

Approval of Falls Church Property Acquisition 9(d) Debt Financing

FINANCE AND RESOURCE MANAGEMENT COMMITTEE

The Falls Church Property Acquisition (Capital Outlay Project #18461) has been authorized by the state to be financed pursuant to Article X, Section 9(d) of the Constitution of Virginia for up to \$11,080,000 plus amounts needed to fund issuance costs, reserve funds, and other financing expenses.

The project involves two separate transactions. The first transaction involves a purchase agreement of \$8.23 million to acquire all of the University of Virginia's 40 percent interest in the 101,154 gross square foot Falls Church Center (the "Center"). The second transaction is the acquisition of 5.33 additional acres adjoining the Center owned by the City of Falls Church. The existing ground lease for the 5.33 acres includes a purchase price of \$3.35 million, with a net balance due of \$2.85 million after consideration of a \$500,000 deposit made in 1996. The total \$11.08 million project will be funded entirely by 9(d) debt. Debt service for the project will be covered by redirecting retired debt service from the original Falls Church project.

The bonds will be issued through the Virginia College Building Authority (the "Authority"), and the university will enter into a loan agreement and promissory note with the Authority. The loan agreement and note are subject to the following parameters: (a) the principal amount shall not be greater than the amount authorized by the General Assembly of Virginia; (b) the aggregate principal amount shall not exceed \$11,080,000 plus amounts needed to fund issuance costs and other financing expenses; (c) the interest rate payable shall not exceed a true interest cost more than 50 basis points higher than the interest rate for "AA" rated securities with comparable maturities; (d) the weighted average maturity of the principal payments shall not be in excess of 20 years; (e) the last principal payment date shall not extend beyond the expected economic life of the project; and (f) the actual amount, interest rates, principal maturities, and date of the note shall be approved by an Authorized Officer.

The resolution identifies (1) the Senior Vice President and Chief Business Officer, and (2) the University Treasurer as each being authorized 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 sale and issuance of the bonds.

**RESOLUTION ON FALLS CHURCH PROPERTY ACQUISITION
9(d) FINANCING**

WHEREAS, pursuant to and in furtherance of Chapter 12, Title 23.1 of the Code of Virginia of 1950, as amended (the “Act”), the Virginia College Building Authority (the “Authority”) developed a program (the “Program”) to purchase debt instruments issued by public institutions of higher education in the Commonwealth of Virginia (“Participating Institutions” and each a “Participating Institution”) to finance or refinance projects of capital improvement (“Capital Projects” and each a “Capital Project”) included in a bill passed by a majority of each house of the General Assembly of Virginia (the “General Assembly”);

WHEREAS, under the Program, the Authority from time to time issues its Educational Facilities Revenue Bonds (Public Higher Education Financing Program) (“Pooled Bonds”) to finance the purchase or refunding of debt instruments issued by Participating Institutions to finance or refinance Capital Projects;

WHEREAS, if a Participating Institution desires to finance or refinance a Capital Project through the Program, it must enter into a loan agreement with the Authority, under which: (i) the Participating Institution will issue its promissory note pursuant to the Act to evidence a loan to it by the Authority; (ii) the Authority will agree to issue Pooled Bonds and use proceeds thereof to purchase the promissory note; (iii) the Participating Institution will agree to use proceeds of Pooled Bonds, loaned to it and received in exchange for its promissory note, to finance or refinance the Capital Project and to not take actions that may jeopardize any federal tax-exempt status of interest on Pooled Bonds allocable to financing or refinancing the Capital Project; and (iv) the Participating Institution will agree to make payments under the promissory note in sums sufficient to pay, together with certain administrative and arbitrage rebate payments, the principal of, premium, if any, and interest due on such Pooled Bonds;

WHEREAS, the Board of Visitors (the “Board”) of Virginia Polytechnic Institute and State University (the “Institution”) from time to time desires to finance or refinance Capital Projects for the Institution as a Participating Institution under the Program, and now proposes that the Institution issue its promissory note or notes (collectively, the “Note”) to be sold to the Authority in accordance with a loan agreement or loan agreements between the Institution and the Authority (collectively, the “Loan Agreement”), under which proceeds of Pooled Bonds will be loaned to and received by the Institution in exchange for the Note, to finance or refinance costs of the following Capital Project authorized for bond financing by the General Assembly: the Falls Church Property Acquisition – Capital Outlay Project Number 18461 (the “Project”); and

WHEREAS, the Board desires to designate certain Institution officers: (i) delegated the authority to approve the forms of and to execute and deliver the Loan Agreement, the Note, and any amendments thereto, and any other documents necessary or desirable in connection with financing or refinancing costs of the Project through and participation in the Program; and (ii) responsible for monitoring post-issuance compliance with covenants of the Institution related to maintaining any federal tax-exempt status of interest on Pooled Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF VISITORS OF VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY:

Section 1. The Project is hereby designated to be undertaken and financed or refinanced by the Authority and, accordingly, the Senior Vice President and Chief Business Officer, and the University Treasurer (the “Authorized Officers”) are each hereby delegated and invested with full power and authority to approve the forms of the Loan Agreement, the Note, and any amendments thereto (in connection with any refunding of Pooled Bonds financing or refinancing the Project or otherwise), and any pledge to the payment of the Note and any amendment thereto of total gross university sponsored overhead, unrestricted endowment income, tuition and fees, indirect cost recoveries, auxiliary enterprise revenues, general and nongeneral fund appropriations, and other revenues not required by law or previous binding contract to be devoted to some other purpose, restricted by a gift instrument for another purpose or excluded from such pledge as provided in the Loan Agreement, subject to the provisions of Section 3 hereof.

