



**RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION SCHOOL BONDS OF THE COUNTY OF ALBEMARLE, VIRGINIA, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$2,000,000, TO BE SOLD TO THE VIRGINIA PUBLIC SCHOOL AUTHORITY AND PROVIDING FOR THE FORM AND DETAILS THEREOF**

**WHEREAS**, the Board of Supervisors (the "Board") of the County of Albemarle, Virginia (the "County"), has determined that it is necessary and expedient to borrow an amount not to exceed \$2,000,000 and to issue its general obligation school bond (as more specifically defined below, the "Local School Bond") for the purpose of financing capital projects for public schools, including without limitation, an addition to the Mary Carr Greer Elementary School; and

**WHEREAS**, the County has held a public hearing, duly noticed, on September 14, 2011, on the issuance of the Local School Bond in accordance with the requirements of Section 15.2-2606, Code of Virginia 1950, as amended (the "Virginia Code"); and

**WHEREAS**, the School Board of the County has, by resolution adopted on August 11, 2011, requested the Board to authorize the issuance of the Local School Bond and consented to the issuance of the Local School Bond; and

**WHEREAS**, the Virginia Public School Authority ("VPSA") has offered to purchase the Local School Bond along with the local school bonds of certain other localities with a portion of the proceeds of certain bonds to be issued by VPSA in the fall of 2011 (the "VPSA Bonds"); and

**WHEREAS**, VPSA intends to issue the VPSA Bonds as "qualified school construction bonds" (referred to below as "QSCBs" and each a "QSCB") within the meaning of Section 54F of the Internal Revenue Code of 1986, as amended (the "Tax Code"), which section was added to the Tax Code by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, 123 Stat. 355), enacted on February 17, 2009; and

**WHEREAS**, VPSA intends to elect to treat the VPSA Bonds as "specified tax credit bonds" under Section 6431 of the Tax Code, as amended by the Hiring Incentives to Restore Employment Act (Pub. L. No. 111-147, 123 Stat. 301), enacted on March 18, 2010, which status enables an issuer of a QSCB to receive a direct payment of a refundable credit in lieu of providing a tax credit to the purchaser or holder of the QSCB; and

**WHEREAS**, the refundable credit payable with respect to each interest payment date will be equal to the lesser of (i) the amount of interest payable under the QSCB on such date or (ii) the amount of interest which would have been payable under the QSCB on such date if such interest were determined at the applicable credit rate determined under Section 54A(b)(3) of the Tax Code (that is, the rate used in computing the amount of tax credit that could be claimed by the QSCB holder absent the "specified tax credit bond" refundable credit election); and

**WHEREAS**, subject to the terms and conditions set forth or referred to below, VPSA will transfer to the County the allocable portion of the refundable credit actually received in cash by VPSA with respect to the VPSA Bonds; and

**WHEREAS**, the allocation of QSCB volume cap pursuant to which VPSA will issue the VPSA Bonds will be made by Executive Order to be issued by the Governor of the Commonwealth of Virginia (the "Executive Order"), to finance the Project along with a number of other projects selected through a competitive evaluation process administered by the Virginia Department of Education; and

**WHEREAS**, the Bond Sale Agreement (as defined below) shall indicate that \$2,000,000 is the amount of proceeds requested (the "Proceeds Requested") from the VPSA in connection with the sale of the Local School Bond; and

**WHEREAS**, VPSA's objective is to pay the County a purchase price for the Local School Bond which, in VPSA's judgment, reflects the Local School Bond's market value (the "VPSA Purchase Price Objective"), taking consideration of such factors as the purchase price to be received by VPSA from the sale of the VPSA Bonds, the underwriters' discount and the other issuance costs of the VPSA Bonds and other market conditions relating to the sale of the VPSA Bonds; and

**WHEREAS**, such factors may result in the Local School Bond having a purchase price other than par and consequently (i) in the case of any bond premium, the County may have to issue the Local School Bond in a principal amount that is less 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 principal amount of the Local School Bond set forth in paragraph 1 of this Resolution does not exceed the Proceeds Requested by at least the amount of any bond discount, the purchase price to be paid to the County, given the VPSA Purchase Price Objective and market conditions, will be less than the Proceeds Requested.

