected under the principles of sovereign immunity, except the County may participate in the risk management program administered by the North Carolina Association of County Commissioners to fulfill these obligations. The net proceeds of such liability insurance or risk management program shall be applied toward extinguishment or satisfaction of the liability with respect to which the proceeds shall have been paid.

SECTION 5.2. Workers' Compensation. The County shall maintain workers' compensation insurance issued by a responsible carrier authorized under the laws of the State to insure its employees against liability for compensation under the laws now in force in the State, or any act hereafter enacted as an amendment or supplement thereto or in lieu thereof. The proceeds of such workers' compensation insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.

SECTION 5.3. Casualty and Flood Insurance. (a) The County shall require the Board of Education to procure and maintain, or cause to be procured and maintained, throughout the term of this Agreement, insurance against loss or damage to any portion of the Equipment by fire and lightning, with extended coverage, and vandalism, theft and malicious mischief insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. To the extent that any contractor shall provide an insurance policy or certificate of insurance demonstrating that the same coverage as is required by this subsection is being carried by such contractor with respect to the Project or any part thereof and adequately protects the interest of the County and the Board of Education, the insurance provided for by this subsection shall not be required with respect to the Project or such part thereof while the Project or such part thereof is so covered by such other insurance.

(b) The Net Proceeds of such insurance required by this Section shall be applied as provided in Section 6.1 or Section 6.2.

SECTION 5.4. General Insurance Provisions. (a) The County shall require the Board of Education to pay or cause to be paid when due the premiums for all insurance policies required by this Agreement.

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

(c) In lieu of obtaining the policies of insurance required by this Article, the County or the Board of Education may adopt alternative risk management programs which the County or the Board of Education determines to be reasonable, including, without limitation, to self-insure in whole or in part, individually or in connection with other units of local government or other institutions, to participate in programs of captive insurance companies, to participate with other units of local government or other institutions in mutual or other cooperative insurance or other risk management programs, to participate in State or federal insurance programs, to take advantage of State or federal laws now or hereafter in existence limiting liability, or to establish or participate in other alternative risk management programs, all as may be reasonable and appropriate risk management by the County.

(d) The insurance coverage required under this Article may be maintained under a blanket policy covering other properties of the County.

(e) Any agreement herein by the County to provide insurance and to pay the cost thereof may be carried out by the Board of Education with the same force and effect as if carried out by the County.

ARTICLE VI

DAMAGE AND DESTRUCTION; USE OF NET PROCEEDS

SECTION 6.1. Repair and Replacement of the Equipment. Pursuant to the Security Agreement, the Board of Education has agreed to maintain casualty and fire insurance on Polk County High School, the building in which the Equipment is being installed. Upon the receipt of any payment in connection with an insurance claim, the Net Proceeds shall be deposited to the Escrow Account. Within 90 days following the receipt of Net Proceeds, unless a further extension is approved by the Lender, the County shall require the Board of Education to commence the repair, restoration or replacement of the Equipment, or shall elect, by written notice to the Lender, to apply the Net Proceeds to the prepayment of the Installment Payments under the provisions of Article X. For purposes of this subsection, "commence" shall include the retention of an engineer in anticipation of the repair, restoration, modification, improvement or replacement of the Equipment.

In the event that the County (in consultation with the Board of Education) shall, after commencing the repair, restoration, modification, improvement or replacement of the Equipment, determine that the Net Proceeds (plus any amount withheld therefrom by reason of any deductible clause) shall be insufficient for the accomplishment thereof, the County may, subject to the proviso set forth below, elect to apply the Net Proceeds to the prepayment of the Installment Payments under the provisions of Article X. Except as set forth in Section 6.2, all Net Proceeds of any casualty insurance shall be applied to the prompt repair, restoration or replacement of the Equipment. Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of such Net Proceeds shall be the property of the County, subject to the Security Agreement and Permitted Encumbrances, and shall be included as part of the Equipment under this Agreement.

SECTION 6.2. Insufficiency of Net Proceeds; Discharge of the Obligation of the County to Repair the Equipment. (a) If the Net Proceeds shall be insufficient to pay in full the cost of repair, restoration or replacement of the Equipment, the County (in consultation with the Board of Education) may elect to complete the work and pay any cost in excess of the amount of the Net Proceeds, and the County agrees that, if by reason of any such insufficiency of the Net Proceeds, the County shall make any payments pursuant to the provisions of this subsection, the County shall not be entitled to any reimbursement therefor from the Lender, nor shall the County be entitled to any diminution of the Installment Payments payable under Section 4.1.

(b) If the County elects not to apply the Net Proceeds to the repair, restoration or replacement of the Equipment, the County may apply the Net Proceeds of such insurance policies to the prepayment of the principal component of the Installment Payments in accordance with Article X. In the event the amount of such Net Proceeds exceeds the amount necessary to prepay the principal component of all remaining Installment Payments, plus the interest component of the Installment Payments accrued to the date of prepayment, such excess shall be paid to or retained by the County.

