

RESOLUTION APPROVING A PLAN TO FINANCE CERTAIN PUBLIC FACILITIES PROJECTS THROUGH THE ISSUANCE OF ONE OR MORE SERIES OF REVENUE OBLIGATIONS 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 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 Board of Supervisors (the “County Board”) of Albemarle County, Virginia (the “County”), desires to finance or reimburse, in conjunction with the Authority, (a) the costs of certain projects in the County’s Capital Improvement Plan, including (without limitation) capital expenditures related to the following governmental and public purpose categories: (i) judicial, (ii) parks, recreation and cultural, (iii) public safety, (iv) public works, (v) schools, (vi) transportation and (vii) solid waste; and (b) the costs of acquiring certain real property to be used for any of the following purposes: (i) any public use, including (without limitation) public facilities such as educational facilities and military installations (pursuant to Virginia Code § 15.2-1800), (ii) facility site(s) (pursuant to Virginia Code § 15.2-4917), and (iii) development of business and industry (pursuant to Virginia Code § 15.2-1802) (collectively, the “Series 2023 Projects”);

WHEREAS, the County Board desires that the Authority issue revenue obligations in the form of one or more series of notes or bonds (such obligations collectively referred to herein as the “Bonds”), and use the proceeds thereof to (a) finance or reimburse the costs of the Series 2023 Projects, (b) pay, if and as desired, interest on the Bonds up to one year following completion of the Series 2023 Projects, (c) fund, if and as desired, a reserve fund for the Bonds, and (d) pay the related costs of issuance;

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

WHEREAS, there have been made available at this meeting preliminary forms of the following documents (collectively, the “Documents”) proposed to be used in connection with the issuance and sale of the Bonds (in one or more series):

- (a) a 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 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 Preliminary Official Statement of the Authority relating to the public offering of the Bonds (the “Preliminary Official Statement”); and

(d) a 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 undertaking of the Series 2023 Projects and the financing thereof will be in the best interests of the County and its citizens. The County Board hereby requests that the Authority undertake the following plan to issue the Bonds for such purposes. The Authority will issue the Bonds (in one or more series) and use the proceeds thereof to (a) finance or reimburse the costs of the Series 2023 Projects, (b) pay, if and as desired, interest on the Bonds up to one year following completion of the Series 2023 Projects, (c) fund, if and as desired, a reserve fund for the Bonds, and (d) pay the related costs of issuance. Pursuant to 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 to finance the Series 2023 Projects 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 of the County, the Chief Financial Officer of the County and any person serving in an interim capacity in such roles) 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 facilities and purposes of the Series 2023 Projects are either essential to the efficient operation of the County or

important to the welfare or quality of life of County residents, and the County Board anticipates that such facilities and purposes will continue to be so during the term of the Financing Agreement.

3. The Chair of the County Board and the County Executive, either 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 made available at 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 each Supplemental Financing Agreement (which may relate to one or more series of Bonds), 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 one or more series of Bonds pursuant to the provisions of the Trust Agreement; provided that (a) the aggregate principal amount of all series shall not exceed \$178,000,000, (b) the "true" or "Canadian" interest cost of the Bonds of any series issued on a federally tax-exempt basis shall not exceed 5.5% (taking into account any original issue discount or premium), (c) the "true" or "Canadian" interest cost of the Bonds of any series issued on a federally taxable basis shall not exceed 6.5% (taking into account any original issue discount or premium), (d) the Bonds of any series shall mature or be subject to mandatory sinking fund redemption in installments ending not later than December 31, 2043, (e) the Bonds of any series 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), (f) the Bonds of any series shall be subject to optional redemption, if at all, at a redemption price not to exceed 102% of their principal amount or at a "make whole" redemption price, and (g) no Bonds may be issued after June 30, 2024, without further approval by the County Board. 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 of any series, the determination of whether the Bonds of any series are issued on a federally tax-exempt or taxable basis, the aggregate principal amount of each series (subject to the aggregate limit for all Bonds set forth in clause (a)), the maturity schedule (including serial maturities and term maturities for the Bonds) for each series and the redemption provisions for each series, 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 of any series:

(a) Each series of 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 a series of Bonds shall be sold by competitive sale, the County Executive is hereby authorized to receive bids for such Bonds and award such 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 such Bonds. The actions of the County Executive, in collaboration with the Chair or Vice-Chair of the Authority, in selling such Bonds by competitive sale shall be conclusive, and no further action with respect to the sale and issuance of such Bonds shall be necessary on the part of the County Board.

(c) If a series of Bonds is 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 such 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 a series of 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 such Bonds and to execute and deliver to the underwriter(s) a bond purchase agreement (a "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 a 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 applicable Bond Purchase Agreement with the records of the County Board. The actions of the County Executive in selling such Bonds by negotiated sale to the underwriter(s) shall be conclusive, and no further action with respect to the sale and issuance of such Bonds shall be necessary on the part of the County Board.

6. The Preliminary Official Statement in the form made available at 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 of any series 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 particular series of 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 such 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 any series of Bonds issued on a federally tax-exempt basis 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 such 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 existing 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 such 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 any series of Bonds issued on a federally tax-exempt basis or the facilities financed 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 such 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 any Bonds issued on a federally tax-exempt basis) 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 each series of Bonds and the financing of the Series 2023 Projects, 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 particular series of Bonds or other legally available funds of the County. If for any reason any series of Bonds is not issued, it is understood that all such fees and expenses incurred in connection with such series of Bonds shall be paid by the County from its legally available funds and that the Authority shall have no responsibility therefor.

12. 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.

13. 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 each series of Bonds and the financing of the Series 2023 Projects are hereby authorized, approved and ratified.

14. This Resolution shall take effect immediately.

I, Claudette K. 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	_____	_____