



Amherst County Board of Supervisors
County Resolution No. 2020-0023-R

For consideration on September 15, 2020

A RESOLUTION, NO. 2020-0023-R

**Resolution of the Board of Supervisors of the County
of Amherst, Virginia, Authorizing Lease Financing
with Virginia Resources Authority**

Approved as to form by the County Attorney

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

I. That the Board of Supervisors of Amherst County hereby authorizes lease financing with Virginia Resources Authority, as follows:

WHEREAS, the Board of Supervisors (the "Board") of the County of Amherst, Virginia (the "County") intends to finance the acquisition, construction, furnishing and equipping of a solid waste disposal project consisting of certain transfer stations and convenience centers located in the County (the "New Money Project"); and

WHEREAS, the Economic Development Authority of Amherst County, Virginia, (the "EDA"), has previously issued its \$2,420,000 Public Facility Lease Revenue Bond, Taxable Series 2007 (the "2007 Bond"), the proceeds of which were used to finance the cost of acquiring, constructing and equipping an animal shelter located in the County (the "Animal Shelter"), which was then leased by the EDA to the County pursuant to a lease agreement dated as of September 27, 2007, secured by a leasehold deed of trust executed by the EDA for the benefit of Rural Housing Service, an Agency of the United States Department of Agriculture and consented to by the County (the "2007 Project"); and

WHEREAS, the EDA previously issued its \$5,395,000 Lease Revenue Refunding Bond (County Government Projects), Series 2017B (the "2017B Bond," together with the 2007 Bond, the "Prior Bonds") on behalf of the County, the proceeds of which were used to refund the EDA's \$5,350,000 Public Facility Lease Revenue Bond, Series 2007 and \$2,373,000 Public Facility Lease Revenue Bond, Series 2008, which financed numerous County projects including an addition to the County administrative building (the "Administrative Building") and paying the costs of issuance thereof (the "2017B Project," collectively with the New Money Project and the 2007 Project, the "Projects"); and

WHEREAS, the Prior Bonds are subject to redemption at the option of the County and the Board wishes to refund all or a portion of the Prior Bonds (the "Refunded Bonds") to achieve debt service savings

for the benefit of the County, and the Board has determined that it is in the best interest of the County to enter into a lease financing arrangement to finance the Projects, subject to the terms and conditions herein; and

WHEREAS, the Board has the power to lease and acquire by lease essential real property and personal property consisting of the Administrative Building, the Animal Shelter and such additional collateral, if required by VRA, that the Chairman, the Vice Chairman or the County Administrator, any one of whom may act, selects as security for the Leased Obligations (together, the "Leased Property"); and

WHEREAS, the Projects and the Leased Property are essential to the governmental functions of the County and the Board reasonably expects the Projects and the Leased Property to continue to be essential to the governmental functions of the County for a period not less than the terms of the Prime Lease (as defined below) and the Local Lease Acquisition Agreement and Financing Lease (as defined below); and

WHEREAS, the Board proposes to enter into (a) the Prime Lease and the Local Lease Acquisition Agreement and Financing Lease with Virginia Resources Authority ("VRA"), as applicable, and (b) related documents in connection with financing the Projects; and

WHEREAS, to assist in providing funding for the Projects, VRA intends to (a) issue its Infrastructure and State Moral Obligation Revenue Bonds (Virginia Pooled Financing Program), Series 2020C (as more particularly defined in the below defined Local Lease Acquisition Agreement and Financing Lease, the "VRA Bonds") and, subject to VRA credit approval, to make available a portion of the proceeds to the County for the Projects; (b) acquire a leasehold interest in the Leased Property pursuant to the terms of the Prime Lease; and (c) lease the Leased Property to the County pursuant to the terms of the Local Lease Acquisition Agreement and Financing Lease (collectively, the "Lease Obligations"); and

WHEREAS, the Local Lease Acquisition Agreement and Financing Lease shall indicate that \$6,000,000 is the amount of proceeds requested from VRA to finance the New Money Project and pay related costs of issuance and \$5,800,000 is the amount of proceeds requested from VRA to refund the Refunded Bonds and pay related costs of issuance, or such other amount as requested by the County and approved by VRA in advance of VRA's bond pricing (the "Proceeds Requested"); and

