

March 28, 2013

**Virginia:**

AT A CONTINUED MEETING of the Nelson County Board of Supervisors and joint meeting with the Nelson County Broadband Authority at 6:00 p.m. in the Board of Supervisors Room located on the second floor of the Nelson County Courthouse.

Present: Constance Brennan, Central District Supervisor - Vice Chair  
Thomas H. Bruguiera, Jr. West District Supervisor- Chair  
Larry D. Saunders, South District Supervisor  
Allen M. Hale, East District Supervisor  
Thomas D. Harvey, North District Supervisor  
Stephen A. Carter, County Administrator  
Candice W. McGarry, Administrative Assistant/Deputy Clerk  
Debra K. McCann, Director of Finance and Human Resources  
Paul Jacobsen, Esq. Bond Counsel

Absent: None

**I. Call to Order**

Mr. Bruguiera called the joint meeting with the Broadband Authority to order at 6:00 pm, with four (4) Supervisors present to establish a quorum and Mr. Hale arrived shortly thereafter.

**II. New/Unfinished Business**

A. 2013 VRA Refinancing (R2013-17)

Mr. Carter noted that the County had been working with VRA to put together a refinancing package to refinance the \$7,500,000 Courthouse loan with Rural Development and the 1999 School Literary Fund loan; which would result in significant savings to the County. He added that the term of the Literary Fund loan refinancing would be the same and would end in 2019 and that the Rural Development loan refinancing was on a fifteen year schedule as was previously decided by the Board. He added that the Chairman has signed the documents and that Bond Counsel Paul Jacobsen recommended endorsement of the resolution presented.

Ms. Brennan then inquired as to whether or not the Board could change the fifteen year term for the Rural Development refinancing and Mr. Jacobsen advised the Board that the County has been approved for a fifteen year financing and presumably the County would be approved for a longer term. He noted that the term could be changed if it were within the next several weeks.

Mr. Harvey then moved to approve resolution **R2013-17** Nelson County Board of Supervisors Approving Lease Refinancing of Courthouse and School Capital Improvements. Mr. Saunders seconded the motion and there being no further discussion,

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Supervisors voted unanimously (4-0) by roll call vote to approve the motion and the following resolution was adopted:

**RESOLUTION R2013-17**  
**NELSON COUNTY BOARD OF SUPERVISORS**  
**APPROVING LEASE REFINANCING OF COURTHOUSE**  
**AND SCHOOL CAPITAL IMPROVEMENTS**

**WHEREAS**, in 2009 the County of Nelson, Virginia (**the “County”**) and the Economic Development Authority of Nelson County, Virginia, (**the “EDA”**) entered into an agreement related to a lease revenue financing of a County capital project, and to accomplish such financing the EDA issued its \$7,500,000 Public Facility Lease Revenue Bond, Taxable Series 2009 (**the “Courthouse Obligation”**); and

**WHEREAS**, the proceeds of the Courthouse Obligation were used to finance a portion of the costs of the design, acquisition, construction and equipping of certain improvements, additions and renovations to the County's courthouse, public safety and administrative facilities (**the “Courthouse Project”**) and provide for the payment of the issuance costs of the Courthouse Obligation; and

**WHEREAS**, in 1999 the County entered into an agreement with the Literary Fund of Virginia for the financing of school facilities in the County in the original principal amount of \$5,000,000 (**the "School Obligation" and, together with the Courthouse Obligation, the "Prior Obligations"**); and

**WHEREAS**, the proceeds of the School Obligation were used to finance a portion of the costs of the design, acquisition, construction and equipping of Rockfish River Elementary School in the County (**the "School Project" and, together with the Courthouse Project, the "Projects"**); and

**WHEREAS**, the Prior Obligations are each subject to redemption at the option of the County and the Board of Supervisors of the County (**the “Board”**) wishes to refund the Prior Obligations 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 refund the Prior Obligations, subject to the terms and conditions herein; and

**WHEREAS**, the Board has the power to acquire by lease essential real property and personal property consisting of a portion of the Courthouse Project and as further described in the Local Lease Acquisition Agreement and Financing Lease (as defined below) (**the “Leased Property”**); and

**WHEREAS**, the Leased Property is essential to the governmental functions of the County and the Board reasonably expects 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; and

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**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**”) and (b) related documents in connection with refunding the Prior Obligations; and

**WHEREAS**, to assist in providing refunding of the Prior Obligations, VRA intends to (a) issue its Series 2013A VRA Bonds (**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 to refund the Prior Obligations; (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 County has submitted its application to VRA to currently refund the Prior Obligations and to undertake the Lease Obligations; and

**WHEREAS**, the Local Lease Acquisition Agreement and Financing Lease shall indicate that the County agrees to undertake the Lease Obligations on terms, determined by VRA to be fair and accepted by the County that, subject to VRA’s Purchase Price Objective (as defined below) and market conditions, achieves an aggregate net present value debt service savings of not less than approximately 3% of the par amount of the Prior Obligations (**the “Targeted Savings”**); and