ARTICLE VII

COVENANTS OF THE COUNTY

SECTION 7.1. Installation of Additional Improvements. The County or the Board of Education may at any time and from time to time, in their sole discretion, and at their own expense, construct real property improvements and install items of equipment or other personal property in or upon any portion of the site of the Project that does not materially impair the effective use, nor materially decrease the value, of the Equipment; provided, however, that the County or the Board of Education shall repair and restore any and all damage resulting from the construction, installation, modification or removal of any such items. All such items provided by the County or the Board of Education shall be subject to the lien of the Security Agreement.

SECTION 7.2. Access to the Equipment. The County agrees to make arrangements with the Board of Education so that the Lender and its agents and employees shall have the right, at all reasonable times during normal business hours upon the furnishing of reasonable notice under the circumstances, to enter upon the site of the Project or any portion thereof to examine and inspect the same. The County further agrees that the Lender and the Lender's successors, assigns or designees shall have such rights of access to the site of the Project as may be reasonably necessary to cause the proper maintenance of the Equipment in the event of failure by the County to perform its obligations hereunder. No right of inspection shall be deemed to impose on the Lender any duty or obligation whatsoever to undertake any inspection, and no inspection made by the Lender shall be deemed to impose upon the Lender any duty or obligation to identify any defects in the Project or to notify any person with respect thereto.

SECTION 7.3. Maintenance, Utilities, Taxes and Assessments. (a) Subject to the Enforcement Limitation, the County shall provide, or shall arrange for the Board of Education to provide, for the repair and replacement of any portion of the Equipment required on account of ordinary wear and tear or want of care.

(b) Subject to the Enforcement Limitation, the County shall also pay, or provide for the payment of, all taxes and assessments, including, but not limited to, utility charges of any type or nature levied, assessed or charged against any portion of the Project; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the County shall be obligated to pay only such installments as are required to be paid as and when the same become due.

(c) The County or the Board of Education may, at their own expense and in their name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom; provided, however, that prior to such nonpayment, the County shall furnish to the Lender an opinion of counsel acceptable to the Lender to the effect that, by nonpayment of any such items, the interest of the Lender in the Equipment will not be materially endangered and that all or any portion of the Equipment will not be subject to loss or forfeiture. Otherwise, subject to the Enforcement Limitation, the County shall promptly pay such taxes, assessments or charges or make provisions for the payment thereof.

SECTION 7.4. Modification of the Project. The County and the Board of Education shall have the right, in their sole discretion and at their own expense, to make additions, modifications and improvements to any portion of the Equipment if such additions, modifications or improvements are necessary or beneficial for the use of the Equipment. Such additions, modifications and improvements shall not in any way damage any of the Equipment (unless such damage is to be repaired as provided in Section 6.1) or cause the Equipment to be used for purposes other than those authorized under the provisions of law, and the Equipment, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is not less than the value of the Equipment immediately prior to the making of such additions, modifications and improvements. The Equipment, as so modified, shall be subject to the lien of the Security Agreement.

Except for Permitted Encumbrances, the County shall not permit any lien to be established or remain against the Equipment for labor or materials furnished in connection with any additions, modifications or improvements made by the County pursuant to this Section; provided, however, that if any such lien is established, the County may, at its own expense and in its name, in good faith contest any lien filed or established against the Equipment, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, provided that the County shall furnish to the Lender full security against any loss or forfeiture which might arise from the nonpayment of any such item in form satisfactory to the Lender.

SECTION 7.5. Encumbrances. Except as provided in this Article (including, without limitation, Section 7.4 and this Section), the County shall not, directly or indirectly, create, incur, assume or suffer to exist any pledge, lien, charge, encumbrance or claim, as applicable, on or with respect to the Equipment, other than Permitted Encumbrances. Except as expressly provided in this Article and subject to the Enforcement Limitation, the County shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such pledge, lien, charge, encumbrance or claim for which it is responsible if the same shall arise at any time; provided, however, that the County may contest any such lien, charge, encumbrance or claim if it desires to do so and if it provides the Lender with full security against any loss or forfeiture which might arise from the nonpayment of any such item in form satisfactory to the Lender.

SECTION 7.6. Indemnification of the Lender and the Local Government Commission. To the fullest extent permitted by law and subject to the Enforcement Limitation, the County covenants to defend, indemnify and hold harmless the Lender and the LGC and their respective officers, directors, members, employees and agents (collectively, the "Indemnified Party") against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such Indemnified Party may become subject under any statute or at law or in equity or otherwise in connection with the transactions contemplated by this Agreement or the Security Agreement and shall reimburse any such Indemnified Party for any legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of the transactions contemplated by this Agreement or the Security Agreement. In particular, without limitation, the County shall and hereby agrees to indemnify and save the Indemnified Party harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of any breach or default on the part of the County in the performance of any of its obligations under this Agreement or the Security Agreement, subject to the Enforcement Limitation.

