

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

**R-43-14**

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 29<sup>th</sup> day of October, 2014:

<u>Supervisor:</u>	<u>Vote:</u>
W.R. Davis, Jr.	Aye
C. Thomas Tiller, Jr.	Aye
James H. Burrell	Aye
Ron Stiers	Aye
Thomas W. Evelyn	Aye

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

**RESOLUTION OF BOARD OF SUPERVISORS OF THE  
COUNTY OF NEW KENT, VIRGINIA  
APPROVING LEASE REFINANCING OF  
VARIOUS PUBLIC CAPITAL IMPROVEMENTS**

**WHEREAS**, the County of New Kent, Virginia (**the “County”**) and the Economic Development Authority of New Kent County, Virginia, (**the “EDA”**) have previously entered into an agreement related to a lease revenue financing of certain County capital projects, and to accomplish such financing the EDA has previously issued its \$49,725,000 Lease Revenue Bonds (School and Governmental Projects) Series 2006 (**the “Prior Bonds”**) on behalf of the County; and

**WHEREAS**, the proceeds of the Prior Bonds were used to finance a portion of the costs of the design, acquisition, construction and equipping of (i) a new County high school, (ii) renovations to Watkins Elementary School in the County, (iii) a new County Sheriff’s facility and (iv) renovations to the County Courthouse Building (**the “Project”**) and provide for the payment of the issuance costs of the Prior Bonds; and

**WHEREAS**, the Prior Bonds are subject to redemption at the option of the County and the Board of Supervisors of the County (**the “Board”**) wishes to advance refund all of the Prior Bonds (**the “Refunded Bonds”**) to achieve debt service savings for the benefit of the County, and the Board has determined that it is in the best interest of the County to enter into a lease

financing arrangement to refund the Refunded Bonds, subject to the terms and conditions herein; and

**WHEREAS**, the Board has the power to lease and acquire by lease essential real property and personal property consisting of the new County high school (**the "Leased Property"**); and

**WHEREAS**, the Project and the Leased Property are essential to the governmental functions of the County and the Board reasonably expects the Project and the Leased Property to continue to be essential to the governmental functions of the County for a period not less than the terms of the Prime Lease (as defined below) and the Local Lease Acquisition Agreement and Financing Lease (as defined below); and

**WHEREAS**, the Board proposes to enter into (a) the Prime Lease and the Local Lease Acquisition Agreement and Financing Lease with Virginia Resources Authority ("**VRA**") and the New Kent School Board (**the "School Board"**), as applicable and (b) related documents in connection with refunding the Prior Bonds; and

**WHEREAS**, to assist in providing refunding of the Refunded Bonds, VRA intends to (a) issue its Series 2014 VRA Bonds (**as more particularly defined in the below defined Local Lease Acquisition Agreement and Financing Lease, the "VRA Bonds"**) and, subject to VRA credit approval, to make available a portion of the proceeds to the County to refund the Refunded Bonds; (b) acquire a leasehold interest in the Leased Property pursuant to the terms of the Prime Lease; and (c) lease the Leased Property to the County pursuant to the terms of the Local Lease Acquisition Agreement and Financing Lease (**collectively, the "Lease Obligations"**); and

**WHEREAS**, the County has submitted its application to VRA to advance refund a portion of the Prior Bonds and to undertake the Lease Obligations; and

**WHEREAS**, the Local Lease Acquisition Agreement and Financing Lease shall indicate that the County agrees to undertake the Lease Obligations on terms, determined by VRA to be fair and accepted by the County that, subject to VRA's Purchase Price Objective (as defined below) and market conditions, achieves an aggregate net present value debt service savings of not less than 3% of the par amount of the Refunded Bonds (**the "Targeted Savings"**);

**WHEREAS**, VRA has advised the County that the sale date of the VRA Bonds is tentatively scheduled for December 10, 2014 but may occur, subject to market conditions, at any time between December 1 and December 17, 2014 (**the "VRA Sale Date"**), and that VRA's objective is to pay the County an amount which, in VRA's judgment, reflects the market value of the Lease Obligations under the Local Lease Acquisition Agreement and Financing Lease (**the "Purchase Price Objective"**), taking into consideration such factors as the purchase price received by VRA for the VRA Bonds, the underwriters' discount and other issuance costs of the VRA Bonds, and other market conditions relating to the sale of the VRA Bonds;

