

**BOARD OF SUPERVISORS
COUNTY OF NEW KENT
VIRGINIA
R-33-20**

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 10th day of August, 2020:

<u>Present:</u>	<u>Vote:</u>
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:

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF NEW KENT, VIRGINIA, AUTHORIZING THE ISSUANCE AND SALE
OF UP TO \$3,150,000 PRINCIPAL AMOUNT OF WATER AND SEWER REVENUE
BONDS AND PROVIDING FOR THE FORM, DETAILS AND PAYMENT THEREOF**

WHEREAS, on November 17, 2004, the County of New Kent, Virginia (**the “County”**) issued its \$17,675,000 Water and Sewer Revenue Bond, Series 2004 dated as of October 17, 2004 (**the “Original Local Bond”**) pursuant to a Trust Agreement between the County and SunTrust Bank as trustee whose successor in interest is U.S. Bank National Association (**the “Trustee”**), dated as of November 1, 2004 (**the “Original Trust Agreement”**) and a First Supplemental Trust Agreement between the County and the Trustee, dated as of November 1, 2004 (**the “First Supplemental Trust Agreement”**) and sold the Original Local Bond to the Virginia Resources Authority (**“VRA”**) pursuant to a Financing Agreement, dated as of November 1, 2004, between VRA and the County (**the “Original Financing Agreement”**);

WHEREAS, VRA purchased the Original Local Bond with a portion of the proceeds of one of the series of VRA’s Virginia Pooled Financing Program Bonds, its \$42,610,000 Infrastructure Revenue Bonds (Virginia Pooled Financing Program), Series 2004B (Non-AMT);

WHEREAS, on August 2, 2012, the County issued its \$8,995,000 Water and Sewer Revenue Refunding Bond, Series 2012 (**the “2012 Local Bond”**) pursuant to a Second Supplemental Trust Agreement between the County and the Trustee, dated as of August 1, 2012 (**the “Second Supplemental Trust Agreement”**) and sold the 2012 Local Bond to VRA pursuant to a Local Bond Sale and Amended and Restated Financing Agreement, dated as of August 1, 2012 (**the “2012 Financing Agreement”**);

WHEREAS, on December 6, 2012, the County issued its \$5,180,000 Water and Sewer Revenue Refunding Bond, Series 2012C (**the “2012C Local Bond”**) pursuant to a Third Supplemental Trust Agreement between the County and the Trustee, dated as of December 1, 2012 (**the “Third Supplemental Trust Agreement”**) and sold the 2012C Local Bond to VRA pursuant to a Local Bond Sale and Amended and Restated Financing Agreement, dated as of October 25, 2012 (**the “2012C Financing Agreement”**);

WHEREAS, on July 29, 2014, the County issued its \$1,172,884 Water and Sewer Revenue Bond, Series 2014 (**the “2014 Local Bond”**) pursuant to a Fourth Supplemental Trust Agreement between the County and the Trustee, dated as of July 1, 2014 (**the “Fourth Supplemental Trust Agreement”**) and sold the 2014 Local Bond to VRA pursuant to a Financing Agreement, dated as of July 1, 2014 (**the “2014 Financing Agreement”**);

WHEREAS, the County is authorized to acquire, construct, operate and maintain water and sewer systems in the County (**the “System”**), which System is a revenue producing undertaking of the County;

WHEREAS, the County is authorized pursuant to the Public Finance Act, Chapter 26 of Title 15.2 of the Code of Virginia of 1950, as amended (**the “Public Finance Act”**) to borrow money and to issue its revenue bonds to pay all or part of the cost of the System;

WHEREAS, in the judgment of the Board of Supervisors (**the “Board of Supervisors”**) of the County, it is desirable to authorize the issuance of revenue obligations of the County in a principal amount of up to \$3,150,000 to provide funds to pay the cost of capital improvements to the System, such improvements to include the acquisition, construction and equipping of public water system improvements to extend a water line along Route 618 in the County and related improvements thereto, and Colonial Downs Booster Station modifications and related improvements thereto, located in the County, and related legal, consulting and administrative fees and other expenses (**together, the “Project”**);

WHEREAS, the Project constitutes waterworks within the meaning of Title 15.2, Chapter 51, Section 15.2-2109, of the Code of Virginia, 1950, as amended (**the “Virginia Code”**), a water supply facility within the meaning of the term “Project” as defined in Section 62.1-233 of the Virginia Code and a revenue producing undertaking within the meaning of Section 15.2-2608 of the Virginia Code;

WHEREAS, the Board of Supervisors desires to issue the Bond (as defined below) under the provisions of the Public Finance Act, this Resolution and the Trust Agreement (as defined below).

