

**AMHERST TOWN COUNCIL**  
**AGENDA – WEDNESDAY, JANUARY 8, 2020**

**Meeting at 7:00 p.m.**

**Town Hall, 174 S. Main Street, Amherst, VA 24521**

- A. Call to Order for the Town Council– 7:00 p.m. - Mayor Tuggle**
- B. Pledge of Allegiance** - *I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.*
- C. Invocation** - *Any invocation that may be offered before the official start of the Amherst Town Council meeting shall be the voluntary offering to, and for, the benefit of the Council. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by Council and do not necessarily represent the religious beliefs or views of the Council in part or as a whole. No member of the audience is required to attend or participate in the invocation, and such decision will have no impact on their right to participate actively in the business of the Council. Copies of the policy governing invocations and setting forth the procedure by which a volunteer may deliver an invocation are available upon request at the Town Hall.*
- D. Public Hearings and Presentations**
- 1. Recognize Katie LaFuze for her accomplishments during the summer as the Town’s Police Intern- Chief Shiflett-**  
*The Chief would like to recognize the Police Department’s summer intern, Katie LaFuze, who assisted the department with policy updates.*
- E. Citizen Comments** – *This time is set aside on the agenda for Town citizens to address Council regarding items not on the agenda for public hearing or presentations. Individual comment time is limited to three minutes, and groups are limited to five minutes. This time is for citizens to address Council, and not designed to be a question and answer session or a discussion time. If follow-up is requested, that will occur after the meeting.*
- F. Consent Agenda** – *Items on the consent agenda can be voted on as a block if all are in agreement with the recommended action or discussed individually.*
- 1. Town Council Minutes (Pgs. 1-31)** – *Draft of the December 11, 2019 meeting minutes are **attached**. Please let Vicki Hunt know of any concerns by Wednesday morning such that any needed corrections can be presented at the meeting.*
- G. Correspondence and Reports**
- 1. Staff Reports (Pgs. 32-41)**
- a. Town Manager Monthly Report - **attached**
  - b. Police Chief Monthly Report - **attached**
  - c. Office Manager Monthly Report - **attached**
  - d. Clerk of Council Monthly Report- **attached**
  - e. Public Works Monthly Reports- **attached**
  - f. Town Attorney Monthly Report – **attached**
- 2. Council Committee Reports**
- a. Finance Committee – *Mrs. Carton*
  - b. Community Relations – *Mrs. Ogden*
  - c. Utilities Committee – *Mr. Watts*
- 3. Other Reports (Pgs. 42-52)**
- a. Planning Commission– *Met January 2, 2020, minutes to follow*

- b. Industrial Development Authority- Met January 6, 2020, minutes to follow
- c. Robert E. Lee SWCD- October and November minutes attached

## **H. Discussion Items**

1. **VAMWA Resolution (Pgs. 53)-** Sara Carter- *In preparation for the upcoming General Assembly session, VAMWA (Virginia Association of Municipal Wasterwater Agencies) is recommending that their membership pass the attached resolution demonstrating localities concern regarding potential changes to Chesapeake Bay standards that affect wastewater treatment standards.*
2. **Adopt 2020 Meeting Calendar-** Sara Carter- *The normal meeting day for November will fall on November 11<sup>th</sup>, Veterans Day. If Council would like to maintain the same day, no action is required. If Council would like to hold the meeting on a different day, a motion to do so would be required.*
3. **Authorize expenditure for filter inspections at the Water Treatment Plant (Pgs. 54-59) -** Sara Carter- *In preparation for the Water Treatment Plant upgrade, staff is requesting an expenditure of \$8,945 to have the existing filters inspected and warrantied. This expense is necessary to determine the appropriate level of renovation of the filters and determine what parts may be reused and warrantied by the manufacturer.*
4. **Consider update to Electronic Use Policy (Pgs. 60)-** Sara Carter- *Update the Town of Amherst Electronic Use Policy to clarify the use and retention of email for Council members.*
5. **Amendment to Comprehensive Plan for conservation easement at the Amherst Milling Company-** Sara Carter- *Action on this item was deferred for thirty days at December's meeting. Dave McCormack has requested a second thirty day deferral to the February meeting.*
6. **Comcast Franchise Agreement (Pgs. 61-87) –** Tom Berry- *Mr. Berry has a report and a recommendation on the adoption of the Comcast Franchise. Attached is a report from John Conrad, who provided an opinion on the franchise agreement and the draft franchise.*

## **I. Matters from Staff**

## **J. Matters from Town Council**

## **K. Anticipated Town Council Agenda Items for Next Month**

## **L. Citizen Comments**

## **M. Adjournment**

Mayor D. Dwayne Tuggle called a regular monthly meeting of the Amherst Town Council to order on December 11, 2019, at 7:00 P.M. in the Council Chambers of the Town Hall at 174 S. Main Street. It was noted that a quorum was present as follows:

P	D. Dwayne Tuggle	P	Kenneth G. Bunch
P	Rachel A. Carton	P	Sarah G. Ogden
P	Kenneth S. Watts	P	Janice N. Wheaton

Also present were the following staff members:

Sara E. Carter	Town Manager	Robert A. Shiflett, II	Chief of Police
W. Thomas Berry	Town Attorney	Gary Williams	Director of Plants
Vicki K. Hunt	Clerk of Council	Becky L. Cash	Lead Water Operator
Tracie L. Wright	Office Manager		

Recitation of the Pledge of Allegiance to the Flag was followed by an invocation by Sarah G Ogden.

Mayor Tuggle presented awards and gave a special thanks on behalf of Council to the following groups for their accomplishment in the 2019 Christmas Parade.

- Girl Scout Troup 1069 – Winner of Theme Contest
- Amherst Special Olympics – 1<sup>st</sup> Place Float
- Mount Olive Baptist Church – 2<sup>nd</sup> Place Float
- Temple Christian School Marching Band– 1<sup>st</sup> Place Band
- Madison Heights Drum, Drill & Flag Team – 1<sup>st</sup> Place Dance/Flag
- Burch Family Christmas Supporting Our Veterans – Best Use of Theme Grand Champions
- Burch Family Christmas Supporting Our Veterans – Best Overall Grand Champions

Town Manager Carter reported that the Planning Commission, after consideration and with a public hearing, voted 3-2 to recommend denial by Town Council of a request by Dave McCormack, Owner, Lazy River LTD, to allow a conservation easement on the South side of Union Hill Road between Amherst Milling Company and the developed portion of the Mill Race subdivision in conformance with the Comprehensive Plan. Staff recommended that Council go forward with the public hearing as scheduled and defer action for 30 days as requested by Mr. McCormack, to give Council, staff and Mr. McCormack additional time to address any concerns.

Dave McCormick was present and spoke on his request and answer questions.

Mayor Tuggle opened a duly advertised public hearing at 7:18 PM on a proposed amendment to the Town’s Comprehensive Plan to change the designated land use for Tax Map parcels 96-4-A and 96-1-1-7, totaling 76+/- acres from Planned Development- Residential to Agricultural to allow a request for a conservation easement by Dave McCormack, that would, if approved by Town Council, allow land between the developed portion of the Mill Race subdivision and the Amherst Milling Company to be changed from planned development areas to conservation and would allow Mr. McCormack to complete a conservation easement process for the property.

There being no one present who wished to speak on the matter, the public hearing closed at 7:19 PM.

After discussion, by consensus of Council action on the proposed amendment to the Town's Comprehensive Plan to change the designated land use for Tax Map parcels 96-4-A and 96-1-1-7, totaling 76+/- acres from Planned Development- Residential to Agricultural to allow a request for a conservation easement by Dave McCormack, that would, if approved by Town Council, allow land between the developed portion of the Mill Race subdivision and the Amherst Milling Company to be changed from planned development areas to conservation and would allow Mr. McCormack to complete a conservation easement process for the property is deferred to the January 8, 2020 meeting.

Town Manager Carter reported that the Planning Commission voted 4 in favor, 0 against, 2 absent, to recommend that Town Council approve the proposed amendment to Table 7.1 of Chapter 18.1 of the Town Code, regulating uses in districts, allowing residences to be co-located with businesses in the B-1 and B-2 district and delete the prohibition on sidewalk level residences where businesses and residences are co-located.

Mayor Tuggle opened a duly advertised public hearing at 7:44 PM on a proposed amendment to Table 7.1 of Chapter 18.1 of the Town Code, regulating uses in districts. If the amendment is approved, it will allow residences to be co-located with businesses in the B-1 and B-2 district and delete the prohibition on sidewalk level residences where business and residences are co-located.

There being no one present who wished to speak on the matter, the public hearing closed at 7:45 PM.

Mr. Watts. made a motion that was seconded by Mr. Bunch to amend Table 7.1 of Chapter 18.1 of the Town Code, regulating uses in districts, allowing residences to be co-located with businesses in the B-1 and B-2 district and delete the prohibition on sidewalk level residences where businesses and residences are co-located, as recommended by the Planning Commission and staff.

After discussion, the motion carried 4-1 as follows:

D. Dwayne Tuggle		Kenneth G. Bunch	Aye
Rachel A. Carton	Aye	Sarah G. Ogden	Aye
Kenneth S. Watts	Aye	Janice N. Wheaton	Nay

Mrs. Carton made a motion that was seconded by Mr. Bunch to ratify the setting of the December 11, 2019, public hearing on a proposed Resolution Authorizing the Issuance and Sale of a \$3,017,000.00 General Obligation Sewer Revenue Bond, Series 2019, United States of America, Registered Holder.

After discussion, the motion carried 5-0 as follows:

D. Dwayne Tuggle		Kenneth G. Bunch	Aye
Rachel A. Carton	Aye	Sarah G. Ogden	Aye
Kenneth S. Watts	Aye	Janice N. Wheaton	Aye

Daniel M. Siegel, Esq., Shareholder, Sands Anderson, PC, was present to speak and answer questions related to the duly advertised USDA Rural Development Sewer Revenue Bond resolution.

Mayor Tuggle opened a duly advertised public hearing at 7:54 PM on a proposed Resolution Authorizing the Issuance and Sale of a \$3,017,000.00 General Obligation Sewer Revenue Bond, Series 2019, United States of America, Registered Holder, as recommended by staff.

There being no one present who wished to speak on the matter, the public hearing closed at 7:55 PM.

There being no discussion, Mrs. Carton made a motion that was seconded by Mrs. Ogden to approve a Resolution Authorizing the Issuance and Sale of a General Obligation Sewer Revenue Bond, Series 2019, United States of America, Registered Holder, in an amount not to exceed \$3,017,000.00, as recommended by staff. The motion 5-0 via the roll call method with Mmes. Carton, Ogden, Messrs. Watts and Bunch voting “Aye,” and Ms. Wheaton abstaining. A copy of the Resolution is attached and made a part of these minutes.

Richard Lee, 184 Ridge Drive, Amherst, VA, came forward in favor of Town Council’s approval of a Second Amendment sanctuary resolution.

Mrs. Carton made a motion that was seconded by Mr. Watts to approve the minutes from the November 13, 2019, meeting as presented. After discussion the motion carried 5-0 as follows:

D. Dwayne Tuggle		Kenneth G. Bunch	Aye
Rachel A. Carton	Aye	Sarah G. Ogden	Aye
Kenneth S. Watts	Aye	Janice N. Wheaton	Aye

Town Manager Carter gave a brief report on fluoridation of water in the town’s system. Lead Water Operator Becky Cash was present to answer questions. Upon recommendation to continue with fluoridation of water in the town’s system from the Utility Committee and staff, Town Council voted 5-0 to continue with fluoridation of the water in the town’s system as follows:

D. Dwayne Tuggle		Kenneth G. Bunch	Aye
Rachel A. Carton	Aye	Sarah G. Ogden	Aye
Kenneth S. Watts	Aye	Janice N. Wheaton	Aye

Mr. Watts made a motion that was seconded by Mrs. Carton to appoint the following individual to the board and for the term listed below. There being no discussion, the motion carried 5-0 with Mmes. Carton, Ogden, Wheaton and Messrs. Watts and Bunch voting “Aye.”

<b>Board</b>	<b>Appointed</b>	<b>Term of Office</b>
Planning Commission	Janice N. Wheaton	12/11/19 – 12/31/20

After discussion, it was the consensus of the members present that Town Attorney Berry research and present his findings at the next meeting on the views of other localities in Virginia pertaining to the Second Amendment sanctuary measure.

There being no one listed to speak on the citizen comment sign-in sheet, no comments were made.

There being no further business, the meeting adjourned until January 8, 2020, at 7:00 pm on motion by Mrs. Carton seconded by Mrs. Ogden at 8:29 PM. The motion carried 5-0 with Mmes. Carton, Ogden, Wheaton and Mr. Watts and Bunch voting "Aye."

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D. Dwayne Tuggle  
Mayor

Attest: \_\_\_\_\_  
Clerk of Council

For Approval

**A RESOLUTION OF THE TOWN OF AMHERST, VIRGINIA  
AUTHORIZING THE ISSUANCE AND SALE OF A  
\$3,017,000 GENERAL OBLIGATION SEWER REVENUE BOND, SERIES 2019 AND  
PROVIDING FOR THE FORM, DETAILS AND PAYMENT THEREOF**

**WHEREAS**, the Town of Amherst, Virginia (**the “Town”**) is authorized to acquire, construct, operate and maintain sewer systems in the Town (**the “System”**); and

**WHEREAS**, the Town is authorized pursuant to the Public Finance Act, Chapter 26 of Title 15.2 of the Code of Virginia of 1950, as amended (**the “Act”**) to borrow money and to issue its general obligation sewer revenue bond to pay all or part of the cost of the System; and

**WHEREAS**, the Town Council of the Town (**the “Town Council”**) has determined to improve the System located in the Town and that to do so it is necessary to issue its General Obligation Sewer Revenue Bond, Series 2019 (**the “Series 2019 RD Bond”**) in the amount of Three Million Seventeen Thousand and 00/100 Dollars (\$3,017,000), the proceeds of which, together with other available funds, are estimated to be sufficient to pay the cost of the Project, as defined below, hereinafter authorized; and

**WHEREAS**, the United States of America, acting through Rural Development and/or Rural Utilities Service (formerly Farmers Home Administration), has offered to purchase the Series 2019 RD Bond upon certain terms and conditions; and the Town, after consideration of the condition of the municipal bond market, has determined to satisfy such terms and conditions, to authorize and issue its Series 2019 RD Bond, and to award the sale of the Series 2019 RD Bond to the United States of America; and

**BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF AMHERST, VIRGINIA, AS FOLLOWS:**

**ARTICLE I.**

**DEFINITIONS**

Section 1.1 Definitions. Whenever used in this resolution, unless a different meaning clearly appears from the context:

(a) **“Act”** shall mean the Public Finance Act (Chapter 26, Title 15.2, Code of Virginia, 1950, as amended).

(b) **“Additional Bonds”** shall mean any bonds issued pursuant to Article VI and secured on a parity with the Bonds by a pledge of the Net Revenues.

(c) **“Bondholder”** shall mean the holder or owner of the Series 2019 RD Bond.

(d) **“Bond” or “Bonds”** shall mean the Series 2019 RD Bond and any Additional Bonds.

(e) **“Certified copy”** shall mean a copy of a resolution or other paper certified by the Town Manager of the Town, Mayor of the Town, Clerk of the Town Council, or by any other authorized Town official.

(f) **“Closing Date”** shall mean the date on which the Series 2019 RD Bond is delivered to the United States upon payment of the purchase price therefor.

(g) **“Consulting Engineer”** shall mean such engineering firm or individual engineer as may be employed by the Town as Consulting Engineer in accordance with Section 9.6.

(h) **“Costs”** shall mean the cost of improvements; the cost of all lands, properties, rights, easements and franchises acquired and the cost of all conveyances in fee simple of the Town’s title thereto and leased thereof; the cost of preparing the land; the cost of impact fees to host jurisdictions; the cost of all labor, machinery, equipment and furnishings; financing and credit enhancement charges; interest prior to and during construction and for one year after completion of construction; cost of engineering and legal services, plans, specifications, surveys, estimates of costs and revenues; any deposit to any bond interest and principal reserve account; start-up costs and start-up operating capital; other expenses necessary or incident to the determining of the feasibility or practicability of any such acquisition, improvement or construction; administrative expenses and such other expenses as may be necessary or incident to the financing hereby authorized, or to the acquisition, improvement or construction of the Project.

(i) **“Fiscal Year”** shall mean the twelve-month period beginning on July 1 of one year and ending on June 30 of the following year.

(j) **“Government”** shall mean the United States of America, its successors and assigns, acting by and through Rural Development and/or Rural Utilities Service, each an agency of the United States Department of Agriculture.

(k) **“Gross Revenues”** shall mean all revenues, income, and receipts derived or received by the Town from the operation and ownership of the System, including the interest income from the investment or deposit of money in any fund created by this resolution or a supplemental resolution in connection with the System, plus any other money from other sources pledged by the Town to the payment of the Bonds, but “Gross Revenues” shall not mean or include any impact fees or developer fees charged by the Town for the construction of capital improvements or extensions to the System.

(l) **“Letter of Conditions”** shall mean that certain Letter of Conditions, dated July 23, 2014 from the United States to the Town setting forth conditions and requirements for the issuance of the Series 2019 RD Bond and any supplements thereto.

(m) **“Net Revenues”** shall mean Gross Revenues less Operating Expenses.



(n) **“Operating Expenses”** shall mean the reasonable and necessary expenses of operation, administration, maintenance and repair of the System, excluding any allowance for depreciation, or for reserves and expenditures for capital improvements or extensions to the System.

(o) **“Project”** in the context of this resolution shall mean the renovations and improvements to the Town’s sewer system located in the Town substantially as described on Exhibit A, attached hereto.

(p) **“Series 2019 RD Bond”** shall mean the Bond authorized and issued under Section 3.1 hereof.

(q) **“System”** shall mean the Town’s sewer system and all additions, extensions and enlargements thereof and any sewer project or projects that may be duly authorized by the Town and made a part of the System.

(r) **“Town”** shall mean the Town of Amherst, Virginia.

(s) **“Town Council”** shall mean the Town Council of the Town.

(t) **“Town Manager,” “Mayor,” or “Vice Mayor,”** shall mean, respectively, the persons holding such offices of the Town.

Section 1.2 Other Definitions. Words defined elsewhere in this resolution shall have the meanings therein provided.

Section 1.3 Rules of Construction. Unless the context clearly indicates to the contrary, words importing the singular number shall include the plural number and vice versa.

## ARTICLE II.

### AUTHORIZATION OF PROJECT

Section 2.1 The Project. In order to provide improvements to the sewer facilities serving the Town, the acquisition, construction and equipping of the Project are hereby authorized.

Section 2.2 Modification of Project. The Project authorized hereby may be modified by the Town; provided, however, that any such modification shall first have been approved by the Government and recommended in writing by the Consulting Engineer.