WHEREAS, VRA's objective is to pay the County an amount which, in VRA's judgment, reflects the market value of the Rental Payments (as defined in the Local Lease Acquisition Agreement and Financing Lease) under the Local Lease Acquisition Agreement and Financing Lease (the "VRA Purchase Price Objective"), taking into consideration such factors as the purchase price to be received by VRA for VRA Bonds, the issuance costs of the VRA Bonds (consisting of the underwriters' discount and other costs incurred by VRA (collectively, the "VRA Costs")) and other market conditions relating to the sale of the VRA Bonds; and

WHEREAS, such factors may result in the County receiving an amount other than the par amount of the aggregate principal components of the Rental Payments under the Local Lease Acquisition Agreement and Financing Lease and consequently (i) the aggregate principal components of the Rental Payments under the Local Lease Acquisition Agreement and Financing Lease may be greater than the Proceeds Requested in order to receive an amount of proceeds that is substantially equal to the Proceeds Requested, or (ii) if the maximum authorized aggregate principal components of the Rental Payments under the Local Lease Acquisition Agreement and Financing Lease set forth in paragraph 2 of this Resolution does not exceed the Proceeds Requested by at least the amount of the VRA Costs and any original issue

discount, the amount to be paid to the County, given the VRA Purchase Price Objective and market conditions, will be less than the Proceeds Requested; and

WHEREAS, the Local Lease Acquisition Agreement and Financing Lease shall indicate that the County agrees to undertake the refunding of the Refunded Bonds on terms, determined by VRA to be fair and accepted by the County that, subject to VRA's Purchase Price Objective and market conditions, achieves an aggregate net present value debt service savings of not less than 3.00% of the par amount of the Refunded Bonds (the "Targeted Savings"); and

WHEREAS, the Local Lease Acquisition Agreement and Financing Lease shall provide that the aggregate total principal components of Lease Obligations will not exceed the parameters set forth herein; and

WHEREAS, there have been presented to this meeting drafts of the following documents (together, the "Basic Documents") in connection with the transactions described above, copies of which shall be filed with the records of the Board:

- A. Prime Lease, between the County and VRA, dated as of September 25, 2020 conveying certain interests in the Leased Property to VRA (the "Prime Lease");
- B. Local Lease Acquisition Agreement and Financing Lease, between the County and VRA, dated as of September 25, 2020 (i) providing for a portion of the proceeds of the sale of the VRA Bonds to be provided by VRA to the County and (ii) conveying to the County a leasehold interest in the Leased Property (the "Local Lease Acquisition Agreement and Financing Lease"); and
- C. Leasehold Deed of Trust and Security Agreement, between VRA and certain deed of trust trustees to be named therein, dated as of September 25, 2020 regarding VRA's leasehold interest in the Leased Property (the "Leasehold Deed of Trust").

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

1. It is hereby found and determined that the terms of the Basic Documents in the respective forms presented to this meeting and incorporated in this Resolution are in the best interests of the County for funding the Projects.

2. The Basic Documents and related financing documents are hereby approved in substantially the respective forms presented to this meeting. The Chairman, Vice Chairman, County Administrator and any officer of the Board who shall have power generally to execute contracts on behalf of the Board are, and each of them hereby is, authorized to execute, acknowledge, consent to and deliver, as appropriate, the Basic Documents and related financing documents and to make revisions, amendments and modifications thereto. The actions of the Chairman, the Vice Chairman and the County Administrator, any of whom is authorized to act, shall be conclusive, and no further action shall be necessary on the part of the County.

