

**RESOLUTION APPROVING A PLAN TO FINANCE VARIOUS COUNTY PROJECTS THROUGH THE ISSUANCE OF A REVENUE NOTE BY THE ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA, AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH AND APPROVING THE FORMS OF SUCH DOCUMENTS**

**WHEREAS**, the Economic Development Authority of Albemarle County, Virginia (the “Authority”), was created under and is authorized to exercise all the powers set forth in the Industrial Development and Revenue Bond Act, Title 15.2, Chapter 49, Code of Virginia, as amended (the “Act”), which include, among other things, (a) the power to make loans to, among others, a county in furtherance of the Act, (b) to finance facilities for use by, among others, a county, (c) to issue its revenue bonds, notes and other obligations from time to time for such purposes and (d) 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 interest on any such obligations;

**WHEREAS**, the Board of Supervisors (the “County Board”) of Albemarle County, Virginia (the “County”), desires to obtain, in conjunction with the Authority, a draw-down loan to finance the costs of various projects in the County’s Capital Improvement Plan including (without limitation) capital expenditures for court and public school improvements (collectively, the “County Projects”);

**WHEREAS**, the County desires to request the Authority (a) issue and sell its Revenue Note (County Projects), Series 2020 (the “Note”), pursuant to the terms of a Note Purchase and Loan Agreement (the “Loan Agreement”) between the County, the Authority and the Lender (as hereinafter defined), in order to provide for a draw-down loan and its repayment terms, (b) loan the proceeds of the Note to the County pursuant to the terms of the Loan Agreement to finance, as needed, the costs of the County Projects and to pay the related costs of issuance, and (c) secure the repayment of the Note by an assignment to the Lender of certain payments due from the County to the Authority in accordance with the terms of the Loan Agreement;

**WHEREAS**, the County has requested Davenport & Company LLC, as the County’s financial advisor (the “Financial Advisor”), to solicit proposals for a draw-down loan from banking and other financial institutions;

**WHEREAS**, the County Board has reviewed a summary of the proposals received and has determined, in consultation with the Financial Advisor, to request that the Authority award the Note to JPMorgan Chase Bank, N.A., or a subsidiary thereof (collectively with any successors and assigns, the “Lender”), in accordance with the terms of its proposal attached hereto as Exhibit A (the “Proposal”); and

**WHEREAS**, there has been presented to this meeting a draft of the Loan Agreement that the County proposes to execute in support of the transactions described above, a copy of which shall be filed with the records of the County Board;

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

1. The County Board hereby approves the following plan in connection with the draw-down loan and the financing of the County Projects. The Lender shall make a draw-down loan to the Authority, the Authority shall issue and deliver the Note to the Lender as evidence of such loan and further loan the proceeds of the Note to the County, and the County shall use the proceeds thereof to finance the County Projects and agree to repay such loan from amounts appropriated from time to time by the County Board, all in accordance with the terms set forth in the Loan Agreement. The Note shall be issued on final terms that the County Executive (which term shall include for purposes of this Resolution the Deputy County Executive and the Assistant County Executive) determines, in consultation with the Financial Advisor and in collaboration with the Chairman or Vice-Chairman of the Authority, either of whom may act, to be in the best interests of the County and the Authority; provided that the Note shall (a) provide for the Lender to make principal advances from time to time in an aggregate amount not to exceed \$75,000,000, (b) mature no later than July 31, 2022, (c) bear interest at a variable rate not to exceed 80% of One-Month LIBOR plus 60 basis points as determined in accordance with the terms of the Proposal (subject to adjustment upon an event of taxability or an event of default), (d) be sold to the Lender at a price not less than 100% of the principal amount thereof and (e) be subject to optional redemption at least monthly without any prepayment premium. The obligation of the Authority to make payments under the Note and the Loan Agreement shall be limited to the payments, if any, received from the County, which shall be assigned to the Lender pursuant to the terms of the Loan Agreement. This plan of financing shall contain such additional requirements and provisions as the County Executive may approve and determine, in collaboration with the Chairman or Vice-Chairman of the Authority, to be in the best interests of the County and the Authority. Following the sale of the Note, the County Executive shall file a certificate with the records of the County Board setting forth the final terms of the Note and the Loan Agreement. The actions of the County Executive in approving the terms of the Note and the Loan Agreement shall be conclusive, and no further action shall be necessary on the part of the County.

2. The County Board hereby directs the County Executive to request that the Authority award and sell the Note to the Lender in accordance with the terms of the Proposal and this Resolution.

