

**RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF**

**\$4,280,000 GENERAL OBLIGATION PUBLIC IMPROVEMENT REFUNDING BOND,**

**SERIES 2002, OF THE COUNTY OF JAMES CITY, VIRGINIA**

**AND PROVIDING FOR THE FORM, DETAILS, AND PAYMENT THEREOF**

WHEREAS, the issuance of general obligation bonds by the County of James City, Virginia (the "County"), in the maximum principal amount of \$38,600,000 was approved by the qualified voters of the County at a special election held on March 1, 1994, to finance a school construction program (the "School Improvements"). On August 3, 1994, the County issued its \$9,500,000 General Obligation Public Improvement Bonds, Series of 1994 (the "1994 Bonds") to finance a portion of the costs of the School Improvements; and

WHEREAS, the County's Board of Supervisors (the "Board") determines that it is in the best interests of the County to take advantage of lower interest rates now prevalent in the capital markets and to issue and sell general obligation public improvement refunding bonds to refinance the 1994 Bonds maturing on and after December 15, 2007. The Board has received a proposal from SunTrust Bank (the "Bank") to purchase such refunding bonds on substantially the terms set forth in Proposed Terms and Conditions (the "Proposal") dated November 1, 2002, and delivered by the Bank to the Board.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia,

**Section 1.** **Authorization, Issuance and Sale.** There is hereby authorized to be issued and sold, pursuant to the Constitution and statutes of the Commonwealth of Virginia, including the Public Finance Act of 1991, Chapter 26, Title 15.2, Code of Virginia of 1950, as amended (the "Act"), general obligation public improvement refunding bonds of the County in the principal amount of \$4,280,000 to refund the 1994 Bonds maturing on and after December 15, 2007 (the "1994 Refunded Bonds") and to pay the costs incurred in connection with issuing such refunding bonds. The Board hereby elects to issue such refunding bonds under the provisions of the Act.

**Section 2.** **Bond Details.** Such refunding bonds shall be issued as a single bond designated "General Obligation Public Improvement Refunding Bond, Series 2002" (the "Bond"), shall be dated the date of its issuance (the "Issuance Date"), which shall be no later than December 31, 2002, shall be in registered form, registered initially in the name of the Bank, shall be in the principal amount of \$4,280,000, and shall be numbered R-1. Interest on the Bond shall accrue at the rate per year of 3.75% and shall be payable on each June 15 and December 15, commencing December 15, 2002. Interest shall be calculated on the basis of a year of 360 days with twelve 30-day months.

The Bond shall mature on December 15, 2014. Principal installments of the Bond shall be payable on December 15 in the years and the principal amounts set forth below:

<u>December 15</u>	<u>Principal Installment Payable</u>
2002	\$ 80,000
2003	46,000
2004	48,000
2005	50,000
2006	52,000
2007	529,000
2008	522,000
2009	514,000
2010	506,000
2011	497,000
2012	488,000
2013	479,000
2014	469,000

If not earlier paid, the aggregate principal amount outstanding under the Bond, together with all accrued and unpaid interest thereon, shall be due and payable on December 15, 2014.

The Board authorizes the issuance and sale of the Bond to the Bank on the terms set forth above, consistent with the Proposal, which Proposal is hereby accepted by the Board. The Bank shall purchase the Bond from the County for the purchase price of \$4,280,000.

The County Administrator is hereby designated as the Registrar for the Bond (the "Registrar"). Principal and interest shall be payable by check or draft mailed to the registered owner at its address as it appears on the registration books kept by the Registrar as of the close of business on the day preceding the principal or interest payment date. A "Business Day" is any day other than a Saturday, Sunday, legal holiday or other date on which banking institutions are authorized or obligated by law to close in the Commonwealth of Virginia. In case any principal or interest payment date is not a Business Day, then payment of principal and interest need not be made on such date, but may be made on the next succeeding Business Day, and if made on such next succeeding Business Day no additional interest shall accrue for the period after such principal or interest payment date. Principal and interest on the Bond shall be payable in lawful money of the United States of America.

**Section 3. Prepayment Provisions.** The Bond is subject to prepayment at the option of the County in whole or in part at any time or from time to time on or after December 15, 2008 at a prepayment price of 100% of the principal amount

to be prepaid plus accrued interest to the prepayment date. Any such prepayment shall be applied to the principal installments due on the Bond in inverse chronological order.

The County shall cause notice of each prepayment to be sent to the registered owner by facsimile transmission, registered or certified mail, or overnight express delivery, not less than thirty (30) nor more than sixty (60) days prior to the prepayment date.