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

1. The Project is hereby approved and the County is authorized to issue not more than \$3,150,000 principal amount of its Water and Sewer Revenue Bond, Series 2020 (or such appropriate series designation) (**the “Bond”**) under the Public

Finance Act. The Bond shall mature no later than twenty five (25) years from the date of its issuance and shall bear a Cost of Funds on the disbursed and unpaid principal balance from the date of each disbursement until payment of the entire principal sum at the per annum rate which is 1% below the prevailing "AA" market rates prior to closing but not in excess of one and thirty five- hundredths percent (1.35%) per annum composed of interest to the Fund, as defined below, and a fee of 0.20% payable as an Annual Administrative Fee, as set forth in the commitment letter from VRA, as Administrator of the Fund to the Authority dated the date thereof, (which the County agrees shall be due and payable in accordance with the terms and conditions of the 2020 Financing Agreement (as defined below).

2. The Bond shall be issued to or for the account of VRA, as administrator of the Virginia Water Supply Revolving Fund (**the "Fund"**), pursuant to the terms, conditions and provisions of a financing agreement, as it may be amended from time to time (**the "2020 Financing Agreement"**), by and between VRA and the County, as the Borrower thereunder and a Fifth Supplemental Trust Agreement between the County and the Trustee (**the "Fifth Supplemental Trust Agreement," together with the Fourth Supplemental Trust Agreement, Third Supplemental Trust Agreement, the Second Supplemental Trust Agreement, the First Supplemental Trust Agreement and the Original Trust Agreement, the "Trust Agreement"**). The Bond shall be in substantially the form attached to this Resolution as **Exhibit A**, with such appropriate variations, omissions and insertions as are permitted or required by this Resolution.
3. The 2020 Financing Agreement and the Fifth Supplemental Trust Agreement will be in substantially the forms presented to and filed with the minutes of the meeting of this Board of Supervisors at which this Resolution is being adopted. The forms of the 2020 Financing Agreement and the Fifth Supplemental Trust Agreement and the terms, conditions and provisions thereof are hereby approved by this Board of Supervisors, and the Chairman, Vice-Chairman and County Administrator, any of whom may act, are hereby authorized and directed to execute and deliver to VRA the 2020 Financing Agreement and to the Trustee, the Fifth Supplemental Trust Agreement, each in substantially such forms, with such changes and amendments as the officer executing the same shall approve, such approval to be conclusively evidenced by his execution and delivery thereof.
4. The Bond shall be a limited obligation of the County and, except to the extent payable from the proceeds of the sale of the Bond, is payable exclusively from the Revenues, as defined in the 2020 Financing Agreement, (including amounts that may be appropriated from time to time by the Board pursuant to Section 5.4 of the 2020 Financing Agreement) of the County's System which the County hereby pledges to the payment of the Bond pursuant to the terms of the 2020 Financing Agreement. The pledge of Revenues securing the Bond shall be on parity with Existing Parity Bonds, (as defined in the 2020 Financing Agreement) secured by such Revenues.

