BOARD OF SUPERVISORS
COUNTY OF NEW KENT
VIRGINIA

R-08-08

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 14th day of April, 2008:

Present:	Vote:
Thomas W. Evelyn	Aye
D. M. Sparks	Aye
Stran L. Trout	Aye
W. R. Davis, Jr.	Aye
James H. Burrell	Aye

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

RESOLUTION OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF NEW KENT, VIRGINIA

WHEREAS, the Board of Supervisors **(the "Board of Supervisors")** of New Kent County, Virginia **(the "County")** directed Davenport & Company LLC **(the "Financial Advisor")** to prepare a Request for Proposals **(the "RFP")** to (i) obtain financing proposals to pay the costs of the design, construction, renovation and equipping of the County's existing High School **(the "High School Project")** and its existing Middle School **(the "Middle School Project", together with the High School Project, the "Project")** for the County, (ii) refund the Economic Development Authority of New Kent County, Virginia **(the "Authority")** outstanding Lease Revenue Bonds, Series 1997C **(the "Outstanding 1997C Bonds")** with the same principal amortization as in such bonds, and (iii) refund the Authority's outstanding lease obligations under a Lease Purchase Agreement, dated as of May 1, 1995, between the Authority and the County **(the "1995 Lease")**; and

WHEREAS, the Financial Advisor has received responses to the RFP that reflect attractive financing for the Project and the refunding of the Outstanding 1997C Bonds and the 1995 Lease and, after reviewing the responses, the Financial Advisor along with the County's Bond Counsel, Sands Anderson Marks & Miller, a Professional Corporation, Richmond, Virginia **("Bond Counsel")** has recommended that the Board of Supervisors select the proposal **(the "Proposal")** from RBC Bank (USA) **(the "Bank")**; and

WHEREAS, the Board of Supervisors has reviewed each of the responses and recommendations from the Financial Advisor and Bond Counsel and has determined that the Proposal is the most beneficial response to the RFP and provides attractive financing terms for the Project and the refunding of the Outstanding 1997C Bonds and the 1995 Lease and the Board of Supervisors on behalf of the County desires to accept such Proposal and proceed with the financing reflected therein; and

WHEREAS, the Board of Supervisors will request the Authority to issue, offer and sell its lease revenue and refunding bond **(the "Bond")** in an amount of up to $2,500,000 pursuant to the Proposal to finance the design, construction, renovation and equipping of the Project and the refunding of the Outstanding 1997C Bonds and the 1995 Lease with a fifteen (15) year amortization at the interest rate of 3.44% per annum to accomplish certain purposes of the Virginia Industrial Development and Revenue Bond Act **(the "Act")**, with the County providing its moral obligation in support of the payment of the Bond; and

WHEREAS, there have been presented to this meeting drafts of the following documents **(collectively, the "Documents")** in connection with the transactions described above, copies of which shall be filed with the records of the Board of Supervisors:

a. a Ground Lease, dated as of April 1, 2008 **(the "Ground Lease")**, among the County, the Authority and the New Kent County School Board **(the "School Board")** conveying to the Authority a leasehold interest in the property described therein **(the "Property")**;

b. a Lease Agreement, dated as of April 1, 2008, between the Authority and the County conveying to the County a leasehold interest in the Property **(the "Lease Agreement")**;

c. a Bond Purchase Agreement, dated as of April 1, 2008 among the Authority, the County and the Bank, pursuant to which the Bond is to be issued **(the "Bond Purchase Agreement")**;

d. an Assignment Agreement, dated as of April 1, 2008 between the Authority and the Bank, assigning to the Bank certain of the Authority's rights under the Lease Agreement and the Ground Lease, which is to be acknowledged and consented to by the County and the School Board **(the "Assignment Agreement")**; and

e. a Specimen Bond.

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

1. The County hereby accepts the Proposal from the Bank for a fifteen (15) year period of amortization of the Bond (with the portion refunding the Outstanding 1997C Bonds at the same amortization as in such bonds and the portion refunding the 1995 Lease amortizing approximately the same) and instructs the Financial Advisor and Bond Counsel to take all such action as necessary or appropriate to conclude the financing as so set forth in the Proposal by the issuance of the Bond of the Authority based upon the recommendation of the Financial Advisor and Bond Counsel.

2. All costs and expenses in connection with the undertaking of the refunding of the Outstanding 1997C Bonds and the 1995 Lease, the acquisition, design, construction, equipping and furnishing of the Project and the issuance of the Bond including the Authority's expenses, the fees and expenses of the County, and the fees and expenses of Bond Counsel and the Bank and its counsel, for the sale of the Bond, shall be paid from the proceeds therefrom or other funds of the County. If for any reason the Bond 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.

