BOARD OF SUPERVISORS
COUNTY OF NEW KENT
VIRGINIA

R-43-16

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 7th day of September, 2016:

Present:	Vote:
Patricia A. Paige	Aye
W.R. Davis, Jr.	Aye
Thomas W. Evelyn	Aye
C. Thomas Tiller, Jr.	Aye
Ronald P. Stiers	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

WHEREAS, the Board of Supervisors **(the "Board of Supervisors")** of the County of New Kent, Virginia **(the "County")** directed Davenport & Company LLC **(the "Financial Advisor")** to prepare a Request for Proposals **(the "RFP")** to obtain financing proposals to (a) refund the outstanding principal amount of the Economic Development Authority of New Kent County, Virginia's $2,800,000 Public Facility Lease Revenue Bond, Series 2007, as amended by an Allonge dated as of July 13, 2012 **(together, the "Outstanding 2007 Bond")** issued to finance the County's human services building and (b) finance a portion of the costs of the design, acquisition, installation and equipping of a new fire station in the County **(the "Project")** to be located in the County;

WHEREAS, the Financial Advisor reviewed responses to the RFP for the refunding of the Outstanding 2007 Bond and the financing of the Project and along with the County's Bond Counsel, Sands Anderson PC, Richmond, Virginia **("Bond Counsel")** and the County Administrator recommends to the Board of Supervisors acceptance of the proposal **(the "Proposal")** from Branch Banking and Trust Company **(the "Lender")** for such financing with interest rates as set forth in such Proposal and subject to such other terms as set forth therein;

WHEREAS, the Board of Supervisors now requests the Economic Development Authority of New Kent County, Virginia **(the "Authority")** to (a) issue, offer and sell its (i) lease revenue bond in an amount of approximately $2,275,000 **(the "2016A Bond")** to provide for the financing of a portion of the cost of the Project, including cost of issuing the 2016A

Bond, and its (ii) lease revenue refunding bond in an amount of approximately $1,950,000 **(the "2016B Bond," and, together with the 2016A Bond, the "Bonds")** to provide for the refunding of the Outstanding 2007 Bond, including cost of issuing the 2016B Bond, (b) lease the County's Human Services Building **(the "Leased Property")** from the County for an approximately twenty one year term under a ground lease, and in turn, lease the Leased Property to the County for a term not to exceed the term of the Bonds under a lease agreement with the Authority and, (c) secure the Bonds by an assignment of its rights under such lease agreement (except the right to receive indemnification, to receive notices and to give consents and to receive its administrative expenses) under an assignment agreement, which is to be acknowledged and consented to by the Lender and the County, all in accordance with a bond purchase agreement;

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 October 1, 2016, between the County and the Authority conveying to the Authority a leasehold interest in the Leased Property described therein **(the "Ground Lease")**;

b. a Lease Agreement, dated as of October 1, 2016, between the Authority and the County **(the "Lease Agreement")** conveying to the County a leasehold interest in such Leased Property;

c. a Bond Purchase Agreement, dated as of October 1, 2016 among the Authority, the County and the Lender, pursuant to which the Bonds are to be issued **(the "Bond Purchase Agreement")**;

d. an Assignment Agreement, dated as of October 1, 2016 between the Authority and the Lender, assigning to the Lender 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 **(the "Assignment Agreement")**;

e. a Specimen 2016A Bond; and

f. a Specimen 2016B Bond.

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 cost of the Project, the refunding of the Outstanding 2007 Bond and the issuance of the Bonds, including the Authority's expenses, the fees and expenses of the County, and the fees and expenses of Bond Counsel, the County Attorney, the Financial Advisor and the Lender, and other fees and expenses related thereto, for the sale of the Bonds, shall be paid from the proceeds therefrom or other funds of the County. If for any reason the Bonds are 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 Board of Supervisors hereby instructs the Financial Advisor and Bond Counsel to take all such action as necessary or appropriate to conclude the purchase of the Bonds by the Lender.