SECTION 7.7. Financial Statements. The County agrees that it will furnish the Lender, when the same become available, but in no event later than 210 days after the end of the Fiscal Year, its annual audited financial statements. The County also agrees that it will furnish the Lender copies of its annual budget as approved within 30 days after such approval.

ARTICLE VIII

ASSIGNMENT, LEASING AND AMENDMENT

SECTION 8.1. Assignment by the Lender. The Lender may, at any time and from time to time, assign to any bank, insurance company or similar financial institution, or to any other entity approved by the LGC, all or any part of its interest in the Equipment or this Agreement, including, without limitation, the Lender's rights to receive the Installment Payments and any additional payments due and to become due hereunder. Reassignment by any assignee may also only be to a bank, insurance company or similar financial institution, or to any other entity approved by the LGC. In addition, the Lender or its assignees may assign or reassign all or any part of this Agreement, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Agreement, or making this Agreement 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 Agreement, provided such certificates are sold only to a bank, insurance company or similar financial institution or other entity approved by the LGC. Such bank, insurance company or similar institution or other entity approved by the LGC must also represent that (i) such purchaser has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment (ii) such purchaser understands neither the IFC or certificates will be registered under the Securities Act of 1933, (iii) such purchaser is either an "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, or a qualified institutional buyer within the meaning of Rule 144A, and (iv) that it is the intention of such purchaser to acquire such certificates (A) for investment for its own account or (B) for resale in a transaction exempt from registration under the Securities Act of 1933. In the event of an assignment or reassignment of the Lender's interest in the Equipment or this Agreement as permitted hereby, the Lender shall deliver to the County a duplicate original counterpart of the document by which such assignment or reassignment is made disclosing the name and address of each assignee. The County covenants and agrees with the Lender and each subsequent assignee of the Lender to maintain for the full term of this Agreement a written record of each such assignment or reassignment. The County agrees to execute any document reasonably required by the Lender in connection with any assignment or reassignment. Notwithstanding any assignment by the Lender of its interest in this Agreement, the County shall not be obligated to provide any financial or other information to any assignee of the Lender except as set forth in Section 7.7.

After the giving of notice described above to the County, 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 acknowledgement shall in no way be deemed to make the assignment effective.

The Lender covenants that any disclosure document circulated by it or an assignee in connection with the sale of the Lender's rights in this Agreement will contain a statement to the effect that the County has not reviewed and is not responsible for the disclosure document. The Lender covenants to defend, indemnify and hold harmless the County and its officers, employees and agents against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such Indemnified Party may become subject on account of any statement included in a disclosure document, or failure to include a statement in a disclosure document, unless the County shall have expressly approved the use of such disclosure document.

SECTION 8.2. No Assignment by the County. This Agreement may not be assigned by the County.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

SECTION 9.1. Events of Default Defined. The following shall be “events of default” under this Agreement and the terms “events of default” and “default” shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) The failure by the County to pay any Installment Payment required to be paid hereunder when due.

(b) The occurrence of an Event of Nonappropriation.

(c) Failure by the County to observe and perform any warranty, covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto other than as referred to in clause (a) or (b) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the County by the Lender; provided, however, that if the failure stated in the notice cannot be corrected within the applicable period and if corrective action is instituted by the County within the applicable period and the County is diligently pursuing completion of the corrective action, but the corrective action cannot be completed within thirty (30) days, the County shall have an additional period of sixty (60) days to correct the failure before such failure shall constitute an event of default hereunder.

(d) The County becomes insolvent or the subject of insolvency proceedings; or is unable, or admits in writing its inability, to pay its debts as they mature; or makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its property; or files a petition or other pleading seeking reorganization, composition, readjustment or liquidation of assets, or requesting similar relief; or applies to a court for the appointment of a receiver for it or for the whole or any part of its property; or has a receiver or liquidator appointed for it or for the whole or any part of its property (with or without the consent of the County) and such receiver is not discharged within ninety (90) consecutive days after his appointment; or becomes the subject of an “order for relief” within the meaning of the United States Bankruptcy Code; or files an answer to a creditor’s petition admitting the material allegations thereof for liquidation, reorganization, readjustment or composition or to effect a plan or other arrangement with creditors or fail to have such petition dismissed within sixty (60) consecutive days after the same is filed against the County.

(e) The occurrence of an “Event of Default” under the Security Agreement as defined therein.

(f) The County shall fail to pay the principal of or the interest or any redemption premium on any general obligation bonds or notes of the County as required by such bonds or notes or the documents providing for the issuance thereof.

(g) Any warranty, representation or statement made by the County herein or in the Security Agreement, the Escrow Agreement or any other document executed and delivered by the County in connection herewith is found to be incorrect or misleading in any material respect as of the date made.

