

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

O-03-06

At the regular meeting of the Board of Supervisors of the County of New Kent in the Boardroom of the County Administration Building in New Kent, Virginia, on the 9th day of May, 2006:

Present:	Vote:
Mark E. Hill	Aye
James H. Burrell	Abstain
Stran L. Trout	Aye
W. R. Davis, Jr.	Aye
David M. Sparks	Aye

Motion was made by Mr. Trout, which carried 4:0 with 1 abstention, to adopt the following Ordinance:

**ORDINANCE ESTABLISHING A SPECIAL ASSESSMENT FOR THE
FARMS OF NEW KENT COMMUNITY DEVELOPMENT AUTHORITY
AND AUTHORIZING A MEMORANDUM OF UNDERSTANDING
WITH THE COMMUNITY DEVELOPMENT AUTHORITY**

WHEREAS, the Board of Supervisors of New Kent County, Virginia (the "Board") created The Farms of New Kent Community Development Authority (the "CDA") by Ordinance enacted December 12, 2005 (the "Ordinance"); and,

WHEREAS, the CDA has requested that the Board establish a special assessment on property within the CDA District; and,

WHEREAS, the Board proposes to set forth certain agreements with the CDA and the owners of the land within the CDA (collectively, the "Landowner") pursuant to a Memorandum of Understanding among the Board, the Landowner, the developer and the CDA (the "Memorandum of Understanding"); and,

WHEREAS, the CDA proposes to issue its bonds (the "Bonds") to finance certain improvements within the CDA District; and

WHEREAS, the establishment of a special assessment on property within the CDA District and the actions contemplated by the Memorandum of Understanding will benefit the citizens of the County by promoting increased employment opportunities, a strengthened economic base and increased tax revenues and additional business opportunities not currently available in the local area.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF NEW KENT COUNTY, VIRGINIA:

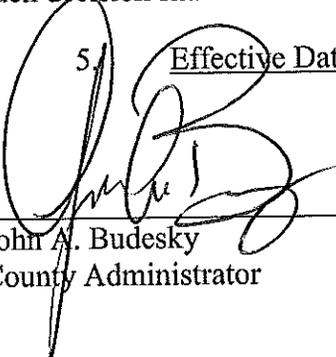
1. Approval of Memorandum of Understanding. The Memorandum of Understanding is approved in substantially the form presented to the Board at this meeting, with such changes and corrections (including, without limitation, changes in the date thereof) that do not materially adversely affect the County's interests as may be approved by the County Administrator or the Chairman of the Board of Supervisors, whose approval shall be evidenced conclusively by the execution and delivery of the Memorandum of Understanding. The County Administrator and the Chairman of the Board of Supervisors, or either of them, is authorized and directed to execute and deliver the Memorandum of Understanding.

2. Special Assessment. By agreement between the Landowner and the Board pursuant to the Memorandum of Understanding, special assessments to pay the costs of public improvements to benefit property within the CDA District are hereby established and apportioned in accordance with the Rate and Method of Apportionment of Special Assessments attached hereto as **Exhibit A**. The CDA shall cause notice of the special assessments to be reported to the County's Treasurer or other County official responsible for the collection of taxes. The special assessments shall be liens on the taxable real property in the CDA District in accordance with the provisions of Virginia Code Sections 15.2-2404 et. seq.

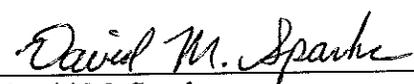
3. Subsequent Resolution. The Board may make such additional changes or amendments to the Memorandum of Understanding as it determines to be necessary or appropriate by subsequent resolution.

4. Severability. If any part, section, clause or phrase of this Ordinance, or any individual assessment levied hereby, is declared to be unconstitutional or invalid for any reason, such decision shall not affect the validity of any other portion hereof or assessment hereunder.

