

**BOARD OF SUPERVISORS
COUNTY OF NEW KENT
VIRGINIA**

R-34-12

At the regular meeting of the Board of Supervisors of the County of New Kent in the Boardroom of the Administration Building in New Kent, Virginia, on the 27th day of June, 2012:

Present:	Vote:
C. Thomas Tiller, Jr.	Aye
Ron Stiers	Aye
W. R. Davis, Jr.	Aye
Thomas W. Evelyn	Aye
James H. Burrell	Aye

Motion was made by Mr. Evelyn, which carried 5:0, to adopt the following resolution:

**RESOLUTION OF THE BOARD OF SUPERVISORS OF
THE COUNTY OF NEW KENT, VIRGINIA
AS TO 2007 LEASE REVENUE BOND**

WHEREAS, the Board of Supervisors (**the “Board of Supervisors”**) of the County of New Kent, Virginia (**the “County”**) has determined to modify its outstanding obligations with Citizens and Farmers Bank (**the “Bank”**) pursuant to the \$2,800,000 Public Facilities Lease Revenue Bond, Series 2007, issued October 25, 2007 (**the “Existing Bond”**) issued by the Economic Development Authority of New Kent County, Virginia (**the “Authority”**); and

WHEREAS, the Existing Bond financed the acquisition, design, construction, equipping and furnishing of the Human Services Building for the County (**the “Project”**) to accomplish certain purposes of the Virginia Industrial Development and Revenue Bond Act (**the “Act”**), and the County provided its moral obligation in support of the payment of the Existing Bond; and

WHEREAS, in relation to the issuance of the Existing Bond, the County leased the Project (**the “Leased Property”**) to the Authority pursuant to a Ground Lease, dated as of October 1, 2007 (**the “Ground Lease”**) and, in turn, the Authority leased the Leased Property to the County pursuant to a Lease Agreement, dated as of October 1, 2007 (**the “Lease Agreement”**) wherein the County agreed to pay rental payments thereunder equal to the debt service on the Existing Bond; and

WHEREAS, both the Ground Lease and the Lease Agreement were assigned by the Authority to the Bank as security for the Existing Bond pursuant to an Assignment Agreement, dated as of October 1, 2007 (**the “Assignment”**); and

WHEREAS, the Bank has presented a proposal (**the “2012 Bank Proposal”**) to modify the terms of the Existing Bond through the issuance by the Authority of an Allonge which will modify the Existing Bond (**the “Allonge”**) to reduce the interest rate on the Existing Bond from 3.98% to an interest rate of 3.10% per annum, with the continuation of an optional one time change in the interest rate on October 25, 2022 (**the “Reset Date”**) and a limited prepayment penalty, with certain terms and conditions, all as set forth in such 2012 Bank Proposal; and

WHEREAS, the issuance of the Allonge would require certain modifications to the existing Ground Lease, Lease Agreement and Assignment (**the “Existing Lease Documents”**) to conform to the 2012 Bank Proposal (**the “Modification Documents”**);

NOW THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of New Kent, Virginia:

1. All costs and expenses in connection with the undertaking of the issuance of the Allonge and the modification to the Existing Lease Documents with the Modification Documents, including the Authority’s expenses, the fees and expenses of the Bond Counsel, the County’s Financial Advisor and fees and expenses of the Bank, and other fees and expenses related thereto, shall be paid from other funds of the County. If for any reason the Allonge is not issued, it is understood that all such expenses shall be paid by the County and that the Authority shall have no responsibility therefor.
2. The following plan for issuance of the Allonge and modification of the Existing Lease Documents is approved. The Authority shall modify (i) the terms of the Existing Bond by issuance of the Allonge which will reduce the existing interest rate on the Existing Bond from 3.98% to 3.10% per annum, with an optional change in interest rate by the Bank (as is currently in the Existing Bond) on the Reset Date and a limited prepayment penalty and (ii) the Existing Lease Documents with the Modification Documents. The obligation of the Authority to pay principal and interest on the Allonge will be limited to rent payments received from the County under the Modification Documents which modify the Existing Lease Documents. The Allonge to the Existing Bond will continue to be secured by the Existing Lease Documents as modified by the Modification Documents. If the Board of Supervisors exercises its right not to appropriate money for rent payments, the Bank may terminate the Lease Agreement or otherwise exclude the County from possession of the Leased Property. The obligation of the County to pay rent thereunder will be subject to the Board of Supervisors of the County making annual appropriations for such purpose. The Board of Supervisors on behalf of the County has adopted this resolution as its moral obligation to the

