

RESOLUTION APPROVING A PLAN TO FINANCE CERTAIN PUBLIC FACILITIES PROJECTS THROUGH THE ISSUANCE OF REVENUE 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 Act, to finance or refinance and lease 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 the leasing by the Authority of such facilities 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, in conjunction with the Authority, 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: (a) County administration, (b) judicial, (c) parks, recreation and cultural, (d) public safety, (e) public works, (f) schools, (g) transportation and (h) water resources (collectively, the “Series 2017 Project”);

WHEREAS, the County desires to request the Authority to issue its Public Facility Revenue Bonds (Albemarle County Projects), Series 2017 (the “Bonds”), and use the proceeds to (a) finance or reimburse the costs of the Series 2017 Project, (b) pay as desired interest on the Bonds up to one year following completion of the Series 2017 Project, (c) fund 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);

WHEREAS, the County Board desires to authorize the County Executive (the “County Executive,” which term as used herein shall also include any Interim or Acting County Executive or any Deputy County Executive) to determine, in collaboration with the Authority and the County’s financial advisor, Davenport & Company LLC (the “Financial Advisor”), whether the Bonds will be further secured by undertaking a lease/lease-back financing arrangement between the Authority and the County of certain County property (the “Leased Property”);

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 Fifth 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 National Association, as successor trustee (the “Trustee”), pursuant to which the Bonds are to be issued;

- (b) a Fourth 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”);
- (d) a Notice of Sale (attached as Appendix H to the Preliminary Official Statement) (the “Notice of Sale”) (applicable only if the Bonds are sold through a competitive sale); and
- (e) 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 following plan for the Bonds and the financing of the Series 2017 Project is hereby approved. The Authority will issue the Bonds in an aggregate principal amount not to exceed \$25,500,000. The Authority will use the proceeds of the Bonds to finance or reimburse the costs of the Series 2017 Project, to pay as desired interest on the Bonds up to one year following completion of the Series 2017 Project, to fund as desired a reserve fund for the Bonds and to 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. Subject to the provisions of the immediately following paragraph, 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 of financing for the Series 2017 Project shall contain such additional requirements and provisions as may be approved by the County Executive and the Chairman or Vice-Chairman of the Authority.

If the County Executive determines, in collaboration with the Authority and the Financial Advisor, that it is in the best interests of the County to do so, the Bonds may be further secured by

undertaking a lease/lease-back financing arrangement between the County and the Authority. Such plan of lease/lease-back financing would be effected through a prime lease (the "Prime Lease") between the County and Authority leasing the Leased Property to the Authority and a financing lease (the "Financing Lease") between the County and the Authority leasing the Leased Property back to the County. Payments due under the Financing Lease would be credited in an amount and time to the extent the County makes all Basic Payments and Additional Payments due under the Financing Agreement with respect to the Bonds. The County Executive shall determine, in collaboration with the Financial Advisor, which County property or properties comprising part or all of the Series 2017 Project shall constitute the Leased Property. Alternatively, the County Executive may determine, in collaboration with the Authority and the Financial Advisor, to amend the terms of the existing Deed and Agreement of Ground Lease and Deed and Agreement of Financing Lease (previously executed by the Authority and the County in connection with the issuance of certain bonds under the Trust Agreement) to serve as additional security for the Bonds. The Chair of the County Board and the County Executive, either of whom may act, are hereby authorized to execute and deliver the Prime Lease and the Financing Lease (or, alternatively, amendments to the above-mentioned Deed and Agreement of Ground Lease and Deed and Agreement of Financing Lease) in such forms as are consistent with the terms of this Resolution and approved by the officer executing such instruments. Such officer's execution and delivery of the Prime Lease and the Financing Lease (or, alternatively, amendments to the above-mentioned Deed and Agreement of Ground Lease and Deed and Agreement of Financing Lease) shall constitute conclusive evidence of such officer's approval of the final forms of such instruments.

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 components of the Series 2017 Project 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 components 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 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 (as each is defined in the Financing Agreement) in amounts equivalent to the payments on the Bonds, which shall be sold to the purchaser(s) thereof on terms as shall be satisfactory to the County Executive; provided that the Basic Payments shall be equivalent to the Bonds (a) maturing in installments or subject to mandatory sinking fund redemption ending not later than December 31, 2038, (b) having a "true" or "Canadian" interest cost not exceeding 5.00% (taking into account any original issue discount or premium), (c) being

subject to optional redemption, if at all, at a redemption price not to exceed 102% of their principal amount and (d) being 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). The County Executive is also authorized to approve a lesser principal amount for the Bonds, a maturity schedule (including serial maturities and term maturities for the Bonds) and the redemptions provisions of the Bonds, all as the County Executive shall determine to be in the best interests of the County. If the County Executive shall determine that it is in the best interests of the County to undertake a lease/lease-back financing arrangement to further secure the Bonds, the foregoing provisions of this Section 4 shall apply with equal force to the payments due under the Financing Lease.

5. The County Board hereby approves the following terms of the sale of 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 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 Chairman or Vice-Chairman 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 Chairman or Vice-Chairman 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 bid, 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 substantially in accordance with the form of the Notice of Sale, which is hereby approved; provided that the County Executive, in collaboration with the Financial Advisor, may make such changes in the Notice of Sale not inconsistent with this Resolution as he may consider to be in the best interests of the County and the Authority.

(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 the Rule) as of its date, except for the omission of certain pricing and other information permitted to be omitted pursuant to Rule 15c2-12 of the Securities and Exchange Commission (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, with respect to the information therein pertaining to the County. The County Executive is 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 the 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.

7. 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 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 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.

8. The County covenants that during the term of the Financing Agreement it shall not permit the proceeds of the Bonds 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 the Bonds from being includable in the gross income for federal income tax purposes of the holder thereof under existing law, the County need not comply with such covenants.

9. 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 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.

10. All costs and expenses in connection with the financing of the Series 2017 Project and the issuance of the 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 shall be paid by the County from its legally available funds and that the Authority shall have no responsibility therefor.

11. 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.

12. 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 are hereby approved and ratified.

13. This Resolution shall take effect immediately.