5. Effective Date. This Ordinance shall be effective immediately.



John A. Budesky
County Administrator



David M. Sparks
Chairman

*FARMS OF NEW KENT COMMUNITY DEVELOPMENT AUTHORITY
NEW KENT COUNTY, VIRGINIA*

**Rate And Method of Apportionment
Of Special Assessment**

A. INTRODUCTION

A Special Assessment shall be imposed and the Special Assessment or an Annual Installment of the Special Assessment shall be collected on real property within the Farms of New Kent CDA through the application of the procedures described below. The Board of Directors of the CDA or their designee shall make all determinations in this Rate and Method of Apportionment of Special Assessment unless stated otherwise.

B. DEFINITIONS

The terms used herein shall have the following meanings:

"**Act**" means the Virginia Water and Waste Authorities Act, beginning with §15.2-5100 *et seq.* of the Code of Virginia, 1950, as it may be amended from time to time.

"**Administrative Expenses**" means the following costs directly related to the administration of the CDA: the actual costs of computing the Annual Installments; the actual costs of collecting the Annual Installments (whether by the County or otherwise); the actual costs of remitting the Annual Installments to the Trustee; the actual costs of the Administrator and Trustee (including legal counsel) in the discharge of their duties; the costs of the CDA of complying with arbitrage rebate requirements; the costs of the CDA of complying with securities disclosure requirements; and any other costs of the CDA in any way related to the administration and operation of the CDA, including, without limitation, the costs of official meetings of the CDA, the costs of legal counsel and other consultants and advisors, and costs related to commencing foreclosure and pursuing collection of delinquent Annual Installments.

"**Administrator**" means the official or designee of the CDA who shall be responsible for determining the Annual Revenue Requirement and such other responsibilities as provided herein, in the Bond Indenture, or by the Board of Directors.

"**Annual Installment**" means the portion of the Special Assessment as set forth in the Special Assessment Roll due and payable each Assessment Year. The Annual Installment for each year as shown in the Special Assessment Roll may be revised as long as the total of the Annual Installments as shown in the Special Assessment Roll is not exceeded. The Annual Installment shall be allocated to Assessed Property in proportion to the Special Assessment allocated to each Parcel as set forth in Section C hereof.

“Annual Installment Rate” means, for any Assessment Year, a percentage equal to the Annual Revenue Requirement divided by the current total of the Principal Portion of the Special Assessment.

“Annual Credit” means, for each Assessment Year, for each Parcel, the (i) the Annual Installment for the Parcel for that year (ii) less the Annual Payment for the Parcel for that Assessment Year.

"Annual Payment" shall be the portion of the Annual Installment to be collected each Assessment Year as determined by the provisions of Section E.

"Annual Revenue Requirement" means, for any Assessment Year, the sum of the following: (1) debt service on the Bonds to be paid from the Annual Installments; (2) periodic costs associated with such Bonds, including but not limited to, rebate payments and credit enhancement on the Bonds; and (3) Administrative Expenses; less (4) any credits applied under the Bond Indenture, such as interest earnings on any account balances, and (5) any other funds available to the CDA that may be applied to the Annual Revenue Requirement.

"Assessed Property" means, for any Assessment Year, Parcels within the CDA other than Non-Benefited Property.

"Assessment Year" means the annual cycle in which the Annual Installment, Annual Credit, and Annual Payment is determined each year for each Parcel, the Annual Payment is collected, and these revenues are applied to the payments on the Bonds each year.

"Board" means the Board of Supervisors of the County.

"Board of Directors" means the Board of Directors of the CDA.

"Bond Indenture" means the indenture or similar document setting forth the terms and other provisions relating to the Bonds, as modified, amended and/or supplemented from time to time.

"Bonds" means any bonds or other debt, including refunding bonds, whether in one or more series, issued by or on behalf of the CDA under the Act and to be repaid with the Special Assessments.

“Building Square Footage” or **“BSF”** means the actual or, for property not yet developed, the estimated leasable building area as shown on the building permit, architectural plans or other available documents, as estimated by the Administrator.

"County" means New Kent County, Virginia.

“Equivalent Units” means, for Land Use Class 1, the number of units that is or may be built on a Parcel, and for Land Use Class 2, the Building Square Footage in 1,000s of square feet, multiplied by the factors for each land use class shown below, which represent an allocation of the costs of the Public Improvements funded by the Bonds:

Land Use Class 1	1.00 per unit
Land Use Class 2	0.67 per 1,000 BSF

“Land Use Class 1” means Assessed Property used or intended to be used for residential dwelling units, including any ancillary uses thereto.