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

1. **Authorization of Local School Bond and Use of Proceeds.** The Board hereby determines that it is advisable to contract a debt and issue and sell its general obligation school bond in a principal amount not to exceed \$2,000,000 (the "Local School Bond") for the purpose of financing capital projects for public schools, including without limitation, an addition to the Mary Carr Greer Elementary School, and for paying the County's allocable share of (a) VPSA's costs of issuing the VPSA Bonds and (b) any upfront flat fees of VPSA as determined by VPSA to be necessary to compensate VPSA for the ongoing costs related to administering the local school bonds purchased with the VPSA Bonds, including the County's Local School Bond (such upfront fees may be in lieu of the Annual Administrative Fee described in paragraph 4 in this Resolution). The Board hereby authorizes the issuance and sale of the Local School Bond in the form and upon the terms established pursuant to this Resolution and the Bond Sale Agreement.

2. **Sale of the Local School Bond.** The sale of the Local School Bond, within the parameters set forth in paragraph 4 of this Resolution, to VPSA is authorized. Given the VPSA Purchase Price Objective and market conditions, the County acknowledges that if the limitation on the maximum principal amount on the Local School Bond set forth in paragraph 1 of this Resolution restricts VPSA's ability to generate the Proceeds Requested, the Local School Bond may be sold for a purchase price of not lower than 90% of the Proceeds Requested. The Chairman of the Board, the County Executive (which term shall include any Assistant County Executive), or either of them, and such other officer or officers of the County as either may designate, are hereby authorized and directed to enter into an agreement with VPSA providing for the sale of the Local School Bond to VPSA (the "Bond Sale Agreement"). The Bond Sale Agreement shall be in substantially the form submitted to the Board at this meeting, which form is hereby approved.

3. **Details of the Local School Bond.** The Local School Bond shall be dated the date of its issuance and delivery; shall be designated "General Obligation School Bond, Series 2011B," or such other designation as the County Executive shall determine; shall bear interest from the date of delivery thereof payable semi-annually on dates specified by VPSA (each, an "Interest Payment Date" at the rates established in accordance with paragraph 4 of this Resolution; and shall mature annually in the years (each a "Principal Payment Date," and together with any Interest Payment Date, a "Payment Date") and in the amounts (the "Principal Installments") determined by the County Executive, subject to the provisions of paragraph 4 of this Resolution.

4. **Interest Rate and Principal Installments.** The County Executive is hereby authorized and directed to accept the interest rate on the Local School Bond established by VPSA, provided that each interest rate may be up to five one-hundredths of one percent (0.05%) over the interest rate to be paid by VPSA for the corresponding principal payment date of the VPSA Bonds, a portion of the proceeds of which will be used to purchase the Bonds, to the extent required by VPSA (the "Annual Administrative Fee"), and provided further that the true interest cost of the Local School Bond does not exceed seven and a half percent (7.50%) per annum. The Payment Dates and the Principal Installments shall be specified by VPSA. The County Executive is hereby authorized and directed to accept the final Payment Dates and the Principal Installments at the request of VPSA based on the final term to maturity of the VPSA Bonds, requirements imposed on VPSA by the nationally-recognized rating agencies and the final principal amount of the Local School Bond; provided,

however, that the principal amount of the Local School Bond shall not exceed the amount authorized by this Resolution and the final maturity of the Local School Bond shall be no later than the earlier of (a) December 31, 2030, and (b) the latest maturity date permitted under Section 54A of the Tax Code. The execution and delivery of the Local School Bond as described in paragraph 10 hereof shall conclusively evidence the approval and acceptance all of the details of the Local School Bond by the County Executive as authorized by this Resolution.

