

RESOLUTION APPROVING A PLAN TO REFUND CERTAIN PRIOR BONDS THROUGH THE ISSUANCE OF A SERIES OF REVENUE REFUNDING BONDS BY THE ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA

WHEREAS, the Economic Development Authority of Albemarle County, Virginia (formerly the Industrial Development Authority of Albemarle County, Virginia) (the “Authority”), pursuant to the Industrial Development and Revenue Bond Act (the “Act”), under which it was created, is authorized to exercise all the powers set forth in the Act, which include, among other things, the power to make loans to, among others, a county in furtherance of the purposes of the Act, to finance or refinance facilities for use by, among others, a county, to issue its revenue bonds, notes and other obligations from time to time for such purposes and to pledge all or any part of its revenues and receipts derived from payments received by the Authority in connection with its loans or from any source as security for the payment of principal of and premium, if any, and interest on any such obligations;

WHEREAS, the County Executive of Albemarle County, Virginia (the “County”), working with the County’s Department of Finance and Budget and Davenport & Company LLC, as the County’s financial advisor (the “Financial Advisor”), has identified a potential opportunity for the County to realize debt service savings by refunding all or a portion of the Authority’s outstanding Public Facility Revenue Bonds (Albemarle County Project), Series 2013 (the “2013 Bonds”), the original proceeds of which were loaned to the County to finance and refinance various public facility projects for the benefit of the County;

WHEREAS, pending concurrence by the Board of Supervisors of the County (the “County Board”), the Authority has authorized the issuance of a series of Public Facility Revenue Refunding Bonds (Albemarle County Projects) (the “Bonds”), for the purposes of (a) refunding all or a portion of the outstanding 2013 Bonds (such refunded portion, the “Refunded Bonds”), (b) funding as desired a reserve fund for the Bonds, and (c) paying the related costs of issuance and refunding;

WHEREAS, the Bonds are to be secured by payments appropriated from time to time by the County Board and paid in accordance with the terms of the Financing Agreement (as defined herein);

WHEREAS, there have been circulated prior to this meeting drafts of the following documents (collectively, the “Documents”), proposed in connection with the issuance and sale of the Bonds:

- (a) a form of Supplemental Agreement of Trust, supplementing the Agreement of Trust dated as of March 1, 2003, as previously supplemented (collectively, the “Trust Agreement”), all between the Authority and U.S. Bank Trust Company, National Association, as successor trustee (the “Trustee”), pursuant to which the Bonds are to be issued and which is to be acknowledged and consented to by the County;
- (b) a form of Supplemental Financing Agreement (the “Supplemental Financing Agreement”), supplementing a Financing Agreement dated as of March 1, 2003, as previously supplemented (collectively, the “Financing Agreement”), all between the Authority and the County, pursuant to which the Authority will loan the proceeds of the Bonds to the County and the County will undertake, subject to

appropriation, to make payments to the Authority in amounts sufficient to pay the principal of and premium, if any, and interest on the Bonds and certain other related costs;

- (c) a form of Preliminary Official Statement of the Authority relating to the public offering of the Bonds (the “Preliminary Official Statement”); and
- (d) a form of Continuing Disclosure Agreement (attached as Appendix F to the Preliminary Official Statement), pursuant to which the County agrees to undertake certain continuing disclosure obligations with respect to the Bonds;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF ALBEMARLE COUNTY, VIRGINIA:

1. The County Board hereby finds that the refunding of the Refunded Bonds will be in the best interests of the County and its citizens. The County Board hereby concurs with the following financing plan heretofore authorized by the Authority. The Authority will issue the Bonds and use the proceeds thereof to (a) refund the Refunded Bonds, (b) fund as desired a reserve fund for the Bonds, and (c) pay the related costs of issuance and refunding. Pursuant to the provisions of the Financing Agreement, the County will undertake to make certain Basic Payments and Additional Payments (each as defined in the Financing Agreement) to the Authority in amounts sufficient to amortize the Bonds, to pay the fees or expenses of the Authority and the Trustee and to pay certain other related costs. The obligation of the Authority to pay principal of and premium, if any, and interest on the Bonds will be limited to the Basic Payments and Additional Payments received from the County. The Bonds will be secured by an assignment of the Basic Payments and certain Additional Payments due under the Financing Agreement, all for the benefit of the holders of the Bonds. The undertaking by the County to make Basic Payments and Additional Payments will be subject to the appropriation by the County Board from time to time of sufficient amounts for such purposes. The plan to issue the Bonds and refund the Refunded Bonds shall contain such additional requirements and provisions as may be approved by the County Executive (the “County Executive,” which term as used herein shall also include any Deputy County Executive) and the Chair or Vice-Chair of the Authority.