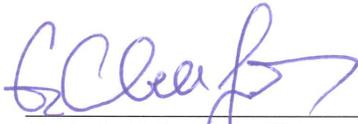
repayment of the Allonge which modifies the Existing Bond. The issuance of the Allonge and the Modification Documents on the terms set forth in the 2012 Bank Proposal is hereby approved.

3. The Board of Supervisors hereby approves the County entering into the Modification Documents and the Allonge in the principal amount of up to \$2,400,000 on terms approximately the same as the Existing Bond, payable as to interest at an interest rate of 3.10%, on an accrual basis of 30 day months and 360 day years, with a one-time optional change in the interest rate on the Reset Date at the option of the Bank and a limited prepayment penalty with such changes as may be approved by the officer executing them whose signature shall be conclusive evidence of his approval of the same. The County Administrator or Chairman are each hereby authorized to determine the final terms of the Allonge and the Modification Documents, whose determination shall be conclusive, as evidenced by his execution of such Allonge or Modification Documents.
4. The Chairman or Vice Chairman of the Board of Supervisors, or either of them, and the County Administrator, Clerk of the Board of Supervisors and Deputy Clerk of the Board of Supervisors are each hereby authorized and directed to execute the Modification Documents and the Allonge.
5. The County represents and covenants that it shall not take or omit to take any action the taking or omission of which will cause the Allonge which modifies the Existing Bond to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (**the "Code"**) or otherwise cause the interest on the Allonge which modifies the Existing Bond to be includable in gross income for Federal income tax purposes under existing law. Without limiting the generality of the foregoing, the County shall comply with any provision of law that may require the Authority or the County at any time to rebate to the United States any part of the earnings derived from the investment of the gross proceeds from the sale of Allonge which modifies the Existing Bond.
6. Any authorization herein to execute a document shall include authorization to deliver it to the other parties thereto and to record such document where appropriate.
7. All other acts of the officers of the County that are in conformity with the purposes and intent of this resolution and in furtherance of the plan of financing, the issuance and sale of the Allonge which modifies the Existing Bond, are hereby approved and ratified.
8. The County by acceptance of this financing agrees to indemnify, defend and save harmless, to the extent permitted by law, the Authority, its officers, directors, employees and agents from and against all liabilities, obligations, claims, damages, penalties, fines, losses, costs and expenses in any way connected with the Authority, the issuance of the Allonge which modifies the Existing Bond, the

Modification Documents or the lease of the Leased Property.

9. Nothing in this Resolution, the Allonge which modifies the Existing Bond or the Modification Documents shall constitute a debt or a pledge of the faith and credit of the Authority or the County, and the Authority shall not be obligated to make any payments under the Allonge which modifies the Existing Bond or the Modification Documents except from payments made by or on behalf of the County under the Lease Agreement as modified by the Modification Documents pursuant to annual appropriation thereof in accordance with applicable law.
10. Since the Existing Bond was issued as a “qualified tax-exempt obligation”, the County hereby treats the Allonge as it modifies the Existing Bond as deemed designated under the refunding exception of Section 265(b)(3) of the Code, and allocates to the Authority in relation to the issuance of the Allonge as it modifies the Existing Bond, up to \$2,400,000 of its allocation of “qualified tax-exempt obligations” for the purpose of Section 265(b)(3) of the Code.
11. This resolution shall take effect immediately.

Adopted this 27th day of June, 2012.



G. Cabell Lawton, IV
County Administrator



James H. Burrell
Chairman