SECTION 9.2. Remedies on Default. Upon the occurrence of any event of default under Section 9.1, the Lender may, without any further demand or notice, exercise any one or more of the following remedies:

(a) declare the entire amount of the principal component of the Installment Payments and the accrued and unpaid interest component to the date of declaration to be immediately due and payable;

(b) exercise all remedies available at law or in equity or under the Security Agreement or Escrow Agreement, including sale of the Equipment, and apply the proceeds of any such sale or other disposition, after deducting all costs and expenses, including court costs and reasonable attorneys' fees incurred with the recovery, repair, storage and other sale or other disposition costs, toward the principal component and accrued and unpaid interest of the balance of Installment Payments due; and

(c) subject to the Enforcement Limitation, proceed by appropriate court action to enforce performance by the County of the applicable covenants of this Agreement or to recover for the breach thereof.

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

SECTION 9.3. No Remedy Exclusive. No remedy conferred herein upon or reserved to the Lender is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. To the extent permitted by law, any delay or omission to exercise any right or power accruing upon any default shall not impair any such right or power nor shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lender to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required in this Article or by law.

SECTION 9.4. Agreement to Pay Attorneys' Fees and Expenses. In the event the County should default under any of the provisions hereof and the Lender should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the County contained herein, the County agrees that it will pay on demand to the Lender, subject to the limitations and provisions of Section 6-21.2 of the General Statutes of North Carolina, as amended, the reasonable fees of such attorneys and such other expenses so incurred by the Lender. For purposes of this Section, the reasonable fees of attorneys shall mean attorneys' fees actually incurred at such attorneys' standard hourly rate for such services and shall not be based on any percentage of the outstanding amount due; provided, however that such attorneys' fees shall not exceed the maximum amount permitted by law.

SECTION 9.5. No Additional Waiver Implied by One Waiver. In the event any provision contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder except as may be provided by law.

ARTICLE X

PREPAYMENT OF INSTALLMENT PAYMENTS

SECTION 10.1. Prepayment of Installment Payments. Upon at least 30 days' prior written notice to the Lender (unless otherwise waived by the Lender), the County may prepay, in whole, but not in part, on any Installment Payment Date the outstanding principal component of the Installment Payments at a prepayment price of 102% of the principal component of the Installment Payments to be prepaid, plus accrued interest thereon to the prepayment date.

ARTICLE XI

MISCELLANEOUS

SECTION 11.1. Notices. All notices, approvals, consents, requests and other communications hereunder shall be in writing and, unless otherwise provided herein, shall be deemed to have been given when delivered or mailed by registered or certified mail, postage prepaid, addressed as follows:

If to the County:

County of Polk, North Carolina
40 Courthouse Street
Columbus, North Carolina 28722
Attention: County Manager

If to the Lender:

Bank of America, National Association
11333 McCormick Road
Hunt Valley II
Mail Code: MD5-03-07-05
Hunt Valley, MD 21031
Attn: Agreement Administration

The County and the Lender, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

SECTION 11.2. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the County and the Lender and their respective successors and assigns. Whenever in this Agreement either the County or the Lender is named or referred to, such reference shall be deemed to include the successors or assigns thereof and all the covenants and agreements in this Agreement contained by or on behalf of the County or the Lender shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 11.3. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 11.4. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 11.5. Commitment Letter. The terms of this Agreement shall supersede the terms of any commitment letter, proposal or other term sheet provided by the Lender. To the extent of any conflict between this Agreement and such other documents, this Agreement shall take priority.

SECTION 11.6. Applicable Law. This Agreement shall be construed and governed in accordance with the laws of the State of North Carolina.

SECTION 11.7. E-Verify. The Lender hereby certifies that the Lender understands that "E-Verify" is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. The Lender uses E-Verify to verify the work authorization of its employees in accordance with Section 64-26(a) of the General Statutes of North Carolina, as amended. The Lender shall require that any subcontractor that it uses in connection with the transactions contemplated by this Agreement certify to such subcontractor's compliance with E-Verify.

IN WITNESS WHEREOF, the County and the Lender have caused this Agreement to be executed in their respective names by their respective duly authorized officers as of the date first above written.

COUNTY OF POLK, NORTH CAROLINA

[SEAL]

By:____
Chair of the Board of Commissioners

Attest:

____
Clerk to the Board of Commissioners

BANK OF AMERICA, NATIONAL ASSOCIATION

By:____
Senior Vice President

[Counterpart signature page to the Installment Financing Agreement, dated as of April 21, 2021, between the County of Polk, North Carolina and Bank of America, National Association]

CERTIFICATE OF LOCAL GOVERNMENT COMMISSION

The foregoing Installment Financing Agreement has been approved under the provisions of Section 160A-20 and Article 8 of Chapter 159 of the General Statutes of North Carolina, as amended.