5. The Project will constitute a part of the County's System.
6. The Bond shall be executed, for and on behalf of the County, by the manual signature of the Chairman or the Vice-Chairman of the Board of Supervisors, either of whom may act, and shall have the corporate seal of the County impressed thereon, attested by the manual signature of the Clerk of the Board of Supervisors. The Bond shall be in substantially the form as **Exhibit A** attached hereto, with such variations, insertions or deletions as may be approved by the officer executing the Bond on the County's behalf.
7. The Chairman, Vice-Chairman, County Administrator, Clerk of the Board of Supervisors, County Attorney, Sands Anderson PC as the County's Bond Counsel and Davenport & Company LLC as the County's Financial Advisor, and all other appropriate officers, agents and employees of the County shall take all actions as shall be necessary to carry out the provisions of this Resolution.
8. Such officers of the County as may be requested are authorized and directed to execute and delivery a nonarbitrage certificate and tax compliance agreement in a form not inconsistent with this Resolution as may be approved by the officers of the County executing such document, whose approval shall be evidenced conclusively by the execution and delivery thereof.
9. The County covenants that it will not directly or indirectly use or permit the use of any of the proceeds of the Bond or any other of its funds, or enter into, or allow any other person or entity to enter into, any arrangement, formal or informal, or take or omit to take, any other action that would cause interest on any Related Series of VRA Bonds (as defined in the 2020 Financing Agreement) to be includable in gross income for federal income tax purposes or to become a specific item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations. The County also consents to the calculation of any "rebate amount" to be paid with respect to the portion of the Related Series of VRA Bonds related to the Bond by a rebate calculation service selected by VRA.
10. The County covenants that it shall not permit the proceeds of the Bond or the Project financed with the proceeds of the Bond to be used in any manner that would result in: (a) 5% or more of such proceeds or the facilities financed with such proceeds 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 Internal Revenue Code of 1986, as amended (the "Code"); (b) 5% or more of the proceeds or the Project financed with such proceeds being used with respect to any output facility (other than a facility for the furnishing of water or the transportation and treatment of waste 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 a nationally-recognized bond counsel that any such covenants need not be complied with to prevent the interest on the Related Series of VRA Bonds from being includable in the gross income of the registered owners thereof for federal income purposes under existing law, the County need not comply with such covenants.

11. On February 28, 2018 the Board of Supervisors authorized an application to the Fund for debt financing of the Project and on May 23, 2018 (**the "Declaration Date"**) by resolution the Board of Supervisors stated its official intent to utilize the proceeds of the Bond to pay some or all of the costs of the Project, which official intent was confirmed and reiterated by Board of Supervisors action on April 24, 2019. The County intends that the proceeds of the Bond be used to reimburse the County for expenditures with respect to the Project (**the Expenditures"**) made on or after the date that is no more than 60 days prior to the Declaration Date. The County reasonably expected on the Declaration Date that it would reimburse the Expenditures with the proceeds of the Bond or other debt. Each Expenditure was or will be, unless otherwise approved by bond counsel, be either: (a) of a type properly chargeable to a capital account under general federal income tax principles (determined in each case as of the date of the Expenditure); (b) a cost of issuance with respect to the Bond; (c) a nonrecurring item that is not customarily payable from current revenues; or (d) a grant to a party that is not related to or an agent of the County, so long as such grant does not impose any obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the County. The County intends that the adoption of this Bond Resolution confirms the prior declaration on the Declaration Date of "official intent" within the meaning of Treasury Regulations Section 1.150-2, promulgated under the Internal Revenue Code of 1986, as amended.
12. The County Administrator and such officers or agents of the County as the County Administrator may designate are authorized and directed to file a certified copy of this Resolution with the Circuit Court of the County, pursuant to Section 15.2-2607 of the Virginia Code. The filing of this Resolution with the Clerk of the Circuit Court of the County shall be deemed to be the filing of an initial resolution or ordinance with such Court for all purposes of the Public Finance Act.
13. All other actions of County officials in conformity with the purposes and intent of this Resolution and in furtherance of the issuance and sale of the Bond as authorized herein are ratified, approved and confirmed. County officials are authorized and directed to execute and deliver all certificates and other instruments considered necessary or desirable in connection with the issuance, sale and delivery of the Bond pursuant to this Resolution, the 2020 Financing Agreement and the Trust Agreement and to do all acts and things necessary or convenient to carry out the terms and provisions of such documents.

14. All ordinances, resolutions and proceedings in conflict herewith are, to the extent of such conflict, repealed. This Resolution shall constitute the “Local Resolution” as such term is defined in Section 1.1 of the 2020 Financing Agreement.