**Section 4. Preparation and Delivery; Execution and Authentication.** The Chairman or Vice Chairman and the Clerk or Deputy Clerk of the Board are authorized and directed to take all proper steps to have the Bond prepared and executed in accordance with its terms and to deliver the Bond to the Bank upon payment therefor.

The Bond shall be signed by the manual signature of the Chairman or Vice Chairman of the Board and the County's seal shall be affixed thereto and attested to by the manual signature of the Clerk or Deputy Clerk of the Board.

**Section 5. Bond Form.** The Bond shall be in substantially the form set forth in Exhibit A attached hereto.

**Section 6. Pledge of Full Faith and Credit.** The full faith and credit of the County are irrevocably pledged for the payment of principal of and interest on the Bond. Unless other funds are lawfully available and appropriated for timely payment of the Bond, the County shall levy and collect an annual *ad valorem* tax, over and above all other taxes authorized or limited by law and without limitation as to rate or amount, on all locally taxable property in the County sufficient to pay the principal of and interest on the Bond, as the same become due.

**Section 7. Registration, Transfer and Owner of Bond.** The Registrar shall maintain registration books for the registration of the Bond. Upon surrender of the Bond at the designated office of the Registrar, together with an assignment duly executed by the registered owner or his duly authorized attorney or legal representative in such form as shall be satisfactory to the Registrar, the County shall execute a new Bond having an equal principal amount, of the same form and maturity, bearing interest at the same rate, and registered in names as requested by the then registered owner or its duly authorized attorney or legal representative. Any such exchange shall be at the expense of the County, except that the Registrar may charge the person requesting such exchange the amount of any tax or other governmental charge required to be paid with respect thereto.

The Registrar shall treat the registered owner as the person exclusively entitled to payment of principal and interest and the exercise of all other

rights and powers of the owner.

**Section 8. Refunding; Escrow Agreement.** The Board hereby irrevocably calls for the optional redemption of the 1994 Refunded Bonds on December 15, 2004 (the "Redemption Date") at a redemption price equal to 102% of the principal amount of the 1994 Refunded Bonds plus accrued interest to the Redemption Date.

To facilitate the defeasance of the 1994 Refunded Bonds and the payment of the principal of, premium and interest on the 1994 Refunded Bonds from the Issuance Date through the Redemption Date, the Board hereby authorizes the use of the Escrow Agreement dated the Issuance Date (the "Escrow Agreement") between the County and SunTrust Bank, as escrow agent (the "Escrow Agent"). The substantially final form of the Escrow Agreement has been made available to the Board prior to the adoption of this Resolution. The Escrow Agreement is hereby approved in substantially the form made available to the Board. There may, however, be changes, insertions, completions or omissions to the form of the Escrow Agreement to reflect the final terms of the Bond or other commercially reasonable provisions. All of such changes, insertions, completions or omissions will be approved by the Chairman or the Vice Chairman of the Board, whose approval shall be evidenced conclusively by the execution and delivery of the Escrow Agreement. The Board hereby authorizes the Chairman or the Vice Chairman of the Board to execute and deliver the Escrow Agreement on behalf of the County.

**Section 9. Arbitrage Covenants.**

- (a) **No Composite Issue.** The County represents that there have not been issued, and covenants that there will not be issued, any obligations that will be treated as part of the same issue of obligations as the Bond within the meaning of the Internal Revenue Code of 1986, as amended, including regulations issued pursuant thereto (the "Code").
- (b) **No Arbitrage Bonds.** The County 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 Code, or otherwise cause interest on the Bond to be includable in the gross income for federal income tax purposes of the registered owner thereof under existing law. Without limiting the generality of the foregoing, the County shall comply with any provision of law which 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 Bond, unless the County receives an opinion of nationally recognized bond counsel that such compliance is not required to prevent interest on the Bond from being includable in the gross income for federal income tax purposes of the registered owner

thereof under existing law. The County shall pay any such required rebate from its legally available funds.

**Section 10. Non-Arbitrage Certificate and Elections.** Such officers of the County as may be requested are authorized and directed to execute an appropriate certificate setting forth the expected use and investment of the proceeds of the Bond in order to show that such expected use and investment will not violate the provisions of Section 148 of the Code, and 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 and elections shall be in such form as may be requested by bond counsel for the County. The County shall comply with any covenants set forth in such certificate regarding the use and investment of the proceeds of the Bond.

**Section 11. Limitation on Private Use; No Federal Guaranty.** The County covenants that it shall not permit the proceeds of the Bond to be used in any manner that would result in (a) ten percent (10%) or more of such proceeds being used in a trade or business carried on by any person other than a state or local governmental unit, as provided in Section 141(b) of the Code, (b) five percent (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) five percent (5%) or more of such proceeds being used directly or indirectly to make or finance loans to any persons other than a state or local governmental unit, as provided in Section 141(c) of the Code; *provided*, 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 Bond from being includable in the gross income for federal income tax purposes of the registered owners thereof under existing law, the County need not comply with such covenants.