Section 2.3 Project Made Part of System; Pledge of Revenues. All improvements, extensions, additions and replacements constituting the Project financed in part or in whole by the issuance of the Series 2019 RD Bond shall be a part of the System and all revenues derived from the ownership and operation of the System (**the “System Revenues”**) are pledged to the

equal benefit of the owners of the Series 2019 RD Bond, but such revenues are not pledged to the benefit of the owners of any other bonds issued by the Town except and to the extent expressly set forth therein and permitted under this Resolution.

### ARTICLE III.

#### **AUTHORIZATION, FORM, EXECUTION, DELIVERY AND REGISTRATION OF SERIES 2019 RD BOND**

Section 3.1 Authorization of Series 2019 RD Bond. There is hereby authorized to be issued a general obligation sewer revenue bond of the Town in the principal amount of Three Million Seventeen Thousand and 00/100 Dollars (\$3,017,000) to provide funds to finance, in part, the cost of the Project. The Series 2019 RD Bond shall be designated the “Town of Amherst, Virginia, General Obligation Sewer Revenue Bond, Series 2019 (RD).”

Section 3.2 Details of the Series 2019 RD Bond. The Series 2019 RD Bond shall be issued as one fully registered bond (registered as to principal and interest) without coupons, shall consist of a Bond in the denomination of \$3,017,000 numbered R-1, shall be dated as of the Closing Date and shall bear interest on the unpaid principal balance at the rate of 2.375% per year (or such greater or lesser rate as may be agreed to by the Government, subject to a maximum rate of 4.00%). Interest only shall be paid during the first twenty four (24) months after closing, such interest being payable annually on the first and second anniversary dates of the Closing Date. Thereafter payment for the remaining 456 months of principal and interest shall be made in equally amortized monthly installments which, if the interest rate is 2.375% per annum, such installments shall be in the amount of Ten Thousand Seventy Seven and 00/100 Dollars (\$10,077.00) thereafter for a period of thirty-eight (38) years, until paid. If not sooner paid, the final installment shall be due and payable on the fortieth anniversary of the Closing Date of the Series 2019 RD Bond in 2059. Each payment shall be applied first to interest accrued to the payment date and then to principal. If the Closing Date actually occurs on the 29th, 30th or 31st day of a month, then the closing date for purposes of this paragraph shall be deemed to be the 28th day of such month.

Installments of principal may be prepaid at the option of the Town as a whole or in part, without premium (but if in part, in inverse chronological order) on any interest payment date, upon not less than thirty nor more than sixty days’ notice forwarded by registered or certified mail to the registered owner of this Bond at the address shown on the registration books maintained at the office of the Registrar, upon payment of the principal amount of installments to be prepaid and interest accrued to the date fixed for such prepayment, without premium, by check or draft mailed to such owner at such address.

At the request of the Government, the Series 2019 RD Bond may be delivered as a fully registered bond in the alternative form contained herein providing for principal advances to be made from time to time by the Government in an aggregate amount not to exceed \$3,017,000. An authorized officer of the Government shall enter the amount and the date of each such principal advance on the Certificate of Principal Advances attached to the Series 2019 RD Bond

when the proceeds of such advance are delivered to the Town. Each such principal advance shall bear interest from the date of such advance so entered on the certificate.

Section 3.3 Execution of the Series 2019 RD Bond. The Series 2019 RD Bond shall be signed by the manual signature of the Mayor or Vice Mayor of the Town and the Town seal shall be affixed thereto and attested by the Clerk of the Town Council.

Section 3.4 Form of the Series 2019 RD Bond. The Series 2019 RD Bond shall be in substantially the following form:

*[The remainder of this page is intentionally left blank.]*

For Approval

No. R-1

\$3,017,000.00

**UNITED STATES OF AMERICA**  
**COMMONWEALTH OF VIRGINIA**  
**TOWN OF AMHERST**

**General Obligation Sewer Revenue Bond, Series 2019 (RD)**

**Registered Holder:** United States of America

**Principal Sum:** Three Million Seventeen Thousand and 00/100 Dollars

**Date:** \_\_\_\_\_, 2019

The Town of Amherst, Virginia (the "Town"), a political subdivision of the Commonwealth of Virginia, for value received, hereby promises to the United States of America, or registered assigns, a sum equal to the amount of principal advances made hereunder but not to exceed the sum of

**THREE MILLION SEVENTEEN THOUSAND AND 00/100 DOLLARS**  
**(\$3,017,000.00)**

and to pay to the registered owner hereof interest on the unpaid principal from the date hereof until payment of the entire principal sum at the rate of [2.375%] per year (or such lesser rate as may be agreed to by the Government). Interest only shall be paid during the first twenty four (24) months after closing, such interest being payable annually on the first and second anniversary dates of the Closing Date. Thereafter payment for the remaining 456 months of principal and interest shall be made in equally amortized monthly installments of Ten Thousand Seventy Seven and 00/100 Dollars (\$10,077.00) commencing on \_\_\_\_\_, \_\_\_\_\_ and thereafter for a period of thirty-eight (38) years, until paid, each payment to be applied first to interest accrued to such payment date and then to principal, and such final installment, if not sooner paid, to be due and payable forty (40) years from the date hereof in 2059. Installments of both principal and interest shall be payable in lawful money of the United States of America by check or draft mailed to the registered owner at its address as it appears on the registration books kept for that purpose at the office of the Town Manager who was appointed as Registrar. This Bond shall be registered as to principal and interest. The final installment of principal shall be payable upon presentation and surrender hereof at the office of the Registrar.

This Bond has been authorized by a resolution adopted by the Town Council on December 11, 2019 (“**the “Bond Resolution”**”), and is issued pursuant to the Public Finance Act (Chapter 26, Title 15.2, Code of Virginia, 1950, as amended) (**the “Act”**) and the Constitution of the Commonwealth of Virginia, to provide funds, along with other monies that may be available, to pay the cost of acquiring, constructing and equipping improvements to the Town’s sewer system (**the “Project”**) located in the Town. Copies of the Bond Resolution are on file at the office of the Town Manager of the Town. Reference is hereby made to the Bond Resolution and any amendments thereto for the provisions, among others, describing the pledge and covenants securing this Bond, the nature and extent of the security therefor, the terms and conditions upon which this Bond is issued, and the rights and obligations of the Town and the rights of the Bondholder(s).

Both principal of and interest on this Bond are payable from ad valorem taxes to be levied without limitation as to rate or amount on all property in the Town subject to taxation and from a pledge of the full faith and credit of the Town and the revenues of the Town’s sewer system (**the “System”**) pledged thereto as herein set forth. Nothing herein or in the Bond Resolution shall be deemed to create or constitute an indebtedness of or a pledge of the faith and credit of the Commonwealth of Virginia or of any county, city, town or other political subdivision of the Commonwealth other than the Town. This Bond also is secured by a pledge of the revenues derived from the ownership and operation of the System.

THIS BOND IS A GENERAL OBLIGATION OF THE TOWN FOR THE PAYMENT OF WHICH THE TOWN’S FULL FAITH AND CREDIT ARE IRREVOCABLY PLEDGED. THE TOWN COUNCIL IS AUTHORIZED AND REQUIRED TO LEVY AND COLLECT ANNUALLY AT THE SAME TIME AND IN THE SAME MANNER AS OTHER TAXES OF THE TOWN ARE ASSESSED, LEVIED AND COLLECTED, A TAX UPON ALL TAXABLE PROPERTY WITHIN THE TOWN, OVER AND ABOVE ALL OTHER TAXES AUTHORIZED OR LIMITED BY LAW AND WITHOUT LIMITATION AS TO RATE OR AMOUNT, SUFFICIENT TO PAY WHEN DUE THE PRINCIPAL OF AND PREMIUM, IF ANY, AND INTEREST ON THE BOND, TO THE EXTENT OTHER FUNDS OF THE TOWN ARE NOT LAWFULLY AVAILABLE AND APPROPRIATED FOR SUCH PURPOSE. THIS BOND ALSO IS PAYABLE FROM CERTAIN REVENUES TO BE DERIVED FROM THE OWNERSHIP OR OPERATION OF THE TOWN’S SYSTEM AS THE SAME MAY FROM TIME TO TIME EXIST, ALL OF WHICH REVENUES HAVE BEEN PLEDGED PURSUANT TO THE BOND RESOLUTION TO SECURE THE PAYMENT THEREOF. NEITHER THE COMMONWEALTH OF VIRGINIA NOR ANY POLITICAL SUBDIVISION THEREOF, OTHER THAN THE TOWN, SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF OR INTEREST ON THE BOND OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE REVENUES PLEDGED THEREFOR, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE COMMONWEALTH OF VIRGINIA OR ANY POLITICAL SUBDIVISION THEREOF, OTHER THAN THE TOWN, IS PLEDGED TO THE PAYMENT OF PRINCIPAL OF OR INTEREST ON THE BOND OR OTHER COSTS INCIDENT THERETO.

Installments of principal may be prepaid at the option of the Town as a whole or in part, without premium (but if in part, in inverse chronological order) on any interest payment date,

upon not less than thirty nor more than sixty days' notice forwarded by registered or certified mail to the registered owner of this Bond at the address shown on the registration books maintained at the office of the Registrar, upon payment of the principal amount of installments to be prepaid and interest accrued to the date fixed for such prepayment, without premium, by check or draft mailed to such owner at such address.

Additional Bonds secured equally and ratably with this Bond may be issued from time to time under the conditions, limitations and restrictions set forth in the Bond Resolution to finance the cost of the completion of the Project, the acquisition or construction of improvements, extensions, additions and replacements to the System, one or more projects duly authorized by the Town and made a part of the System, or to refund bonds of the Town, or for any or all of such purposes.

This Bond is transferable only upon the registration books kept at the office of the Registrar by the registered holder hereof or by his duly authorized attorney, upon surrender of this Bond (together with a written instrument of transfer, satisfactory in form to the Registrar, duly executed by the registered holder or his authorized attorney, which may be in the form endorsed hereon) and subject to the limitations and upon payment of the charges, if any, as provided in the Bond Resolution, and thereupon as provided in the Bond Resolution a new Bond, in the aggregate principal amount and of the same series, interest rate and maturity as the Bond surrendered, shall be issued in exchange therefor. The Town and the Registrar shall deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal hereof and interest due hereon and for all other purposes whatsoever.

All acts, conditions and things required by the Constitution and statutes of the Commonwealth of Virginia to happen, exist or be performed precedent to, and in the issuance of this Bond have happened, exist and have been performed.

This Bond shall not be valid or obligatory for any purpose unless the Certificate of Authentication hereon has been duly executed by the Registrar and the date of authentication inserted hereon.

**IN WITNESS WHEREOF**, the Town has caused this Bond to be signed by its Mayor or Vice Mayor, to be countersigned by its Clerk or Deputy Clerk of the Town Council, and this Bond to be dated as of \_\_\_\_\_, \_\_\_\_.

COUNTERSIGNED:

\_\_\_\_\_  
Clerk, Town Council of the  
Town of Amherst, Virginia

\_\_\_\_\_  
Mayor, Town of Amherst, Virginia

**CERTIFICATE OF AUTHENTICATION**

This Bond is the Series 2019 RD Bond described in the within mentioned Bond Resolution.

\_\_\_\_\_  
Town Manager  
Town of Amherst, Virginia

For Approval

**TRANSFER OF BOND**

Transfer of this Bond may be registered by the registered owner or his duly authorized attorney upon presentation hereof to the Registrar who shall make note of such transfer in its books kept by her for that purpose and in the registration blank below:

<u>Date of Registration</u>	<u>Name of Registered Owner</u>	<u>Signature of Registrar</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

**CERTIFICATE OF PRINCIPAL ADVANCES**

The amount and date of principal advances not to exceed the face amount hereof shall be entered hereon by an authorized officer of the United States of America, when the proceeds of such principal amounts are delivered to the Town.

<u>Amount</u>	<u>Date</u>	<u>Authorized Signatures</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____



**Schedule A**

Principal Installments Paid in Advance of Maturity Date

<u>Principal Due Date(s) Inclusive</u>	<u>Principal Payment Amount</u>	<u>Date</u>	<u>Balance</u>	<u>Date Paid</u>	<u>Signature of Registrar</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Section 3.5 Registration and Exchange of Bond. The Town Manager is hereby appointed Registrar. Transfer of the Bond shall be registered upon books maintained for that purpose at the office of the Registrar. Prior to due presentment for registration of transfer, the Registrar shall treat the registered owner as the person exclusively entitled to payment of principal and interest and the exercise of all other rights and powers of the owner. The Bond initially shall be registered as to principal and interest in the name of the United States of America, with an address of Finance Office, USDA/Rural Development, 1520 Market Street, St. Louis, Missouri 63103-2696.

Section 3.6 Delivery of the Series 2019 RD Bond. The Mayor or Vice Mayor and Town Manager are hereby authorized and directed to have the Bond prepared and executed in accordance with the terms thereof and to deliver the Series 2019 RD Bond to the United States upon payment therefor. The Mayor or Vice Mayor and Town Manager are further authorized and directed to agree to and comply with, on behalf of the Town, any and all further conditions and requirements of the United States in connection with its purchase of the Bond.

Section 3.7 Replacement of Mutilated, Lost or Destroyed Bond. Should the Bond become mutilated or be lost or destroyed, the Town shall cause to be executed and delivered a new Bond of like date, number, series and tenor in exchange and substitution for, and upon cancellation of, such mutilated Bond or in lieu of and in substitution for such lost or destroyed Bond. Such new Bond shall be executed and delivered only when the owner has paid all reasonable expenses and charges in connection therewith and, in the case of a lost or destroyed Bond, has filed with the Town and the Registrar evidence satisfactory to them that such Bond was lost or destroyed and that he was the owner thereof and the owner has furnished to the Registrar indemnity satisfactory to him; provided, however, that no surety on such indemnity shall be required from the Government.

## ARTICLE IV.

### PREPAYMENT OF BOND

Section 4.1 Prepayment Dates and Prices. Installments of principal at the option of the Town, may be prepaid as a whole, or in part, without premium (but if in part, in inverse chronological order) on any interest payment date, upon payment of the principal amount of the installments to be prepaid and interest accrued to the date fixed for such prepayment, without premium.

Section 4.2 Manner of Effecting Prepayment. Prepayment of the Bond shall be effected in the following manner:

(a) The Town shall approve prepayment of installments which are by their terms subject to prepayment and fixing a date for such prepayment.

(b) Not less than thirty nor more than sixty days prior to such prepayment date, the Town shall cause a notice of such prepayment to be sent by registered or certified mail to the registered owner of the Bond to be prepaid at its address appearing on the registration books of the Town. The notice of prepayment shall state the date fixed for prepayment, the place at which payment will be made and, if less than all of the Bonds or less than the entire principal of any single fully registered Bond shall be called for prepayment, the numbers of Bonds or installments of any single Bond to be prepaid.

(c) On or prior to the date fixed for prepayment the Registrar shall make available at his office the amount to be prepaid and accrued interest.

Section 4.3 Cancellation of Prepaid Bond. The Bonds so prepaid in full shall be cancelled upon surrender.

## ARTICLE V.

### REVENUES AND FUNDS

Section 5.1 Revenue Covenant. The Town covenants that so long as the Series 2019 RD Bond is outstanding it will fix, charge and collect such rates, fees and other charges for the use of and for the services furnished by the System and will from time to time revise such rates, fees and other charges so as to produce sufficient revenues in each fiscal year to equal an amount required to pay (i) the Operating Expenses which shall accrue and become payable during the then current fiscal year, and (ii) the amounts required by Section 3.2 to be paid during the then current fiscal year on debt service for the Bonds.

Section 5.2 Free Service; Enforcement of Charges.

(a) So long as the Series 2019 RD Bond is outstanding the Town shall not permit connections to or use of the System or provide any services of the System without making a charge therefor; provided, however, that the Town may supply water service to facilities on public property without making a charge.

(b) If any rates, fees or charges for the use of and for the services furnished by the System shall not be paid within 60 days after the same shall become due and payable, or within such shorter time as may be determined by the Town, the Town may at the expiration of such period disconnect the premises from the System or otherwise suspend service to such premises until such delinquent rates, fees or charges and any interest, penalties or charges for reconnection shall have been paid in full, unless the State Health Commissioner shall have found and shall certify to the Town that suspending such services will endanger the health of the persons occupying such premises or the health of others.

(c) The Town shall take all such action as may be necessary to perfect liens upon real estate for the amount of any unpaid rates, fees or charges described in paragraph (b) above or any unpaid connection charges or other charges so that such liens will be binding upon subsequent bona fide purchasers for valuable consideration without actual notice thereof.

Section 5.3 Pledge of Revenues. All revenues derived by the Town from the use of and services furnished by the System are hereby pledged equally and ratably to the payment of the principal of and interest on the Bonds, subject only to the right to make application thereof to other purposes as provided herein.

**ARTICLE VI.**

**ADDITIONAL BONDS**

Section 6.1. Issuance of Additional Bonds. The Town may Issue Additional Bonds to finance the cost of completing the Project or the acquisition or construction of improvements, extensions, additions and replacements to the System or to refund any Bonds. Additional Bonds shall be in such form, shall be dated such date shall mature in such installments of principal and interest, shall bear interest at such rate or rates, shall be in such denomination or denominations and may contain such provisions for prepayment prior to their respective maturities, all as provided by the Town Council by resolution adopted prior to their Issuance. Additional Bonds shall contain an appropriate series designation.

Section 6.2. Conditions of Issuance. The Town shall not issue any Additional Bonds unless there shall have been filed with the Town and, if the Government is the Owner of either the Series 2019 RD Bond or any Additional Bonds, with the Government, the following:

(a) a certified copy of a resolution of the Town Council in form complying with the foregoing provisions specifying or providing for all the terms of the Additional Bonds and, if applicable, stating the cost of the acquisition or construction of any improvements, extensions,

additions and replacements to the System to be acquired or constructed and finding and ordering that such improvements, extensions, additions and replacements shall be a part of the System;

(b) a certified copy of a resolution of the Town Council specifying or providing for the interest rate or rates and directing the delivery of such Additional Bonds to the purchaser or purchasers upon payment of the purchase price set forth therein;

(c) if the Additional Bonds are to be issued to complete the Project, a certificate of the Consulting Engineer to that effect;

(d) if the Additional Bonds are to be issued for any purpose other than the refunding of Bonds or the completion of the Project, either (i) a certificate of an independent certified public accountant or engineering firm stating that the amount of the Net Revenues for the fiscal year preceding the year in which the proposed Additional Bonds are to be issued was not less than one hundred percent (100%) of the average annual principal and interest requirements for the Bonds then outstanding and the Additional Bonds to be issued, or (ii) the written consent of the holders of three-fourths in aggregate principal amount of the Bonds outstanding;

(e) a certificate of the Town, signed by the Mayor or Vice Mayor of the Town, that the Town is in compliance with all covenants and undertakings in connection with this resolution and any supplemental resolution authorizing Additional Bonds which remain outstanding; and

(f) the written opinion or opinions of counsel for the Town stating that the issuance of the Additional Bonds has been duly authorized and that all conditions precedent to their delivery have been fulfilled.