5. **Certain Investment Earnings.** The Board hereby acknowledges that VPSA will (i) issue the VPSA Bonds with multiple maturities or with a single “bullet” maturity, in either case, with a final maturity date on or shortly before the latest maturity date permitted for the VPSA Bonds under Section 54A of the Tax Code, (ii) invest the Principal Installments for the benefit of the County until they are applied to pay the principal of the VPSA Bonds and (iii) either remit the investment earnings periodically to the County or credit the investment earnings against the County’s obligation to make Principal Installments, at the option of VPSA. The Board further acknowledges that VPSA may cause a portion of such earnings to be deposited into a reserve fund or account to be applied by VPSA for use to pay the costs, fees and expenses described in paragraph 15 below. Any balance in such reserve fund or account attributable to investment earnings on the County’s Principal Installments as reasonably determined by VPSA will be remitted or credited to the County on the final maturity date of the VPSA Bonds.

6. **Certain Acknowledgements.** The County acknowledges that the interest rate on the Local School Bond will be set at the level necessary to pay the interest on the allocable portion of the VPSA Bonds plus the Annual Administrative Fee, if any, and that the County will be obligated to pay interest on the Local School Bond at the stated taxable rate thereon regardless of the elimination or reduction of the refundable credit to be received by VPSA due to (i) any amendments by Congress to Sections 54A, 54F or 6431 or any other applicable sections of the Tax Code, (ii) any failure or determination by Congress not to appropriate funds necessary to pay the refundable credit, (iii) any guidance or changes to guidance provided by the U.S. Department of Treasury or the Internal Revenue Service, or (iv) any action or omission by VPSA, the County or any other locality selling local school bonds to VPSA in connection with the VPSA Bonds that causes the VPSA Bonds to lose their status as QSCBs and/or specified tax credit bonds in whole or in part. It is also acknowledged that the County has the right to effect an extraordinary optional redemption of the Local School Bond in whole or in part upon the occurrence of any of these events as provided in the form of Local School Bond.

7. **Form of the Local School Bond.** The Local School Bond shall be issued initially in the form of a single, temporary typewritten bond substantially in the form attached hereto as Exhibit A.

8. **Payment; Paying Agent and Bond Registrar.** The following provisions shall apply to the Local School Bond:

(a) For as long as VPSA is the registered owner of the Local School Bond, all payments of principal, premium, if any, and interest on the Local School Bond shall be made in immediately available funds to, or at the direction of VPSA at, or before 11:00 a.m. on the applicable Interest Payment Date, Principal Payment Date or date fixed for prepayment or redemption, or if such date is not a business day for Virginia banks or for the Commonwealth of Virginia, then at or before 11:00 a.m. on the business day next succeeding such Interest Payment Date, Principal Payment Date or date fixed for payment, prepayment or redemption.

(b) The Bond Registrar and Paying Agent for the Local School Bond shall be the banking institution selected by VPSA for such purposes.

9. **Prepayment or Redemption.** The Principal Installments of the Local School Bond may be subject to optional prepayment or redemption prior to their stated maturities as determined by VPSA. The Principal Installments of the Local School Bond will be subject to extraordinary mandatory redemption (i) if certain proceeds of the Local School Bond have not been spent within three years after the date of its issuance and delivery (which three year period may be extended by the U.S. Secretary of the Treasury or his delegate), (ii) due to a loss of “qualified tax credit bond” and “qualified school construction bond” status of the VPSA Bonds corresponding to the Local School Bond under Sections 54A and 54F of the Tax Code, and (iii) if due to (a) any amendments by Congress to Sections 54A, 54F or 6431 or any other applicable sections of the Tax Code or (b) any guidance or changes to guidance provided by the U.S. Department of Treasury or

the Internal Revenue Service, there is a reduction or elimination of the direct payment of the refundable credit to be received by VPSA with respect to the VPSA Bonds. The Principal Installments of the Local School Board shall be redeemed at the redemption prices and upon the other terms set forth in the Local School Bond.

