

**BOARD OF SUPERVISORS
COUNTY OF NEW KENT
VIRGINIA
R-22-20**

At the regular meeting of the Board of Supervisors of the County of New Kent, Virginia in the Boardroom of the Administration Building in New Kent, Virginia, on the 13th day of April, 2020:

Present:	Vote:
John N. Lockwood	Aye
Thomas W. Evelyn	Aye
C. Thomas Tiller, Jr.	Aye
Ron Stiers	Aye
Patricia A. Paige	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 Economic Development Authority of New Kent County, Virginia (**the "Authority"**), at the request of the Board of Supervisors (**the "Board of Supervisors"**) of the County of New Kent, Virginia (**the "County"**) previously issued its \$3,200,000 Public Facilities Lease Revenue Bond, Series 2018 (**the "Refunded Bond"**) to finance a portion of the costs of the design, construction, installation and equipping of the new Pine Fork Park recreation area in the County (**the "Project"**);

WHEREAS, the Refunded Bond was purchased by Branch Banking and Trust Company (**the "Lender"**) and secured by (a) a Ground Lease (**the "Prior Ground Lease"**) between the County and the Authority conveying to the Authority an interest in the County's Pine Fork Park property (**the "Leased Property"**), (b) a Lease Agreement (**the "Prior Lease Agreement"**) between the Authority and the County establishing rental payments sufficient to pay the Refunded Bond and (c) an Assignment of Rents and Leases (**the "Prior Assignment Agreement"**) from the Authority for the benefit of the Lender;

WHEREAS, the Lender has indicated it is willing to refund and restructure the Refunded Bond at a lower rate, achieving debt service savings for the County pursuant to the Lender's proposal dated March 21, 2020 (**the "Proposal"**);

WHEREAS, the Board of Supervisors request the Authority (a) issue, offer and sell its lease revenue refunding bond in an amount of approximately \$3,200,000 (**the "Bond"**) to refund

and refinance the Refunded Bond and provide for the financing of the remainder of the cost of the Project, including the costs of issuing the Bond, (b) amend the existing Prior Ground Lease, Prior Lease Agreement and Prior Assignment Agreement to reflect the issuance of the Bond and the refunding of the Refunded Bond;

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. An Amended and Restated Ground Lease, dated as of May 1, 2020, between the County and the Authority conveying to the Authority a leasehold interest in the Leased Property described therein **(the “Ground Lease”)** and amending and restating the Prior Ground Lease;
- b. An Amended and Restated Lease Agreement, dated as of May 1, 2020, between the Authority and the County **(the “Lease Agreement”)** conveying to the County a leasehold interest in such Leased Property and amending and restating the Prior Lease Agreement;
- c. a Bond Purchase Agreement, dated as of May 1, 2020 among the Authority, the County and the Lender, pursuant to which the Bond is to be issued **(the “Bond Purchase Agreement”)**;
- d. an Amended and Restated Assignment Agreement, dated as of May 1, 2020 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”)** and amending and restating the Prior Assignment Agreement; and
- e. a Specimen Bond.

NOW THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of New Kent, Virginia:

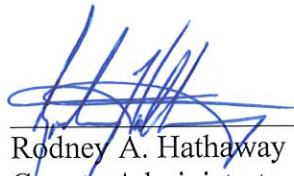
1. All costs and expenses in connection with the undertaking of the cost of the Project, the refunding of the Refunded Bond and the issuance of the Bond, including the Authority’s expenses, the fees and expenses of the County, and the fees and expenses of Bond Counsel, the County Attorney, the Financial Advisor and the Lender, and other fees and expenses related thereto, for the sale of the Bond, shall be paid from the proceeds therefrom or other funds of the County.
2. The Board of Supervisors hereby instructs the Financial Advisor and Bond Counsel to take all such action as necessary or appropriate to accept the Proposal and conclude the purchase of the Bond by the Lender and the refunding of the Refunded Bond.
3. The following plan for financing a portion of the cost of the Project and refunding the

Refunded Bond is approved. The Authority shall use the proceeds from the issuance of the Bond to provide for refunding the Refunded Bond and the financing on behalf of the County of a portion of the cost of the Project and to lease the Leased Property from the County for a lease term of approximately twenty 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 Bond. The obligation of the Authority to pay principal and interest on the Bond 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 Bond and as a statement of its intent to consider the appropriation of funds sufficient to pay rent under the Lease Agreement annually during the term thereof. The Bond 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.