## ARTICLE VII.

### DISBURSEMENT OF BOND PROCEEDS

Section 7.1 Disbursement of Bond Proceeds. Principal advances shall be made by the Government, in an aggregate amount not to exceed \$3,017,000 under the Series 2019 RD Bond upon application by the Town and compliance with all Government requirements. An authorized officer of Government shall enter the amount and the date of each such principal advance on the Certificate of Principal Advances (the “Certificate”), attached to the Series 2019 RD Bond when the proceeds of such advances are delivered to the Town. Each principal advance shall bear interest from the date of the advance entered on the Certificate.

## ARTICLE VIII.

### SECURITY FOR DEPOSITS AND INVESTMENTS OF FUNDS

Section 8.1 Security for Deposits. All moneys on deposit with any bank or trust company shall be secured for the benefit of the Town and the Bondholders in the manner required by Chapters 44, 45, and 46 of Title 2.2, Code of Virginia of 1950, as amended).

## ARTICLE IX.

### PARTICULAR COVENANTS

Section 9.1 General. The Town hereby particularly covenants and agrees with the owner of the Bond and makes provisions which shall become a part of its contract with such Bondholder as set forth in the following sections of this Article.

Section 9.2 Payment of Bond. The Town shall pay promptly, as provided herein, the principal of and interest on the Bond issued pursuant to this resolution, but such principal and interest shall be payable from ad valorem taxes to be levied without limitation as to rate or amount on all property in the Town subject to taxation, from the revenues of the System pledged herein, and the full faith and credit of the Town is pledged to the payment of the Bond. Nothing in the Bond or in this resolution shall be deemed to create or constitute an indebtedness of or a pledge of the faith and credit of the Commonwealth of Virginia or of any county, city, town or other political subdivision of the Commonwealth, other than the Town.

Section 9.3 Construction of System. The Town shall obtain all approvals, permits and consents required by law as a condition precedent to the construction, development, operation and improvement of all parts of the System and shall complete the construction of the Project in a sound and economical manner and in conformity with all applicable requirements of governmental authorities and do all acts and things necessary and reasonable so that it may begin to collect revenues from the Project at the earliest practicable time.

Section 9.4 Operation and Maintenance. The Town shall establish and enforce reasonable rules and regulations governing the use and services of the System, maintain and operate the System in an efficient and economical manner, maintain the same in good repair and sound operating condition and make all necessary repairs, replacements and renewals. All compensation, salaries, fees and wages paid by it in connection with the operation, maintenance and repair of the System shall be reasonable. The Town shall observe and perform all the terms and conditions contained in the Act and comply with all valid acts, rules regulations, orders and directions of any legislative, executive, administrative or judicial body applicable to the System or the Town.

Section 9.5 Competition. The Town shall not operate or assent to the operation of any sewer service in competition with the System.

Section 9.6 Consulting Engineer. The Town shall employ as necessary as Consulting Engineer an engineering firm or individual engineer of recognized standing and experience in the field of sewer system engineering, whose duties shall include supervision of the construction of improvements to the System and advice as to proper operation, maintenance and repair of the System.

Section 9.7 Sale or Encumbrance. Neither the System nor any integral part thereof shall be sold, encumbered or otherwise disposed of; provided, however, that the Town may grant easements, licenses or permits across, over or under parts of the System for streets, roads and utilities as will not adversely affect the use of the System and provided, further, that the Town may sell or otherwise dispose of any property constituting a part of the System that is no longer needed or useful for such purpose that may be used by the Town for any lawful purpose related to the System. Notwithstanding the foregoing, for so long as the Series 2019 RD Bond is owned by the United States of America any sale, encumbrances or other disposition of the System or any part thereof, not expressly permitted or contemplated hereby, must first be consented to in writing by a representative of the Government.

Section 9.8 Creation of Liens. The Town shall not create or suffer to be created any lien or charge upon the System or any part thereof, except as provided herein. The Town shall pay or cause to be discharged, or shall make adequate provision to satisfy and discharge, all lawful claims and demands for labor, materials or supplies within sixty days after the same shall accrue and all governmental charges when the same become due, which, if unpaid, might by law become a lien upon the System or any part thereof; provided, however, that nothing contained in this section shall require the Town to pay or cause to be discharged or make provision for any such lien or charge so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings.

Section 9.9 Title to Lands. The Town shall make no contract requiring payment for labor or to contractors, builders or materialmen on account of the construction or reconstruction of any part of the System unless such part is located on lands to which title in fee simple or over which perpetual easement, in either case sufficient for the purposes of the System, is owned or can be acquired by the Town, or unless such part is lawfully located in public street or highway or is a main, conduit, pipeline, main connection or outfall located on land in which a right or interest less than a fee simple or perpetual easement has been acquired and such lesser right or interest has been approved by written opinion of counsel for the Town as sufficient for the purposes of the Town.

Section 9.10 Insurance. The Town shall maintain insurance as follows:

(a) The Town shall keep insured all above-ground structures forming a part of the System, as well as all other insurable portions of the System of a type that are customarily insured by other publicly owned sewer systems, against loss by fire, including extended coverage, tornado and windstorm, to such extent as may be necessary to provide for a full recovery whenever an insured loss does not exceed eighty percent (80%) of the full insurable value of the property damaged. All proceeds of such insurance shall be applied promptly to the repair or replacement of the property damaged or destroyed.

(b) The Town shall carry public liability insurance relating to the operation of the System with limits of not less than \$1,000,000 to protect the Town from claims for bodily injury, or damage to property of others which may arise from the ownership or operation of the System.

(c) The Town shall carry workers' compensation insurance in such amounts and upon such terms so that it will not be considered a self-insurer of its liability to its employees under the Virginia Workers' Compensation Act.

(d) All policies of insurance, accompanied by receipts showing payment of premiums in full, shall be deposited in the office of the Town Manager of the Town.

(e) The Town shall obtain surety bonds on all of its officers and employees who may handle funds pertaining to the System, such bonds to be in such amounts as are customarily carried by public bodies owning and operating similar systems.

All such insurance shall be taken out and maintained with generally recognized insurance companies and may be written with deductible amounts comparable to those on similar policies carried by other public bodies owning and operating similar systems.

Section 9.11 Records and Reports. The Town shall keep proper books of record and accounts, separate from any of its other records and accounts, showing complete and correct entries of all transactions relating to the System, and any Bondholder shall have the right at all reasonable times to inspect the System and all records, accounts and data relating thereto. The Town shall also cause an annual audit of its books and accounts to be made by an independent certified public accountant at the end of each fiscal year. No later than two hundred and forty days after the end of each fiscal year, copies of the audit report, certified by such accountant, reflecting in reasonable detail the financial condition and record of operation of the System, including specifically the rates charged, the number of connections served, and the tap fees collected for new connections, shall be filed in the office of the Town Manager of the Town and shall be mailed to any Bondholder who may have requested the same in writing.

Section 9.12 Refinancing. The Town shall refinance the unpaid principal balance of the Series 2019 RD Bond upon the request of the United States of America if at any time it shall appear to the Government that the Town is able to do so with funds obtained from responsible private sources at reasonable rates and terms for loans for similar purposes and periods of time.

Section 9.13 Covenant as to Other Bonds. The Town covenants that as of the date of this resolution there are no outstanding bonds, notes or other revenue bond obligations concerning the System other than the Series 2019 RD Bond.

## ARTICLE X.

### AMENDMENTS

Section 10.1 Amendments Without Consent: The Town shall have the right, from time to time, without the consent of the Bondholder to adopt resolutions supplemental hereto, not inconsistent with the terms and provisions hereof:

(a) to cure any ambiguity or formal defect or omission or to correct any inconsistent provisions in this resolution or in any supplemental resolution;

(b) to grant to or confer upon the Bondholder any additional lawful right, remedy, power, authority or security;

(c) to add conditions, limitations, and restrictions on the issuance of Additional Bonds; and

(d) to add other covenants and agreements to be observed by the Town or to surrender any right or power herein reserved to or conferred upon the Town.

No such supplemental resolution shall become effective until certified copies have been filed in the office of the Town Manager of the Town.

Section 10.2 Amendments Requiring Consent. The owners of not less than sixty-five percent in principal amount of the Bonds then outstanding shall have the right, from time to time, but only pursuant to this section, to consent to and approve the adoption of such resolution or resolutions supplemental hereto as shall be deemed necessary or desirable by the Town for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this resolution or in any supplemental resolution; provided, however, that nothing herein contained shall permit or be construed as permitting (a) an extension of the maturity of the principal of or the interest on any Bond or the prepayment premium, if any, or the rate of interest thereon, or (b) the creation of a lien upon or a pledge of revenues other than the lien and pledge created by this resolution or otherwise permitted hereby, or (c) a preference or priority of any Bond or Bonds over any other Bond or Bonds, or (d) a reduction in the principal amount of Bonds required for consent to such supplemental resolution. Nothing herein contained, however, shall be construed as making necessary the approval by Bondholders of the adoption of any supplemental resolution authorized by Section 10.1.

Section 10.3 Adoption and Consent to Amendment. Upon the adoption of any supplemental resolution for any of the purposes of Section 10.2, a certified copy thereof shall be filed in the office of the Town Manager of the Town for inspection by any Bondholder. The



Town Manager shall cause a copy of such supplemental resolution or a summary thereof, together with a request to the Bondholders for their consent thereto, to be sent by registered or certified mail to the registered owner of each Bond at his address as it appears on the registration books of the Town; provided, however, that failure to mail any such notice shall not affect the validity of such supplemental resolution when consented to and approved as provided in this section. If, within sixty days or such longer period as shall be prescribed by the Town following the giving of such notice, the Town shall file in its office, and in the office of the Government, an instrument or instruments in writing purporting to be executed by the holders of not less than sixty-five percent in principal amount of the Bonds then outstanding, which shall refer to the supplemental resolution and shall specifically consent to and approve the adoption thereof, together with a certified copy of such supplemental resolution and the written opinion of counsel for the Town stating that such resolution has been duly adopted, is authorized or permitted by this resolution and is valid and legally binding upon the Town and enforceable in accordance with its terms, such supplemental resolution shall thereupon be effective as the owners of all the Bonds then outstanding, whether or not such owners shall have consented thereto.

Section 10.4 Amendment by Unanimous Consent. Notwithstanding any other provisions herein, the Town may amend any term or provision of this resolution or any supplemental resolution upon adoption of a supplemental resolution and the filing of certified copies of such supplemental resolution, together with the written consent thereto of the owners of the Bonds then outstanding, as provided in Section 10.3.

Section 10.5 Effect of Amendments. This resolution shall be deemed modified and amended, and the respective rights, duties and obligations hereunder of the Town and any owner of the Bonds then outstanding shall be determined and enforced under the provisions of this resolution, as so modified and amended, upon the adoption of any amendment as provided in this Article.

## ARTICLE XI.

### DISCHARGE UPON PAYMENT

Section 11.1 Discharge Upon Payment of Bonds. If any Bonds shall have become due and payable at maturity or shall have been duly called for prepayment and the full amount of the principal, interest and premium, if any, so due and payable upon the Bonds then outstanding shall have been paid at the time and in the manner provided therein and in this resolution, then the right, title and interest of the Bondholder in the revenues and the other moneys, funds and securities pledged under this resolution and all covenants, agreements and other obligations of the Town to the Bondholder under this resolution shall cease, terminate and be void, and the Town shall be discharged from its obligations hereunder. In such event all moneys and securities not required for the payment of the principal, interest and prepayment premium, if any on the Bonds, may be used by the Town for any lawful purpose.

## ARTICLE XII.

### MISCELLANEOUS

Section 12.1 Contract with Bondholders: The provisions of this resolution shall constitute a contract between the Town and the Bondholder for so long as any Bonds or interest thereon is outstanding.

Section 12.2 Town Officers and Agents. The officers and agents of the Town shall do and are authorized to perform all acts and things required of them by this resolution, the Bonds and the Act for the complete and punctual performance of all the terms, covenants and agreements therein, and to do all acts and things and execute all documents and certificates required by the Government in connection with the issuance of the Bonds (including but not limited to an initial operating budget, a request for obligation of funds, an equal opportunity agreement, an assurance agreement, an applicant certification concerning collection policies for consumer or commercial debts, a certification regarding debarment, suspension and other responsibility matters, a certification regarding drug-free workplace requirements, and a certification for contracts, grants, and loans regarding lobbying, all in standard form acceptable to the Government), and such actions of the officers and agents of the Town are hereby approved and ratified.

Section 12.3 Successors and Assigns. All the covenants, stipulations, promises and agreements of the Town contained in this resolution shall bind and inure to the benefit of its successors and assigns, whether so expressed or not.

Section 12.4 Limitation of Rights. Nothing expressed or mentioned in or to be implied from this resolution or the Bond is intended or shall be construed to give to any person or company other than the parties hereto and the owner of the Bonds any legal or equitable rights, remedy or claim under or in respect to this resolution or any covenants, conditions and agreements herein contained; this resolution and all of the covenants, conditions and agreements hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the owners of the Bonds as herein provided.

Section 12.5 Limitation of Liability of the Town, etc. No covenant, condition or agreement contained herein shall be deemed to be a covenant, agreement or obligation of a present or future member of the Town Council, officer, employee or agent of the Town in his individual capacity, and neither the members of the Town Council nor any officer thereof executing the Bond shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof. No member of the Town Council, officer, employee or agent of the Town shall incur any personal liability in acting or proceeding, or in not acting or not proceeding, in good faith, reasonably and in accordance with the terms of this resolution or the Act.

Section 12.1 Notice. Any provision in this resolution for the giving, filing, mailing or delivery of notice or other papers shall be deemed fully complied with if, and when, such notice or other papers are sent by registered or certified mail, return receipt requested, to the Town,

addressed to Town Manager, Town of Amherst, 174 S. Main Street, P.O. Box 280, Amherst, VA 24521.

Section 12.2 Headings. Any headings in this resolution are solely for convenience of reference and shall not constitute a part of the resolution nor shall they affect its meaning, construction or effect.

Section 12.3 Conditions Precedent: Upon the issuance of the Bonds all acts, conditions, and things required by the Constitution and statutes of the Commonwealth of Virginia or this resolution to have happened, exist and to have been performed precedent to or in the issuance of the Bonds shall have happened, exist and have been performed.

Section 12.4 [RESERVED].

Section 12.5 Series Designation. In the event the Series 2019 RD Bond is not issued during calendar year 2019, the Mayor or Vice Mayor and Town Manager of the Town are hereby authorized and directed to change the series designation to such other year as may be appropriate at the time of their issuance. Thereafter all references in this resolution to the Series 2019 RD Bond shall be deemed to refer to the \$3,017,000 General Obligation Sewer Revenue Bond issued pursuant to Article III under the new series designation.

Section 12.6 Government Resolution. The Government Loan Form Resolution attached hereto as Exhibit B is hereby adopted and incorporated herein and to the extent of any inconsistency with this resolution and the Government Resolution, the Government Resolution shall control.

Section 12.7 Severability. The provisions of this resolution are hereby declared to be severable. If any court of competent jurisdiction shall hold any provision of this resolution to be invalid and unenforceable, such holding shall not affect any other provision hereof.

Section 12.8 Approval of Sewer System Grant Agreement. The Town hereby accepts a grant or grants from the Government in accordance with the Sewer System Grant Agreement from the Government, previously approved and obligated, in an amount not to exceed \$1,076,000, presented at this meeting, which Sewer System Grant Agreement is hereby approved in substantially the forms presented to this meeting with such completions, omissions, insertions and changes as may be approved by the officer executing it, his execution to constitute conclusive evidence of his approval of any such completions, omissions, insertions and changes. The Mayor, Vice Mayor and Town Manager of the Town, and each of them, are authorized to execute the Sewer System Grant Agreement in accordance with the foregoing. The Mayor, Vice Mayor and Town Manager of the Town, and all other officers, employees and agents of the Town are hereby authorized and directed to take any and all such further action as shall be deemed necessary or desirable to close on the grant in accordance with the approved Sewer System Grant Agreement, and all such action is hereby approved and ratified.

Section 12.9 Effective Date. This resolution shall take effect immediately. A certified copy of this Bond Resolution shall be filed by the Clerk of the Town Council with the Clerk of

the Circuit Court of the County of Amherst, Virginia. The filing of this Bond Resolution with the Clerk of the Circuit Court of the County of Amherst, Virginia shall be deemed to be the filing of a resolution authorizing the issuance of bonds with such Court for all purposes of the Act.

*[Remainder of this Page Intentionally Left Blank]*

For Approval

The Members of the Town Council voted as follows:

Ayes

Nays

Absent

Abstentions

Adopted this 11<sup>th</sup> day of December, 2019.

The undersigned Clerk of the Town Council of the Town of Amherst, Virginia hereby certifies that the foregoing constitutes a true and correct extract from the minutes of a meeting of the Town Council held on December 11, 2019, and of the whole thereof so far as applicable to the matters referred to in such extract. I hereby further certify that such meeting was a regularly called meeting and that, during the consideration of the foregoing resolution, a quorum was present and action was taken in an open meeting.

Dated this \_\_ day of \_\_\_\_\_, 2019.

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Clerk, Town Council of the  
Town of Amherst, Virginia

**EXHIBIT A**

**PROJECT DESCRIPTION**

Improvements to the Town's sewer system.

For Approval

## EXHIBIT B

### UNITED STATES OF AMERICA LOAN FORM RESOLUTION

RUS BULLETIN 1780-27

Position 5

APPROVED  
OMB. No. 0572-0121

#### LOAN RESOLUTION (Public Bodies)

A RESOLUTION OF THE Town Council  
OF THE Town of Amherst, Virginia  
AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A  
PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS  
sewer systems in the Town  
FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.

WHEREAS, it is necessary for the Town of Amherst, Virginia  
*(Public Body)*  
(herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of  
Three Million Seventeen Thousand and 00/100 Dollars (\$3,017,000)

pursuant to the provisions of the Public Finance Act, Chapter 26 of Title 15.2 of the Code of Virginia, as amended \_\_\_\_\_; and  
**WHEREAS**, the Association intends to obtain assistance from the United States Department of Agriculture,  
(herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921  
et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event  
that no other acceptable purchaser for such bonds is found by the Association:

**NOW THEREFORE**, in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legal ly permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by USDA. No free service or use of the facility will be permitted.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0572-0121. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.