The County represents and agrees that the Bond is not and will not be "federally guaranteed," as such term is used in Section 149(b) of the Code. No portion of the payment of principal of or interest on the Bond is or will be guaranteed, directly or indirectly, in whole or in part by the United States or an agency or instrumentality thereof.

**Section 12. Bank Qualification.** The Bond is hereby designated as a qualified tax-exempt obligation under Section 265(b)(3)(B) of the Code for the purpose of facilitating its sale to a financial institution. The County has not and will not designate more than \$10,000,000 of obligations, including the Bond, as qualified tax-exempt obligations in calendar year 2002. The County has not issued more than \$10,000,000 of tax-exempt obligations in calendar year 2002, including the Bond. Neither the County, its industrial development authority nor any other entity which issues obligations on behalf of the County (together, the "County Entities") has issued any "private activity bonds" which are "qualified 501(c)(3) bonds," within the meaning of Sections 141 and 145 of the Code during calendar year 2002. Barring

circumstances unforeseen as of the date of delivery of the Bond, the County Entities will not issue tax-exempt obligations if the issuance of such tax-exempt obligations would, when aggregated with all other tax-exempt obligations theretofore issued by the County Entities in calendar year 2002, result in the County Entities having issued a total of more than \$10,000,000 of tax-exempt obligations in calendar year 2002, including the Bond but not including any private activity bonds other than qualified 501(c)(3) bonds. The County has no reason to believe that it will issue such tax-exempt obligations in 2002 in an aggregate amount that will exceed such \$10,000,000 limit; *provided*, that if the County receives an opinion of nationally recognized bond counsel that compliance with any covenant set forth above in this paragraph is not required for the Bond to be a qualified tax-exempt obligation, the County need not comply with such covenant.

**Section 13. Discharge upon Payment of Bond.** The Bond may be defeased, as permitted by the Act. Any defeasance of the Bond, as permitted by the Act, shall not release the County or the Registrar from its obligations hereunder to register and transfer the Bond or release the County from its obligations to pay the principal of and interest on the Bond as contemplated herein until the date the Bond is paid in full, unless otherwise provided in the Act. In addition, such defeasance shall not terminate the obligations of the County under Sections 9 and 11 until the date the Bond is paid in full.

**Section 14. Other Actions.** All other actions of the Supervisors, officers, staff, and agents of the County in conformity with the purposes and intent of this Resolution and in furtherance of the issuance and sale of the Bond and the refunding of the 1994 Refunded Bonds are approved and confirmed. The officers and staff of the County are authorized and directed to execute and deliver all certificates and instruments, including Internal Revenue Service Form 8038-G and to take all such further action as may be considered necessary or desirable in connection with the issuance, sale and delivery of the Bond.

**Section 15. Limitation of Liability of Officials of the County.** No covenant, condition, agreement or obligation contained herein shall be deemed to be a covenant, condition, agreement or obligation of a Supervisor, officer, employee or agent of the County in his or her individual capacity, and no officer of the County executing the Bond shall be liable personally on the Bond or be subject to any personal liability or accountability by reason of the issuance thereof. No Supervisor, officer, employee, or agent of the County shall incur any personal liability with respect to any other action taken by him or her pursuant to this Resolution, provided he or she acts in good faith.

**Section 16. Contract with Registered Owner.** The provisions of this Resolution shall constitute a contract between the County and the registered owner of the Bond for so long as the Bond is outstanding. Notwithstanding the foregoing, this Resolution may be amended by the County in any manner that does not,

in the opinion of the County, materially adversely affect the registered owner of the Bond.

Each year, within thirty (30) days of such document becoming available, the County shall send to the registered owner of the Bond a copy of the County's Comprehensive Annual Financial Report.

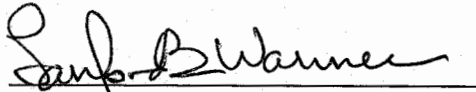
**Section 17. Repeal of Conflicting Resolutions.** All resolutions or parts of resolutions in conflict herewith are repealed.

**Section 18. Effective Date.** This Resolution shall take effect immediately upon its adoption. The Clerk and any Deputy Clerk of the Board are hereby authorized and directed to see to the immediate filing of a certified copy of this Resolution with the Circuit Court of the County of James City, Virginia.

James G. Kennedy  
Chairman, Board of Supervisors

SUPERVISOR	VOTE
MCLENNON	AYE
BROWN	AYE
GOODSON	AYE
HARRISON	AYE
KENNEDY	AYE

ATTEST:

  
Sanford B. Wanner  
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of November, 2002.