The final pricing terms of the Local Lease Acquisition Agreement and Financing Lease will be determined by VRA, subject to VRA's Purchase Price Objective and market conditions described in the recitals hereof; provided, however that (i) the Lease Obligations shall be composed of principal components having a maximum aggregate principal amount of not to exceed \$14,000,000 (the "Maximum Authorized Principal Amount"), (ii) with respect to the financing of the New Money Project, a true interest

cost not to exceed 5.00% per annum, taking into account any original issue discount or premium (exclusive of Supplemental Interest, as defined below), (iii) with respect to the refunding of the Refunded Bonds, the aggregate net present value debt service savings resulting from refunding of the Refunded Bonds shall not be less than the Targeted Savings, and (iv) the Lease Obligations shall be payable over a term expiring not later than December 31, 2042. Subject to the preceding terms, the Board further authorizes VRA to determine the aggregate total of principal and interest components of the Lease Obligations, establish a schedule of Lease Obligations including the dates and amounts and the optional and extraordinary prepayment provisions, if any, of the Lease Obligations, all in accordance with the provisions hereof. The term of the Prime Lease shall not be more than five years longer than the term of the Local Lease Acquisition Agreement and Financing Lease; such term is intended to provide security to VRA in the event of default or non-appropriation by the County, all as more fully set forth in the Local Lease Acquisition Agreement and Financing Lease (or any supplement thereto).

It is determined to be in the best interest of the County to accept the offer of VRA to enter into the Local Lease Acquisition Agreement and Financing Lease with the County for an amount determined by VRA to be fair, subject to the conditions set forth in this Resolution, which Financing Lease shall be executed by the Chairman, the Vice Chairman or the County Administrator, any one of whom may act. Given the VRA Purchase Price Objective and market conditions, it may become necessary to enter into the Local Lease Acquisition Agreement and Financing Lease with aggregate principal components of the Rental Payments greater than the Proceeds Requested. If the limitation on the maximum aggregate principal components of Rental Payments on the Local Lease Acquisition Agreement and Financing Lease set forth in this paragraph 2 restricts VRA's ability to generate the Proceeds Requested, taking into account the VRA Costs, the VRA Purchase Price Objective and market conditions, the Chairman, Vice Chairman or County Administrator, any one of whom may act, is authorized to accept proceeds for the acquisition of the Local Lease Acquisition Agreement and Financing Lease at an amount less than the Proceeds Requested.

The Chairman, Vice Chairman or County Administrator, any one of whom may act, and such other officer or officers of the County as either may designate are hereby authorized and directed to enter into the Local Lease Acquisition Agreement and Financing Lease.

As set forth in the Local Lease Acquisition Agreement and Financing Lease, the County agrees to pay such "Supplemental Interest" and other charges as provided therein, including such amounts as may be necessary to maintain or replenish any VRA Reserve (as defined in the Local Lease Acquisition Agreement and Financing Lease).

Lease payments due under the Local Lease Acquisition Agreement and Financing Lease (the "Lease Payments") shall be payable in lawful money of the United States of America and otherwise comply with the terms set forth in the Local Lease Acquisition Agreement and Financing Lease. The County may, at its option, prepay the principal components of Lease Payments upon the terms set forth in the Local Lease Acquisition Agreement and Financing Lease.

The Chairman, Vice Chairman or County Administrator, any one of whom may act, is hereby authorized and directed to select the particular portion or portions of the Refunded Bonds (if any) to be refunded and direct VRA to provide a Proceeds Requested that achieves the refunding of the selected portion or portions (if any) provided that the refunding of the Refunded Bonds selected shall result in an aggregate net present value debt service savings of not less than the Targeted Savings. It is understood and agreed that the County will be responsible for all reasonable out-of-pocket fees and expenses incurred by VRA in connection with the proposed refunding of the Refunded Bonds in the event that the parameters set forth herein can be achieved through the issuance of VRA Bonds, but the County opts not to move forward with the financing. Such VRA costs have a not to exceed amount of \$5,000.

3. The same officers of the Board, and the County Administrator and the County Attorney are, and each of them hereby is, authorized and directed to take all actions and procure, execute and deliver any and all other agreements, financing statements, papers, instruments, title insurance policies, real property surveys and inspections, opinions, certificates, affidavits and other documents, and to do or cause to be done any and all other acts and things necessary or proper for carrying out the purposes and intent of this Resolution and the Basic Documents, including the redemption or prepayment of all or a portion of the Prior Bonds and the transfer of interests in the Leased Property. The same officers are authorized and directed to work with the County's financial advisor, Davenport & Company LLC, the County's bond counsel, Kaufman & Canoles, a Professional Corporation, and representatives of VRA, including without limitation McGuireWoods LLP, Bond Counsel to VRA, to perform all services and prepare all documentation necessary or appropriate for the execution, delivery and recording, as appropriate, of the Basic Documents.