**CERTIFICATION TO BE EXECUTED AT LOAN CLOSING**

I, the undersigned, as \_\_\_\_\_ of the \_\_\_\_\_  
hereby certify that the \_\_\_\_\_ of such Association is composed of  
\_\_\_\_\_ members, of whom , \_\_\_\_\_ constituting a quorum, were present at a meeting thereof duly called and  
held on the \_\_\_\_\_ day of \_\_\_\_\_ ; and that the foregoing resolution was adopted at such meeting  
by the vote shown above, I further certify that as of \_\_\_\_\_ ,  
the date of closing of the loan from the United States Department of Agriculture, said resolution remains in effect and has not been  
rescinded or amended in any way.

Dated, this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Title \_\_\_\_\_

For Approval

## Town Manager's Report for the January 8, 2019 Town Council Meeting

<b>Committee</b>	<b>Report</b>
A. Industrial Development Authority	No meeting/no report
B. Planning Commission	Meeting held January 2, minutes attached
C. Board of Zoning Appeals	No meetings/no report
D. Property Maintenance Investigation Board	No meetings/no report
E. Community Relations Committee	No meetings/no report
F. Finance Committee	No meetings/no report
G. Utilities Committee	No meetings/no report
H. Town/Sweet Briar Sewer Use Advisory Commission	No meetings/no report
I. Lynchburg Regional Business Alliance	Attended ED meeting on December 19
J. Central Virginia Planning District Commission	No meetings/no report
K. Amherst County Chamber of Commerce	Did not attend meeting



# AMHERST POLICE DEPARTMENT



## MONTHLY REPORT

### December 2019

Month:	SHIFT WORKING:
OFFICER:	VEHICLE:
MILEAGE START OF SHIFT:	MILEAGE END OF SHIFT:

CALLS FOR SERVICE	NUMBER
MOTORIST ASSIST	27
ALARM	17
PHONE COMPLAINT	36
BOLO	20
MISSING PERSON	
SHOPLIFTING	
PROBLEM WITH OTHERS	9
DOMESTIC	3
CHECK WELFARE	1
NOISE OR DOG COMPLAINT	2
TRAFFIC CRASH	8
EMS CALLS	3
SUDDEN DEATH	2
SUSPICIOUS PERSON	9
CALLS AT AMBRIAR	7
OTHER	48

OFFICER INITIATED	NUMBER
BUILDING CHECKS	71
BUSINESS VISIT	79
BUILDING SEARCH	1
TRAFFIC SUMMONS	28
DRUNK IN PUBLIC	
EXTRA PATROLS/ Parks	278 / 109
WARRANT SERVICE	8
PROPERTY WALK AROUNDS	18
WARRANTS OBTAINED	4
PARKING TICKETS	
MISD. INVESTIGATION	3
FELONY INVESTIGATION	9
NARCOTICS INV.	2
SEARCH WARRANT	
PUBLIC RELATIONS	7
CITIZEN CONTACT	256

WARNINGS	NUMBER
SPEEDING	3
EQUIPMENT VIOLATION	5
RECKLESS DRIVING	3
SUSPENDED LICENSE	
INSPECTION/REGISTRATION	5
SEAT BELT / TEXTING	
ALL OTHER VIOLATIONS	8

TRAFFIC STOPS TICKETED	NUMBER
SPEEDING	20
EQUIPMENT VIOLATION	
RECKLESS DRIVING	
SUSPENDED LICENSE	
INSPECTION/REGISTRATION	6
SEAT BELT / TEXTING	
ALL OTHER VIOLATIONS	2

ARREST	NUMBER
MISDEMEANOR	5
FELONY	2
EPO	2
ECO/ PPO	1
NARCOTICS VIOLATION	1
DUI / DUID	

OTHER	NUMBER
ASSIST OTHER OFFICER	31
ASSIST OTHER AGENCY	29
COURT	
REPORTS	9
SCHOOL / TRAINING	9 DAYS
MEETINGS	14
TOWED / IMPOUNDED VEH	



# AMHERST POLICE DEPARTMENT

## MONTHLY REPORT



PLEASE LIST ALL PASS ON'S, INVESTIGATIONS, ARREST, IMPOUNDED VEHICLES WITH REASON AND LOCATION, AND BUSINESSES WITH OPEN DOORS OR ANY OTHER SIGNIFICANT COMPLAINTS.

Calls for service: 241

Miles Patrolled: 7,894.



# TOWN OF AMHERST

P.O. Box 280 174 S. Main Street Amherst, VA 24521  
Phone (434)946-7885 Fax (434)946-2087

**To:** Town Council  
**From:** Tracie Wright  
**Date:** January 2, 2020  
**Re:** December 2019 Monthly Report

---

**Utilities** – 1156 bills were cut totaling \$199,695.84.

**A/P** – A total of 65 checks were cut totaling \$255,186.97 for December 2019 bills.

**Meals and Beverage Tax** – 14 Businesses paid \$44,776.93 in Meals and Beverage Tax for the month of November.

**Taxes** – License Fee bills were due by December 5<sup>th</sup>. Please inform everyone that if they did not receive their bill to please contact us at the office. Code of Virginia states that citizens are responsible for making sure they receive and pay their bills by the due date. As of January 2, 2020 we have a total of \$12,054.13 in outstanding 2019 bills. Dee will be sending out 30 day late notices soon. Anything still outstanding 30 days after the notice letter will be in the Bank Lien process.

Anyone whom had outstanding balances from prior years, and we were also unsuccessful in receiving funds by the Bank Lien process, were added to the Virginia State Debt Set-Off list in December. If anyone on this list is entitled to a State Tax refund will be flagged and the funds will come to the Town for payment instead of the individual as a refund. The Town does fall further down the list, with IRS debt or outstanding child support payments to receive the money first.

**New Projects** –

- New financial software installation set-up to begin soon.

**Upcoming Items** –

- CIP Process
- Budget Process begins
- W2's and end of year reporting.

## **Clerk of Council December 2019 Report**

### **Committee Meetings**

#### **Planning Commission**

Receive and review agenda packet for 12-4-19 meeting; post agenda packet to website; prepare for and attend meeting; draft minutes for approval; post minutes on website

#### **Town Council**

Receive and review agenda packet for 12-11-19 meeting; post agenda packet to website; prepare for and attend meeting; draft minutes for approval; post minutes and recording on website

**Quorums:** Confirm cancellation of meeting of Industrial Development Authority, confirm quorum for regular meetings of Planning Commission and Town Council

### **Town Website Maintenance and Management**

Maintain, create and update content including but not limited to:

- Agendas and Minutes
- Parade Line-up List; Parade Winner information
- Livestream of the Town of Amherst 2019 Christmas Parade
- Update 2020 Calendars, Hot Topics, News Room
  - Regional Pre-Disaster Plan – Public Survey
  - Long Range Transportation Plan Public Survey
  - Link for Amherst Lancers Tech Club Livestream of the Town of Amherst 2019 Christmas Parade

### **Town Facebook Administrator**

- Create content and/or design:
  - Christmas Parade information and advertisements
  - Santa in Town Hall
  - Tree Lighting Ceremony
  - Daily Links from ACHS 12 days of Christmas Parade
  - Links from ACHS parade route
- Share links to community events and news; Monitor feedback

### **Christmas Parade**

- Attend 12-10-19 Post-parade debrief meeting with parade committee members and Mike Cargill
- Finalize Parade Participation line-up list and distribute
- Finalize informational program for parade announcers and distribute
- Email parade winners
- Send Appreciation Email to all parade participants

### **Banners**

Receive VDOT Town Christmas Banner Permit; distribute

### **Other**

- Research Town Council shirts; miscellaneous emails
- Prepare miscellaneous purchase orders
- Prepare and execute Certificate reflecting individual votes on Authorizing Resolution (2019 Sewer Bond)
- Town of Amherst Committees as of December 31, 2019 Update; See Attached.

# Town of Amherst Committees as of December 31, 2019

Appointed/Term Expires

**TOWN COUNCIL**

D. Dwayne Tuggle, Mayor	01/01/19	12/31/22
Rachel A. Carton, Vice Mayor	01/01/19	12/31/20
Kenneth S. Watts	01/01/19	12/31/22
Sarah B. Ogden	01/01/19	12/31/20
Kenneth G. Bunch	01/01/19	12/31/20
Janice N. Wheaton	11/12/19	12/31/22

**PLANNING COMMISSION**

June Driskill, Chairperson	06/08/16	06/30/20
Janice N. Wheaton	12/11/10	12/31/20 (TC rep)
William Jones	07/01/10	06/30/23
Ted Finney	07/01/17	06/30/21
Kevin Belcher	07/01/18	06/30/22
Clifford Hart	07/01/19	06/30/23
Anne Webster Day	03/13/19	06/30/22

**BOARD OF ZONING APPEALS**

Gary Mays, Chairman	04/08/15	08/31/20
Ed Carton	09/01/19	08/31/24
Teresa Tatlock	07/10/16	08/31/21
Marvin Hensley	08/31/17	08/31/22
Kevin James Akershoek	09/01/18	08/31/23 Vacancy Advertised

**INDUSTRIAL DEVELOPMENT AUTHORITY**

Clifford Hart	09/01/19	08/31/23
Sharon Watts Turner	07/01/18	06/30/22
Gary Jennings	05/10/17	06/30/21
Jacob Bailey	06/08/16	06/30/20
Manly Rucker	05/10/17	06/30/21
Kim Odell Stein	07/11/18	06/30/22
Richard Wydner	07/01/19	06/30/23

**PROPERTY MAINTENANCE INVESTIGATION BOARD**

C. Manly Rucker, III	05/10/17	06/30/20
Bessie H. Kirkwood	07/01/18	06/30/21
Glenda Hash	06/08/16	06/30/20

**REGION 2000 REGIONAL COMMISSION/MPO**

D. Dwayne Tuggle	01/01/19	12/31/20
Sara Carter	01/01/19	12/31/20

Appointed/Term Expires

**CENTRAL VIRGINIA TRANSPORTATION COUNCIL (MPO)**

D. Dwayne Tuggle	01/01/19	12/31/20
Sara E. Carter	01/01/19	12/31/20

**TOWN/SWEET BRIAR SEWER USE ADVISORY COMMISSION**

Clifford Hart	01/01/19	12/31/20
Kenneth S. Watts	01/01/19	12/31/20

**JOINT COMMITTEE ON COOPERATION**

Kenneth S. Watts	01/01/19	12/31/20
Kenneth G. Bunch	01/01/19	12/31/20
Sarah B. Ogden	01/01/19	12/31/20

(3 Appointments from Amherst County)

<b>TOWN COUNCIL COMMITTEES (FOR THE 01/01/19-12/31/20TERM)</b>
--

**FINANCE COMMITTEE**

- Rachel A. Carton (Chairman) and Kenneth S. Watts
- Monitor the budget development process.
  - Review accounting procedures, budgets, and bookkeeping activities.
  - Interface with auditors.

**COMMUNITY RELATIONS AND RECREATION COMMITTEE**

- Sarah B. Ogden (Chairman) and Rachel A. Carton
- Monitor and review implementation of the Town's bike trails and public parks
  - Review the Town's beautification efforts and programs.
  - Interface with citizens, business operators, Sweet Briar College and VDOT

**UTILITIES COMMITTEE**

- Kenneth S. Watts (Chairman) and Kenneth G. Bunch
- Monitor the development and construction of capital improvement projects.
  - Review proposed utility system upgrades and extensions.
  - Interface and assist developers in coordinating Town policies with proposed new developments.

**RECODIFICATION COMMITTEE**

- Kenneth G. Bunch (Chairman) and Kenneth S. Watts
- Monitor the recodification of Town Code process
  - Review proposed proof and edits

# Utility/Town Maintenance and Construction Report

Dec-20

Water Meter Read	1150
Water Meter Re-Read	38
Disconnects	14
VA-811 Service locations	16
Vehicle PM Work Orders	28
Pump Station/Plant Work Orders	24
Banners Installed/Dismantled	2
Water Services Installed/Replaced	7
Sewer Services Installed/Replaced	5
Minor Leaks ks Repaired	3
Major Leaks Repaired	0
Minor Sewer Problems Resolved	9
Major Sewer Problems Resolved	0

10

## Man Hours

Meter Reading	91
Street/Sidewalk Maintenance	373
Safety Training	5
Bush Hogging	15
Flushing Water	0
Equipment Maintenance	77
Xmas decorations	205

## Major Issues & Comments

## Routine/Annual Work

## Projects/Unusual Work

Service Work Orders	Locating Un-marked/Unknown Water & Sewer System Assets
Meter Reading	Continue Safety and Shop/Yard Clean-up
Prev-Maint Work Orders	Staff has been working on finding water valves and addressing issues
Disconnects	Working on clearing water right of ways.
Re-connects	
Flushing Program in Select Locations	





TOWN OF AMHERST  
**DEPARTMENT OF PLANTS**

MONTHLY PRODUCTION AND OPERATIONAL REPORT  
 December 2019

SUBMITTED BY: GARY S. WILLIAMS,  
 DIRECTOR OF PLANTS

SUBMISSION DATE:  
 January 2, 2020

**Grandview Water Filtration Plant,**

Daily Water Withdrawal and Production:

	Total, million gallons	Average, million gallons	Max, million gallons	Min, million gallons
Raw Water	9.850	0.330	0.560	0.030
Produced	8.650	0.290	0.510	0.010
Delivered	8.000	0.270	0.430	0.010

**Rutledge Creek Wastewater Treatment Plant,**

Daily Received and Treated Waste Stream:

	Total, million gallons	Average, million gallons	Max, million gallons	Min, million gallons
Final Effluent	6.196	0.200	0.338	0.137

December was pretty much a quiet month at both facilities. Because of the unseasonably warm weather staff at both plant performed a myriad of physical plant upkeep and budget friendly improvements.

Two wastewater operators will be trying for licensure upgrades in the next few weeks.

Wastewater staff has noticed a marked increase in the number of persons using the Rutledge Creek Bike/Hike trail. And there has also been an active dog exercising taking place the general area parking.

**W. THOMAS BERRY**  
**ATTORNEY AT LAW**  
TAN BARK PROFESSIONAL BUILDING, COURT STREET  
P.O. BOX 354 \* 402 COURT STREET  
LOVINGSTON, VIRGINIA 22949

W. THOMAS BERRY  
KYLE D. HUGHES

OFFICE PHONE  
434-263-4886  
Fax: 434-263-4285

December 30, 2019

Town of Amherst  
P.O. Box 280  
Amherst, VA 24521

Attn: Sara Carter- Town Manager

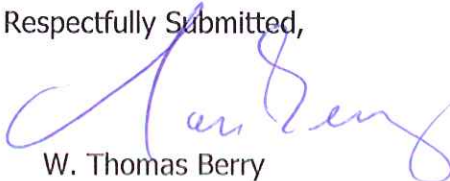
Re: Monthly Report to Town Council  
(December 2019)

Dear Ms. Carter and Council,

My report on work regarding the following matters:

1. Town Council Meeting: Attendance at the monthly scheduled meeting on December 11, 2019.
2. Personnel: Review of Town of Amherst Police Department Policy and Procedure (ongoing).
3. Business:
  - A. Background research regarding Town Policy & Procedure,
  - B. Discussions with John Conrad, regarding Comcast Contract,
  - C. Submit Memorandum of Understanding on School Board Easement.
4. Upcoming Work:
  - A. Police Department policies,
  - B. Comcast,
  - C. Town Park,
  - D. Emmert Easement.
5. Access to Town Attorney: My email address is dawn@tomberrylaw.com. Please feel free to use this email access provided, and I will promptly return any communication. My home phone (434) 946-9501; office phone (434) 263-4886.

Respectfully Submitted,



W. Thomas Berry

WTB/dmc

# Invoice

W. THOMAS BERRY, LLC  
 ATTORNEY-AT-LAW  
 P.O. BOX 354/ 402 COURT STREET  
 LOVINGSTON, VA 22949  
 PHONE: (434) 263-4886

Date	Invoice #
12/30/2019	9143

<b>Bill To</b>
Town of Amherst c/o Sara Carter P.O. Box 280 Amherst, VA 24521

<b>Terms</b>
Due on receipt

Description	Qty	Rate	Amount
12/2/2019 - T/T JOHN CONRAD	0.8	175.00	140.00
12/2/2019 - REVIEW CONRAD OPINION	1	175.00	175.00
12/2/2019 - BROWN AFFIDAVITS	1.5	175.00	262.50
12/2/2019 - MEMO OF UNDERSTANDING	1	175.00	175.00
12/3/2019 - RESEARCH <i>Land records</i>	1	175.00	175.00
12/3/2019 - T/T SKIPPY AND PHYLLIS	1.5	175.00	262.50
12/4/2019 - T/T JAMES DOWNEY	0.8	175.00	140.00
12/4/2019 - MET WITH PHYLLIS AND SKIPPY	1	175.00	175.00
12/9/2019 - REVIEW PLEADINGS	1	175.00	175.00
12/9/2019 - REVIEW PACKAGE	1	175.00	175.00
12/11/2019 - TOWN MEETING	1.5	175.00	262.50
12/17/2019 - COUNTY WASTE CONTRACT	1	175.00	175.00
12/18/2019 - FINALIZE <i>Contract</i>	1.5	175.00	262.50

<b>Total</b>	\$2,555.00
<b>Payments/Credits</b>	\$0.00
<b>Balance Due</b>	\$2,555.00

## **Robert E. Lee Soil & Water Conservation District**

7631-A Richmond Hwy.

Appomattox, VA 24522

Phone 434-352-2819 FAX 434-352-9405

www.releeconservation.com

### **Board of Directors Regular Meeting Minutes**

**The Spring House Restaurant**

**9789 Richmond Hwy**

**Lynchburg, VA 24504**

**October 24, 2019 – 6:00 p.m.**

**Directors:** Barry Lobb, Chairman  
(Present) Carolyn Hutcherson, Vice Chair  
Julius Sigler, Jr., Treasurer  
Doug Perrow, Asst. Treasurer  
Bruce Jones

**Directors:** Paul Spiggle, Asst. Treasurer  
(Absent) Bob Martin

**Staff/Partners:** Jonathan Wooldridge, RELSWCD Ag BMP Conservation Specialist  
(Present) Dave Sandman, RELSWCD Ag BMP Conservation Specialist  
Julie Stratton, RELSWCD Office Administrator  
Hannah Tillotson, RELSWCD Conservation Education Specialist  
Mark Hollberg, DCR Conservation District Coordinator  
Don Yancey, NRCS District Conservationist

**Others:** Charles Falwell - TWID  
Stacy Link  
Tom Stratton

**Call to order:** The regular meeting of the Robert E. Lee Soil and Water Conservation District Board of Directors was called to order October 24, 2019, at 6:05 p.m., by Barry Lobb, Chairman, at The Spring House Restaurant, 9789 Richmond Hwy, Lynchburg, Virginia.

**Acknowledgement of Guests:** Charles Falwell-TWID, Stacy Link-Lynchburg, Tom Stratton

**Adopting the Agenda:** Barry Lobb, Chairman, asked if there were any changes to the agenda. There being none, **motion was made to approve the agenda as presented. (Perrow, Sigler, passed 4-0)**

**Reading and Approving the 9/26/2019 Minutes:** Barry Lobb, Chairman, asked if there were any corrections to the minutes (copy filed with the minutes). There being none, the September 26, 2019, minutes were approved as read.