2. The County Board, while recognizing that it is not empowered to make any binding commitment to make appropriations beyond the current fiscal year, hereby states its intent to make appropriations in future fiscal years in amounts sufficient to make all payments due under the Financing Agreement and hereby recommends that future County Boards do likewise during the term of the Financing Agreement. The County Board hereby confirms that the prior projects to be refinanced are either essential to the efficient operation of the County or important to the welfare or quality of life of the citizens of the County, and the County Board anticipates that such facilities and purposes will continue to be so during the term of the Bonds.

3. The Chair or Vice-Chair of the County Board and the County Executive, any of whom may act, are hereby authorized and directed to execute the Documents to which the County is a signatory, which shall be in substantially the forms circulated prior to this meeting, which forms are hereby approved, with such completions, omissions, insertions and changes not inconsistent with this Resolution as may be approved by the officer signing such Documents. Such officer’s execution and delivery thereof shall constitute conclusive evidence of such officer’s approval of any such completions, omissions, insertions and changes.

4. In making completions to the Supplemental Financing Agreement, the County Executive, in collaboration with the Financial Advisor and the Authority, shall provide for Basic Payments and Additional Payments in amounts equivalent to the payments on the Bonds and certain related costs and expenses, which Bonds shall be sold to the purchaser(s) thereof on terms as shall be satisfactory to the County Executive. The County Board consents to the issuance by the Authority of a series of Bonds pursuant to the provisions of the Trust Agreement; provided that (a) the aggregate principal amount of the Bonds shall not exceed \$21,500,000, (b) the “true” or “Canadian” interest cost of the Bonds shall not exceed 3.50% (taking into account any original issue discount or premium), (c) the Bonds shall mature or be subject to mandatory sinking fund redemption in installments ending not later than December 31, 2033, (d) the Bonds shall be sold to the purchaser(s) thereof at a price not less than 98% of the aggregate principal amount thereof (without taking into account any original issue discount or premium), and (e) the Bonds shall be subject to optional redemption, if at all, at a redemption price not to exceed 102% of their principal amount. The County Executive is also authorized to approve, in collaboration with the Chair or Vice-Chair of the Authority, the timing for the issuance of the Bonds, the determination of the aggregate principal amount of the Bonds (subject to the limit forth in clause (a) above), the maturity schedule (including serial maturities and term maturities for the Bonds) and the redemption provisions, all as the County Executive shall determine to be in the best interests of the County.

5. The County Board hereby approves the following terms of sale for the Bonds:

(a) The Bonds shall be sold through a competitive sale or a negotiated sale, as the County Executive, in collaboration with the Financial Advisor and the Authority, determines to be in the best interests of the County.

(b) If the County Executive determines that the Bonds shall be sold by competitive sale, the County Executive is hereby authorized to receive bids for the Bonds and award the Bonds to the bidder providing the lowest “true” or “Canadian” interest cost, subject to the limitations set forth in Section 4. Following a competitive sale, the County Executive shall, in collaboration with the Chair or Vice-Chair of the Authority, file a certificate with the Authority and the County Board setting forth the final terms of the Bonds. The actions of the County Executive, in collaboration with the Chair or Vice-Chair of the Authority, in selling the Bonds by competitive sale shall be conclusive, and no further action with respect to the sale and issuance of the Bonds shall be necessary on the part of the County Board.

(c) If the Bonds are sold by competitive sale, the County Executive, in collaboration with the Financial Advisor, is hereby authorized and directed to take all proper steps to advertise the Bonds for sale pursuant to the terms of a Notice of Sale, the form of which shall be prepared by the Financial Advisor and the County’s bond counsel and approved by the County Executive.

(d) If the County Executive determines that the Bonds shall be sold by negotiated sale, the County Executive is hereby authorized, in collaboration with the Financial Advisor and the Authority, to choose one or more investment banks or firms to serve as underwriter(s) for the Bonds and to execute and deliver to the underwriter(s) a bond purchase agreement (the “Bond Purchase Agreement”) in a form to be approved by the County Executive in consultation with the County Attorney and the County’s bond counsel. The execution of the Bond Purchase Agreement by the County Executive shall constitute conclusive evidence of his approval thereof. Following a negotiated sale, the County Executive shall file a copy of the Bond Purchase Agreement with the

records of the County Board. The actions of the County Executive in selling the Bonds by negotiated sale to the underwriter(s) shall be conclusive, and no further action with respect to the sale and issuance of the Bonds shall be necessary on the part of the County Board.