**WHEREAS**, VRA has advised the County that the sale date of the VRA Bonds is tentatively scheduled for May 8, 2013 but may occur, subject to market conditions, at any time between April 30 and May 31, 2013 (**the “VRA Sale Date”**), and that VRA’s objective is to pay the County an amount which, in VRA’s judgment, reflects the market value of the Lease Obligations under the Local Lease Acquisition Agreement and Financing Lease (**the “Purchase Price Objective”**), taking into consideration such factors as the purchase price received by VRA for the VRA Bonds, the underwriters’ discount and other issuance costs of the VRA Bonds, and other market conditions relating to the sale of the VRA Bonds; 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 June 1, 2013 conveying certain interests in the Leased Property to VRA (**the “Prime Lease”**);

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- B. Local Lease Acquisition Agreement and Financing Lease, between the County and VRA, dated as of April 4, 2013 (i) providing for a portion of the proceeds of the sale of the VRA Bonds to be provided by VRA to the County to refund the Prior Obligations 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 June 1, 2013 regarding VRA’s leasehold interest in the Leased Property (**the “Leasehold Deed of Trust”**).

**NOW, THEREFORE, BE IT RESOLVED, THAT:**

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 the refunding of the Prior Obligations.

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 be, and each of them hereby is, authorized to execute, acknowledge, consent to and deliver, as appropriate, the Basic Documents and related financing documents. The actions of the Chairman, the Vice Chairman and the County Administrator, each 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 \$8,850,000 (**the “Maximum Authorized Principal Amount”**), (ii) the aggregate net present value debt service savings resulting from refunding of the Prior Obligations shall not be less than the Targeted Savings, and (iii) the Lease Obligations shall be payable over a term expiring not later than December 1, 2033. 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).

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The Chairman, the County Administrator, 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 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).

Rental Payments (as defined in the Local Lease Acquisition Agreement and Financing Lease) due under the Local Lease Acquisition Agreement and Financing Lease 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 Rental Payments upon the terms set forth in the Local Lease Acquisition Agreement and Financing Lease.

3. The same officers of the Board, and the County Administrator and the County Attorney be, 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 Obligations, the release and transfer of interests in the Courthouse Project and other property that may serve as security for the Courthouse Obligation and the final selection of property to be utilized as the Leased Property as may be required by VRA prior to the recording of the Local Lease Acquisition and Financing Lease. The same officers are authorized and directed to work with the County’s bond counsel, Sands Anderson PC, 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.

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 Section 148 of the Internal Revenue Code of 1986, as amended (**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. The County shall pay any such required rebate from legally available funds.

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 Project, (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 or Vice Chairman of the Board or the County Administrator, or any of them, 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 Rental Payments and any other payments due under the Lease Obligations 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. The Board believes that funds sufficient to make payment of all amounts payable under the Lease Obligations can be obtained. While recognizing that it is not empowered to make any binding commitment to make such payments 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 Lease Obligations. The Board directs the 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 Lease Obligations an amount sufficient to pay all amounts coming due under the Lease Obligations during such fiscal year. As soon as practicable after the submission of the County's annual budget to the Board, the County

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Administrator is authorized and directed to deliver to VRA evidence that a request for an amount sufficient to make the payment of all amounts payable under the Lease Obligations has been made. Throughout the term of the Lease Obligations, the County Administrator shall deliver to VRA within 30 days after the adoption of the budget for each fiscal year, but not later than July 1, a certificate stating whether an amount equal to the Rental Payments and any other amounts due under the Lease Obligations which will be due during the next fiscal year has been appropriated by the Board in such budget. If at any time during any fiscal year of the County, the amount appropriated in the County's annual budget in any such fiscal year is insufficient to pay when due the amounts payable under the Lease Obligations, the Board directs the 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 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 of the Board, the Vice Chairman of the Board or the County Administrator, each of whom is authorized to act, shall determine. The Chairman of the Board, the Vice Chairman of the Board or the County Administrator, each of whom is authorized to 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.

10. 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 refund the Prior Obligations.

11. The Board hereby determines that it is in the best interests of the County to authorize the County Treasurer to participate in the Virginia State Non-Arbitrage Program in connection with the Lease Obligations if requested by VRA.

12. Nothing in this Resolution, the Basic Documents or other related documents shall constitute a debt or a pledge of the faith and credit of the County, and the County shall not be obligated to make any payments under the Basic Documents except from funds that may be appropriated by the Board.

13. 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 refunding of the Prior Obligations are hereby approved, ratified and confirmed.

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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. This Resolution shall be effective immediately upon its adoption.

**B. FY13-14 Budget Work Session**

This item was considered at the Board's regular session at 7:00 pm.

**III. Other Business (As May Be Presented)**

There was no other business considered by the Board

**IV. Adjournment**

AT 6:57 PM, Mr. Bruguere moved to continue the Broadband Authority meeting until April 9<sup>th</sup> at 1pm and adjourn the Board of Supervisors Meeting. Mr. Saunders seconded the motion and there being no further discussion, Members voted unanimously (5-0) by roll call vote to approve the motion and the meeting adjourned.