____
Secretary, Local Government Commission
of North Carolina

EXHIBIT A

INSTALLMENT PAYMENT SCHEDULE

Installment Payment Date	Principal	Interest	Total
November 1, 2021		$71,530.78	$ 71,530.78
May 1, 2022	$414,000.00	67,766.00	481,766.00
November 1, 2022		63,240.98	63,240.98
May 1, 2023	414,000.00	63,240.98	477,240.98
November 1, 2023		58,715.96	58,715.96
May 1, 2024	414,000.00	58,715.96	472,715.96
November 1, 2024		54,190.94	54,190.94
May 1, 2025	414,000.00	54,190.94	468,190.94
November 1, 2025		49,665.92	49,665.92
May 1, 2026	414,000.00	49,665.92	463,665.92
November 1, 2026		45,140.90	45,140.90
May 1, 2027	413,000.00	45,140.90	458,140.90
November 1, 2027		40,626.81	40,626.81
May 1, 2028	413,000.00	40,626.81	453,626.81
November 1, 2028		36,112.72	36,112.72
May 1, 2029	413,000.00	36,112.72	449,112.72
November 1, 2029		31,598.63	31,598.63
May 1, 2030	413,000.00	31,598.63	444,598.63
November 1, 2030		27,084.54	27,084.54
May 1, 2031	413,000.00	27,084.54	440,084.54
November 1, 2031		22,570.45	22,570.45
May 1, 2032	413,000.00	22,570.45	435,570.45
November 1, 2032		18,056.36	18,056.36
May 1, 2033	413,000.00	18,056.36	431,056.36
November 1, 2033		13,542.27	13,542.27
May 1, 2034	413,000.00	13,542.27	426,542.27
November 1, 2034		9,028.18	9,028.18
May 1, 2035	413,000.00	9,028.18	422,028.18
November 1, 2035		4,514.09	4,514.09
May 1, 2036	413,000.00	4,514.09	417,514.09

ACCEPTANCE CERTIFICATE

Bank of America, National Association
11333 McCormick Road
Hunt Valley II
Mail Code: MD5-03-07-05
Hunt Valley, MD 21031
Attn: Agreement Administration

Re: Installment Financing Agreement dated as of April 21, 2021, between Bank of America, National Association, as Lender, and County of Polk, North Carolina (the "County")

Ladies and Gentlemen:

In accordance with the Installment Financing Agreement (the "Agreement"), the undersigned authorized officer of the County hereby certifies and represents to, and agrees with Lender as follows:

1. All of the equipment making up the Project (the "Equipment") described in the Agreement has been delivered, installed and accepted on the date hereof.

2. The County has conducted or caused to be conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.

3. The County is maintaining, or is causing the Polk County Board of Education to maintain, the insurance coverage required by Article V of the Agreement.

4. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists at the date hereof.

Date: ______________

COUNTY OF POLK, NORTH CAROLINA

By: ___________________________________
Name: _________________________________
Title: _________________________________

Draft No. 2
March 22, 2021

SECURITY AGREEMENT

THIS SECURITY AGREEMENT, dated as of April 21, 2021 (the "Security Agreement"), is made by the COUNTY OF POLK, NORTH CAROLINA, a body corporate and politic duly organized and existing under the Constitution and laws of the State of North Carolina (the "County") and THE POLK COUNTY BOARD OF EDUCATION, a body corporate and politic duly organized and existing under the Constitution and laws of the State of North Carolina (the "Board of Education")for the benefit of BANK OF AMERICA, NATIONAL ASSOCIATION (the "Lender"), or any successors or assigns, being hereinafter sometimes referred to as the "Secured Party";

WITNESSETH:

WHEREAS, the County has entered into an Installment Financing Agreement, of even date herewith (the "Agreement"), with the Lender, whereby the Lender has agreed to advance funds to the County in the principal amount of $6,200,000 to (a) pay the costs of the acquisition and installation of HVAC equipment, new lighting equipment and other equipment (the "Project") to be installed at Polk County High School, a public school located in the County and owned and operated by the Board of Education and (b) pay certain related financing costs, and the County has agreed to repay the funds advanced to the County with interest in installments due at the times and in the amounts set forth in the Agreement (the "Installment Payments"), the final Installment Payment being due on May 1, 2036;

WHEREAS, the County will secure (a) the payment of the Installment Payments due under the Agreement, (b) the performance by the County of all of its other obligations under the Agreement, (c) the payment of any and all other indebtedness which this Security Agreement by its terms secures and (d) the performance by the County of the covenants and agreements contained in this Security Agreement by granting to the Secured Party a security interest in the Collateral (hereinafter defined);