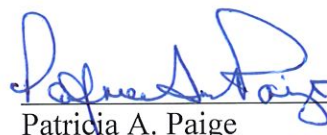
4. The Board of Supervisors hereby approves the Proposal and the Documents and the form of the Bond in the principal amount of not to exceed \$3,200,000, with a fixed interest rate not to exceed 2.50%, for an amortization of approximately 14 years from its date of issuance, subject to other terms as 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 or her approval of the same. The County Administrator or Chairman is hereby authorized to determine the final terms of the Bond, including, but not limited to the principal amount, maturity and amortization, whose determination shall be conclusive, as evidenced by his execution of the Documents to which the County is a party.
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 Bond, to refund the Refunded Bond, to finance the Project and to lease the Leased Property. The County hereby requests the Authority to issue the Bond pursuant to and in accordance with the Documents.
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 Bond 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 the interest on the Bond 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 Bond.

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 Bond, the refunding of the Refunded 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 Bond, the refunding of the Refunded Bond or the lease of the Leased Property.
10. Nothing in this Resolution, the Bond 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 Bond 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 Board of Supervisors has determined to authorize the County, if and as necessary, to utilize SNAP in connection with the investment of the proceeds of the Bond or the transferred proceeds of the Refunded Bond.
12. This resolution shall take effect immediately.

ADOPTED THIS 13th DAY OF APRIL, 2020.



Rodney A. Hathaway
County Administrator/
Clerk of the Board of Supervisors



Patricia A. Paige
Board Chairwoman

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 April 13, 2020, by the Board of Supervisors with the following votes:

Aye: John N. Lockwood
 Thomas W. Evelyn
 C. Thomas Tiller, Jr.
 Ron Stiers
 Patricia A. Paige

Absent: None

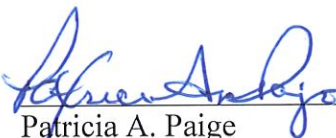
Nay: None

Abstentions: None

Signed this 16th day of April, 2020.



Rodney A. Hathaway
County Administrator/
Clerk of the Board of Supervisors

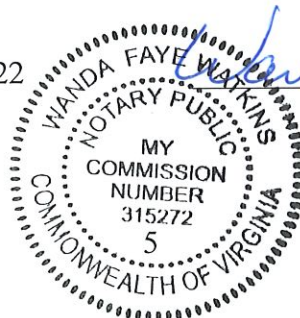


Patricia A. Paige
Board Chairwoman

COUNTY OF NEW KENT
COMMONWEALTH OF VIRGINIA

The foregoing instrument was acknowledged before me this 16th day of April, 2020 by Rodney A. Hathaway, County Administrator and Clerk of the New Kent Board of Supervisors.

My commission expires: 12-31-2022
My Commission Number: 315272





Notary

COUNTY OF NEW KENT
COMMONWEALTH OF VIRGINIA

The foregoing instrument was acknowledged before me this 16th day of April, 2020 by Patricia A. Paige, Chairwoman of the New Kent Board of Supervisors.

My commission expires: 12-31-2022
My Commission Number: 315272

Wanda Faye Watkins
Notary



INSTRUMENT 200001458
RECORDED IN THE CLERK'S OFFICE OF
NEW KENT COUNTY CIRCUIT COURT ON
APRIL 24, 2020 AT 08:10 AM
AMY P. CRUMP, CLERK
RECORDED BY: KSM