10. **Execution of the Local School Bond.** The Chairman or Vice Chairman of the Board, either of whom may act, and the Clerk of the Board or any Deputy Clerk of the Board, either of whom may act, are authorized and directed to execute and deliver the Local School Bond and to affix the seal of the County thereto.

11. **Pledge of Full Faith and Credit.** For the prompt payment of the principal of and interest, if any, and premium, if any, on the Local School Bond as the same shall become due, the full faith and credit of the County are hereby irrevocably pledged, and in each year while any of the Local School Bond shall be outstanding there shall be levied and collected in accordance with law an annual ad valorem tax upon all taxable property in the County subject to local taxation sufficient in amount to provide for the payment of the principal of and interest, if any, and premium, if any, on the Local School Bond as such principal, interest, if any, and premium, if any, shall become due, which tax shall be without limitation as to rate or amount and in addition to all other taxes authorized to be levied in the County to the extent other funds of the County are not lawfully available and appropriated for such purpose.

12. **Use of Proceeds Certificate and Tax Compliance Agreement.** The Chairman of the Board, the County Executive and such other officer or officers of the County as either may designate are hereby authorized and directed to execute and deliver on behalf of the County a Use of Proceeds Certificate and Tax Compliance Agreement (the "Tax Compliance Agreement") setting forth the expected use and investment of the proceeds of the Local School Bond and containing such covenants as may be necessary for the VPSA Bonds to qualify as and to remain as "qualified tax credit bonds," "qualified school construction bonds" and "specified tax credit bonds" under Sections 54A, 54F and 6431 of the Tax Code and the applicable regulations. The Board covenants on behalf of the County that (i) the proceeds from the issuance and sale of the Local School Bond will be invested and expended as set forth in the Tax Compliance Agreement and that the County shall comply with the other covenants and representations contained therein and (ii) the County shall comply with the provisions of the Tax Code so that the VPSA Bonds will not lose their status as "qualified tax credit bonds," "qualified school construction bonds" and "specified tax credit bonds" under Sections 54A, 54F and 6431 of the Tax Code.

13. **State Non-Arbitrage Program; Proceeds Agreement.** The Board hereby determines that it is in the best interests of the County to authorize and direct the County Director of Finance to participate in the State Non-Arbitrage Program in connection with the Local School Bond. The Chairman of the Board, the County Executive and such officer or officers of the County as either may designate are hereby authorized and directed to execute and deliver a Proceeds Agreement with respect to the deposit and investment of proceeds of the Local School Bond by and among the County, the other participants in the sale of the VPSA Bonds, VPSA, the investment manager and the depository, substantially in the form submitted to the Board at this meeting, which form is hereby approved.

14. **Continuing Disclosure Agreement.** The Chairman of the Board, the County Executive and such other officer or officers of the County as either may designate are hereby authorized and directed to execute a Continuing Disclosure Agreement, as set forth in Appendix E to the Bond Sale Agreement, setting forth the reports and notices to be filed by the County and containing such covenants as may be necessary in order to show compliance with the provisions of the Securities and Exchange Commission Rule 15c2-12, under the Securities Exchange Act of 1934, as amended, and directed to make all filings required by Section 3 of the Bond Sale Agreement should the County be determined by the VPSA to be a MOP (as defined in the Continuing Disclosure Agreement).

