

**BOARD OF SUPERVISORS  
COUNTY OF NEW KENT  
VIRGINIA  
R-31-17**

At the regular meeting of the Board of Supervisors of the County of New Kent, Virginia in the Boardroom of the Administration Building in New Kent, Virginia, on the 5<sup>th</sup> day of September, 2017:

<u>Present:</u>	<u>Vote:</u>
Patricia A. Paige	Aye
Ron Stiers	Aye
Thomas W. Evelyn	Aye
C. Thomas Tiller, Jr.	Aye
W.R. Davis, Jr.	Aye

Motion was made by Mr. Tiller, which carried 5:0, to adopt the following resolution:

**RESOLUTION OF BOARD OF SUPERVISORS  
OF THE COUNTY OF NEW KENT, VIRGINIA  
APPROVING LEASE PURCHASE FINANCING**

**WHEREAS**, the Board of Supervisors (**the “Board”**) of the County of New Kent, Virginia (**the “County”**) has determined (i) that a true and very real need exists for the acquisition, installation and equipping of fire vehicles and related equipment by the County (**the “Equipment”**) described in the Lease Agreement (as hereinafter defined); (ii) that the Equipment is essential to the governmental functions of the County; and (iii) that it reasonably expects the Equipment to continue to be essential to the governmental functions of the County for a period not less than the term of the Lease Agreement; and

**WHEREAS**, the Board has taken the necessary steps under the Procurement Act of the Code of Virginia, 1950, as amended, to acquire the Equipment; and

**WHEREAS**, the Board proposes to enter into a Master Equipment Lease/Purchase Agreement and one or more schedules thereunder, in the principal amount of not to exceed \$3,200,000 (**the “Lease Agreement”**) with Banc of America Public Capital Corp (**the “Lessor”**) to finance the purchase of the Equipment over a term not to exceed approximately ten (10) years, such Lease Agreement being in accordance with the Proposal (as defined below); and

**WHEREAS**, (i) all amounts payable by the County under the Lease Agreement (**the “Lease Obligations”**) are subject to annual appropriation by the Board; (ii) the Board is not under any obligation to make any appropriation with respect to the Lease Agreement; (iii) the Lease Agreement is not a general obligation of the County or a charge against the general credit or taxing

power of the County; and (iv) amounts payable by the County under the Lease Agreement do not constitute a debt of the County within the meaning of any constitutional, charter or statutory limitation; and

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

1. The Board hereby accepts the proposal of the Lessor submitted on August 16, 2017, **(the “Proposal”)** for the financing of the Equipment on the terms set forth therein, including without limitation, a maximum annual interest rate of 2.1602% for a maximum term of approximately ten years.

2. It is hereby found and determined that the terms of the Lease Agreement as provided in the Proposal are in the best interests of the County for the design, acquisition, improvement, installation and equipping of the Equipment.

3. The Lease Agreement and related financing documents are hereby approved. The Chairman, the Vice Chairman and the County Administrator, each of whom is authorized to act, are hereby authorized to execute, acknowledge and deliver the Lease Agreement and related financing documents, including but not limited to an escrow agreement with an authorized escrow agent, if required, as selected by the Chairman, Vice Chairman or County Administrator, and a restricted account agreement if utilized by the County, with any changes, insertions and omissions therein as may be approved by the individuals executing the Lease Agreement and such documents, including but not limited to the annual interest rate, payment dates, lease term, description of Equipment and prepayment provisions, such approval to be conclusively evidenced by the execution and delivery thereof. The Chairman, the Vice Chairman and the County Administrator, each of whom is authorized to act, are each hereby designated as authorized representatives of the County under the Lease Agreement and any escrow agreement or other related agreement until such time as the Board designates other authorized representatives.

4. The same officers of the Board, and the County Administrator and the County Attorney are authorized and directed to execute and deliver any and all other agreements, financing statements, papers, instruments, 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 intents of this resolution and the Lease Agreement.

5. The County covenants that it shall not take or omit to take any action the taking or omission of which will cause the Lease Obligations to be “arbitrage bonds” within the meaning of Section 148 of the Code, or otherwise cause interest on the Lease Obligations derived from the interest component of rental payments made by the County under the Lease Agreement 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 Lease Obligations.

6. The County further covenants that it shall not permit the proceeds of 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 Equipment, (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 any such covenants need not be complied with to prevent the interest on the Lease Obligations 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 covenants.

7. The County hereby designates the principal portion of payments under the Lease Agreement as a "qualified tax-exempt obligation" for the purpose of Section 265(b)(3) of the Code. The County does not reasonably anticipate (nor do any of its subordinate entities reasonably anticipate) issuing more than \$10,000,000 in qualified tax exempt obligations during calendar year 2017 for the benefit of the County and the County (and any of its subordinate entities) will not designate more than \$10,000,000 of qualified tax-exempt obligations for the benefit of the County pursuant to Section 265(b)(3) of the Code during such calendar year.

8. The Board hereby determines that it is in the best interests of the County to authorize the County Treasurer to participate in the State Non-Arbitrage Program in connection with the Lease Obligations, if directed by the Chairman.

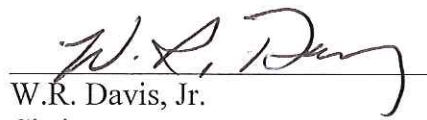
9. The recitals to this resolution are hereby incorporated by reference and are declared to be findings of the County in connection with its decision to acquire and finance the Equipment.

10. 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 Equipment by the County to finance the Equipment and the design, acquisition, improvement, installation and equipping of the Equipment are hereby approved, ratified and confirmed.

11. This resolution shall be effective immediately upon its adoption.

ADOPTED THIS 5<sup>TH</sup> DAY OF SEPTEMBER, 2017.

  
\_\_\_\_\_  
Rodney A. Hathaway  
County Administrator

  
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W.R. Davis, Jr.  
Chairman

**CERTIFICATION OF ADOPTION OF RESOLUTION**

The undersigned Clerk of the Board of Supervisors of the County of New Kent, Virginia hereby certifies that the Resolution set forth above was adopted during an open meeting on September 5, 2017, by the Board of Supervisors with the following votes:


Aye: Patricia A. Paige  
Ron Stiers  
Thomas W. Evelyn  
C. Thomas Tiller, Jr.  
W.R. Davis, Jr.

Absent: None

Nay: None

Abstentions: None

Signed this 6<sup>th</sup> day of September, 2017.

By:  \_\_\_\_\_  
Clerk, Board of Supervisors