The Chairman, Vice Chairman or the County Administrator, any one of whom may act, are authorized and directed to execute an escrow deposit agreement in connection with the Prior Bonds (the "Escrow Agreement") between the County and an escrow agent to be appointed by the County Administrator (the "Escrow Agent"). The Escrow Agreement shall be in the form approved by the Chairman, Vice Chairman or the County Administrator, any one of whom may act, in collaboration with the County's bond counsel, the execution thereof by the Chairman, Vice Chairman or the County Administrator, any one of whom may act, to constitute conclusive evidence of approval of the Escrow Agreement. The Escrow Agreement may provide for the irrevocable deposit of a portion of the Lease Obligation proceeds in an escrow fund which shall be sufficient, when invested in noncallable, direct obligations of the United States Government or comparable open-market securities (the "Government Obligations"), or otherwise, to provide for payment of principal of and premium, if any, and interest on the Refunded Bonds; provided, however, that such Lease Obligation proceeds shall be invested in such manner that the VRA Bonds will not be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"). The Escrow Agent is authorized and directed to execute an initial and final subscription form for the purchase of the Government Obligations.

4. The County represents and covenants that it shall not take or omit to take any action the taking or omission of which would (a) cause the VRA Bonds to be "arbitrage bonds" within the meaning of the Code or (b) otherwise cause interest on any VRA 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 it at any time to rebate to the United States any part of the earnings derived from the investment of the gross proceeds of the VRA Bonds.

5. The County covenants that it shall not permit any proceeds derived from the Lease Obligations to be used in any manner that would result in (a) 10% or more of 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 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 the Projects, (b) 5% or more of such proceeds 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 compliance with any such covenant is not required in order to prevent the interest on the VRA Bonds 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 covenant to the extent provided in such opinion.

6. Such officers of the County as may be requested are authorized and directed to execute and deliver a tax compliance agreement in relation to the Lease Obligations (the "Tax Compliance Agreement") in the form approved by the Chairman, Vice Chairman or the County Administrator, any one of whom may act, in collaboration with the County's bond counsel, with such completions, omissions, insertions and changes as may be approved by the officers of the County executing such Tax Compliance Agreement, whose approval shall be evidenced conclusively by the execution and delivery thereof.

7. The undertaking by the County under the Local Lease Acquisition Agreement and Financing Lease to make Lease Payments shall be a limited obligation of the County, payable solely from funds to be appropriated by the Board from time to time for such purpose and shall not constitute a debt of the County within the meaning of any constitutional or statutory limitation or a pledge of the faith and credit of the County beyond any fiscal year for which the Board has lawfully appropriated from time to time. Nothing herein or in the Lease Obligations 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.

8. While recognizing that it is not empowered to make any binding commitment to make Rental Payments and any other payments required under the Financing Lease beyond the current fiscal year, the 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 Boards do likewise during the term of the Financing Lease. The Board directs the County Administrator or Deputy County Administrator, 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 Financing Lease an amount sufficient to pay the Rental Payments and all other payments coming due under the Financing Lease during such fiscal year. If at any time during any fiscal year of the County throughout the term of the Financing Lease, the amount appropriated in the County's annual budget in any such fiscal year is insufficient to pay when due the Rental Payments and any other payments required under the Financing Lease, the Board directs the County Administrator or Deputy County Administrator, or such other officer who may be charged with the responsibility for preparing the County's annual budget, to submit to the Board at the next scheduled meeting, or as promptly as practicable but in any event within 45 days, a request for a supplemental appropriation sufficient to cover the deficit.

9. The County's obligation to make the Rental Payments and all other payments pursuant to the Financing Lease is hereby specifically stated to be subject to annual appropriation therefor by the Board, and nothing in this Resolution or the Documents shall constitute a pledge of the full faith and credit nor taxing power of the County or compel the Board to make any such appropriation.

