

**POTOMAC AND RAPPAHANNOCK
TRANSPORTATION COMMISSION**

RESOLUTION

MOTION: _____

RESOLUTION NO. 07-06-____

OFFICIAL COMMISSION MEETING

SECOND: _____

JUNE 7, 2007

RE: RESOLUTION SUPPLEMENTING AND AMENDING RESOLUTION NO. 07-03-08, ENTITLED “RESOLUTION AUTHORIZING THE LEASING OF CERTAIN PROPERTY AND A FINANCING IN AN AMOUNT NOT TO EXCEED \$4,500,000 BY THE POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION, PROVIDING FOR THE FORM, DETAILS AND PAYMENT THEREOF, AND PROVIDING FOR INTERIM FINANCING THEREOF” ADOPTED ON MARCH 1, 2007

WHEREAS, the Potomac-Rappahannock Transportation Commission (the “PRTC”) is a public body corporate and politic under the provisions of the Transportation District Act of 1964, Chapter 45, Subtitle IV, Title 15.2 of the Code of Virginia of 1950, as amended (formerly Chapter 32, Article 2, Title 15.1 of the Code of Virginia of 1950, as amended), created for the purpose of facilitating the planning and development of an improved transportation system to serve its member jurisdictions; and

WHEREAS, the PRTC has determined it to be advisable and necessary to request a loan in the amount not to exceed \$4,500,000 from the Virginia Resources Authority (“VRA”) for the purposes of land acquisition, design, construction and management costs associated with a new commuter parking lot and construction costs associated with the expansion of a bus storage yard (the “Project”); and

WHEREAS, the PRTC has also determined that in anticipation of the financing through VRA for the Project, it is in the PRTC’s best interest to finance the Project, on an interim basis, through a borrowing with SunTrust Bank (the “Bank”); and

WHEREAS, on March 1, 2007, the PRTC adopted Resolution No. 07-03-08 entitled “Resolution Authorizing the Leasing of Certain Property and a Financing in an Amount Not to Exceed \$4,500,000 by the Potomac and Rappahannock Transportation Commission, Providing for the Form, Details and Payment Thereof, and Providing for Interim Financing Thereof” (the “Initial Resolution”; all capitalized terms used in this Supplemental Resolution and not otherwise defined herein shall have the meaning assigned to them in the Initial Resolution); and

WHEREAS, the Initial Resolution authorized the financing through VRA and the interim financing through the Bank, all as more particularly described therein; and

WHEREAS, the PRTC has determined that all or a portion of the Interim Note (with respect to the interim financing through the Bank) and the Lease Obligation (with respect to the financing through VRA) may need to be issued on a taxable basis rather than a tax-exempt basis; and

WHEREAS, the PRTC has determined that the maximum interest rates set forth in the Initial Resolution with respect to the Interim Note and the Lease Obligation need to be amended;

NOW, THEREFORE, BE IT RESOLVED by the Potomac and Rappahannock Transportation Commission:

1. **Lease Obligation**. The Lease Obligation may be issued on a taxable or tax-exempt basis, as determined by the Chairman or the Executive Director, each of whom is authorized to act, in consultation with the PRTC's counsel, the PRTC's bond counsel and VRA's bond counsel, as appropriate. The Lease Obligation shall accrue interest at a maximum interest rate of 9.0% per annum. Except as provided herein, the Lease Obligation shall comply with all the terms and conditions set forth in the Initial Resolution.
2. **Interim Note**. The Interim Note may be issued on a taxable or tax-exempt basis, as determined by the Chairman or the Executive Director, each of whom is authorized to act, in consultation with the PRTC's counsel, the PRTC's bond counsel and VRA's bond counsel, as appropriate. The Interim Note shall accrue interest at a fixed interest rate or a variable interest rate, in either case, not to exceed 9.0% per annum. Except as provided herein, the Interim Note shall comply with all the terms and conditions set forth in the Initial Resolution.
3. **Tax Compliance**. If it is determined that all or a portion of the Interim Note or the Lease Obligation will be issued on a taxable basis, then the Tax Documents may be modified and amended as determined by the Chairman or the Executive Director, each of whom is authorized to act, in consultation with the PRTC's counsel, the PRTC's bond counsel and VRA's bond counsel, as appropriate.
4. **Confirm Other Actions**. All other actions of the officers of the PRTC in conformity with the purpose and intent of this Supplemental Resolution and the Initial Resolution are hereby approved and confirmed. The officers of the PRTC are hereby authorized and directed to execute and deliver all certificates and instruments and to take all such further action as may be considered necessary or desirable in connection with the execution and delivery of the Documents in connection with the Interim Note and the Lease Obligation.