**WHEREAS**, the Local Lease Acquisition Agreement and Financing Lease shall provide that the aggregate total principal components of Lease Obligations will not exceed the parameters set forth herein;

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

- A. Prime Lease, among the County, the School Board and VRA, dated as of December 1, 2014 conveying certain interests in the Leased Property to VRA **(the “Prime Lease”)**;
- B. Local Lease Acquisition Agreement and Financing Lease, among the County, the School Board and VRA, dated as of December 1, 2014 (i) providing for a portion of the proceeds of the sale of the VRA Bonds to be provided by VRA to the County and (ii) conveying to the County and the School Board a leasehold interest in the Leased Property **(the “Local Lease Acquisition Agreement and Financing Lease”)**; and
- C. Leasehold Deed of Trust and Security Agreement, between VRA and certain deed of trust trustees to be named therein, dated as of December 1, 2014 regarding VRA’s leasehold interest in the Leased Property **(the “Leasehold Deed of Trust”)**.

**NOW, THEREFORE, BE IT RESOLVED, THAT:**

1. It is hereby found and determined that the terms of the Basic Documents in the respective forms presented to this meeting and incorporated in this Resolution are in the best interests of the County for the refunding of the Prior Bonds.

2. The Basic Documents and related financing documents are hereby approved in substantially the respective forms presented to this meeting. The Chairman, Vice-Chairman, County Administrator and any officer of the Board who shall have power generally to execute contracts on behalf of the Board be, and each of them hereby is, authorized to execute, acknowledge, consent to and deliver, as appropriate, the Basic Documents and related financing documents and to make revision, amendments and modifications thereto. The actions of the Chairman, the Vice Chairman and the County Administrator, each of whom is authorized to act, shall be conclusive, and no further action shall be necessary on the part of the County.

The final pricing terms of the Local Lease Acquisition Agreement and Financing Lease will be determined by VRA, subject to VRA's Purchase Price Objective and market conditions described in the Recitals hereof; provided, however that (i) the Lease Obligations shall be composed of principal components having a maximum aggregate principal amount of not to exceed \$49,500,000 (**the "Maximum Authorized Principal Amount"**), (ii) the aggregate net present value debt service savings resulting from refunding of the Refunded Bonds shall not be less than the Targeted Savings, and (iii) the Lease Obligations shall be payable over a term expiring not later than February 1, 2029. Subject to the preceding terms, the Board further authorizes VRA to determine the aggregate total of principal and interest components of the Lease Obligations, establish a schedule of Lease Obligations including the dates and amounts and the optional and extraordinary prepayment provisions, if any, of the Lease Obligations, all in accordance with the provisions hereof. The term of the Prime Lease shall not be more than five years longer than the term of the Local Lease Acquisition Agreement and Financing Lease; such term is intended to provide security to VRA in the event of default or non-appropriation by the County, all as more fully set forth in the Local Lease Acquisition Agreement and Financing Lease (or any supplement thereto).

The Chairman, the County Administrator, or either of them and such other officer or officers of the County as either may designate are hereby authorized and directed to enter into the Local Lease Acquisition Agreement and Financing Lease.

As set forth in the Local Lease Acquisition Agreement and Financing Lease, the County agrees to pay such "supplemental interest" and other charges as provided therein, including such amounts as may be necessary to maintain or replenish any VRA Reserve (as defined in the Local Lease Acquisition Agreement and Financing Lease).

Lease payments due under the Local Lease Acquisition Agreement and Financing Lease (**the "Lease Payments"**) shall be payable in lawful money of the United States of America and otherwise comply with the terms set forth in the Local Lease Acquisition Agreement and Financing Lease. The County may, at its option, prepay the principal components of Lease Payments upon the terms set forth in the Local Lease Acquisition Agreement and Financing Lease.