10. The County authorizes and consents to the inclusion of information with respect to the County to be contained in VRA's Preliminary Official Statement and VRA's Official Statement in final form, both prepared in connection with the sale of the VRA Bonds, a portion of the proceeds of which will be used to purchase the Lease Obligations. If appropriate, such disclosure documents shall be distributed in such manner and at such times as the Chairman, Vice Chairman or the County Administrator, any one of whom may act, shall determine. The Chairman, Vice Chairman or the County Administrator, any one of whom may act, are authorized and directed to take whatever actions are necessary and/or appropriate to aid VRA in ensuring compliance with Securities and Exchange Commission Rule 15c2-12.

11. The recitals to this Resolution are hereby incorporated by reference and are declared to be findings of the Board in connection with its decision to fund the Projects.

12. All acts of the officers, agents and representatives of the County that are in conformity with the purposes and intent of this Resolution and in furtherance of the leasing of the Leased Property by the County to finance the Projects are hereby approved, ratified and confirmed. In addition, the Chairman,

Vice Chairman or the County Administrator, any one of whom may act, is hereby authorized and directed to cause the redemption proceedings, including the giving of redemption notices to the holders of the Refunded Bonds, shall be done pursuant to the terms of the Refunded Bonds (or otherwise as agreed to by the holders).

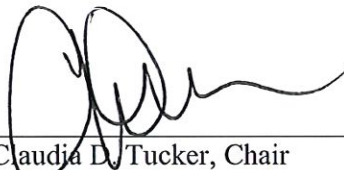
13. The Board hereby determines that it is in the best interests of the County to authorize and direct the County Treasurer and Director of Finance to participate in the State Non-Arbitrage Program ("SNAP"), if requested by VRA, in connection with the investment of the proceeds of the lease-leaseback transaction. The 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 documents provided in connection with SNAP.

14. Any authorization herein to execute a document shall include authorization to deliver it to the other parties thereto, to record such document where appropriate and to pay from County funds all appropriate recording fees, taxes and related charges.

15. In adopting this Resolution authorizing the Basic Documents, the County declares and reaffirms its prior official intent declarations to issue the Basic Documents and provide moneys to reimburse the County for expenditures with respect to the New Money Project, as contemplated by Treasury Regulations 1.150-2 promulgated pursuant to the Tax Code.

II. That this resolution shall be in force and effect upon adoption.

Adopted this 15th day of September, 2020.

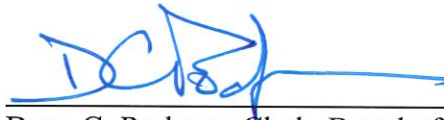


Claudia D. Tucker, Chair
Amherst County Board of Supervisors

| Member | Vote |
|------------------------------------|------------|
| Claudia D. Tucker, Chair..... | <u>AYE</u> |
| Jennifer R. Moore, Vice-Chair..... | <u>AYE</u> |
| David W. Pugh, Jr. | <u>AYE</u> |
| Tom Martin | <u>AYE</u> |
| L. J. "Jimmy" Ayers III | <u>AYE</u> |

The undersigned Clerk of the Board of Supervisors of the County of Amherst, Virginia, hereby certifies that the foregoing constitutes a true and correct extract from the minutes of a meeting of the Board of Supervisors held on September 15, 2020, and of the whole thereof so far as applicable to the matters referred to in such extract. I hereby further certify that such meeting was a regularly scheduled meeting and that, during the consideration of the foregoing resolution, a quorum was present. Members present at the meeting were: Tucker, Moore, Pugh, Martin, Ayers. Members absent from the meeting were: none. Members voting in favor of the foregoing resolution were: Tucker, Moore, Pugh, Martin, Ayers. Members voting against the foregoing resolution were: none. Members abstaining from voting on the foregoing resolution were: none.

WITNESS MY HAND and the seal of the Board of Supervisors of the County of Amherst, Virginia,
this 15th day of September, 2020.



Dean C. Rodgers, Clerk, Board of Supervisors of the
County of Amherst, Virginia

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