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5. **Repeal the Conflicting Resolutions; Confirmation of Initial Resolution.** All resolutions or parts of resolutions in conflict herewith are hereby repealed. Except as otherwise amended, supplemented or modified by this Supplemental Resolution, the Initial Resolution is hereby ratified and confirmed.
6. **Establish an Effective Date.** This Supplemental Resolution shall take effect immediately.

ATTACHMENT:

Exhibit A – Initial Resolution, adopted March 1, 2007

June 7, 2007

TO: Chairman Gibbons and Commissioners

FROM: Alfred H. Harf
Executive Director

RE: Resolution Supplementing and Amending Resolution No. 07-03-08, Entitled
“Resolution Authorizing the Leasing of Certain Property and a Financing in an
Amount Not to Exceed \$4,500,000 by the Potomac and Rappahannock
Transportation Commission, Providing for the Form, Details and Payment
Thereof, and Providing for Interim Financing Thereof” Adopted on March 1,
2007

Recommendation:

Authorize the supplementation and amendment of PRTC resolution 07-03-08, entitled “Resolution Authorizing the Leasing of Certain Property and a Financing in an Amount Not to Exceed \$4,500,000 by PRTC, Providing for the Form, Details, and Payment Thereof, and Providing for Interim Financing Thereof” adopted on March 1, 2007.

Background:

At its March 1, 2007 meeting, the Commission approved the leasing of certain property and a financing in an amount not to exceed \$4,500,000 from the Virginia Resources Authority (VRA), as well as interim financing for same from SunTrust Bank, to finance the property acquisition, relocation assistance, and design and construction management costs of a new commuter park-ride lot near the Transit Center and construction costs associated with the expansion of a bus storage yard.

In order to issue tax exempt bonds to finance projects, the tax code and regulations prohibit an issuer from issuing tax exempt bonds for a project if there had been money allocated to the project that is ultimately used for another purpose, except under specified circumstances. This concept is generally called “replacement proceeds.” PRTC management learned only after the March 1 authorization that a portion of what we thought would qualify for tax-exempt financing probably will not because of these rules, necessitating this second authorization to approve modifications detailed later in this staff report.

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A portion of the costs of the commuter parking lot and the bus storage yard project were originally to be provided by Prince William County, Manassas, and Manassas Park but have been reprogrammed and will be used for other PRTC costs during FY 2007 and FY 2008. In particular, \$1,595,765 will now be used for FY 2008 operating costs and \$1,242,735 will be used for FY 2007 and FY 2008 capital expenditures. The costs that were to be paid with the money from Prince William County, Manassas, and Manassas Park will now be paid with a tax-exempt or taxable borrowing by PRTC. An interim borrowing is expected to be made from SunTrust, and a long-term financing is expected to be made from VRA.

In the course of responding to questions about the funding history of these transactions posed by bond counsels for the interim financing and for the permanent financing (they are different) since the March 1 meeting, the linkage between the borrowing and the reprogramming of funds previously intended to pay for the same expenditures on a “pay-as-you-go” basis has been highlighted. Because the planned borrowing is in part replacing previously appropriated funds provided by Prince William County, Manassas, and Manassas Park, and because the previously appropriated funds are being reprogrammed for other capital and operating purposes, further fact-finding by involved bond counsels has been undertaken to confirm whether all such borrowing qualifies as tax-exempt.

Bond counsels for the interim and permanent financing have concluded that borrowing to effectuate reprogramming of available funds for another capital purpose can be financed on a tax-exempt basis (if the investment of the bond proceeds is restricted and certain other tax requirements are met), but they have reached different conclusions about reprogramming of available funds for an operating purpose. Therefore a portion of the interim financing will need to be issued on a taxable basis, while this does not appear to be necessary for the permanent financing so long as specified investment restrictions are respected.

The supplemental resolution allows for financing on a taxable basis only to the degree required, which management will determine based on the advice of the parties responsible for authorizing the financing and validating compliance with applicable tax laws. The supplemental resolution also increases the interest rate cap from 6% to 9% to account for this change.

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Fiscal Impact:

Estimated debt service costs for the first year have been included in the FY 2008 budget.