## REPORT OF OFFICERS/PARTNERS/STAFF

**1-Treasurer's Report - September** – Julius Sigler, Jr., Treasurer, gave the report (copy filed with minutes). All bank statements were reconciled to the respective ledgers and QuickBooks program. The September treasurer's report will be filed in the District Office.

**2-DCR Conservation District Coordinator Report** - Mark Hollberg, CDC, gave the October report (copy filed with minutes).

- The District quarterly report was received.
- The Variance Process can potentially allow a district to approve and pay more than the \$100,000 participant cap on WP-4 and WP-4B projects. Key points:
  - District staff should first bring the required packet of information to the District Board for review
  - The Variance Request needs to come from the **District Board, not staff.**
  - Once DCR responds to the District Board, the District Board may then move to formally approve the project at their next Board meeting and notify the participant at that time.
- Reminder of the new deliverable in FY20 CS & TA grant regarding data entry in the AgBMP tracking module being entered to the satisfaction of DCR.
- Reminder to thoroughly review Part I of the VACS contract with each applicant.
- Dates to remember:
  - Nov. 12 and 21 – VACS mid-year update webinars
  - Nov. 20 – AgBMP TAC meeting – Verona
- Reminder that a letter of resignation from a current director is necessary if their position is not filled at the end of their term and they do not intend to remain in the position of District Director.

**3-USDA Natural Resources Conservation Service Report** - Don Yancey, District Conservationist, gave the October report (copy filed with minutes)

- EQIP – Information on the FY2020 program is forthcoming.
- CRP/GRP/WRP –There may be a regular CRP program sign-up period announced in December of this year.
- CSP – Can begin making annual payments on this program. There will be another sign-up period for the CSP GCI program. The deadline for the current sign-up period is November 8.
- ECP/EFRP – a meeting was held to discuss making a request for ECP due to the drought conditions throughout the area.
- Outreach, Training and Upcoming Events –
  - Jim Jarvis will be Acting DC in Chatham for the next 2 to 3 months. Staff participated in a conservation education program at Appomattox Elementary School in cooperation with Robert E. Lee SWCD on October 18; an active shooter training was held at the Rustburg Service Center on October 22; staff will assist with the Reality Store at Rustburg HS on October 28 and Brookville HS on November 13; staff will attend a training for CRP in Norfolk on November 20; JED meeting is scheduled at the Farmville office on November 19.

**4-Virginia Department of Forestry Report – Absent.** No report.

**5-Virginia Cooperative Extension Report** – Bruce Jones, Appomattox VCE Agent - oral report.

- Certified Pesticide Applicator trainings will be held over the winter months.
- Medicinal mushroom training at the Appomattox office on November 16.
- Distributed a Virginia Research and Extension Innovation Initiative for Agency 229 handout.

**6-RELSWCD Ag BMP Senior Conservation Specialist Report:** Jonathan Wooldridge gave the October report (copy filed with minutes).

- Projects – Work continues on plans and designs for new projects; continue to monitor progress on projects under construction; continue to meet new producers interested in programs. Currently have three large animal waste structures in the planning stages. Working on Nutrient Management Plans for producers.
- Practices and Conservation Plans presented for Board approval –

<u>Contract/ Instance#</u>	<u>Prac</u>	<u>Co</u>	<u>Est. Cost</u>	<u>CS amt</u>	<u>TC</u>	<u>Fund</u>	<u>Comp Date</u>
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None this month

- Watershed Dams –
  - Dams are checked as rain events happen.
  - Work continues with Charles Wilson, DCR Dam Safety, getting EAPs on the dams updated in the new DCR Dam Safety online data base.
  - The 2<sup>nd</sup> mowing on all six watershed dams has been completed and checked out.
- Conservation easements – Informed Ruth Babylon/VOF that RELSWCD will give up its co-holding status of conservation easements to VOF and sent her a copy of the draft September board meeting minutes. She is starting paperwork and will send notification letters to the affected landowners.
- Request approval of Ray Phelps / beef cattle producer / Appomattox County-CB and Ben Cole / grain and timber producer / Appomattox County-OCB as District Clean Water Farm Award winners. **Motion was made to approve Ray Phelps / beef cattle producer / Appomattox County-CB and Ben Cole / grain and timber producer / Appomattox County-OCB as the District’s Clean Water Farm Award winners. (Perrow, Sigler, passed 4-0)**
- The District’s 8 spot checks were completed on September 25. One livestock exclusion practice in Appomattox had a maintenance issue and has been repaired by the landowner, rechecked and pictures sent to Mark Hollberg for approval.
- Meetings attended:
  - October 8 – Buffalo River TMDL – Amherst County Admin Building
- Future meetings:
  - November 12 and 21 – Mid-year VACS update webinar – District office

**7-RELSWCD Ag BMP Conservation Specialist 2 Report** – Dave Sandman gave the October report (copy filed with minutes).

- Plan to have the remaining designs drawn up and delivered to the approved participants by the end of November.
- Still taking applications for the 2020 OCBVACS program.
- Practices and Conservation Plans presented for Board approval -

<u>Contract#</u>	<u>Prac</u>	<u>Co</u>	<u>CS amt</u>	<u>TC</u>	<u>Fund</u>	<u>Comp Date</u>
10-15-0105 236751	SL-6	Camp	\$50,000.00	NA	2019 OCBVACS SL-6 Supp	6-30-2020

**Motion was made to approve 2019 OCBVACS SL-6 Supplemental contract 10-15-0105, instance 236751, practice SL-6, for \$50,000.00 cost share with a completion date of 6-30-2020 (Sigler, Jones, passed 4-0)**

- Meetings attended:
  - October 1 – Kyle Bolt/review ongoing cost share projects and workload – District office
- Future meetings:

**8-RELSWCD Office Administrator Report** - Julie Stratton gave the October report (copy filed with minutes).

- Distributed the approved August minutes.
- Prepared the September Employee time report and distributed to directors.
- Prepared the draft minutes of the September 26 regular BOD meeting and distributed for review.
- Updated the Cost Share ledger with approved practices.
- Prepared the September Treasurer’s and Budget report and forwarded to the treasurer for review.
- Processed the October payroll, taxes, and retirement.
- Prepared the draft agenda for the October 24 regular BOD meeting and forwarded to the Chairman for review.
- Monitored the monthly internet usage.
- Reminder - the Budget Committee/Board of Directors will need to make a decision regarding increasing the request from Amherst County to \$10,000. **Motion was made to increase the FY21 local allocation request from Amherst County to \$10,000.00 (Hutcherson, Jones, passed 4-0)**
- Director quarterly reimbursement checks were included in the meeting packets.
- The 1<sup>st</sup> quarter Attachment E report with beginning and ending balance sheets, quarterly profit and loss standard statement and a reconciliation report of the Attachment E to the QBs profit and loss statement was prepared and submitted. The supporting documentation (quarterly profit and loss by class report, quarterly payroll summary, checking account bank reconciliation, quarterly general ledger report and Ag BMP cost share tracking program allocation ledger reports) are on file in the district office.
- Quarterly 941, VEC and State reports were prepared, reconciled and submitted.
- Tax credit certificate to be signed by a director -

<u>Contract #</u>	<u>Instance #</u>	<u>Practice</u>	<u>Tax Credit Amount</u>
None this month			

- Meetings attended:
  - October 1 – participated in meeting with Kyle Bolt – District office
  - October 8 – Annual Plan of Work committee meeting – District office
  - October 8 – Personnel / Budget committees meeting – District office
  - October 16 – Participated in Office Administrator interview – District office
- Future meetings:
- Reminders:

- Due to the Thanksgiving holiday the next regular meeting of the RELSWCD Board of Directors is scheduled for the third Thursday – November 21, 2019.

**9-RELSWCD Conservation Education Specialist Report** – Hannah Tillotson gave the October report (copy filed with minutes).

- Meetings –
  - October 4 – meeting with Lani Patrick and Thomas Shahady to discuss Mock Panel logistics for Campbell County High Schools
- Programs –
  - Assisted with Holiday Lake 4-H and JRA-Campbell Environmental Science programs.
  - Presented District programs to Appomattox Elementary After School Club, Yellow Branch Elementary School, Appomattox Elementary Young Farmers Day and Campbell County High Schools.

## **REPORT OF COMMITTEES**

**10-Annual Plan of Work Committee meeting minutes – APW Review** – Carolyn Hutcherson, committee member, reported the July 2019-June 2020 APW was reviewed at the District Office on October 8, 2019. The July 2019-June 2020 APW was reviewed by the Board of Directors at the October 24, 2019 meeting.

**11-Personnel Committee Meeting Minutes Report**– Carolyn Hutcherson, Personnel committee chair, and Julius Sigler, Jr., Budget committee chair, reported on the October 8 joint meeting (copy filed with the minutes).

- Kyle Bolt accepted the PT Conservation Specialist position offer. **Motion was made to approve hiring Kyle Bolt as the PT Conservation Specialist with a FLSA status of non-exempt at the hourly rate of \$20.00 per hour/24 hours per week, annual leave of 4 hours per month, sick, medical, family leave of 5 hours per month, and a start date of November 15. (Hutcherson, Sigler, passed 4-0)**
- **A motion was made to change Jonathan Wooldridge’s position title to District Manager/Senior Conservation Specialist. (Hutcherson, Sigler, passed 4-0)**
- **An interview for the Office Administrator position was held October 16. An offer was made and declined.**
- **Another Office Administrator position interview is scheduled for October 28.**
- **Motion was made to authorize an adjustment in salary beginning November 1, 2019, for Jonathan Wooldridge as District Manager/Senior Conservation Specialist and for Julie Stratton to continue as Office Administrator until January 31, 2020. (Sigler, Jones, passed 4-0)**
- **Motion was made to empower the executive committee to make an offer for the Office Administrator position if there is no quorum at the November RELSWCD Board of Directors meeting. (Sigler, Perrow, passed 4-0)**

## **UNFINISHED BUSINESS**

## **NEW BUSINESS**

## **PUBLIC COMMENT**



**ANNOUNCEMENTS –**

- Charles Falwell, TWID trustees chairman, advised the Board one of the TWID trustees would attend the monthly District Board of Directors meetings.
- Doug Perrow advised the Board the next election for the TWID is scheduled for November 5.

**ADJOURNMENT** - The Chairman adjourned the meeting at 7:10 p.m.

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Barry Lobb, Chairman

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Julie M. Stratton, Office Administrator

# Robert E. Lee Soil & Water Conservation District

7631-A Richmond Hwy.

Appomattox, VA 24522

Phone 434-352-2819 FAX 434-352-9405

www.releconservation.com

## Board of Directors Regular Meeting Minutes

The Spring House Restaurant

9789 Richmond Hwy

Lynchburg, VA 24504

November 21, 2019 – 6:00 p.m.

**Directors:** Carolyn Hutcherson, Vice Chair  
(Present) Doug Perrow, Asst. Treasurer  
Bruce Jones

**Directors:** Barry Lobb, Chairman  
(Absent) Julius Sigler, Jr., Treasurer  
Paul Spiggle, Asst. Treasurer  
Bob Martin

**Staff/Partners:** Jonathan Wooldridge, RELSWCD District Manager/Senior Conservation Specialist  
(Present) Dave Sandman, RELSWCD Ag BMP Conservation Specialist  
Julie Stratton, RELSWCD Office Administrator  
Hannah Tillotson, RELSWCD Conservation Education Specialist  
Kyle Bolt, RELSWCD PT Conservation Technician  
Mark Hollberg, DCR Conservation District Coordinator  
Don Yancey, NRCS District Conservationist  
Rick Butler, VDOF Appomattox Forester

**Others:** Jeffrey Floyd, Amherst County District Director-elect  
Brandon Payne, Amherst County District Director-elect  
Mary Lund, Appomattox County District Director-elect  
Karen Angulo-Appomattox County District Director-elect  
Brandon Schmitt-Campbell County District Director-elect  
Chad Barrett-City of Lynchburg District Director-elect  
Charles Smith-City of Lynchburg District Director-elect  
A. C. Whitehead - TWID

**Call to order:** The regular meeting of the Robert E. Lee Soil and Water Conservation District Board of Directors was called to order November 21, 2019, at 6:05 p.m., by Carolyn Hutcherson, Vice-Chair, at The Spring House Restaurant, 9789 Richmond Hwy, Lynchburg, Virginia. A quorum was not present.

**Acknowledgement of Guests:** Jeffrey Floyd, Amherst County District Director-elect, Brandon Payne, Amherst County District Director-elect, Mary Lund, Appomattox County District Director-elect, Karen Angulo-Appomattox County District Director-elect, Brandon Schmitt-Campbell County District Director-elect, Chad Barrett-City of Lynchburg District Director-elect, Charles Smith-City of Lynchburg District Director-elect, A. C. Whitehead - TWID

**Adopting the Agenda:** Carolyn Hutcherson, Vice-Chair – No motion as a quorum was not present.

**Reading and Approving the 10/24/2019 Minutes:** Carolyn Hutcherson, Vice-Chair – No motion as a quorum was not present.

## **REPORT OF OFFICERS/PARTNERS/STAFF**

**1-Treasurer's Report - October** – Julie Stratton, Office Administrator/Asst. Treasurer, gave the report (copy filed with minutes). All bank statements were reconciled to the respective ledgers and QuickBooks program. The October treasurer's report will be filed in the District Office.

**2-DCR Conservation District Coordinator Report** - Mark Hollberg, CDC, gave the November report (copy filed with minutes).

- Administration and VACS:
  - Second quarter disbursement letters will be sent by November 13.
  - Tax credit administration review.
  - DCR has contracted with Clifton, Larson & Allen, LLP (CLA) to conduct SWCD audits for the next two years.
  - Mandatory COIA training – Section 2.23132 of the Code of Virginia requires every local elected official to complete COIA training within two months of assuming office and at least once every two years after the initial training is completed.
  - DCR IT Security Awareness on-line training – All AgBMP tracking program users must complete within 2 months.
- Miscellaneous:
  - Newly elected directors must take the oath of office by 12/31/19. Phase I training will be done locally in January. Phase II training will be done regionally in March.

**3-USDA Natural Resources Conservation Service Report** - Don Yancey, District Conservationist, gave the November report (copy filed with minutes)

- CRP/GRP/WRP – a training for CRP was held in Norfolk, VA, on November 20 in preparation for a planned CRP sign-up period expected to be announced in December.
- CSP – The 10 CSP GCI FY2020 applications need to be estimated by November 29 and contracts obligated by January 24, 2020.
- Outreach, Training and Upcoming Events –
  - Staff assisted with an outreach event in Amherst County the first week of November and assisted with VCE Reality Store at Brookville High School on November 13. JED meeting scheduled for December 17.

**4-Virginia Department of Forestry Report** – Rick Butler, Appomattox Forester – oral report.

- Public Relations –
  - Smokey Bear program at Appomattox Primary School
  - Forestry program at Appomattox Middle School
  - Appomattox High School FFA Forestry Team placed 3<sup>rd</sup> in area competition held in Appomattox
- Finishing up seedling re-inspections. Had survival issues and some replanting will be needed.

**5-Virginia Cooperative Extension Report** – Bruce Jones, Appomattox VCE Agent - oral report.

- Upcoming trainings –

- Area vegetable production meeting – Charlotte County – December 5
- Soybean and wheat meeting – Charlotte County – December 11
- Certified Pesticide Applicator training – Campbell County Extension Office – December 3, Nelson County Extension Office – December 10, Appomattox County Extension Office – January 23
- Industrial hemp production update – This season’s crops have been harvested and prepared for market. There are still a lot of unknowns about industrial hemp production.
- Will be requesting financial donation to attend the National County Agents Meeting to be held in Virginia Beach, VA.

**6-RELSWCD District Manager/Senior Conservation Specialist Report:** Jonathan Wooldridge gave the November report (copy filed with minutes).

- Projects – Work continues on plans and designs for new projects; continue to monitor progress on projects under construction; continue to meet new producers interested in programs. Currently have three large animal waste structures in the planning stages. Working on Nutrient Management Plans for producers. Working on variance packet for contract #10-20-0011.
- Practices and Conservation Plans presented for Board approval –

<b>Contract/ Instance#</b>	<b>Prac</b>	<b>Co</b>	<b>Est. Cost</b>	<b>CS amt</b>	<b>TC</b>	<b>Fund</b>	<b>Comp Date</b>
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None this month

- Watershed Dams – Three in Appomattox County and three in Campbell County.
  - Dams are checked as rain events happen.
  - Work continues with Charles Wilson, DCR Dam Safety, getting EAPs on the dams updated in the new DCR Dam Safety online data base. Also uploading past watershed dam inspections on the data base.
- Conservation easements – Contacted Ruth Babylon/VOF – she has sent notification letters to the landowners that RELSWCD has given the co-holding easement authority to VOF.
- District CB Clean Water Award - Ray Phelps / beef cattle producer / Appomattox County and District OCB Clean Water Award - Ben Cole / grain and timber producer / Appomattox County
- Met with Darrell Marshall/VDACS on 11/21/19 involving an anonymous complaint involving land clearing for pasture in Amherst County. The land has already been seeded and the complaint is non-founded.
- Meetings attended:
  - November 12 and 21 - Mid-year VACS update webinars – District office
- Future meetings:
  - December 9-10 - Soil Science, Soil Fertility, Crop Production School - Richmond

**7-RELSWCD Ag BMP Conservation Specialist 2 Report** – Dave Sandman gave the November report (copy filed with minutes).

- All OCB backlog SL-6 applications have been Board approved as of the end of October.
- Current OCB cost share amounts obligated to date:
  - 2015 backlog SL-6 (2019 SL-6 Supplemental) - \$1,468,860.00
  - 2019 OCBVACS - \$99,308.00
  - 2020 OCBVACS - \$201,497.00 / balance remaining - \$32,954.00
- Practices and Conservation Plans presented for Board approval -

<b>Contract# Instance#</b>	<b>Prac</b>	<b>Co</b>	<b>CS amt</b>	<b>TC</b>	<b>Fund</b>	<b>Comp Date</b>
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None this month

- Meetings attended:
  - November 12 – Mid-year VACS update webinar – District office
  - November 13 – meeting with Kyle Bolt, PT Conservation Technician – District office
- Kyle Bolt, PT Conservation Technician – introduction to District Board.