“Land Use Class 2” means any Assessed Property that is not classified as Land Use Class 1.

“Mandatory Special Assessment Prepayment” shall mean a mandatory prepayment of Special Assessments pursuant to Section J.

"Non-Benefited Property" means Public Property, Owner Association Property, or easements that create an exclusive use for a public utility provider.

“Owner Association Property” means Parcels within the boundaries of the CDA owned by or irrevocably offered for dedication to a property owners’ association (if not used in a trade or business) and available for use by property owners in general.

"Parcel" means a lot or parcel with a tax map identification number assigned by the County for real property tax purposes.

“Principal Portion of the Special Assessment” means the portion of the Special Assessments equal to the outstanding principal amount of the Bonds. The Principal Portion of the Special Assessments shall be allocated to Assessed Property proportionate to the Special Assessments as set forth in Section C hereof. The Principal Portion of the Special Assessments may be increased for refunding bonds or other reasons as long as the total of the Special Assessments are not increased as set forth in the Special Assessment Roll.

"Public Improvements" means those improvements that the CDA has been authorized to provide to be paid with the Special Assessment.

"Public Property" means, for any Assessment Year, property within the boundaries of the CDA owned by or irrevocably offered for dedication to the federal government, Commonwealth of Virginia, the County, the CDA, or any other public agency, political subdivision, or entity, whether in fee simple or any other property ownership interest that creates a substantially exclusive use in the property.

“Special Assessment” means the Special Assessment on each parcel, including both the Principal Portion of the Special Assessment and the Annual Installment to be collected

each year (which amount also includes the Principal Portion of Special Assessment), as shown on the Special Assessment Roll, as calculated by the Administrator and confirmed by the Board of Directors pursuant to the provisions of Section C.1., as it may be reapportioned upon the subdivision of any Parcel according to the provisions of Section C.2. and as it may be reduced according to the provisions of Sections C.3. and C.4.

“Special Assessment Roll” means the document attached hereto as Appendix A-1 and A-2, as updated from time to time by the Board of Directors of the CDA in accordance with the procedures set forth herein.

"Trustee" means the fiscal agent or trustee as specified in the Bond Indenture, including a substitute fiscal agent or trustee.

C. SPECIAL ASESSMENTS

1. The Amount of the Special Assessment

The total of the Special Assessments, the Principal Portion of the Special Assessments, and the Annual Installments shall not exceed the amounts set forth in the Special Assessment Roll as it may be updated at the issuance of the Bonds and from time to time as provided for herein. The Special Assessment for each Parcel shall be set by the Board of Directors prior to the issuance of the Bonds and shall not be changed thereafter except pursuant to the provisions of herein. The Board of Directors shall set the Special Assessment on each Parcel according to the following formula:

$$A = B \times (C \div D)$$

Where the terms have the following meanings:

A = the Special Assessment for a Parcel

B = the total of the Special Assessments for all Parcels as shown in the Special Assessment Roll

C = the Equivalent Units of a Parcel

D = the sum of the Equivalent Units of all of the Parcels in the CDA.

Upon a change in the estimate of the total of the Equivalent Units of a Parcel, the Board of Directors may reapportion the Special Assessment on some or all of the Parcels upon the unanimous request of the owners of the Parcels for which the Special Assessment is to be reapportioned. The reapportionment shall be made according to the following formula:

$$A = (B \div C) \times D$$

Where the terms have the following meanings:

A = the Special Assessment of the Parcel

- B = the Equivalent Units of a Parcel
- C = the total Equivalent Units of all Parcels subject to the reallocation
- D = the total of the Special Assessments for all Parcels subject to the reallocation.

The computation of the Equivalent Units shall be calculated by the Administrator, based on the information available regarding the use of the Parcel, and the estimate of the Administrator shall be final. The Administrator shall use consistent standards in preparing the calculations and shall prepare and keep in the records of the CDA the computations made according to this section.