3. The following plan for financing a portion of the cost of the Project and the refunding of the Outstanding 2007 Bond is approved. The Authority shall use the proceeds from the issuance of the Bonds to provide for the financing on behalf of the County of a portion of the cost of the Project and the refunding of the Outstanding 2007 Bond and to lease the Leased Property from the County for a lease term of approximately twenty-one years and to lease the Leased 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 Bonds. The obligation of the Authority to pay principal and interest on the Bonds 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 its moral obligation to the repayment of the Bonds. The Bonds will be secured by an Assignment Agreement to the Lender as the holder thereof. If the Board of Supervisors exercises its right not to appropriate money for rent payments, the Lender may terminate the Lease Agreement or otherwise exclude the County from possession of the Leased Property. The issuance of the Bond on the terms set forth in a Bond Purchase Agreement is hereby approved.

4. The Board of Supervisors hereby approves the Documents and (a) the form of the 2016A Bond in the principal amount of up to $2,275,000, with a fixed interest rate not to exceed 2.13%, for an amortization of approximately 15 years from its date of issuance, (b) the form of the 2016B Bond in the principal amount of up to $1,950,000, with a fixed interest rate not to exceed 1.84%, for an amortization of approximately 11 years from its date of issuance, subject to other terms as set forth therein 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. The County Administrator or Chairman is hereby authorized to determine the final terms of the Bonds, including, but not limited to the principal amount, maturity and amortization, whose determination shall be conclusive, as evidenced by his execution of such Bonds.

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 Lender, to issue the Bonds, to refund the Outstanding 2007 Bond, to finance the Project and to lease the Leased 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 Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended **(the "Code")** or otherwise cause the interest on the Bonds 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 Bonds.

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 plan of financing, the issuance and sale of the Bonds and the undertaking of the refunding of the Outstanding 2007 Bond and the financing of the Project, are hereby approved and ratified.

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 Bonds or the lease of the Leased Property.

10. Nothing in this Resolution, the Bonds 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 Bonds or the Documents 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 intends that a portion of the Bonds be deemed a "qualified tax-exempt obligation" but to the extent necessary, the County hereby designates, and allocates to the Authority in relation to the issuance of the Bonds, such designation as a "qualified tax-exempt obligation" for the purpose of Section 265(b)(3) of the Code. The County 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 2016 for the benefit of the County and the County (and any of its subordinate entities) will not designate more than $10,000,000 of qualified tax-exempt obligations for the benefit of the County pursuant to Section 265(b)(3) of the Code during such calendar year.

12. The Board of Supervisors on behalf of the County hereby designates to the Bonds 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 Bonds will be a private activity bond, 95% or more of the net proceeds of the Bonds are to be used

for local governmental activities of 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 2016 is not reasonably expected to exceed $5,000,000 increased by the lesser of $10,000,000 or so much of the aggregate face amount of the Bonds as is attributable to financing the construction of public school facilities within the meaning of Section 148(f)(D)(vii). The Board of Supervisors on behalf of the County hereby allocates to the Authority a portion of its small issuer size limitation in the amount of the Bonds for the calendar year 2016 to the Bonds for purposes of Section 148(f)(4)(D) of the Code.

13. In the event the County is unable to close on the issuance of the Bonds before the deadline set forth in the Proposal unless otherwise extended and the terms set forth therein are revised to reflect a later closing date with an increase in interest rates, the parameters set forth in Section 4 hereof may be amended by further action of the Board of Supervisors.

14. This resolution shall take effect immediately.

ADOPTED THIS 7TH DAY OF SEPTEMBER, 2016.

Rodney A. Hathaway
County Administrator

Ronald P. Stiers
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 September 7, 2016, by the Board of Supervisors with the following votes:

Aye:	Patricia A. Paige W.R. Davis, Jr. Thomas W. Evelyn C. Thomas Tiller, Jr. Ronald P. Stiers
Absent:	None
Nay:	None
Abstentions:	None

Signed this 8th day of September, 2016.

By: _____
Clerk, Board of Supervisors