**8-RELSWCD Office Administrator Report** - Julie Stratton gave the November report (copy filed with minutes).

- Distributed the approved September minutes.
- Prepared the October Employee time report and distributed to directors.
- Prepared the draft minutes of the October 24 regular BOD meeting and distributed for review.
- Updated the Cost Share ledger with approved practices.
- Prepared the October Treasurer’s and Budget report and forwarded to the treasurer for review.
- Processed the November payroll, taxes, and retirement.
- Prepared the draft agenda for the November 21 regular BOD meeting and forwarded to the Chairman for review.
- Monitored the monthly internet usage.
- Reminder – All newly elected directors need to take the oath of office before 1/1/20 and bring a copy of the certificate of oath to the January meeting.
- Tax credit certificate to be signed by a director -

<u>Contract #</u>	<u>Instance #</u>	<u>Practice</u>	<u>Tax Credit Amount</u>
10-19-0006	332197	LE-2	\$1,940.34

NRCS EQIP project

- Meetings attended:
  - November 10 – orientation-employee paperwork for Kyle Bolt – District office
- Future meetings:
  - December 10 – employee paperwork for Cindy Miller – District office
- Reminders:
  - The next regular meeting of the RELSWCD Board of Directors is scheduled for the fourth Thursday – January 23, 2020

**9-RELSWCD Conservation Education Specialist Report** – Hannah Tillotson gave the November report (copy filed with minutes).

- Meetings attended:
  - November 18 – meeting with Lani Patrick (Campbell County) and Nat Draper (James River Association) – partnering on EPA grant for the District
- Future meetings:
  - December 2 – follow-up meeting with Dr. Thomas Shahady and Lani Patrick – mock panel logistics for Campbell County High Schools
  - February 26-28 – VAEE 2020 Conference – Sweet Briar College
- Programs –
  - 11/5 – Weathering/Erosion – Appomattox Elementary School
  - 11/6 – Aquatic Ecology – Desmond T. Doss at Holiday Lake 4-H
  - 11/7 – Food Chain/Food Web – Yellow Branch Elementary School
  - 11/13 – Reality Store – Brookville High School
  - 11/15 – Reality Store – E. C. Glass High School

## **REPORT OF COMMITTEES**

**10-Personnel Committee Report**– Carolyn Hutcherson, Personnel committee chair, reported an interview was conducted with Cindy Miller for the Office Administrator position on October 28. The position was offered and accepted at an annual salary of \$45,500.00, participation in VRS, FLSA exempt and annual leave and SMF benefits as outlined in the personnel policy. The Executive Committee (Barry Lobb, Carolyn Hutcherson and Julius Sigler, Jr.) approved hiring Cindy Miller as Office Administrator with a hire date of January 1, 2020.

## **UNFINISHED BUSINESS**

**11-Timberlake WID Update** – Doug Perrow informed the Board a Tax Referendum was held at Timberlake United Methodist Church on November 19 and passed.

## **NEW BUSINESS**

## **PUBLIC COMMENT**

**ANNOUNCEMENTS** – A special RELSWCD Board of Directors meeting will be held December 12 at 5:00 p.m. at the District Office.

**ADJOURNMENT** - The Vice-Chair adjourned the meeting at 8:00 p.m.

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Carolyn Hutcherson, Vice-Chair

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Julie M. Stratton, Office Administrator

**A RESOLUTION IN SUPPORT OF RECONSIDERATION OF  
NEW WASTEWATER REGULATIONS UNDER THE VIRGINIA CHESAPEAKE BAY TMDL  
PHASE III WATERSHED IMPLEMENTATION PLAN**

WHEREAS, local governments including the Town of Amherst have led Virginia’s progress toward a restored Chesapeake Bay by collectively investing well over \$2 billion to upgrade wastewater treatment facilities;

WHEREAS, in the past, new laws, regulations, and plans guiding this important undertaking have always been developed in collaboration with local government and the Town of Amherst has supported such efforts;

WHEREAS, Virginia’s Chesapeake Bay TMDL Phase III Watershed Implementation Plan (WIP) adopted on August 23, 2019 breaks from this long tradition of strong state-local collaboration on wastewater improvement plans;

WHEREAS, despite acknowledging that local government wastewater operations are outperforming their Chesapeake Bay TMDL requirements, the Phase III WIP wrongly assumes, without explanation, that in 2025 they will reverse course and spike up to substantially higher levels, contrary to a decade-long demonstrated track record of declining discharges;

WHEREAS, as a result of this mistake, the WIP calls for additional costly regulations on municipal wastewater treatment facilities, which will increase competition for limited State water quality funding and potentially cause delays in other sectors like agriculture and stormwater that also need State funding to meet the Bay goals;

WHEREAS, numerous more cost-effective recommendations for meeting the same water quality goals were recommended by the Virginia Association of Municipal Wastewater Agencies with broad local government support but were rejected in the final Phase III WIP without any written explanation; and

WHEREAS, the Town of Amherst has long supported the overall Chesapeake Bay restoration goals and believes the best path forward for continued progress is for the Governor and General Assembly to closely review the concerns outlined above and to revise the Phase III WIP as warranted before any regulatory actions restricting local wastewater treatment facilities proceed further.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Amherst on this 8<sup>th</sup> day of January, 2020, that the Town of Amherst supports immediate review and reconsideration by the Governor and General Assembly to correct the Phase III WIP to resolve these concerns and, while such review is in progress, that all regulatory or other efforts imposing new restrictions on local wastewater treatment facilities be suspended in the interim.

This resolution was adopted January 8<sup>th</sup>, 2020.

-----  
Mayor Dwayne Tuggle

-----  
Clerk of Council



2616 Garner Rd.  
Raleigh, NC 27610  
Telephone: (919) 833-6343  
Website: <http://www.klshaneinc.com>

**kl shane, Inc.**  
*Manufacturers' Representative*

P.O. Box 385  
Garner, NC 27529  
FAX: (919) 833-6449  
Email: [Info@klshaneinc.com](mailto:Info@klshaneinc.com)

December 27, 2019

To: Herb White III, P.E.  
hwhite@wwassociates.net  
Project Engineer  
WW Associates  
P.O. Box 4119  
Lynchburg, Virginia 24502

Reference: Quotation 84-19  
Filter Inspection Filter 1-4

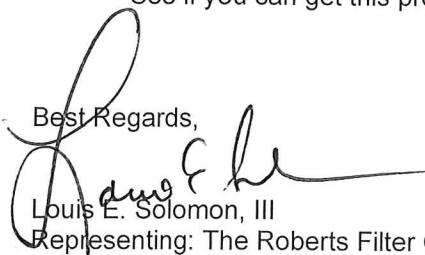
Herb:

Here is the revised Quote for the inspection services. We need to get authorization to proceed to schedule the key personnel in that we will need.

I will personally be on site with Roberts' Superintendent the entire two days. The individual slated to do this Filter Inspection for Roberts is Mathew Lee and he is very professional and conscientious. The personnel assisting him are all experienced filter personnel on KLS's direct payroll.

See if you can get this proposal approved by your client so we can proceed with the work.

Best Regards,



Louis E. Solomon, III  
Representing: The Roberts Filter Group





**kl shane, Inc.**  
Manufacturers' Representative

P.O. Box 385  
Garner, NC 27529

**TELEPHONE**  
919.833.6343

**TELEFAX**  
919.833.6449

**WEBSITE**  
www.klshaneinc.com

*DOING THINGS RIGHT*

*THE FIRST TIME...*

*EVERY TIME!*

December 28, 2019

TO: Herb White III, P.E.  
hwhite@wwassociates.net  
Project Engineer  
WW Associates  
P.O. Box 4119  
Lynchburg, Virginia 24502

Reference: Filter Inspection Proposal  
Town of Amherst, Virginia WTP  
Filter Inspection

Dear Herb,

Please find our Quotation No. 84-19 for the Filter Inspection Service, we propose to furnish. KLS/ Roberts will inspect the two (2) Monolithic Wheeler Bottom Underdrains and determine if the underdrains are suitable for rehabilitation and if the filter floor, piers, and walls appear to be in good condition. Roberts would extend a ten (10) year structural warranty on the Monolithic Wheeler Underdrain if suitable for renovation

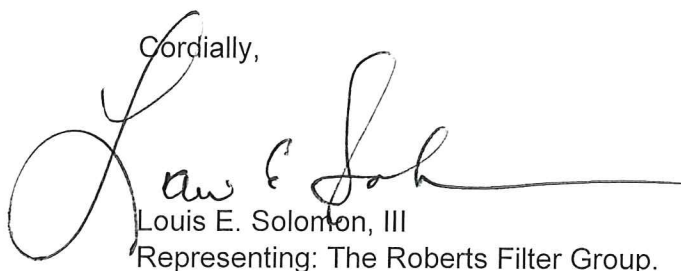
This inspection would result in a warranty for the underdrain and piers only if found in satisfactory condition. Not the filter walls or floor.

In addition, the other two (2) filters will be checked by boxing out to confirm that the underdrains are in fact either Leopold Superblock II underdrains or Nozzle underdrains.

Please review the attached Quotation. Consult with your client and get back to me if you have any questions for me. We have tentatively scheduled this work to be done the week of January 13, 2020. We need confirmation of this work to guarantee availability of the Roberts Superintendent. We will start work on Monday, January 13, 2020.

Thank you for the opportunity to be of service.

Cordially,



Louis E. Solomon, III  
Representing: The Roberts Filter Group.



# Quotation

2616 Garner Road  
 Raleigh, NC 27610  
 P.O. Box 385  
 Garner, NC 27529

Telephone: (919) 833-6343  
 Fax: (919) 833-6449  
 Website: www.klshaneinc.com

DOING THINGS RIGHT  
 THE FIRST TIME...  
 EVERY TIME!

To: Johnathan Campbell, EIT  
Project Engineer  
WW Associates, Inc.  
P.O. Box 4119  
Lynchburg, VA 24502

Re: Town of Amherst, VA  
Filter Inspection Filter 1-4  
Water Treatment Plant  
 Eng: WW Associates, Inc  
 Bids Due: December 28, 2019

WE ARE PLEASED TO FURNISH EQUIPMENT AS INDICATED BELOW:

ITEM	QUANTITY	DESCRIPTION & MANUFACTURER	UNIT PRICE	EXTENDED PRICE
1	1 Lot	<p><b>Filter Inspection</b>            KLS / Roberts will inspect the two MWB Filter Plenums and determine suitability to rehabilitate these filters. This will take ½ day each day. KLS will come the night before and remove the manway.</p> <p>The remaining two filters will be backwashed and a box lowered to allow us to dig down to the underdrain and verify if it is either nozzle or Leopold's Super Block II underdrain.</p> <p>Notes:</p> <ol style="list-style-type: none"> <li>No other equipment, goods, or promises are included unless specifically mentioned herein.</li> <li>KLS / Roberts will use walkboards and tyvex suits with boots coated with Sodium Hypochlorite to prevent having to disinfect the filter.</li> <li>KLS will be done within two days on-site. They will do one of each filter each day and immediately put them back on service. One MWB filter will be drained the night before. Open the plenum and get everything set up to inspect the filter first thing in the AM.</li> <li>KLS will then box out one of the other filters and repeat the process the next day.</li> </ol>		

Total Firm Price, f.o.b. factory, 8,945.00 FFA, plus all applicable taxes.

DELIVERY 1 - 2 WEEKS FROM RECEIPT OF APPROVED DRAWINGS

SEE ATTACHED TERMS AND CONDITIONS

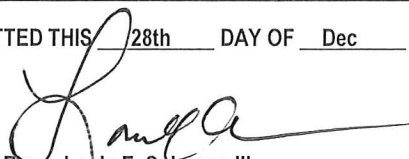
QUOTATION NO: 84-19 FIRM FOR 30 DAYS.

TERMS: NET 30 DAYS

ACCEPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20 \_\_\_\_\_

SUBMITTED THIS 28th DAY OF Dec 2019

\_\_\_\_\_  
 (Purchaser)

  
 By: Louis E. Solomon III

\_\_\_\_\_  
 (Name and Title)



**TERMS AND CONDITIONS OF SALE**  
(To Be Returned With Order)

**PROJECT:**

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**CUSTOMER:**

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**CUSTOMER P.O. NO.**  
(AND JOB NO.)

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1. The terms of payment for equipment on this order, unless otherwise indicated below, are strictly Net 30 Days from date of our invoice. **No retainage is permitted.** Failure to comply with payment terms may result in suspension of further goods or services which may be due on this order and a service charge of 1 1/2% per month will be invoked, until payment is received. Invoice will be rendered when shipment has been made, unless otherwise indicated in quotation.
2. When customer asks that equipment be warehoused or held for a stated or indefinite period after the equipment is ready for shipment, it is expressly understood and agreed that billing will be accepted as of date when the equipment is ready for shipment and that storage charges will be due, starting 30 days from that date until delivery.
3. The amount of any applicable tax or other government charge upon the production, sale, shipment and/or use of the equipment on this order shall be an addition to the price and shall be paid by the customer. The cost of any bonds or any insurance coverage beyond normal limits carried by K. L. Shane, Inc. are not included.
4. If start-up service is included, it will be for one (1) trip only for a maximum of one (1) 8-hour day, unless otherwise indicated below. Additional time required at start-up for other than warranty work, or additional trips to the site after start-up for other than warranty work, will be on a per diem basis and **will require a written purchase order.** We require a **minimum** of sixteen (16) days advance notice to assure our being on the job for start-up at a specific time.
5. We feel it is most important that the Owner's representatives be present at start-up, to receive schooling in operation and maintenance procedures. Additional trip(s) for this purpose will be at the customer's expense. It is the customer's obligation to notify all interested parties of start-up dates.
6. **K. L. Shane, Inc.** at its option, may elect to make one or more partial shipments of equipment and submit invoices for each partial shipment. Provided, however, that partial shipment and partial payment shall not constitute complete satisfaction of Customer's liability for the remainder of the order. Partial shipments will be invoiced upon shipment and payment due in accordance with Paragraph 1 above.
7. **K. L. Shane, Inc.** reserves the right to refuse shipment of requested equipment to Customer in the event Customer has an outstanding, unpaid account receivable with **K. L. Shane, Inc.**
8. If this order is subject to approval and submittal data is provided, submittal data and/or release for shipment of all equipment to be furnished under this order must be received by **K. L. Shane, Inc.** not later than eight (8) weeks after the date on which submittal data was forwarded to the purchaser. Failure to return the submittal data and/or release the equipment for shipment within this time frame shall result in a surcharge and/or an increase in the original purchase amount.
9. Complete submittal data (including installation instructions) on all equipment will be provided for engineering approval, showing general arrangement and approximate dimensions. We reserve the right to make such changes in details of design, construction, or arrangement of equipment which, in our judgment, constitute an improvement. Certified dimension prints will be provided on request. Any changes in layouts or design requested by Customer after engineering approval and release to manufacture for production will be made at Customer's expense.





## **Town of Amherst**

### **Electronic Use Policy**

As the Town has provided additional devices for the use of employees and officials, it has become necessary to outline Town policies for Town owned devices. These policies do not apply to devices owned by individuals and used for Town business.

Ownership- All devices purchased by the Town remain the property of the Town, and at the end of employment, appointment, or term of service, shall be returned to the Town.

Ipad Logon Information- Town Ipad are issued with a passcode. This passcode shall not be changed.

Downloads- No user should download any programs to Town owned devices without permission from their supervisors, or in the case of Town owned Ipad, from the Town Manager.

Retention- Users should remember that one of the purposes of Town email systems is to allow the Town to follow state mandated records retentions policies. Emails should be saved. Access to Council members official Town email boxes shall be maintained by the Town Manager for the purpose of responding to FOIA requests. If your inbox becomes too large, items may be moved to an archive folder, but they shall not be deleted.

Appropriate Use of the Internet and Electronic Communications- Town provided equipment is provided to conduct Town business. Personal uses of Town owned devices should be kept to a minimum and occur outside of work hours. Use of Town internet or equipment may be subject to monitoring without notice. The following uses are explicitly prohibited:

- Transmitting material or messages in violation of federal, state, or local code or ordinances.
- Revealing or sharing passwords.
- Willfully conducting activity that disrupts Town services, the Town network, including computer hacking or spreading viruses.
- Participating in use that interferes with employee productivity.
- Operating a business, soliciting money, advertising or conducting transactions for profit.
- Soliciting for non-Town sponsored events, organizations or functions.
- Intentionally downloading, accessing, viewing, posting, or transmitting information that is abusive, offensive, harassing, threatens violence, or that discriminates on the basis of race, gender, national origin, age, or disability.
- Intentionally accessing, viewing, posting or transmitting sexually explicit material.

**W. THOMAS BERRY, L.L.C.**  
**ATTORNEY AT LAW**  
TAN BARK PROFESSIONAL BUILDING, COURT STREET  
P.O. BOX 354 \* 402 COURT STREET  
LOVINGSTON, VIRGINIA 22949

W. THOMAS BERRY  
KYLE D. HUGHES

OFFICE PHONE:  
434-263-4886  
Fax: 434-263-4285

December 2, 2019

Sara Carter  
Town Manager, Town of Amherst  
PO Box 280  
Amherst VA 24521

Re: Comcast Franchise

Dear Sara:

Opinion from John Conrad on the Comcast Franchise review. Bottom line:  
Currently Comcast agrees to pay 5% franchise fee that is based on gross revenue, however Comcast can reduce gross revenue by including in kind services. The question is the in kind reduction based on fair market value (current practice) or actual costs. If fair market value, then Town loses, if actual costs, then fee is greater.

It is suggested this contract be tabled based on answer to the valuation of in kind.

Sincerely,

W. THOMAS BERRY, L.L.C.



W. Thomas Berry

WTB/dmc

TheConradFirm  
A PROFESSIONAL CORPORATION

STONEWALL JACKSON PROFESSIONAL  
CENTER  
1520 W. Main Street  
Suite 204  
Richmond, VA 23220

November 21, 2019

Phone: (804) 359-6062  
Fax: (804) 359-6064  
[jconrad@theconradfirm.com](mailto:jconrad@theconradfirm.com)

W. Thomas Berry, Esq.  
Skyline Title Agency, Inc.  
402 Court Street  
P. O. Box 354  
Lovingsston, VA 22949

Re: Comcast Franchise Agreement

Dear Tom:

On August 1, 2019, the FCC voted 3-2 to approve two dramatic changes to the proposed cable franchise agreement which I understand is currently on the Town of Amherst's agenda. These changes were published and went into effect on September 26, 2019. This FCC ruling is currently the subject of ongoing administrative and/or legal appeals. As a result, these rulings may not be final. The bottom line is that at the current time due to the effect of these two recent rulings, as explained below, there are more questions than there are answers applicable to this agenda item. Enclosed for our information is an excerpt from the "Handbook of Virginia Local Government Law," applicable to "Cable Service."

The cable television "franchise fee" is the FCC approved maximum annual fee paid by cable service providers like Comcast to local governments as compensation for Comcast's use of the Town's public property and rights-of-way for their cable services. Comcast is required to pay up to 5% franchise of its gross revenues for cable services to customers in the areas of service designated for the Town of Amherst for Comcast's right to conduct business under its proposed franchise agreement. This fee is included in Comcast's bills to its customers for their cable services and is paid by Comcast to the Town. However, Comcast's proposed franchise agreement does not state the amount of this franchise fee to be paid to the Town.