3. The same officers of the Board, and the County Administrator and the County Attorney be, and each of them hereby is, authorized and directed to take all actions and procure, execute and deliver any and all other agreements, financing statements, papers, instruments, title insurance policies, real property surveys and inspections, opinions, certificates, affidavits and other documents, and to do or cause to be done any and all other acts and things necessary or proper for carrying out the purposes and intent of this resolution and the Basic Documents, including the redemption or prepayment of all or a portion of the Prior Bonds and the transfer of interests in the Leased Property. The same officers are authorized and directed to work with the County's financial advisor, Davenport & Company LLC, the County's bond counsel, Sands Anderson PC, and representatives of VRA, including without limitation McGuireWoods LLP, Bond Counsel to VRA, to perform all services and prepare all documentation necessary or appropriate for the execution, delivery and recording, as appropriate, of the Basic Documents. The Chairman or Vice Chairman of the Board and the County Administrator, or any of them, are authorized and directed to execute an escrow deposit agreement in connection with the Prior Bonds (**the "Escrow Agreement"**) between the County and an escrow agent to be appointed by the County Administrator (**the "Escrow Agent"**). The Escrow Agreement shall be in the form approved by the Chairman or Vice Chairman of the Board or the County Administrator, or any of them, in collaboration with the County's bond counsel, the execution thereof by the Chairman or Vice Chairman of the Board or the County Administrator, or any of them, to constitute conclusive evidence of approval of the Escrow Agreement. The Escrow Agreement may provide for the irrevocable deposit of a portion of the Lease Obligation proceeds in an escrow fund which shall be sufficient, when invested in noncallable, direct obligations of the United States Government or comparable open-market securities (**the "Government Obligations"**), or otherwise, to provide for payment of principal of and premium, if any, and interest on the Refunded Bonds; provided, however, that such Lease Obligation proceeds shall be invested in such manner that the VRA Bonds will not be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (**the "Code"**). The Escrow Agent is authorized and directed to execute an initial and final subscription form for the purchase of the Government Obligations.

4. The County represents and covenants that it shall not take or omit to take any action the taking or omission of which would (a) cause the VRA Bonds to be "arbitrage bonds" within the meaning of the Code or (b) otherwise cause interest on any VRA Bonds to be includable in the gross income for Federal income tax purposes of the registered owners thereof under existing law. Without limiting the generality of the foregoing, the County shall comply with any provision of law that may require it at any time to rebate to the United States any part of the earnings derived from the investment of the gross proceeds of the VRA Bonds. The County shall pay any such required rebate from legally available funds.

5. The County covenants that it shall not permit any proceeds derived from the Lease Obligations to be used in any manner that would result in (a) 10% or more of such proceeds being used in a trade or business carried on by any person other than a governmental unit, as provided in Section 141(b) of the Code, provided that no more than 5% of such proceeds may be used in a trade or business unrelated to the County's use of the Project, (b) 5% or more of such proceeds being used with respect to any "output facility" (other than a facility for the furnishing of water), within the meaning of Section 141(b)(4) of the Code, or (c) 5% or more of such proceeds being used directly or indirectly to make or finance loans to any persons other than a governmental unit, as provided in Section 141(c) of the Code; provided, however, that if the County receives an opinion of nationally recognized bond counsel that compliance with any such covenant is not required in order to prevent the interest on the VRA Bonds from being includable in the gross income for Federal income tax purposes of the registered owner thereof under existing law, the County need not comply with such covenant to the extent provided in such opinion.

6. Such officers of the County as may be requested are authorized and directed to execute and deliver a tax compliance agreement in relation to the Lease Obligations (**the "Tax Compliance Agreement"**) in the form approved by the Chairman or Vice Chairman of the Board or the County Administrator, or any of them, in collaboration with the County's bond counsel, with such completions, omissions, insertions and changes as may be approved by the officers of the County executing such Tax Compliance Agreement, whose approval shall be evidenced conclusively by the execution and delivery thereof.

7. The undertaking by the County under the Local Lease Acquisition Agreement and Financing Lease to make Lease Payments shall be a limited obligation of the County, payable solely from funds to be appropriated by the Board from time to time for such purpose and shall not constitute a debt of the County within the meaning of any constitutional or statutory limitation or a pledge of the faith and credit of the County beyond any fiscal year for which the Board has lawfully appropriated from time to time. Nothing herein or in the Lease Obligations shall constitute a debt of the County within the meaning of any constitutional or statutory limitation or a pledge of the faith and credit or taxing power of the County.