6. The Preliminary Official Statement in the form circulated prior to this meeting is approved with respect to the information contained therein (excluding information pertaining to the Authority). The County hereby authorizes distribution of the Preliminary Official Statement to prospective purchasers of the Bonds in a form deemed to be “final” (within the meaning of Rule 15c2-12 of the Securities and Exchange Commission (the “Rule”)) as of its date, except for the omission of certain pricing and other information permitted to be omitted pursuant to the Rule and with such completions, omissions, insertions and changes not inconsistent with this Resolution as may be approved by the County Executive. Such distribution shall constitute conclusive evidence that the County has deemed the Preliminary Official Statement to be “final” (within the meaning of the Rule) as of its date.

7. The County Executive is hereby authorized and directed to approve such completions, omissions, insertions and other changes to the Preliminary Official Statement that are necessary to reflect the terms of sale of the Bonds, determined as set forth in Section 4, and the details thereof and that are appropriate to complete it as an official statement in final form (the “Official Statement”), and distribution thereof to the purchaser(s) of the Bonds shall constitute conclusive evidence that the County has deemed the Official Statement “final” (within the meaning of the Rule) as of its date.

8. The County covenants that it shall not take or omit to take any action the taking or omission of which shall cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”), and regulations thereunder, or otherwise cause interest on the Bonds to be includable in the gross income for federal income tax purposes of the holders thereof under existing law. Without limiting the generality of the foregoing, the County shall comply with any provision of law that may require the County at any time to rebate to the United States of America any part of the earnings derived from the investment of the gross proceeds of the Bonds. The County shall pay from its legally available general funds any amount required to be rebated to the United States of America pursuant to the Code.

9. The County covenants that during the term of the Financing Agreement it shall not permit the proceeds of the Bonds or the facilities refinanced therewith to be used in any manner that would result in (a) 10% or more of such proceeds or facilities 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 such facilities, (b) 5% or more of such proceeds or facilities 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 any such covenants need not be complied with to prevent the interest on the Bonds from being includable in the gross income for federal income tax purposes of the holders thereof under existing law, the County need not comply with such covenants.

10. Such officers of the County as may be requested by bond counsel for the County are authorized and directed to execute an appropriate certificate setting forth (a) the expected use

and investment of the proceeds of the Financing Agreement (derived from the Bonds) in order to show that such expected use and investment will not violate the provisions of Section 148 of the Code and (b) any elections such officers deem desirable regarding rebate of earnings to the United States for purposes of complying with Section 148 of the Code. Such certificate shall be prepared in consultation with bond counsel for the County, and such elections shall be made after consultation with bond counsel.

11. All costs and expenses incurred in connection with the issuance of the Bonds and the refunding of the Refunded Bonds, including the Authority’s fees and expenses and the related fees and expenses of bond counsel, counsel for the Authority, and the Financial Advisor, shall be paid from the proceeds of the Bonds or other legally available funds of the County. If for any reason the Bonds are not issued, it is understood that all such fees and expenses incurred in connection with the Bonds shall be paid by the County from its legally available funds and that the Authority shall have no responsibility therefor.

12. The County Board hereby authorizes and directs the County Executive to (a) determine which portions, if any, of the 2013 Bonds shall constitute the Refunded Bonds and when to refund such Refunded Bonds, (b) request that the Authority take all proper steps to call for the redemption of the Refunded Bonds and prepare and deliver any notices and correspondence necessary therefor and (c) take such action as may be considered necessary or desirable to assist the Authority in redeeming the Refunded Bonds.

13. Any authorization herein to execute a document shall include authorization to deliver it to the other parties thereto and, if applicable, to record such document where appropriate.

14. All other acts of the County Executive and other 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 Bonds and the refunding of the Refunded Bonds are hereby approved and ratified.

15. This Resolution shall take effect immediately.

I, Claudette Borgersen, do hereby certify that the foregoing writing is a true and correct copy of a Resolution duly adopted by the Board of Supervisors of Albemarle County by a vote of _____ to _____, as recorded below, at a meeting held on _____.

Clerk, Board of County Supervisors

	<u>Aye</u>	<u>Nay</u>
Mr. Andrews	___	___
Mr. Gallaway	___	___
Ms. LaPisto-Kirtley	___	___
Ms. Mallek	___	___
Ms. McKeel	___	___
Ms. Price	___	___