One of these two recent FCC rulings is the "In-Kind Benefits" Ruling. This ruling allows Comcast to deduct from this 5% franchise fee Comcast's assessment of the monetary amount of all "in-kind benefits" it provided to the Town as a part of Comcast's provision of cable service under its franchise agreement. At this point in time, due to the recent nature of this FCC ruling, there may be some uncertainty as to exact identity of "in-kind benefits" that Comcast will be allowed to include in its calculation. The descriptions of these "in-kind benefits" have been reported to include the value of all infrastructure and services to all public schools, fire, EMS, and other government buildings and rights of way, referred to as "PEG" facilities, as well as all "I-Net," or Institution Network services or discounted services provided on demand or to senior citizens or low income citizens. In any event, there is a need to clearly identify these "in-kind



benefits," as well as the monetary amounts of these "in-kind benefit offsets" to be calculated by Comcast which will reduce the 5% franchise fee payable by Comcast to the Town.

In addition to this possible uncertainty about the identity of these "in-kind benefits," the FCC regulation allows Comcast, as the cable provider, to calculate the monetary amounts of these new "in-kind" benefit offsets based upon the "fair market value," not the actual cost or "book value" of these non-monetary "in-kind" benefits. Thus, Comcast is now allowed to calculate the "in-kind" benefit offsets in an amount higher than its actual cost of the infrastructure and services in question and based upon its opinion of the fair market value of these infrastructure assets and services. However, at one point in time the FCC ruling specified that fair market value will be determined by the cable operators based upon the rate cards utilized by the cable providers to set the rates they charge customers for services.

In any event, it is clear that these new "in-kind benefit" offsets in the 5% franchise fee will result in significant reductions in revenue to the Town and as a result will affect the current and future city capital and operational budgets of the Town.

In addition, the second ruling of FCC is the "Mixed -Use Rule." All cities and towns are now also precluded from mixing into cable service franchise contracts any license or franchise rights to control or obtain revenue or control of for form non-cable services, including internet services.

As a result of these two recent rulings at this point in time it is my recommendation that the Town continue this proposed franchise agreement agenda item until these terms and conditions of these recent rulings and their financial impact on the Town's current and future city capital and operational budgets can be determined with reasonable certainty. I also recommend that the Town meet and negotiate with Comcast after considering the following:

1. Continue this Comcast franchise agenda item for an indefinite period of time.
2. Write to Comcast, as well as other possible cable service providers, and advise them of this continuance and request Comcast, and possibly other cable service providers, to provide additional information including but not limited to:
  - a. Examples of similar cities, towns or counties who have had experience with cable service franchise agreements and these recent "in-kind" offsets.
  - b. Request Comcast, and possibly other service providers, to identify all terms of the franchise agreement that Comcast can be negotiate, including: (1) a map and clear description of the designated areas of service under this franchise agreement and (2) All reports, descriptions and itemizations of the total amounts of the actual costs of Comcast, Comcast book values, and Comcast's fair market values of all "in-kind" benefits. (Most of the other terms in this franchise agreement cannot be negotiated by Comcast because per FCC regulations require Comcast to notify all

of its other customers of changes in the Franchise Agreement.)

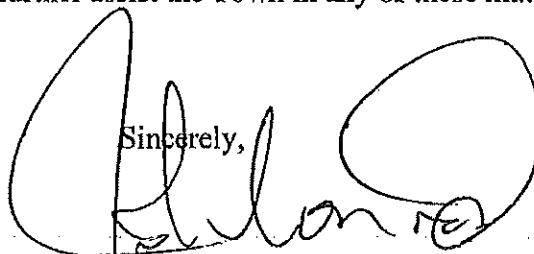
- c. Request Comcast, and possibly other cable providers, to estimate and project the (1) the probable numbers and locations of all future Comcast customers in the designated service areas, (2) the amounts of the 5% franchise fee to be paid by Comcast to the Town, (3) identity, actual costs, book values, and fair market values, of all "in-kind" benefits and offsets and the basis for its opinions of costs and fair market values of each "in-kind benefits," and (4) fair market value based upon Comcast's rate cards utilized by it to set the rates they charge customers for services."
- d. Request Comcast to provide to the Town all information set forth within the regulatory powers and ordinance of the Town, as set forth in the attached excerpt pages 8 and 9 of the "Handbook of Virginia Local Government Law," applicable to "Cable Service."

3. The Town should use this information to decide whether or not to proceed to negotiate with Comcast or consult with its advisors further about these matters.

4. The Town should develop capital and operating budgets for the Town.

Please let me know if I can further assist the Town in any of these matters.

Sincerely,



John A. Conrad

ability to provide the service may be revoked by the SCC after five years from the initial approval if competition has entered the relevant market or the locality has not satisfactorily provided the service it proposed. *Id.* The SCC must give the locality time to get out of the business and sell its system. The locality can continue to run the system for its own purposes. Va. Code § 56-484.7:4.

As with the municipal service providers, the locality must provide open access to its permanent facilities to private companies, it may not cross-subsidize its rates, and it may not use the power of eminent domain to obtain facilities or property from other providers. Va. Code § 56-484.7:1(B).

#### 17-2.04(c) Cable Service

In 2003, the General Assembly authorized municipalities that provide electric service, local telephone service, or Internet services as of January 1, 2003, to provide cable services.<sup>14</sup> Va. Code § 15.2-2108.2 *et seq.* ("Municipal Cable Law").<sup>15</sup> A county or other political subdivision of the Commonwealth is expressly prohibited from providing such service. Va. Code § 15.2-2108.3. Before providing such service, the municipality must hold a preliminary public hearing, hire a consultant to perform a feasibility study, hold public hearings on the feasibility study, and hold a referendum. Va. Code §§ 15.2-2108.5 through -2108.8. Failure to comply with these required steps makes unlawful a municipality's attempt to own or operate cable assets. *See Martinsville Cable, Inc. v. Time Warner NY Cable, LLC*, 445 F. Supp. 2d 668 (W.D. Va. 2006). If the municipality provides cable television services, it must establish a separate department for its operation and an enterprise fund to account for the provision of such services. Va. Code § 15.2-2108.9. The municipality may not cross-subsidize its cable television services or provide itself with any advantage, and it must impute into its rates, taxes, fees, and similar costs incurred by a private provider. Va. Code § 15.2-2108.11. The scope of its service area is that of its electric service, telephone service, or Internet service area as of January 1, 2003. *Id.*

In 2006, the General Assembly authorized localities to grant a negotiated cable franchise in accordance with Title VI of the Communications Act of 1934 and regulate cable systems. Va. Code § 15.2-2108.20. These regulatory powers include "the authority: (i) to enforce customer service standards in accordance with the Act; (ii) to enforce more stringent standards as agreed upon by the cable operator through the terms of a negotiated cable franchise; and (iii) to regulate the rates for basic cable service in accordance with the Act." Under the new statute, a ordinance cable franchise will have a term of 15 years and may be requested by (i) a certificated provider of telecommunications services with previous consent to use the public rights-of-way in a locality through a franchise; (ii) a certificated provider of telecommunications services that lacked previous consent to provide cable service in a locality but provided telecommunications services over facilities leased from an entity having previous consent to use of the public rights-of-way in such locality through a franchise; or (iii) a cable operator with previous consent to use the public rights-of-way to provide cable service in a locality through a franchise and who seeks to renew its existing cable franchise.

<sup>14</sup> A prior court decision found that Virginia statute provided no authority for a locality to provide cable TV services. *Marcus Cable Assocs. LLC v. City of Bristol*, 237 F. Supp. 2d 675 (W.D. Va. 2002), *vacated and dismissed as moot*, No. 01-1741 (4<sup>th</sup> Cir. May 1, 2002).

<sup>15</sup> At first glance, the statutory provisions seem to apply to all municipalities without restriction. However, the general operating limits provision, Va. Code § 15.2-2108.11(G), states that cable service may only be offered in subscriber locations in which electric service, telephone service, or Internet service are being provided as of January 1, 2003 by the municipality. Also note that pursuant to Va. Code § 56-265.4:4(E), the City of Bristol (the only municipality that meets the requirements) is exempt from the public hearing and referendum proceedings.

The statute sets forth the application procedures, including requirements that an applicant file with the chief administrative officer of the locality a request to negotiate the terms and conditions of a negotiated cable franchise and be available for negotiation at least forty-five calendar days prior to filing a notice electing an ordinance cable franchise. Va. Code § 15.2-2108.21(D). Thereafter, an applicant, through its president or chief executive officer, shall file notice with the locality that it elects to receive an ordinance cable franchise at least thirty days prior to offering cable in such locality. The notice shall be accompanied by a map or a boundary description showing (i) the initial service area in which the cable operator intends to provide cable service in the locality within the three-year period required for an initial service area and (ii) the area in the locality in which the cable operator has its telephone facilities. *Id.*

The locality from which the applicant seeks to receive an ordinance cable franchise shall adopt any ordinance requiring adoption under this article within 120 days of the applicant filing notice. Notice of any ordinance that requires a public hearing shall be advertised once a week for two successive weeks in a newspaper having general circulation in the locality. Va. Code §§ 15.2-2108.21(E) and (F).

The ordinance shall, among other things, require a cable operator (1) to provide the locality with access to public, educational, and governmental access channels; (2) to pay a franchise fee; (3) to pay a recurring fee (referred to as the PEG Capital Fee) to support the capital costs of public, educational, and governmental channel facilities, including institutional networks; (4) to comply with the customer service requirements imposed by the locality pursuant to federal law; (5) to adopt enforcement procedures; (6) to adopt a schedule of uniform penalties or liquidated damages that it may impose upon any cable operator with an ordinance cable franchise when the cable operator has failed to materially comply with (i) customer service standards; (ii) carriage of public, educational, and governmental channels; (iii) reporting requirements; or (iv) timely and full payment of the franchise fee or the fee assessed for the provision of public, educational, or governmental access channels, including institutional networks; (7) to adopt procedures under which the locality may inspect and audit, upon thirty days' prior written notice, the books and records of the cable operator and recompute any amounts determined to be payable under the ordinances adopted pursuant to this article; (8) to adopt reasonable reporting requirements for annual financial information and quarterly customer service information; (9) require cable operators to provide, without charge, within the area actually served by the cable operator, one cable service outlet activated for basic cable service to each fire station, public school, police station, public library, and any other local government building; (10) to adopt requirements and procedures management of and construction in public rights of way; (11) to adopt a mandated allocation procedure if cable services subject to a franchise fee, or any other fee determined by a percentage of the cable operator's gross revenues in a locality, are provided to subscribers in conjunction with other services; and (12) require cable operators to make cable service available to (i) up to all of the occupied residential dwelling units in the initial service area selected by cable operator within no less than three years of the date of the grant of the franchise and (ii) no more than 65 percent of the residential dwelling units in the area in the locality in which the cable operator has its telephone facilities, within no less than seven years of the date of the grant of the franchise. Va. Code § 15.2-2108.22.

### 17-3 DELIVERY BY AN AUTHORITY

In addition to private companies and localities through their departments of public works, authorities also frequently deliver utility services in Virginia. The Virginia Water and Waste Authorities Act, Va. Code §§ 15.2-5100 to 15.2-5158, sets forth the powers and duties of a water authority, a sewer authority, a sewage disposal authority, a stormwater control authority, a refuse collection and disposal authority, or any combination or parts thereof.

**A RESOLUTION ADOPTING A FRANCHISE AGREEMENT WITH COMCAST CABLE  
FOR THE TOWN OF AMHERST**

**WHEREAS**, the Town of Amherst has had Comcast Cable as a long-term service provider for cable services within the Town limits; and,

**WHEREAS**, Comcast has approached the Town for a renewal of its Franchise so that it may continue to serve Town residents and business and utilize rights-of-way with the Town; and,

**WHEREAS**, Comcast has offered increased opportunities for residential and business hook-ups within the Town and deleted the density requirement within Town limits for new service; and,

**WHEREAS**, this Franchise agreement is non-exclusive and still allows other providers within Town limits; and,

**WHEREAS**, reliable cable and internet service is a public good and economic development benefit;

**NOW THEREFORE, BE IT RESOLVED**, the Town Council adopts this franchise agreement with Comcast cable for ten years with renewals.

This resolution was adopted on August 14, 2019.

\_\_\_\_\_  
Mayor Dwayne Tuggle

Attest:

\_\_\_\_\_  
Clerk of Council

CABLE FRANCHISE AGREEMENT

BETWEEN

THE TOWN OF AMHERST, VIRGINIA

AND

COMCAST OF CONNECTICUT/GEORGIA/MASSACHUSETTS/NEW HAMPSHIRE/NEW  
YORK/NORTH CAROLINA/VIRGINIA/VERMONT, LLC

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## **FRANCHISE AGREEMENT**

This Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the Town of Amherst, a political subdivision of the Commonwealth of Virginia (hereinafter, “Town” or “Franchise Authority”) and COMCAST OF CONNECTICUT/GEORGIA/MASSACHUSETTS/NEW HAMPSHIRE/NEW YORK/NORTH CAROLINA/VIRGINIA/VERMONT, LLC (hereinafter, “Franchisee”).

The Town having determined that the financial, legal, and technical ability of the Franchisee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Franchisee for the construction, operation, and maintenance of a Cable System on the terms and conditions set forth herein.

### **SECTION 1 - Definition of Terms**

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Code of Virginia, Article 1.2, §15.2-2108.19, and the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§521 - 631 (the “Cable Act”), unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words used to refer to the masculine include the feminine, words in the plural number include the singular number, and likewise, words in the singular number include the plural number. The word “shall” is mandatory and “may” is permissive. Words not defined in the Code of Virginia, Article 1.2, §15.2-2108.19, the Cable Act, or herein shall be given their common and ordinary meaning.

1.1. “Cable Service” or “Service” shall mean the one-way transmission to Subscribers of Video Programming or other Programming service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other Programming service.

1.2. “Cable System” shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the Franchise Area, and as further defined under Section 602 (7) of the Cable Act.

1.3. “Town” shall mean the Town of Amherst or the lawful successor, transferee, designee, or assignee thereof.

1.4. “Customer” or “Subscriber” shall mean a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Franchisee’s express permission.



1.5. “Effective Date” shall mean August 14<sup>th</sup>, 2019.

1.6. “FCC” shall mean the Federal Communications Commission, or successor governmental entity thereto.

1.7. “Franchise” shall mean the initial authorization, or renewal thereof, issued by the Franchise Authority, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.

1.8. “Franchise Agreement” or “Agreement” shall mean this Agreement and any amendments or modifications hereto.

1.9. “Franchise Area” shall mean the present legal boundaries of Town of Amherst, as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means during the term of the Franchise, as per the requirements set forth herein.

1.10. “Franchise Authority” shall mean the Town of Amherst or the lawful successor, transferee, designee, or assignee thereof.

1.11. “Franchisee” shall mean COMCAST OF CONNECTICUT/GEORGIA/ MASSACHUSETTS/NEW HAMPSHIRE/NEW YORK/NORTH CAROLINA/ VIRGINIA/VERMONT, LLC

1.12. “Person” shall mean any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Franchise Authority.

1.13. “Public Buildings” shall mean those buildings owned or leased by the Franchise Authority for government administrative purposes, and shall not include buildings owned by Franchise Authority but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.

1.14. “Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle, park, bridge, waterway, dock, bulkhead, wharf, pier, other public ground or water subject to the jurisdiction and control of the Franchise Authority, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or easements dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchise Authority in the Franchise Area, which shall entitle the Franchisee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchise Authority within the Franchise Area for the purpose of public travel, or for

utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchisee to the use thereof for the purposes of installing, operating, and maintaining the Franchisee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and appurtenant to the Cable System.

1.15. "Standard Installation" shall mean the standard one hundred twenty-five foot (125') aerial Drop connection to the existing distribution system.

1.16. "Video Programming" or "Programming" shall mean the programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

1.17. "Video Service Provider" or "VSP" shall mean any entity using the public rights-of-way to provide multiple Video Programming services to subscribers, for purchase or at no cost, regardless of the transmission method, facilities, or technology used. A VSP shall include but is not limited to any entity that provides cable services, multi-channel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet-Protocol based services.

## **SECTION 2 - Grant of Authority**

2.1. Franchise Grant. The Franchise Authority hereby grants to the Franchisee under the Code of Virginia and the Cable Act a non-exclusive Franchise authorizing the Franchisee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to use, erect, install, construct, repair, alter, add to, inspect, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, underground conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and, including but not limited to, above ground enclosures, markers, and concrete pads, or other related property, equipment, or fixtures as may be necessary, useful, or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.

2.2. Term of Franchise. The term of the Franchise granted hereunder shall be ten (10) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement, the Code of Virginia, and the Cable Act. This Franchise shall be automatically extended for one (1) additional term of five (5) years unless either party notifies the other in writing of its desire to enter renewal negotiations under the Cable Act at least three (3) years before the expiration date of the then-current Franchise Agreement.

2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Article 1.2 of the Code of Virginia and Section 626 of the Cable Act [47 U.S.C. §546], as amended.

### **SECTION 3 - Construction and Maintenance of the Cable System**

3.1. Permits and General Obligations. The Franchisee shall be responsible for obtaining all generally applicable permits, licenses, or other forms of approval or authorization prior to the commencement of any activity that materially disturbs the surface of any street, curb, sidewalk or other public improvement in the Public Way, or impedes vehicular traffic. The issuance of such permits shall not be unreasonably withheld, conditioned, or delayed. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All work shall be done by the Franchisee in accordance with FCC regulations. Notwithstanding the requirements herein, Franchisee shall not be required to obtain a permit for individual drop connections to Subscribers, servicing or installing pedestals or other similar facilities, or other instances of routine maintenance or repair to its Cable System. All transmission and distribution structures, poles, other lines, and equipment installed by the Franchisee for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Public Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Way.

#### 3.2. Conditions of Street Occupancy.

3.2.1. New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Franchisee shall, upon reasonable advance written notice from the Franchise Authority (which shall not be less than thirty (30) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchise Authority shall notify Franchisee of such funding and make available such funds to the Franchisee within a reasonable timeframe. In the event that funds are not available, Franchisee reserves the right to pass its costs through to its Subscribers in accordance with applicable law.

3.2.2. Relocation at Request of Third Party. The Franchisee shall, upon reasonable prior written request of any Person holding a permit issued by the Franchise Authority to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Franchisee may impose a reasonable charge, in accordance with industry practice, on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Franchisee is given not less than thirty (30) business days advance written notice to arrange for such temporary relocation.

3.2.3. Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Franchisee disturbs, alters, or damages any Public Way, the Franchisee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance as is practical.

3.2.4. Safety Requirements. The Franchisee shall undertake all necessary and appropriate commercial efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and state regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.