The total of all Special Assessment shall not be reduced after the issuance of Bonds except as provided below.

2. Reapportionment of Special Assessment Upon the Subdivision of a Parcel

Upon the subdivision of any Parcel, the Special Assessment (including both the Principal Portion of the Special Assessment and the Annual Installments) of the Parcel prior to the subdivision shall be reallocated to each new Parcel in proportion to the Equivalent Units of each Parcel and the Special Assessment for the Parcel prior to the subdivision. The reapportionment of the Special Assessment shall be represented by the formula:

$$A = B \times (C \div D)$$

Where the terms have the following meanings:

- A = the Special Assessment of the Parcel
- B = the Special Assessment of the Parcel prior to the subdivision
- C = the Equivalent Units of a Parcel
- D = the sum of the Equivalent Units of all of the new Parcels of Assessed Property that result from the subdivision.

The computation of the Equivalent Units shall be calculated by the Administrator based on the information available regarding the use of the Parcel. The Administrator shall use consistent standards in preparing the calculations and shall prepare and keep in the records of the CDA the computations made according to this section.

In all cases, the Special Assessment after the subdivision of a Parcel shall equal the sum of the Special Assessment before the subdivision of the Parcel.

3. Reduction in the Special Assessment

a. Reduction in Costs

If the Board of Directors resolves that the total actual costs to be incurred by the CDA, including the costs of the Public Improvements and the costs related to the issuance and

repaying of Bonds, including refunding bonds, and Administrative Expenses are less than the total amount of the Special Assessment, then the Board of Directors shall reduce the Special Assessment (including the Principal Portion of the Special Assessment and the Annual Installment, as applicable) such that the sum of Special Assessment equals the total costs incurred or to be incurred. The Special Assessment shall be reduced for every Parcel of Assessed Property in the CDA in the following manner. First, if the Public Improvements were not completed and any Parcels were not fully improved by the Public Improvements, the Special Assessment shall be reduced on these Parcels to represent the Public Improvements made to these Parcels compared to the Public Improvements made to the other Parcels, taking into consideration the use of the Public Improvements by each land use class, as represented by the Equivalent Unit factors and the Public Improvements actually provided. The Board of Directors may provide for the reduction in the Special Assessment to by equal percentage for each Parcel or some other means if the Board of Directors determines this would be the most fair or practical method of reducing the Special Assessment. Second, if additional reductions are to be made in the Special Assessment, the Special Assessment shall be reduced by an equal percentage such that the sum of the resulting Special Assessment for every Parcel equals the actual costs to be incurred by the CDA.

The Special Assessment as reduced according to the provisions of this section shall not be reduced to an amount that is less than the outstanding amount of the previously issued Bonds, debt service on the outstanding bonds, and estimated Administrative Expenses.

b. Repayment of the Bonds

The Special Assessment applicable to any Parcel shall be reduced each year as Bonds are repaid. The Principal Portion of the Special Assessment shall be reduced for the principal portion of the Annual Installment collected from each Parcel. The Special Assessment shall also be reduced for the Annual Installment collected or foregone (that is, the portion of the Annual Installment that exceeded the Annual Revenue Requirement and is not to be collected). The Administrator may adjust the amortization of the Special Assessment in a manner that is consistently applied to all of the Parcels in the CDA for the purpose of causing the Special Assessment to equal zero once the Bonds are fully repaid.

D. METHOD OF DETERMINING THE ANNUAL PAYMENT TO BE COLLECTED EACH ASSESSMENT YEAR

Commencing with the Annual Payment to be collected in 2007 and for each following Assessment Year, the Administrator shall calculate and the Board of Directors shall confirm the Annual Payment on each Parcel. The Annual Payment for each Parcel shall be equal to the following formula:

$$A = B \times C$$

Where the terms have the following meaning:

- A = the Annual Payment for a Parcel
- B = the Principal Portion of the Special Assessment for the Parcel
- C = the Annual Assessment Rate for the Assessment Year for which the calculation is being made

The Annual Payment for a Parcel may not exceed the Annual Installment for the Parcel. The Annual Payment as calculated shall be collected from each Parcel of Assessed Property in conformance with Section F. The aggregate amount of the Annual Payment on all of the Parcels in any year shall equal the Annual Revenue Requirement for such Assessment Year.

