



City of Hampton, Virginia

### **CERTIFICATE OF THE CLERK OF COUNCIL**

**VIRGINIA:** At a regular meeting of the City Council of Hampton, Virginia, held in the Council Chambers of said City, on Wednesday, February 24, 2016, at 6:30 p.m.

**PRESENT:** George E. Wallace, Mayor  
Linda Curtis, Vice Mayor  
W. H. Hobbs, Jr.  
Will J. Moffett  
Teresa V. Schmidt  
Chris Osby Snead  
Donnie R. Tuck

#### **Resolution Authorizing the Execution and Delivery of an Equipment Lease/Purchase Agreement, and Related Instruments, and Determining Other Matters in Connection therewith to Re-Finance an Existing 2009 Lease/Purchase Agreement with Motorola, Inc.**

**WHEREAS**, in 2009, the City Council of the City of Hampton, Virginia approved an Equipment Lease/Purchase agreement with Motorola, Inc. (the "Motorola Lease") to lease for ultimate purchase certain public safety communications and related equipment (the "Equipment");

**WHEREAS**, it has been determined that current market conditions present an opportunity to re-finance the Motorola Lease to achieve rental payment savings;

**WHEREAS**, after solicitation of bids, the City Council has elected to accept the re-financing proposal of Bank of America Public Capital Corporation on behalf of Bank of America, N.A. ("Bank of America"), and desires to enter in into a Lease/Purchase Agreement with Bank of America or its affiliated entity for such purpose (the "Agreement"); and

**WHEREAS**, a plan of re-financing of the Equipment has been described to City Council, and City Council desires to enter into an Agreement with Bank of America to arrange for such re-financing;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF  
THE CITY OF HAMPTON AS FOLLOWS:**

**1. Authorization of Equipment Lease Purchase Agreement; Essentiality.** The re-financing proposal of Bank of America is accepted. The City Manager is authorized to execute and deliver an Agreement with Bank of America on terms not inconsistent with this Resolution to accomplish the re-financing. The City Council determines that the Equipment to be refinanced under the Agreement is essential to the operations of the City and expects the Equipment to remain essential to such operations during the term of the Agreement.

**2. Terms of Agreement.** The final pricing terms of the Agreement shall be satisfactory to the City Manager; provided, however, that (a) the purchase price or principal component of the rental payments thereunder shall not exceed \$6,850,000; (b) the annual rate of interest shall not exceed 1.19%, and (c) the rental payments due under the Agreement shall be payable substantially in accordance with the payment schedule attached to the Bank of America proposal ending no later than March 1, 2020, which is the final payment date under the existing Motorola Lease.

**3. Subject to Appropriation.** The obligations of the City under the Agreement shall be limited obligations payable solely from funds to be appropriated by the City Council for such purpose and shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation or a pledge of the faith and credit of the City beyond any fiscal year for which the City Council has lawfully appropriated funds from time to time. Nothing herein or in the Agreement shall constitute a debt of the City within the meaning of any constitutional or statutory limitation or a pledge of the faith and credit or taxing power of the City.

**4. Annual Budget.** The City Council believes that funds sufficient to make payment of all amounts payable under the Agreement 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 City Council 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 City Councils do likewise during the term of the Agreement. The City Council directs the City Manager, or such other officer who may be charged with the responsibility for preparing the City's annual budget, to include in the budget request for each fiscal year during the term of the Agreement an amount sufficient to pay all amounts coming due under the Agreement during such fiscal year.

**5. Tax Compliance and Arbitrage Covenants.** The City covenants that it shall not take or omit to take any action the taking or omission of which will cause the interest attributable to the rental payments under the Agreement to be "arbitrage bonds," within the meaning of Section 148 of the Internal Revenue

Code of 1986, as amended, (the "Code"), or otherwise cause the interest components of the rental payments due under the Agreement to be includable in the gross income for federal income tax purposes of the registered owners thereof under existing law. Such officers of the City as may be requested are authorized and directed to execute such tax compliance certificates, as may be necessary to demonstrate compliance with this paragraph.

**6. Other Actions.** The City Manager and such other officers and agents of the City as may be designated by City Manager are authorized and directed to take such further actions as they deem necessary regarding the execution and delivery of the Agreement and implementation of the provisions thereof including, without limitation, the execution and delivery of closing documents and certificates including, any related agreements, IRS Form 8038-G, a Non-Arbitrage Agreement and Tax Certificate. All such actions previously taken by the City Manager or such officers and agents are hereby approved, ratified and confirmed.

**7. Effective Date.** This Resolution shall become effective immediately upon adoption.

**CERTIFICATE**

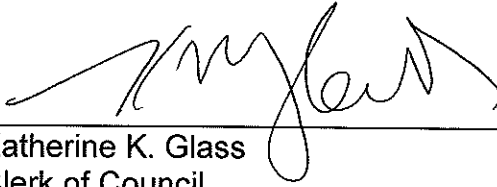
The undersigned Clerk of the City Council of the City of Hampton, Virginia, does hereby certify that the foregoing constitutes a true and correct copy of resolution adopted by the City Council of the City of Hampton, Virginia at a meeting held on February 24, 2016. I hereby further certify that such meeting was a regularly scheduled meeting and that, during the consideration of the foregoing Resolution, a quorum was present. The vote of the members of the City Council upon the foregoing Resolution was as follows:

<u>Council Member</u>	<u>Present/Absent</u>	<u>Vote</u>
George Wallace	present	aye
Linda Curtis	present	aye
W.H. Hobbs, Jr.	present	aye
Will J. Moffett	present	aye
Teresa V. Schmidt	present	aye
Chris Osby Snead	present	aye
Donnie R. Tuck	present	aye

Approved by the Hampton City Council on 2/24/2016.

**Aye: 7** Vice Mayor Curtis, Councilmember Hobbs, Councilmember Moffett, Councilmember Schmidt, Councilmember Snead, Councilmember Tuck and Mayor Wallace.

I certify the foregoing to be a true and accurate recorded vote of the City Council of the City of Hampton, Virginia, taken at a regular meeting held February 24, 2016, approving the above stated resolution.



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Katherine K. Glass  
Clerk of Council

Date: March 1, 2016