3. The County Board hereby authorizes and directs the County Executive to execute and deliver the Loan Agreement. The Loan Agreement shall be in substantially the form presented to this meeting, which is hereby approved, with such completions, omissions, insertions or changes not inconsistent with this Resolution as may be approved by the County Executive, whose approval shall be evidenced conclusively by the execution and delivery thereof.

4. The undertaking by the County to pay any amounts under the Loan Agreement shall be limited obligations payable solely from funds to be appropriated by the County Board from time to time for such purpose. Nothing herein or in the Loan Agreement shall constitute a debt of the County within the meaning of any constitutional or statutory limitation or a pledge of the faith and credit or taxing power of the County.

5. The County Board believes that funds sufficient to make payment of all amounts payable by the County under the Loan Agreement can be obtained. While recognizing that it is not empowered to make any binding commitment to make such payments beyond the current fiscal year, the County Board hereby states its intent to make annual appropriations for future fiscal years in amounts sufficient to make all such payments and hereby recommends that future County Boards do likewise during the term of the Loan Agreement. The County Board directs the County Executive or such other officer who may be charged with the responsibility for preparing the County's annual budget, to include in the budget request for each fiscal year during the term of the Loan Agreement an amount sufficient to make the payment of all amounts payable under the Loan Agreement for such fiscal year. Within 10 days after adoption of the County's annual budget and related appropriation resolution, but not later than 10 days after the beginning of each fiscal year, the County Executive is authorized and directed to deliver to the Authority and the Lender a certificate stating whether an amount equal to or credited to the payment of all amounts that will be due under the Loan Agreement during such fiscal year has been budgeted and appropriated by the County Board. So long as the Note is outstanding, if at any time during any fiscal year of the County, the amount appropriated in the County's annual budget in such fiscal year is insufficient to pay when due the amounts payable by the County under the Loan Agreement, the County Board directs the County Executive or such other officer who may be charged with the responsibility for preparing the County's annual budget to submit to the County Board a request for a supplemental appropriation sufficient to cover the deficit.

6. The County covenants that it shall not take or omit to take any action the taking or omission of which will cause the Note to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), or otherwise cause interest on the Note 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 any part of the earnings derived from the investment of the gross proceeds of the Note, unless the County receives an opinion of nationally recognized bond counsel that such compliance is not required to prevent interest on the Note from being includable in the gross income of the registered owners thereof under existing law. The County shall pay any such required rebate from legally available funds.

7. Such officers of the County as may be requested by the County's bond counsel are hereby authorized and directed to execute an appropriate certificate setting forth (a) the expected use and investment of the proceeds of the Note in order to show that such expected use and investment will not violate the provisions of Section 148 of the Code and regulations issued pursuant thereto 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 the County's bond counsel, and such elections shall be made after consultation with bond counsel.

8. The County covenants that it shall not permit the proceeds of the Note or the facilities financed therewith to be used in any manner that would result in 5% or more of such proceeds or facilities, as applicable, (a) 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, (b) 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) 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 Note from being includable in the gross income for federal income tax purposes of the registered owner thereof under existing law, the County need not comply with such covenants.

9. The County Board has previously received and reviewed the Information Statement, describing the State Non-Arbitrage Program of the Commonwealth of Virginia (“SNAP”) and the Contract Creating the State Non-Arbitrage Program Pool (the “Contract”), and the County Board hereby authorizes the County Executive in his discretion to utilize SNAP in connection with the investment of the proceeds of the Note. The County Board acknowledges that the Treasury Board of the Commonwealth of Virginia is not, and shall not be, in any way liable to the County in connection with SNAP, except as otherwise provided in the Contract.

10. All costs and expenses in connection with the undertaking of the County Projects and the issuance of the Note, including the Authority’s fees and expenses and the fees and expenses of bond counsel, counsel for the Authority and counsel to the Lender, shall be paid from the proceeds of the Note or other legally available funds of the County. If for any reason the Note is not issued, it is understood that all such expenses shall be paid by the County from its legally available funds and that the Authority shall have no responsibility therefor.

11. All other actions of officers of the County in conformity with the purposes and intent of this Resolution and in furtherance of the plan of financing are hereby ratified, approved and confirmed. The officers of the County are hereby authorized and directed to execute and deliver all certificates and instruments and to take all such further action as may be considered necessary or desirable in connection with the completion of the plan of financing.

12. All resolutions or parts of resolutions in conflict herewith are repealed.

13. This Resolution shall take effect immediately upon its adoption.

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

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Clerk, Board of County Supervisors

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