In the event a Parcel is subdivided into new Parcels in an Assessment Year prior to the payment of the Annual Payment, and a portion of the Parcel becomes Non-Benefited Property, the Annual Payment shall be collected on the Parcel or Parcels of Assessed Property based on the allocation of the Special Assessment pursuant to Section C.

E. UPDATING THE ASSESSMENT ROLL

The Board of Directors shall update Special Assessment Roll each Assessment Year to reflect (i) the current Parcels in the CDA, (ii) the Special Assessment allocated for each Parcel, including any adjustments to the Special Assessment as provided for in Section C, (iii) the Principal Portion of the Special Assessment for each Parcel; (iv) the Annual Installment of the Special Assessment for each Parcel, (v) the Annual Credit and Annual Payment to be collected from each Parcel for the Assessment Year, (vi) prepayments of the Special Assessment, and (vii) termination of the Special Assessment.

F. MANNER OF COLLECTION OF THE ANNUAL INSTALLMENT

Annual Installments shall be collected in the same manner and at the same time as regular property taxes of the County and shall be subject to the same penalties, procedures, sale, and lien priorities in case of delinquencies as are provided for regular property taxes of the County. The CDA shall notify the County of the amount of the Annual Installment to be collected on each Parcel each Assessment Year in a timely manner to allow the collection of the Annual Installment by the County. The Board of Directors may provide for other means of collecting the Annual Installments, to the extent permitted under the Act.

G. ADMINISTRATIVE REVIEW

An owner of a lot claiming that a calculation error has been made in the update of Special Assessment Roll in any Assessment Year shall send a written notice describing the error to the Board of Directors (or the Administrator if delegated to review appeals pursuant to this section by the Board of Directors) not later than thirty (30) days after the date any amount which is alleged to be incorrect is due prior to seeking any other remedy. The Board of Directors (or the Administrator if so designated by the Board of Directors) shall

promptly review the notice, and if necessary, meet with the property owner, consider written and oral evidence regarding the alleged error and decide whether, in fact, such a calculation error occurred.

If the Board of Directors (or the Administrator if so designated by the Board of Directors) determines that a calculation error has been made that requires Special Assessment Roll to be modified or changed in favor of the property owner, a cash refund may not be made for any amount previously paid by the owner (except for the final Assessment Year during which the Special Assessment shall be collected or if the Trustee determines there are sufficient funds available to meet the Annual Revenue Requirement for an Assessment Year), but an adjustment shall be made in the amount of the Annual Installment Assessment to be paid in the following Assessment Year. The decision of the CDA or its designee regarding a calculation error relating to the Special Assessment Roll shall be conclusive as long as there is a reasonable basis for the determination.

H. TERMINATION OF ANNUAL INSTALLMENT

Except for any delinquent Annual Installments and related penalties and interest, Annual Installments shall be collected for a term not to exceed the term of all of the Bonds. In no event shall the Annual Installment be collected beyond the period in which the Special Assessment is fully paid as provided for herein.

After the retirement of all Bonds, and the collection of any delinquent Annual Installments, penalties and interest, the CDA shall provide each owner of a Parcel a recordable document (or provide for the recordation of such document) evidencing the termination of the imposition and collection of Special Assessment.

I. PREPAYMENT OF SPECIAL ASSESSMENT

The Special Assessment on any Parcel may be fully paid at any time, the Special Assessment reduced to zero, and the obligation to pay the Annual Installments permanently satisfied by payment of an amount calculated according to the following provisions:

1. A sum equal to the Principal Portion of the Special Assessment for the Parcel, as it may have been set, reapportioned or reduced pursuant to the provisions of Sections C.1., C.2., C.3., and C.4; less,
2. A credit for the reserve fund equal to the amount provided for in the Bond Indenture; plus,
3. A sum equal to (a) the amount needed to pay interest on the outstanding Bonds to be redeemed and the investment earnings on the prepayment amount until the Bonds can be called and redeemed, after taking into consideration the Annual Payment paid or to be paid but not accounted for in the calculation of the

Principal Portion of the Special Assessment in Step 1 and (b) expenses of the CDA related to the prepayment.