15. **Fees, Costs and Expenses.** The County agrees to pay from proceeds of its Local School Bond or other legally available funds the following fees, costs and expenses incurred by VPSA in connection with its purchase and carrying of the Local School Bond within thirty days after receipt by the County Executive of a written bill therefor:

- (a) The County's allocable share of (i) the fees, costs and expenses of the trustee, paying agent and bond registrar under the indenture pursuant to which VPSA will issue the VPSA Bonds and

(ii) the County's allocable share of any fees, costs and expenses payable to third parties in connection with such indenture or VPSA's School Tax Credit Bond Program, as determined by VPSA; and

(b) To the extent permitted by law, the reasonable fees, costs and expenses, including reasonable attorneys' fees, if any, incurred by VPSA in connection with any false representation or certification or covenant default by the County or any County or School Board official, employee, agent or contractor under the Local School Bond, the Continuing Disclosure Agreement, the Tax Compliance Agreement, the Proceeds Agreement and/or any document, certificate or instrument associated therewith (collectively, the "County Documents"), or in connection with any extraordinary mandatory redemption of the Local School Bond as described in paragraph 9 above and the corresponding VPSA Bonds, any amendment to or discretionary action that VPSA makes or undertakes at the request of the County under any of the County Documents or any other document related to the VPSA Bonds.

16. **Filing of Resolution.** The appropriate officers or agents of the County are hereby authorized and directed to cause a certified copy of this Resolution to be filed with the Circuit Court of the County.

17. **Election to Proceed under Public Finance Act.** In accordance with Section 15.2-2601 of the Virginia Code, the Board elects to issue the Local School Bond pursuant to the provisions of the Public Finance Act of 1991, Chapter 26 of Title 15.2 of the Virginia Code.

18. **Further Actions.** The members of the Board and all officers, employees and agents of the County are hereby authorized to take such action as they or any one of them may consider necessary or desirable in connection with the issuance and sale of the Local School Bond and any such action previously taken is hereby ratified and confirmed.

19. **Effective Date.** This Resolution shall take effect immediately.

Resolution

WHEREAS, the Charlottesville-Albemarle Metropolitan Planning Organization amended its Constrained Long-Range Transportation Plan and Transportation Improvement Program on July 27, 2011, to remove language opposing the allocation of construction funding to the proposed Route 29 Western Bypass (“Bypass”); and

WHEREAS, the Virginia Secretary of Transportation has announced that the State will soon begin advertising for bids for the design and construction of the bypass; and

WHEREAS, the Final Environmental Impact Statement for the Route 29 Bypass was completed eighteen years ago and the Supplemental Environmental Impact Statement was completed eight years ago, and VDOT is therefore required to prepare a written reevaluation of the environmental impact statements; and

WHEREAS, among other items, the traffic modeling, the traffic estimates, the air quality analyses and the noise analyses in the environmental impact statements are now outdated and additional analysis needs to be done; and

WHEREAS, there is significant new information that has been developed since the environmental impact statements were prepared, including new scientific research documenting the detrimental effects of highway pollutants on the health of individuals, and children, especially; and

WHEREAS, new data and analyses that should be developed as part of a thorough and properly done review of the bypass and its impacts, including results of traffic modeling, will be necessary in order to provide updated and accurate information about health, noise, and other impacts of the bypass, as well as to identify strategies to mitigate those impacts; and

WHEREAS, the new data and analyses should be considered before it becomes costly and difficult to make changes to the proposed plans for the bypass.

NOW, THEREFORE BE IT RESOLVED that the Albemarle County Board of Supervisors hereby requests that, before construction of the bypass begins, the Virginia Department of Transportation:

- Evaluate updated traffic modeling for the bypass that includes a comparison of at least two scenarios, including one that evaluates a baseline set of improvements with the bypass, and one that evaluates the same baseline set of improvements without the bypass; and
- Consider new scientific research documenting the detrimental effects of highway pollutants on the health of individuals, and children, especially; and
- Conduct thorough analyses of the potential health and noise impacts of the bypass on children attending the six schools and the residents of the neighborhoods located along its proposed route; and
- Engage in meetings with impacted citizens and representatives of impacted schools concerning appropriate strategies to mitigate such impacts in time to appropriately implement mitigation strategies into design and construction of the bypass; and
- Consider a reduction of the design speed for the bypass from 60 mph to 50 mph; and
- Hold a public hearing to allow comment on the above information after it has been prepared.