WHEREAS, the Equipment is being acquired and installed for the benefit of the Board of Education, and the Board of Education is the owner of the site upon which the Equipment will be installed, and the Board of Education is joining in this Security Agreement to provide additional assurances to the Lender that the Board of Education will maintain the Equipment and will cooperate with the Lender in the exercise by the Lender of any of its remedies under this Security Agreement or at law in the event of a default by the County in the payment or performance of its obligations under the Agreement or hereunder;

NOW, THEREFORE, in order to induce the Lender to make the advancement under the Agreement, and in consideration of the benefits to accrue to the County by reason thereof, and for other good and valuable consideration, receipt of which is hereby mutually acknowledged, the parties hereby agree as follows:

Section 1. Ownership of the Equipment; Uniform Commercial Code Security Agreement. The County and the Board of Education hereby state their mutual intention and agree that, notwithstanding the installation of the Equipment at the school owned by the Board of Education, the Equipment is and all times during the term of this Security Agreement shall be the personal property of the County. Such agreement remains effective even if the Equipment shall constitute fixtures within the meaning of the Uniform Commercial Code, as adopted by the State of North Carolina (the "UCC").

The County hereby grants to the Secured Party, as security for the payment of all Installment Payments under the Agreement and the performance by the County of all of its other obligations under the Agreement and this Security Agreement, a security interest in the Equipment (as defined in the Agreement) financed by the County from the amounts advanced to the County pursuant to the Agreement, as more particularly described in Exhibit A hereto, including all replacements, repairs, restorations, modifications and improvements thereof as permitted by the Agreement, and all proceeds (cash and non-cash), including the proceeds of insurance provided for hereby. In accordance with Section 25-9-334(f) of the North Carolina General Statutes, as amended, the Board of Education consents to the security interest in the Equipment and acknowledges that the security interest of the Lender has priority over any conflicting interest of the Board of Education as the owner of the real property upon which the Equipment is installed. This Security Agreement is intended to be an authenticated record of such consent as contemplated by said Section 25-9-334(f).

In addition, the County hereby grants to the Secured Party, as security for the payment of all Installment Payments under the Agreement and the performance by the County of all of its other obligations under the Agreement and this Security Agreement a security interest in the Escrow Account (as defined in the Agreement), all sums contained therein, any investment of funds in the Equipment Fund and all products and proceeds thereof.

The Equipment and the Escrow Account are herein referred to collectively as the "Collateral." The County shall execute, deliver and file, or cause to be filed, in such place or places as may be required by the Secured Party, Uniform Commercial Code financing statements (including any continuation statements or amendments thereto required to be filed to continue the perfection of the security interest granted hereby) in such form as is required to perfect and continue the perfection of the security interest hereby granted in the Collateral.

The County and the Board of Education further agree to provide the Lender with any additional information requested by the Lender necessary to identify the particular Equipment and to provide such identification markings on the Equipment, in form satisfactory to the Lender, as the Lender deems necessary or appropriate to give notice of the Lender's security interest in the Equipment, and upon assignment, the interest of any assignee of the Lender in the Equipment.

Section 2. Grant of Licenses; Collateral Assignment. The Board of Education is the owner of certain real property easements, rights of way and other interests and rights in real property where all or a portion of the Equipment may be located. To the fullest extent permitted by law, the Board of Education hereby grants to the Secured Party such licenses or other rights or privileges as may be necessary or desirable for the Secured Party, or its agents, to enter in or upon such property where the Equipment is located for the purpose of exercising its rights hereunder. The Board of Education grants these licenses in connection with the other property interests granted hereunder to the Secured Party, with the intent that such licenses qualify as licenses coupled with an interest so as to be irrevocable.

Section 3. Representations, Warranties and Covenants of the County and the Board of Education. (a) The County hereby represents, warrants and covenants as follows:

(1) The County is and shall continue to be the absolute owner of the Collateral, free and clear of all encumbrances and security interests, other than Permitted Encumbrances (as defined in the Agreement).

(2) The County shall not sell, transfer, exchange, lease, mortgage, encumber, pledge or otherwise dispose of all or any part of the Collateral, except as provided in the Agreement and this Security Agreement.

(3) The County shall execute and deliver to the Secured Party concurrently with the execution and delivery of this Security Agreement, and upon the request of the Secured Party from time to time thereafter, all financing statements and other documents reasonably required to perfect and maintain the security interest created hereby.

(b) The Board of Education hereby represents, warrants and covenants as follows:

(1) The Board of Education shall have primary responsibility for the acquisition and installation of the Equipment and for the operation and maintenance thereof. The Board of Education shall enter into one or more contracts or purchase orders providing for the acquisition and installation of the Equipment, and shall cause the acquisition and installation of the Equipment to be carried on expeditiously in accordance with the plans and specifications therefor and in compliance with all applicable ordinances and statutes and requirements of all regularly constituted authorities having jurisdiction over the same. The Board of Education shall require each contractor for the Project to provide performance and labor and materials payment bonds in an amount not less than the amount required by law.