The amounts calculated in the preceding steps shall be paid to the CDA and shall be distributed by the CDA to pay costs related to the prepayment and according to the Bond Indenture. Upon the payment of such prepayment amount to the CDA, the obligation to pay the Special Assessment shall be deemed to be permanently satisfied, the Special Assessment shall be reduced to zero, the Annual Installment shall not be collected on the Parcel thereafter, and the CDA shall provide to the owner (or cause to be recorded) a recordable notice of the payment of the Special Assessment within a reasonable period of time of receipt of such prepayment amount.

J. MANDATORY PREPAYMENT OF SPECIAL ASSESSMENTS

1. Prepayment of Assessments for Non-Benefited Property

A prepayment of the Special Assessment shall be required on any Parcel that is acquired by an entity that results in the Parcel being classified as Non-Benefited Property, if the Special Assessment may not be reapportioned to a Parcel of Assessed Property pursuant to the provisions of Sections C.1. or C.2. In the event an entire Parcel becomes Non-Benefited Property such that the Special Assessment cannot be reallocated to any other Parcel pursuant to the provisions of Sections C.1 or C.2., the Special Assessment shall become immediately due and payable and shall be collected from proceeds of a sale, condemnation, or other form of compensation for the property or from any other legally available source of funds.

2. Prepayment of Assessments Resulting From a Change in the Equivalent Units

The Assessments shall be prepaid in part upon a reduction of the Equivalent Units to less than 3,000. The Mandatory Prepayment shall be due from the Parcel (or any resultant Parcels) that results in the application of the provisions of this section.

The Mandatory Prepayment shall be calculated as set forth in Section I, with the Principal Portion of the Special Assessment being prepaid for the reduction in the number of Equivalent Units.

The Mandatory Prepayment shall be due prior to the recordation, conveyance, or other action that results in a change to any Parcel that results in a Mandatory Prepayment. The Mandatory Prepayment shall have the same sale and lien priorities as provided for by law for the Assessments.

The Mandatory Prepayment shall not exceed the amount of the outstanding Bonds plus any amounts owed on the Bonds, including accrued interest and redemption fees.

K. AMENDMENTS

Immaterial amendments may be made to this Rate and Method of Apportionment of Special Assessment by the Board of Directors without further notice under the Act and without notice to owners of Assessed Property within the CDA. Immaterial amendments shall be those that (i) clarify or correct minor inconsistencies in the matters set forth herein, (ii) provide for lawful procedures for the collection and enforcement of the Special Assessment and other charges imposed herein so as to assure their efficient collection, and (iii) otherwise improve the ability of the CDA to fulfill its obligations to impose and collect the Special Assessment and charges imposed herein and to make it available for the payment of the Bonds, Administrative Expenses, and other costs of the CDA. No such amendment shall be approved unless and until it has (i) been found and determined that the amendment is necessary and appropriate and does not materially adversely affect the rights of the owners of the Bonds and (ii) received an opinion of a nationally recognized bond counsel to the effect that the amendment is authorized pursuant to the terms of the Bond Indenture and the County ordinance approving the Rate and Method of Apportionment of Special Assessment. Amendments may not be made to this Rate and Method of Apportionment of Special Assessment pursuant to the procedure described above that would increase the total of the Special Assessment or charges as set forth herein.

L. INTERPRETATION OF PROVISIONS

The Board of Directors shall make all interpretations and determinations related to the application of this Rate and Method of Apportionment of Special Assessment, unless stated otherwise herein or in the Bond Indenture, and as long as there is a rational basis for the determination made by the Board of Directors, such determination shall be conclusive.

M. SEVERABILITY

If any section or part of a section of this "Rate and Method of Apportionment of Special Assessment" is declared invalid or unenforceable, the validity, force, and effect of any other section or part of a section herein shall not thereby be affected or impaired unless such other section or part of a section herein is wholly or necessarily dependent upon the section or part of a section so held to be invalid or unenforceable.