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, after a public hearing concerning this Resolution was held, during an open meeting on August 10, 2020, by the Board of Supervisors with the following votes:

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

NAYS: None

ABSTENTIONS: None



Rodney A. Hathaway
County Administrator/
Clerk of the Board



Patricia A. Paige
Board Chairwoman

COUNTY OF NEW KENT
COMMONWEALTH OF VIRGINIA

The foregoing instrument was acknowledged before me this 11th day of August 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 12th day of August 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



EXHIBIT A

ISSUE DATE:

_____, 2020

UNITED STATES OF AMERICA
COMMONWEALTH OF VIRGINIA
COUNTY OF NEW KENT, VIRGINIA

\$ _____
Water and Sewer Revenue Bond,
Series 2020

THE COUNTY OF NEW KENT, VIRGINIA (the "Borrower"), a political subdivision of the Commonwealth of Virginia, acknowledges itself indebted and for value received, hereby promises to pay, solely from the revenues and other property hereinafter described and pledged to the payment of this Bond, to the order of the Virginia Resources Authority as administrator of the Virginia Water Supply Revolving Fund, Richmond, Virginia (the "Fund"), or registered assigns or legal representatives, the sum equal to the amount of principal advances made hereunder but not to exceed _____ and 00/100 Dollars (\$ _____), with interest, including the part thereof allocable to the Annual Administrative Fee (the "Cost of Funds") on the disbursed and unpaid principal balance from the date of each disbursement until payment of the entire principal sum at the rate of ____ (____%) per annum as set forth below:

Interest of _____ one-hundredths percent (____%) per annum payable for the benefit of the Fund, and twenty-hundredths percent (0.20%) per annum payable as an Annual Administrative Fee.

The Cost of Funds only on all amounts disbursed hereunder shall be due and payable on _____ 1, 20___. Commencing _____ 1, 20___, and continuing semi-annually thereafter on _____ 1 and _____ 1 in each year, principal and the Cost of Funds due under this Bond shall be payable in equal installments of \$ _____, with a final installment of \$ _____ due and payable on _____ 1, 20___, when, if not sooner paid, all amounts due hereunder and under this Bond shall be due and payable in full. Each installment shall be applied first to payment of the Cost of Funds accrued and unpaid to the payment date and then to principal. If principal disbursements up to the maximum authorized amount of this Bond are not made, the principal amount due on this Bond shall not include such undisbursed amount. However, unless the Borrower and the Authority agree otherwise in writing, until all amounts due hereunder and under this Bond shall have been paid in full, less than full disbursement of the maximum authorized amount of this Bond shall not postpone the due date of any semi-annual installment due on this Bond, or change the amount of such installment.

In addition, if any installment of principal or the Cost of Funds on this Bond is not received by the holder of this Bond within ten (10) days from its due date, the Borrower shall

pay to the holder of this Bond, a late payment charge in an amount equal to five percent (5.0%) of such overdue installment. Principal is payable in lawful money of the United States.

No notation is required to be made on this Bond of the payment of any principal on normal installment dates. HENCE, THE FACE AMOUNT OF THIS BOND MAY EXCEED THE PRINCIPAL SUM REMAINING OUTSTANDING.

THIS BOND IS A LIMITED OBLIGATION OF THE BORROWER AND EXCEPT TO THE EXTENT PAYMENT WITH RESPECT TO THE BOND SHALL BE MADE FROM THE PROCEEDS FROM THE SALE OF THE BOND IS PAYABLE SOLELY FROM CERTAIN REVENUES TO BE DERIVED FROM THE OWNERSHIP OR OPERATION OF THE BORROWER'S SYSTEM AS THE SAME MAY FROM TIME TO TIME EXIST, WHICH REVENUES HAVE BEEN PLEDGED PURSUANT TO THE 2020 FINANCING AGREEMENT AND THE TRUST AGREEMENT TO SECURE THE PAYMENT THEREOF. THE LIEN OF THIS PLEDGE IS ON PARITY WITH THE LIEN OF THE PLEDGE SECURING ANY PARITY BONDS AND EXISTING PARITY BONDS, IF ANY. NEITHER THE COMMONWEALTH OF VIRGINIA NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE BORROWER, SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF OR COSTS OF FUNDS ON THE BOND OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE REVENUES PLEDGED THEREFOR, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE COMMONWEALTH OF VIRGINIA OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE BORROWER, IS PLEDGED TO THE PAYMENT OF PRINCIPAL OF OR COST OF FUNDS ON THE BOND OR OTHER COSTS INCIDENT THERETO.