(2) The Board of Education shall procure and maintain throughout the term of this Security Agreement, insurance against loss or damage to any portion of Polk County High School by fire and lightning, with extended coverage, and vandalism, theft and malicious mischief insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. The Board of Education shall pay when due the premiums for all insurance policies required by this Agreement. All insurance policies required by this Article shall be issued by a responsible carrier authorized to do business under the laws of the State of North Carolina. The Secured Party shall not be responsible for the sufficiency or adequacy of any insurance herein required.

The insurance coverage required under the preceding paragraph may be maintained under a blanket policy covering other properties of the Board of Education. In lieu of obtaining the policies of insurance required by the preceding paragraph, the Board of Education may adopt alternative risk management programs which the Board of Education determines to be reasonable, including, without limitation, to self-insure in whole or in part, individually or in connection with other units of local government or other institutions, to participate in programs of captive insurance companies, to participate with other units of local government or other institutions in mutual or other cooperative insurance or other risk management programs, to participate in State or federal insurance programs, to take advantage of State or federal laws now or hereafter in existence limiting liability, or to establish or participate in other alternative risk management programs, all as may be reasonable and appropriate risk management by the County.

The Board of Education shall cause the Net Proceeds (as defined in the Agreement) of any casualty insurance with respect to the Equipment to be deposited to the Escrow Account to be applied to the prompt repair, restoration or replacement of the Equipment as provided in Article VI of the Agreement. Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of such proceeds shall be the property of the County, subject to this Security Agreement and shall be included as part of the Equipment under this Security Agreement.

(3) The Board of Education may at any time and from time to time, in its sole discretion, and at its own expense, construct real property improvements and install items of equipment or other personal property in or upon any portion of Polk County High School that does not materially impair the effective use, nor materially decrease the value, of the Equipment; provided, however, that the Board of Education shall repair and restore any and all damage resulting from the construction, installation, modification or removal of any such items. If any such activity results in the replacement of new equipment for the Equipment, such replacement property shall be “Equipment” and shall be subject to the lien of the Security Agreement.

(4) The Board of Education shall provide for the repair and replacement of any portion of the Equipment required on account of ordinary wear and tear or want of care.

(5) The Board of Education shall pay all taxes and assessments, including, but not limited to, utility charges of any type or nature levied, assessed or charged against any portion of Polk County High School; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Board of Education shall be obligated to pay only such installments as are required to be paid as and when the same become due. The Board of Education may, at its own expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom; provided, however, that prior to such nonpayment, the Board of Education shall furnish to the Secured Party an opinion of counsel acceptable to the Secured Party to the effect that, by nonpayment of any such items, the interest of the Secured Party in the Equipment will not be materially endangered and that all or any portion of the Equipment will not be subject to loss or forfeiture. Otherwise, the Board of Education shall promptly pay such taxes, assessments or charges or make provisions for the payment thereof.

(6) The Board of Education shall not, directly or indirectly, create, incur, assume or suffer to exist any pledge, lien, charge, encumbrance or claim, as applicable, on or with respect to the Equipment, other than Permitted Encumbrances as defined in the Agreement. The Board of Education shall promptly, at its own expense, take such action as may be necessary to duly

discharge or remove any such pledge, lien, charge, encumbrance or claim for which it is responsible if the same shall arise at any time; provided, however, that the Board of Education may contest any such lien, charge, encumbrance or claim if it desires to do so and if it provides the Secured Party with full security against any loss or forfeiture which might arise from the nonpayment of any such item in form satisfactory to the Lender.

Section 4. Events of Default and Remedies of Secured Party. (a) If any of the following events shall occur:

(i) the occurrence of an "event of default" under the Agreement; or

(ii) failure by the County or the Board of Education to observe and perform any warranty, covenant, condition or agreement on the part of the County or the Board of Education under this Security Agreement for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to the County or the Board of Education by the Secured Party unless the Secured Party shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in the notice cannot be corrected within the applicable period and if corrective action is instituted by the County or the Board of Education within the applicable period and diligently pursued, the County or the Board of Education shall have such additional period of time to correct the failure as shall be necessary to correct such failure so long as such correction is diligently pursued; or

(iii) any lien, charge or encumbrance prior to or affecting the validity of this Security Agreement is found to exist, other than Permitted Encumbrances, or proceedings are instituted to enforce any lien, charge or encumbrance against the Collateral and such lien, charge or encumbrance would be prior to the lien of this Security Agreement;

then and in any of such events (hereinafter referred to as an "Event of Default"), all payments under the Agreement may become at once due and payable, regardless of the maturity date or other due date thereof.

