

**BOARD OF SUPERVISORS
COUNTY OF NEW KENT
VIRGINIA
R-12-15**

At the work session 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 25th day of March, 2015:

<u>Present:</u>	<u>Vote:</u>
Ron Stiers	Aye
W.R. Davis, Jr.	Aye
Thomas W. Evelyn	Aye
James H. Burrell	Aye
C. Thomas Tiller, Jr.	Aye

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

**RESOLUTION OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF NEW KENT, VIRGINIA**

WHEREAS, the Board of Supervisors (**the “Board of Supervisors”**) of the County of New Kent, Virginia (**the “County”**) has determined (i) that a true and very real need exists for certain equipment and improvements and the installation and maintenance thereof, for a communications system serving the County including a microwave communications system plus related equipment, tower site improvements, mobile and portable radios and dispatch equipment to be owned by the County (**the “Communications System”**) described in the Lease Agreement (as hereinafter defined), all pursuant to a System Purchase Agreement (**the “Communications System Agreement”**) between the County and Harris Corporation; (ii) that the Communications System is essential to the governmental functions of the County; and (iii) that it reasonably expects the Communications System to continue to be essential to the governmental functions of the County for a period not less than the term of the Lease Agreement as described herein; and

WHEREAS, the County proposes to enter into an Equipment Lease Purchase Agreement, including one or more schedules thereunder, in the aggregate principal amount not to exceed \$5,500,000 (**the “Lease Agreement”**) with Citizens and Farmers Bank (**the “Lessor”**) to finance the purchase of the Communications System over not to exceed fifteen (15) years; and

WHEREAS, (i) all amounts payable by the County under the Lease Agreement (**the “Lease Obligations”**) are subject to appropriation by the Board of Supervisors; (ii) the Board of Supervisors 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

WHEREAS, the County reasonably anticipates that it and its subordinate entities will not issue tax-exempt obligations in the face amount of more than \$10,000,000 during the current calendar year; and

WHEREAS, the County desires to designate the Lease Agreement as a “qualified tax-exempt obligation” under the provisions of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the “Code”);

NOW THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of New Kent, Virginia:

1. The financing of the Communications System described in the Communications System Agreement and the Lease Agreement is hereby approved. The Board of Supervisors hereby approves the Lease Agreement reflecting an aggregate principal component of Lease Obligations thereunder not to exceed \$5,500,000, with a term of not to exceed 15 years, an interest cost of the interest component of Lease Obligations thereunder at an annual rate not to exceed 3.00% and otherwise in accordance with the proposal of Lender dated December 17, 2014, as amended, with the final terms and interest rate to be approved by the County whose execution thereof shall be conclusive evidence of such approval. The obligation of the County to pay rent under the Lease Agreement will be subject to the Board of Supervisors of the County making annual appropriations for such purpose.
2. The Lease Agreement and related financing documents are hereby approved in substantially the forms presented to this meeting. The Board of Supervisors on behalf of the County has adopted this resolution as its moral obligation to the repayment of the Lease Agreement. The Chairman or Vice Chairman of the Board of Supervisors, or either of them, and the County Administrator and Clerk of the Board of Supervisors are each hereby authorized to execute the Lease Agreement and such instruments and documents as are necessary to execute and deliver the Lease Agreement to secure the financing of the Communications System, including, but not limited to, any related escrow agreements, security agreements and financing statements. The obligation of the County to pay rent under the Lease Agreement will be subject to the Board of Supervisors of the County making annual appropriations for such purpose.
3. The County hereby designates the Lease Agreement as a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3) of the Code and represents and covenants that not more than \$10,000,000 in bonds, notes, leases and other obligations of the County (including any subordinate issuing entities), excluding private activity bonds, will be issued in calendar year 2015 and that neither the County nor any subordinate entity thereof will designate more than \$10,000,000 of “qualified tax-exempt obligations” pursuant to Section 265(b)(3) of the Code.
4. The County represents and covenants that it shall not take or omit to take any action the taking or omission of which will cause the Lease Agreement to be an “arbitrage bond” within the meaning of Section 148 of the Code or otherwise cause the interest on the Lease Agreement to be includable in gross income for Federal income tax purposes under existing

law. Without limiting the generality of the foregoing, the County shall comply with any provision of law that may require the County at any time to rebate to the United States any part of the earnings derived from the investment of the gross proceeds from the execution and delivery of the Lease Agreement.

5. 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 Communications System, (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 in order 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.
6. The County hereby declares, in accordance with U.S. Treasury Regulation Section 1.150-2, as amended from time to time, the County's intent to reimburse the County with the proceeds of the Lease Obligations for the Expenditures with respect to the Communications System made on and after January 24, 2015, which date is no more than 60 days prior to the date hereof. The County reasonably expects on the date hereof that it will reimburse the Expenditures with the proceeds of the Lease Obligations. Each Expenditure was and will be either (a) of a type properly chargeable to a capital account under general federal income tax principles (determined in each case as of the date of the Expenditures), (b) a cost of issuance with respect to the Lease Obligations, (c) a nonrecurring item that is not customarily payable from current revenues, or (d) a grant to a party that is not related to or an agent of the County so long as such grant does not impose any obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the County. The maximum principal amount of the Lease Obligations expected to be issued for the Communications System is \$5,500,000. The County will make a reimbursement allocation, which is a written allocation by the County that evidences the County's use of proceeds of the Lease Obligations to reimburse an Expenditure, no later than 18 months after the later of the date on which the Expenditure is paid or the Communications System is placed in service or abandoned, but in no event more than three years after the date on which the Expenditure is paid. The County recognizes that exceptions are available for certain "preliminary expenditures," costs of issuance, certain de minimis amounts, expenditures by "small issuers" (based on the year of issuance and not the year of expenditure) and expenditures for construction projects of at least 5 years.
7. Any authorization herein to execute a document shall include authorization to deliver it to the other parties thereto and to record such document where appropriate.
8. All other acts of the officers of the County that are in conformity with the purposes and intent

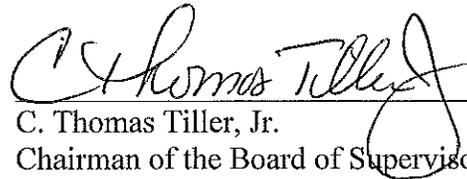
of this resolution and in furtherance of the execution and delivery of the Communications System Agreement and the Lease Agreement and the undertaking of the acquisition, design, construction, equipping, installation and furnishing of the Communications System are hereby approved, ratified and confirmed.

9. Nothing in this Resolution, the Lease Agreement, or the Communications System Agreement or any documents executed or delivered in relation thereto 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 Lease Agreement or the Communications System Agreement except from payments made by or on behalf of the County pursuant to annual appropriation thereof in accordance with applicable law.
10. 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, install and finance the Communications System.
11. This resolution shall take effect immediately.

ADOPTED THIS 25th DAY OF MARCH, 2015.



Rodney A. Hathaway
County Administrator



C. Thomas Tiller, Jr.
Chairman of the Board of Supervisors

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 March 25, 2015, by the Board of Supervisors with the following votes:

Aye: Ron Stiers
 W.R. Davis, Jr.
 Thomas W. Evelyn
 James H. Burrell
 C. Thomas Tiller, Jr.

Nay: none

Abstentions: none

Signed this 2nd day of April, 2015.



Rodney A. Hathaway
Clerk of the Board