This Bond is issued pursuant to the provisions of Chapter 26 of Title 15.2 of the Code of Virginia of 1950 as amended, the terms of the 2020 Financing Agreement between the Borrower and the VRA, as administrator of the Fund, dated as of _____, 2020 (**the "2020 Financing Agreement"**) to evidence a loan by the VRA, as administrator of the Fund to the Borrower to finance the Project Costs and a Trust Agreement between the County and U.S. Bank National Association, as successor in interest to SunTrust Bank (**the "Trustee"**), dated as of November 1, 2004 (**the "Trust Agreement"**), as amended or supplemented and a Fifth Supplemental Trust Agreement between the County and the Trustee, dated as of August 1, 2020 (**the "Fifth Supplemental Trust Agreement"**). The obligations of the Borrower under this Bond, the 2020 Financing Agreement and the Fifth Supplemental Trust Agreement shall terminate when all amounts due and to become due pursuant to this Bond, the 2020 Financing Agreement and the Fifth Supplemental Trust Agreement have been paid in full. Reference is hereby made to the 2020 Financing Agreement and the Fifth Supplemental Trust Agreement and any amendments thereto for the definitions and provisions, among others, describing the pledge and covenants securing this Bond, the nature and extent of the security, the terms and conditions upon which this Bond is issued, and the rights and obligations of the Borrower and the holders of this Bond.

The pledge of Revenues toward payment of the Bond shall be on parity with the pledge of Revenues securing the Existing Parity Bonds, as defined in the 2020 Financing Agreement.

The Borrower may incur additional indebtedness secured by a pledge of the Revenues pursuant to the term of the 2020 Financing Agreement and the Trust Agreement.

Transfer of this Bond may be registered upon the registration books of the Bond Registrar. Prior to due presentment for registration of transfer, the Bond Registrar shall treat the registered owner as the person exclusively entitled to payment of principal and the exercise of all other rights and power of the owner.

This Bond is subject to optional redemption only to the extent and on the terms set forth in the 2020 Financing Agreement.

If an Event of Default occurs, the principal of this Bond may be declared immediately due and payable by the holder by written notice to the Borrower.

Notwithstanding anything in this Bond to the contrary, in addition to the payments of the principal provided by this Bond, the Borrower shall also pay such additional amounts, if any, which may be necessary to provide for payment in full of all amounts due under the 2020 Financing Agreement and the Fifth Supplemental Trust Agreement.

All acts, conditions and things required by the Constitution and statutes of the Commonwealth of Virginia to happen, exist or be performed precedent to and in the issuance of this Bond have happened, exist and have been performed.

IN WITNESS WHEREOF, the Borrower has caused this Bond to be signed by its Chairman, to be attested by the Clerk of the Board of Supervisors, its seal to be affixed hereto and to be dated as of _____, 2020.

COUNTY OF NEW KENT, VIRGINIA

SEAL

By: _____
Title: Chairman

ATTEST:

Clerk, Board of Supervisors
of the County of New Kent, Virginia

CERTIFICATE OF AUTHENTICATION

This Bond is the Series 2020 Bond described in the within mentioned Fifth Supplemental Trust Agreement.

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____

Its: _____

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ whose address for registration purposes is _____ the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Tax I.D. No. _____
of Transferee: _____

Signature Guaranteed

(NOTE: the signature above must correspond with the name of the Registered Owner as it appears on the front of this Bond in every particular, without alteration or enlargement or any change whatsoever.)

SCHEDULE OF PRINCIPAL ADVANCES

The amount and date of principal advances not to exceed the face amount hereof shall be entered hereon by an authorized representative of the VRA as administrator of the Fund when the proceeds of each such advance are delivered to the Borrower.

<u>Amount</u>	<u>Date</u>	<u>Authorized Signatures</u>

INSTRUMENT 200003182
RECORDED IN THE CLERK'S OFFICE OF
NEW KENT COUNTY CIRCUIT COURT ON
AUGUST 12, 2020 AT 10:40 AM
AMY P. CRUMP, CLERK
RECORDED BY: KSM