(b) Upon the occurrence of an Event of Default, the Secured Party may proceed against the Collateral as provided in and in accordance with the applicable provisions of the UCC. Subject to any limitations imposed by the applicable provisions of the UCC, the Secured Party may sell, lease, or otherwise dispose of all or any part of the Collateral, at public or private sale, for cash or on credit, as a whole or in part, and the Secured Party may at such sale or sales purchase the Collateral or any part thereof. The proceeds of such sale, lease, collection or other disposition shall be applied first to the costs and expenses of the Secured Party incurred in connection with such sale, lease, collection or other disposition, and then to such outstanding balance due on any and all indebtedness owed to the Secured Party in the manner provided in the Agreement. Further, the Secured Party may require the County and the Board of Education to assemble the Collateral and make the Collateral reasonably available to the Secured Party at one or more places to be designated by the Secured Party which are reasonably convenient to the County and the Board of Education and the Secured Party, and the Secured Party may take possession of the Collateral and hold, prepare for sale, lease or otherwise dispose of the Collateral. Any required notice by the Secured Party of the sale or other disposition or default, when mailed to the County at its address set forth herein, shall constitute reasonable notice to the County or the Board of Education. In addition to, but not in limitation of, any of the foregoing, the Secured Party may exercise any or all of the rights and remedies afforded to the Secured Party by the provisions of the UCC or otherwise afforded to the Secured Party under this Security Agreement, with all such rights and remedies being cumulative and not alternative, and the County agrees, to the extent permitted by law, to pay the reasonable fees, expenses and other costs of collection, including the fees, expenses and costs provided by statute. No failure or delay in exercising any option, right or remedy shall be deemed a waiver thereon or a waiver of any Event of Default.

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

Section 5. Miscellaneous.

(a) Notices. Except as otherwise provided herein, all notices, approvals, consents, certificates, requests and other communications hereunder shall be in writing and shall be deemed to have been given when the writing is delivered, if delivered by hand or overnight delivery service, and shall be deemed to have been received upon the earlier of actual receipt or three days after deposit in the United States first-class, registered or certified mail, postage prepaid, and addressed as follows:

(b) If to the County:

County of Polk, North Carolina
40 Courthouse Street
Columbus, North Carolina 28722
Attention: County Manager

If to the Board of Education:

Polk County Board of Education
Stearns Education Center
125 East Mills Street
Columbus, NC 28722
Attention: Superintendent

If to the Lender:

Bank of America, National Association
11333 McCormick Road
Hunt Valley II
Mail Code: MD5-03-07-05
Hunt Valley, MD 21031
Attn: Agreement Administration

Any such notice, demand or request may also be transmitted to the appropriate party by telegram, telecopy, electronic mail or telephone and shall be deemed to be properly given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing and sent as specified above.

The County and the Lender, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

(b) Successors and Assigns. This Security Agreement shall bind the County and its successors and assigns and shall inure to the benefit of and be enforceable by the Secured Party and its successors and assigns.

(c) Applicable Law. This Security Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

(d) Severability. In the event any term, provision or covenant herein contained or the application thereof to any circumstances or situation shall be invalid or unenforceable in whole or in part, the remainder hereof and the application of said term or provision or covenant to any other circumstances or situation shall not be affected thereby, and every other term, provision or covenant herein shall be valid and enforceable to the full extent permitted by law.

IN WITNESS WHEREOF, the County has caused this Security Agreement to be executed, sealed and attested in its name by its duly authorized officers, all as of the day and year first above written.

COUNTY OF POLK, NORTH CAROLINA

[SEAL]

By:______________________________________
Chair of the Board of Commissioners

Attest:

____
Clerk to the Board of Commissioners

POLK COUNTY BOARD OF EDUCATION

[SEAL]

By:______________________________________
Chair of the Board of Education

Attest:

____
Secretary to the Board of Education

BANK OF AMERICA, NATIONAL ASSOCIATION

By:______________________________________
Title:

EXHIBIT A

DESCRIPTION OF THE EQUIPMENT

The Equipment consists of all equipment acquired by the County in whole or in part from the proceeds of the amounts advanced to the County pursuant to the Agreement, including, without limitation, the equipment included in the following list of activities related to the Project (but only to the extent proceeds of the amounts advanced to the County pursuant to the Agreement are used in whole or in part to pay the purchase price of such Equipment):

Activity	**Cost**
Mobilization	$ 133,900.00
Demobilization	33,500.00
General Conditions	324,000.00
Engineering – Detailed Design	74,800.00
Demolition	167,900.00
Equipment (Chillers & AHU’s)	949,100.00
Ductwork	1,163,610.00
Piping	1,109,425.00
Insulation	287,413.00
Electrical	399,740.00
Lighting Upgrade	297,689.00
Fire Alarm	105,533.00
Architectural	523,388.00
Controls	310,203.90
Roofing	91,589.10
Crane and Rigging	78,102.00
Fencing/Landscaping/Hardscape at New Chillers	15,000.00
New Safety Access Ladders	50,405.00
TAB	85,032.00
Commissioning	54,670.00
Total	**$6,255,000.00**