8. The Board believes that funds sufficient to make payment of all amounts payable under the Lease Obligations can be obtained. While recognizing that it is not empowered to make any binding commitment to make such payments beyond the current fiscal year, the Board hereby states its intent to make annual appropriations for future fiscal years in amounts sufficient to make all such payments and hereby recommends that future Boards do likewise during the term of the Lease Obligations. The Board directs the County Administrator, or such other officer who may be charged with the responsibility for preparing the County's annual budget, to include in the budget request for each fiscal year during the term of the Lease Obligations an amount sufficient to pay all amounts coming due under the Lease Obligations during such fiscal year. As soon as practicable after the submission of the County's annual budget to the Board, the County Administrator is authorized and directed to deliver to VRA evidence that a request for an amount sufficient to make the payment of all amounts payable under the Lease Obligations has been made. Throughout the term of the Lease Obligations, the County Administrator shall deliver to VRA within 30 days after the adoption of the budget for each fiscal year, but not later than July 1, a certificate stating whether an amount equal to the Lease Payments and any other

amounts due under the Lease Obligations which will be due during the next fiscal year has been appropriated by the Board in such budget. If at any time during any fiscal year of the County, the amount appropriated in the County's annual budget in any such fiscal year is insufficient to pay when due the amounts payable under the Lease Obligations, the Board directs the County Administrator, or such other officer who may be charged with the responsibility for preparing the County's annual budget, to submit to the Board at the next scheduled meeting, or as promptly as practicable but in any event within 45 days, a request for a supplemental appropriation sufficient to cover the deficit.

9. The County authorizes and consents to the inclusion of information with respect to the County to be contained in VRA's Preliminary Official Statement and VRA's Official Statement in final form, both prepared in connection with the sale of the VRA Bonds, a portion of the proceeds of which will be used to purchase the Lease Obligations. If appropriate, such disclosure documents shall be distributed in such manner and at such times as the Chairman of the Board, the Vice Chairman of the Board or the County Administrator, each of whom is authorized to act, shall determine. The Chairman of the Board, the Vice Chairman of the Board or the County Administrator, each of whom is authorized to act, are authorized and directed to take whatever actions are necessary and/or appropriate to aid VRA in ensuring compliance with Securities and Exchange Commission Rule 15c2-12.

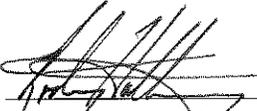
10. The recitals to this resolution are hereby incorporated by reference and are declared to be findings of the Board in connection with its decision to refund the Prior Bonds.

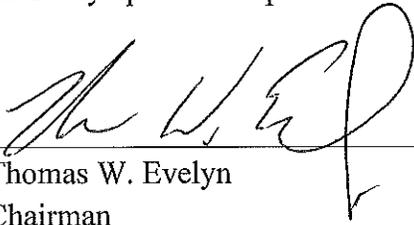
11. Nothing in this Resolution, the Basic Documents or other related documents shall constitute a debt or a pledge of the faith and credit of the County, and the County shall not be obligated to make any payments under the Basic Documents except from funds that may be appropriated by the Board.

12. All acts of the officers, agents and representatives of the County that are in conformity with the purposes and intent of this resolution and in furtherance of the leasing of the Leased Property by the County to finance the refunding of the Prior Bonds are hereby approved, ratified and confirmed.

13. Any authorization herein to execute a document shall include authorization to deliver it to the other parties thereto, to record such document where appropriate and to pay from County funds all appropriate recording fees, taxes and related charges.

14. This Resolution shall be effective immediately upon its adoption.

  
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Rodney A. Hathaway  
County Administrator

  
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Thomas W. Evelyn  
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 October 29, 2014, by the Board of Supervisors with the following votes:

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

Nay:

Abstentions:

Absent:

Signed this 29<sup>th</sup> day of October, 2014.

By:  \_\_\_\_\_  
          Clerk, Board of Supervisors