3. The following plan for refunding the Outstanding 1997C Bonds and the 1995 Lease and financing the costs of the Project is approved. The Authority shall use the proceeds from the issuance of the Bond to refund the Outstanding 1997C Bonds and the 1995 Lease, to finance on behalf of the County, the design, construction, renovation and equipping of the Project and the lease of the Property pursuant to the Ground Lease and, in turn, the lease of the Property to the County for a lease term not less than the term of the Bond at a rent sufficient to pay when due the interest and principal on the Bond. The obligation of the Authority to pay principal and interest on the Bond will be limited to rent payments received from the County under the Lease Agreement. The obligation of the County to pay rent under the Lease Agreement 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 evidence of its moral obligation to the repayment of the Bond. The Bond will be secured by an Assignment Agreement to the Bank as the holder thereof. 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 Property.

4. The Board hereby approves the Documents, the Proposal and the form of the Bond in the amount of up to $2,500,000 with a fifteen (15) year amortization at the interest rate of 3.44% per annum (subject to adjustment as described in the Bond for Change in Deductibility), maturing January 15, 2023 with such changes, including but not limited to changes in the amounts, dates, payment dates and rates as may be approved by the officer executing them whose signatures shall be conclusive evidence of his approval of the same.

5. The Chairman or Vice Chairman of the Board of Supervisors, or either of them, and the County Administrator and Clerk of the Board of Supervisors are each hereby authorized and directed to execute the Documents and such other instruments and documents as are necessary to create and perfect a complete assignment of the rents and profits due or to become due in favor of the Bank, to issue the Bond and to lease the Property.

6. 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 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 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 the Bond.

7. 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.

8. 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 issuance and sale of the Bond, the refunding of the Outstanding 1997C Bonds and the 1995 Lease and the undertaking of the acquisition, design, construction, renovation, equipping and furnishing of the Project are hereby approved, ratified and confirmed.

9. 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 Bond, the refunding of the Outstanding 1997C Bonds and the 1995 Lease or the acquisition, design, construction, renovation and equipping of the Project or the lease of the Property.

10. Nothing in this Resolution, the Bond or any documents executed or delivered in relation thereto 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 Bond except from payments made by or on behalf of the County under the Lease Agreement pursuant to annual appropriation thereof in accordance with applicable law.

11. The County hereby designates the Bond in the amount of up to $2,500,000 as a "qualified tax-exempt obligation" for the purpose of Section 265(b)(3) of the Code, and allocates to the Authority in relation to the issuance of the Bond, up to $2,500,000 of its allocation of "qualified tax-exempt obligations" for the purpose of Section 265(b)(3) of the Code. The County has not issued, and does not reasonably anticipate (nor do any of its subordinate entities reasonably anticipate) issuing more than $10,000,000 in qualified tax exempt obligations during calendar year 2008 and the County (and any of its subordinate entities) will not designate more than $10,000,000 of qualified tax-exempt obligations pursuant to Section 265(b)(3) of the Code during such calendar year.

12. The Board on behalf of the County hereby designates the Bond as eligible for the "small issuer exception" to the rebate requirements of Section 148(f)(2) and (3) of the Code pursuant to Section 148(f)(D)(vii) of the Code, as the Authority is a subordinate entity of the County under Section 148(f)(4)(D) of the Code and the County is a governmental unit with general taxing powers, no bond which is a part of the Bond will be a private activity bond, 95% or more of the net proceeds of the Bond are to be used for local governmental activities of the Authority and the County, and the aggregate face amount of all tax-

exempt bonds, excluding private activity bonds to be issued by the County and the Authority during the calendar year 2008 is not reasonably expected to exceed $5,000,000 increased by the lesser of $10,000,000 attributable to financing the construction of public school facilities within the meaning of Section 148(f)(D)(vii) of the Code or so much of the aggregate face amount of bonds as are attributable to financing the construction of public school facilities within the meaning of Section 148(f)(D)(vii) of the Code. The Board on behalf of the County hereby allocates to the Authority up to $2,500,000 of its small issuer size limitation for the calendar year 2008 to the Bond for purposes of Section 148(f)(4)(D) of the Code.

13. The Board hereby declares, in accordance with U.S. Treasury Regulation Section 1.150-2, as amended from time to time, the County's intent to reimburse the County with the proceeds of the Bond for expenditures with respect to the Project, made on or after the date which is no more than 60 days prior to the date of the adoption of this Resolution. The County reasonably expects that it will reimburse the expenditures with the proceeds of the Bond. The maximum principal amount of the Bond expected to be issued for the Project is $2,500,000.

14. The County Director of Finance and County Treasurer are each hereby authorized to invest proceeds of the Bond, as appropriate, in the State Non-Arbitrage Program.

15. This resolution shall take effect immediately.

Adopted this 14th day of April, 2008.

John A. Budesky County Administrator	James H. Burrell James H. Burrell Chairman

CERTIFICATION OF ADOPTION OF RESOLUTION

The undersigned Clerk of the Board of Supervisors of the County of New Kent, Virginia hereby certifies that the Resolution set forth above was adopted during an open meeting on April 14, 2008, by the Board of Supervisors with the following votes:

Aye: Evelyn, Sparks, Burrell, Trout & Davis

Nay: none

Abstentions: none

Signed this 21st day of April, 2008.

By: ______________________
Clerk, Board of Supervisors

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