Section 2. Subject to the provisions of Section 3 hereof, the Authorized Officers are each hereby delegated and invested with full power and authority to execute, deliver, and issue, on behalf of the Institution, (a) the Loan Agreement, the Note, and any amendments thereto (in connection with any refunding of Pooled Bonds financing or refinancing the Project or otherwise), with approval of such documents in accordance with Section 1 hereof evidenced conclusively by the execution and delivery of the respective document, and (b) any other documents, instruments, or certificates as may be deemed necessary or desirable to finance or refinance costs of the Project through and participate in the Program, and to further carry out the purposes and intent of this resolution. The Authorized Officers are authorized and directed to take such steps and deliver such certificates in connection with delivery of the Note, and any amendment thereto, as may be required under any existing obligations, including bond resolutions relating to any outstanding general revenue pledge bonds, and to notify Virginia Department of Treasury representatives serving as Authority staff at least 60 days in advance of a pledge of any amounts pledged to the payment of the Note in accordance with Section 1 hereof to, or as security for, the payment of any other Institution obligations issued or entered into after the date hereof for so long as the Note and any amendments thereto remain outstanding.

Section 3. The authorizations given above as to the approval, execution, delivery, and issuance of the Loan Agreement, the Note, and any amendments thereto (in connection with any refunding of Pooled Bonds financing or refinancing the Project or otherwise) are subject to the following parameters: (a) the principal amount to be paid under the Note allocable to any component of the Project, together with the principal amount of any other indebtedness with respect to such component, shall not be greater than the amount authorized for such component by the General Assembly plus amounts needed to fund issuance costs, original issue discount, other financing (including, without limitation, refunding) expenses, and any other increase permitted by law; (b) the aggregate principal amount of the Note shall in no event exceed \$11,080,000 as the same may be so increased; (c) the aggregate interest rate payable under the Note shall not exceed a “true” or “Canadian” interest cost more than 50 basis points higher than the interest rate for “AA” rated securities with comparable maturities, as reported by Thomson Municipal Market

Data (MMD) or another comparable service or index, as of the date that the interest rates on the Authority's Pooled Bonds are determined, taking into account any original issue discount or premium; (d) the weighted average maturity of the principal payments due under the Note shall not exceed 20 years after the original issue date of the Note; (e) the last principal payment date under the Note shall not extend beyond the reasonably expected economic life of the Project; and (f) subject to the foregoing, the actual amount, interest rates, principal maturities, and date of the Note shall be approved by an Authorized Officer, as evidenced by the execution thereof.

Section 4. The Board acknowledges that if there is a failure to make, as and when due, any payment of the principal of, premium, if any, and interest on any promissory note issued by the Institution as a Participating Institution to the Authority under the Program, including without limitation the Note and any amendments thereto, the State Comptroller is authorized under the Program and Section 23.1-1211 of the Code of Virginia of 1950, as amended, to charge against appropriations available to the Institution all future payments of principal of, premium, if any, and interest on such promissory note when due and payable and to make such payments to the Authority or its designee, so as to ensure that no future default will occur on such promissory note.

Section 5. The Board agrees that if the Authority determines the Institution as a Participating Institution shall be subject to continuing disclosure obligations under Rule 15c2-12 of the federal Securities and Exchange Commission with respect to any Pooled Bonds, (a) an Authorized Officer shall, and is hereby authorized and directed to, enter into a continuing disclosure undertaking in form and substance reasonably satisfactory to the Authority, and (b) the Institution will comply with the provisions and disclosure obligations contained therein.

Section 6. The Board designates the University Treasurer to be responsible for implementing procedures to monitor post-issuance compliance with covenants in any loan agreement between the Institution as a Participating Institution and the Authority, including the Loan Agreement and any amendments thereto, related to maintaining tax-exempt status for federal income tax purposes of interest on any Pooled Bonds, including, without limitation, monitoring the use of any portion of all Capital Projects for the Institution financed or refinanced with such Pooled Bonds and compliance with any applicable federal income tax remedial action requirements in connection with certain changes in such use. Such officer shall review such post-issuance compliance at least annually for so long as such Pooled Bonds remain outstanding.

RECOMMENDATION:

That the above resolution authorizing the issuance of 9(d) bonds for the Falls Church Property Acquisition Capital Outlay Project Number 18461 be approved.

August 31, 2021