3.2.5. Trimming of Trees and Shrubbery. The Franchisee shall have the authority to trim trees or other natural vegetative growth encroaching or overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Franchisee's wires, cables, or other equipment. All such trimming shall be done at the Franchisee's sole cost and expense. The Franchisee shall be responsible for any collateral, direct real property damage caused by such trimming.

3.2.6. Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Franchisee shall place its Cable System transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Franchisee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Franchisee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Agreement shall be construed to require the Franchisee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

3.2.7. Undergrounding and Beautification Projects. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Franchisee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Franchisee's relocation costs shall be included in any computation of necessary project funding by the Franchise Authority or private parties. Franchisee shall be given reasonable notice and access to the public utilities' facilities at the time that such are placed underground and shall be entitled to reimbursement of its relocation costs from public or private funds

raised for the project and made available to other users of the Public Way. In the event that public and/or private funds are not available or do not cover the entire direct and actual cost of the relocation, Franchisee reserves the right to pass its costs, or in the case of partial reimbursement from public and/or private funds its incremental cost, through to its Subscribers in accordance with applicable law.

3.2.8. Service Area Maps. Upon written request, Franchisee shall provide to the Town, for the Town's exclusive use, a complete set of Franchisee's service area strand maps of the Town on which shall be shown those areas in which facilities exist. Franchisee shall provide the Town with updated maps not more than once annually within thirty (30) days after any written request by the Town. Maps provided hereunder shall be treated as confidential and proprietary in accordance with Section 7.4.3 herein.

#### **SECTION 4 - Service Obligations**

4.1. General Service Obligation. The Franchisee shall make Cable Service available to every occupied residential dwelling unit within the Franchise Area where the dwelling unit is within two hundred seventy-five (275) feet of the nearest point on the Cable System trunk or feeder line from which a usable cable signal can be obtained. Franchisee shall offer Cable Service to all new homes or previously unserved homes located within one hundred and twenty-five (125) feet of the Franchisee's distribution cable from which a usable cable signal can be obtained at the standard installation rate.

The Franchisee may elect to extend Cable Service to areas that do not otherwise qualify to receive Cable Service under this section if any resident or group of residents agree in writing to pay to Franchisee the cost of construction, including materials, labor, and the total cost of any easement(s) necessary to accomplish the proposed line extension. One half of the cost of construction shall be paid to the Franchisee prior to engineering and the balance shall be paid prior to commencement of construction.

4.2. Programming. The Franchisee shall offer to all Customers a diversity of Video Programming services in accordance with federal law.

4.3. No Unfair Discrimination. Neither the Franchisee nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area; provided, however, Franchisee reserves the right to deny service for good cause, including but not limited to non-payment or theft of service, vandalism of equipment, or documented or founded harassment or abuse of Franchisee's employees or agents. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Franchisee are satisfied. Nothing contained herein shall prohibit the Franchisee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its customary business practice.

4.4. New Developments. The Franchise Authority shall provide the Franchisee with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of cable facilities. The Franchise Authority agrees to require the developer, as a condition of issuing the permit, to give the Franchisee access to open trenches for deployment of cable facilities and at least fifteen (15) business days written notice of the date of availability of open trenches.

4.5. Prohibition Against Reselling Service. No Person shall sell, offer for sale, or resell, without the express prior written consent of the Franchisee, any Cable Service, program or signal transmitted over the Cable System by the Franchisee.

### **SECTION 5 - Fees and Charges to Customers**

5.1. All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Franchisee or any affiliated Person for any Cable Service as of the Effective Date shall be in accordance with applicable FCC rate regulations. Before any new or modified rate, fee, or charge is imposed, the Franchisee shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law.

### **SECTION 6 - Customer Service Standards; Customer Bills; and Privacy Protection**

6.1. Customer Service Standards. The Franchise Authority hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The Franchisee shall comply in all respects with the customer service requirements established by the FCC.

6.2. Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (i) is not misleading and (ii) does not omit material information. Notwithstanding anything to the contrary in Section 6.1, above, the Franchisee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622 (c) of the Cable Act [47 U.S.C. §542 (c)].

6.3. Privacy Protection. The Franchisee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

## **SECTION 7 - Oversight and Regulation by Franchise Authority**

7.1. Communications Tax. Franchisee shall comply with the provisions of Section 58.1-645 *et seq.* of the Code of Virginia, pertaining to the Virginia Communications Sales and Use Tax, as amended. Franchisee may designate the Virginia Communications Sales and Use tax as a separate item in any bill to a Subscriber as permitted under applicable law.

7.2. Oversight of Franchise. In accordance with applicable law, the Franchise Authority shall have the right to, at its sole cost and expense and upon reasonable prior written notice and in the presence of Franchisee's employee, periodically inspect the construction and maintenance of the Cable System in the Franchise Area as necessary to monitor Franchisee's compliance with the provisions of this Franchise Agreement.

7.3. Technical Standards. The Franchisee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76.601 *et seq.* To the extent those standards are altered, modified, or amended during the term of this Franchise, the Franchisee shall comply with such altered, modified or amended standards within a commercially reasonable period after such standards become effective. The Franchise Authority shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC rules.

### 7.4. Maintenance of Books, Records, and Files.

7.4.1. Books and Records. Throughout the term of this Franchise Agreement, the Franchisee agrees that the Franchise Authority may review the Franchisee's books and records in the Franchise Area as are reasonably necessary to monitor Franchisee's compliance with the provisions of this Franchise Agreement, upon reasonable prior written notice to the Franchisee pursuant to this Agreement, at the Franchisee's business office, during Normal Business Hours, and without unreasonably interfering with Franchisee's business operations. All such documents that may be the subject of an inspection by the Franchise Authority shall be retained by the Franchisee for a minimum period of twenty-four (24) months.

7.4.2. File for Public Inspection. Throughout the term of this Franchise Agreement, the Franchisee shall maintain for public inspection those documents required pursuant to the FCC's Public Inspection File rules and regulations.

7.4.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Section, the Franchisee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchise Authority agrees to treat any information disclosed by the Franchisee as confidential and only to disclose it to those employees, representatives, and agents of the Franchise Authority that have a need to know in order to enforce this Franchise Agreement and who agree, through the execution of a non-disclosure agreement, to maintain the confidentiality of all such information. The Franchisee shall not be required to provide

Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Franchisee to be competitively sensitive. Franchisee may make proprietary or confidential information available for inspection, but not copying or removal of information by the Franchise Authority’s representative. In the event that the Franchise Authority has in its possession and receives a request under a state “sunshine,” public records, or similar law for the disclosure of information the Franchisee has designated as confidential, trade secret or proprietary, the Franchise Authority shall notify Franchisee of such request and cooperate with Franchisee in opposing such request.

### **SECTION 8 - Transfer or Change of Control of Cable System or Franchise**

8.1. Neither the Franchisee nor any other Person may transfer the Cable System or the Franchise without prior written notice to the Franchise Authority. No prior notice shall be required, however, for: (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or in the Cable System in order to secure indebtedness, (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation, or (iii) the sale, conveyance, transfer, exchange or release of fifty percent (50%) or less of its equitable ownership. Within thirty (30) days of receiving a notice of transfer, the Franchise Authority may, in accordance with FCC rules and regulations, notify the Franchisee in writing of the additional information, if any, it requires regarding the legal, financial, and technical qualifications of the transferee or new controlling party.

### **SECTION 9 - Insurance and Indemnity**

9.1. Insurance. Throughout the term of this Franchise Agreement, the Franchisee shall, at its own cost and expense, maintain Commercial General Liability Insurance and provide the Franchise Authority certificates of insurance designating the Franchise Authority and its officers, boards, commissions, councils, elected officials, and employees as additional insureds and demonstrating that the Franchisee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence for bodily injury or property damage. The Franchisee shall provide workers’ compensation coverage in accordance with applicable law.

9.2. Indemnification. The Franchisee shall indemnify, defend and hold harmless the Franchise Authority, its officers and employees acting in their official capacities from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that directly arise out of the Franchisee’s



construction, operation, maintenance, or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the Franchise Authority shall give the Franchisee timely written notice of its obligation to indemnify and defend the Franchise Authority within ten (10) business days of receipt of a claim or action pursuant to this Section. The Franchise Authority agrees that it will take all necessary action to avoid a default judgment and not prejudice the Franchisee's ability to defend the claim or action. If the Franchise Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchise Authority.

9.2.1 Franchisee shall not be required to indemnify the Franchise Authority for negligence or misconduct on the part of the Franchise Authority or its officials, boards, commissions, agents, or employees, including any loss or claims related to PEG access Channels in which the Franchise Authority or its designee participates, subject to Applicable Law.

9.3. Performance Bond. Within forty-five (45) days of the Effective Date of this Agreement, Franchisee shall post a performance bond in the amount of fifteen thousand dollars (\$15,000) as surety for the faithful performance and discharge by Franchisee of all obligations imposed by this Franchise Agreement. Such bond shall be written by a corporate surety authorized to do business in the Commonwealth of Virginia. The performance bond shall remain in force and effect throughout the initial and any extension term of this Franchise Agreement. The Franchising Authority shall give Franchisee twenty (20) business days' notice of its intent to draw from the performance bond. The Franchising Authority may not draw from the performance bond while any action, appeal or other process has been instituted by Franchisee to challenge the amount owed.

## **SECTION 10 - System Description and Service**

10.1. System Capacity. During the term of this Agreement, the Franchisee's Cable System shall be capable of providing Video Programming with reception available to its customers in the Franchise Area in accordance with the Cable Act.

10.2. Cable Service to School and Town Facilities. Upon written request, the Franchisee shall provide, at no cost to the Franchise Authority, Basic Cable Service and Standard Installation at one (1) outlet, to up to four (4) future Town public facilities including, but not limited to, public grade school (K-12) buildings, fire stations, sheriff's offices, rescue squad buildings, and Town administration facilities located in the Franchise Area within two hundred seventy-five (275) feet of the Franchisee's distribution cable from which a usable signal can be obtained. No charge shall be made for installation or service, except that Franchisee may charge for installation beyond one hundred fifty (150) feet distance of the cable plant and service for more than one (1) drop in each building. For the purposes of this section, the term "school" means an educational institution that receives funding pursuant to Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 et seq., as amended, and does not include "home schools." Town

administration facilities shall not include buildings owned by Franchise Authority but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.

## **SECTION 11 - Enforcement and Revocation Proceedings**

11.1. Notice of Violation or Default and Opportunity to Cure. In the event the Franchise Authority believes that the Franchisee has not complied with the material terms of the Franchise, it shall notify the Franchisee in writing with specific details regarding the exact nature of the alleged non-compliance or default.

11.1.1. Franchisee's Right to Cure or Respond. The Franchisee shall have forty-five (45) days from the receipt of the Franchise Authority's written notice: (i) to respond to the Franchise Authority, contesting the assertion of non-compliance or default; or (ii) to cure such default; or (iii) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate commercially reasonable steps to diligently remedy such default and notify the Franchise Authority of the steps being taken and the projected date that the cure will be completed.

11.1.2. Public Hearings. In the event the Franchisee fails to respond to the Franchise Authority's notice or in the event that the alleged default is not remedied within forty five (45) days or the date projected by the Franchisee, the Franchise Authority shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Franchise Authority that is scheduled at a time that is no less than ten (10) business days therefrom. The Franchise Authority shall notify the Franchisee in advance, in writing of the time and place of such meeting and provide the Franchisee with a reasonable opportunity to be heard.

11.1.3. Enforcement. Subject to applicable federal and state law, in the event the Franchise Authority, after such public hearing, determines that the Franchisee is in default of any material provision of the Franchise, the Franchise Authority may: (i) seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; or (ii) in the case of a substantial default of a material provision of the Franchise, initiate revocation proceedings in accordance with the following:

(a) The Franchise Authority shall give written notice to the Franchisee of its intent to revoke the Franchise on the basis of a pattern of non-compliance by the Franchisee, including two or more instances of substantial non-compliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the non-compliance. The Franchisee shall have ninety (90) business days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Franchise Authority has not received a response from the Franchisee or upon receipt of the response does not agree that the allegations of non-compliance have been or will be resolved, it may then seek revocation of the Franchise at a public hearing. The

Franchise Authority shall cause to be served upon the Franchisee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request revocation of the Franchise.

(b) At the designated public hearing, the Franchise Authority shall give the Franchisee an opportunity to state its position on the matter, present evidence and question witnesses, in accordance with the standards of a fair hearing applicable to administrative hearings in the Commonwealth of Virginia, after which it shall determine whether or not the Franchise shall be terminated. The public hearing shall be on the record and a written transcript shall be made available to the Franchisee within ten (10) business days. The decision of the Franchise Authority shall be in writing and shall be delivered to the Franchisee by certified mail. The Franchisee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchise Authority “de novo” and to modify or reverse such decision as justice may require.

11.2. Technical Violation. The Franchise Authority agrees that it is not its intention to subject the Franchisee to penalties, fines, forfeitures or revocation of the Franchise for so-called “technical” breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

11.2.1. in instances or for matters where a violation or a breach of the Franchise by the Franchisee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

11.2.2. where there existed circumstances reasonably beyond the control of the Franchisee and which precipitated a violation by the Franchisee of the Franchise, or which were deemed to have prevented the Franchisee from complying with a term or condition of the Franchise.

11.3. No Removal of System. Franchisee shall not be required to remove its Cable System or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Franchisee from providing Cable Service, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act, or any portion thereof [47 U.S.C. §541(b)].

## **SECTION 12 - Competitive Equity**

12.1. Purposes. The Franchisee and the Franchise Authority acknowledge that there is increasing competition in the video marketplace among cable operators, direct broadcast satellite providers, telephone companies, broadband content providers and others; new technologies are emerging that enable the provision of new and advanced services to residents of the Franchise Area; and changes in the scope and application of the traditional regulatory framework governing the provision of video services are being

considered in a variety of federal, state and local venues. To foster an environment where video service providers using the public rights-of-way can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to residents of the Franchise Area; promote local communications infrastructure investments and economic opportunities in the Franchise Area; and provide flexibility in the event of subsequent changes in the law, the Franchisee and the Franchise Authority have agreed to the provisions in this Section, and they should be interpreted and applied with such purposes in mind.

## 12.2. New Video Service Provider.

12.2.1. Notwithstanding any other provision of this Agreement or any other provision of law, if any Video Service Provider (“VSP”) (i) enters into any agreement with the Franchise Authority to provide video services to subscribers in the Franchise Area, or (ii) otherwise begins to provide video services to subscribers in the Franchise Area (with or without entering into an agreement with the Franchise Authority), the Franchise Authority, upon written request of the Franchisee, shall permit the Franchisee to construct and operate its Cable System and to provide video services to subscribers in the Franchise Area under the same agreement and/or under the same terms and conditions as apply to the new VSP. The Franchisee and the Franchise Authority shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the VSP within sixty (60) days after the Franchisee submits a written request to the Franchise Authority.

12.2.2. If there is no written agreement or other authorization between the new VSP and the Franchise Authority, the Franchisee and the Franchise Authority shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization (if necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Franchisee and other VSPs, taking into account the terms and conditions under which other VSPs are allowed to provide video services to subscribers in the Franchise Area.

12.3. Subsequent Change in Law. If there is a change in federal, state or local law that provides for a new or alternative form of authorization for a VSP to provide video services to Subscribers in the Franchise Area, or that otherwise changes the nature or extent of the obligations that the Franchise Authority may request from or impose on a VSP providing video services to subscribers in the Franchise Area, the Franchise Authority agrees that, notwithstanding any other provision of law, upon Franchisee’s written request the Franchise Authority shall: (i) permit the Franchisee to provide video services to subscribers in the Franchise Area on the same terms and conditions as are applicable to a VSP under the changed law; (ii) modify this Agreement to comply with the changed law; or (iii) modify this Agreement to ensure competitive equity and parity between the Franchisee and other VSPs, taking into account the conditions under which other VSPs are permitted to provide video services to Subscribers in the Franchise Area. The Franchise Authority and the Franchisee shall implement the provisions of this Section within sixty (60) business days after the Franchisee submits a written request to

the Franchise Authority. Notwithstanding any provision of law that imposes a time or other limitation on the Franchisee's ability to take advantage of the changed law's provisions, the Franchisee may exercise its rights under this Section at any time, but not sooner than thirty (30) days after the changed law goes into effect.

12.4. Effect on This Agreement. Any agreement, authorization, right or determination to provide video services to subscribers in the Franchise Area under Sections 12.2 or 12.3 shall supersede this Agreement, and the Franchisee, at its option, may terminate this Agreement or portions thereof, upon written notice to the Franchise Authority, without penalty or damages.

### **SECTION 13 - Miscellaneous Provisions**

13.1. Force Majeure. The Franchisee shall not be held in default under, or in non-compliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such non-compliance or alleged defaults occurred or were caused by lightning strike, earthquake, flood, tidal wave, unusually severe rain, ice or snow storm, hurricane, tornado, or other catastrophic act of nature; riot, war, labor disputes, environmental restrictions, failure of utility service or the failure of equipment or facilities not belonging to Franchisee, denial of access to facilities or rights-of-way essential to serving the Franchise Area necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Franchisee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Franchisee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

13.2. Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the Franchise Authority:

Town of Amherst  
174 S. Main Street  
P.O. Box 280  
Amherst, VA 24521  
Attention: Town Manager

To the Franchisee:

COMCAST OF CONNECTICUT/GEORGIA/MASSACHUSETTS/NEW HAMPSHIRE/NEW YORK/NORTH CAROLINA/VIRGINIA/VERMONT, LLC

55 Construction Lane  
Fishersville, Virginia 22939-2310  
Attention: Government Affairs Department

With copies to:

Comcast Cable  
7850 Walker Drive, 2<sup>nd</sup> Floor  
Greenbelt, MD 20770  
Attention: Government Affairs Department

And to:

Comcast Cable Northeast Division  
676 Island Pond Rd.  
Manchester, NH 03109  
Attention: Government Affairs Department

13.3. Entire Agreement. This Franchise Agreement and any exhibits or addendums hereto constitute the entire agreement between the Franchise Authority and the Franchisee and supersedes all prior or contemporaneous agreements, ordinances, representations, or understandings, whether written or oral, of the parties regarding the subject matter hereof. Any agreements, ordinances, representations, promises or understandings or parts of such measures that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

13.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

13.5. Governing Law. This Franchise Agreement shall be deemed to be executed in the State where the Franchise Area is located, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of such State, as applicable to contracts entered into and performed entirely within the State.

13.6. Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchise Authority and the Franchisee, which amendment shall be authorized on behalf of the Franchise Authority through the adoption of an appropriate resolution or order by the Franchise Authority, as required by applicable law.

13.7. No Third-Party Beneficiaries. Nothing in this Franchise Agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.

13.8. Captions. Captions to sections throughout this Franchise Agreement are solely to facilitate the reading and reference to the sections and provisions of this Franchise Agreement. Such captions shall not affect the meaning or interpretation of this Franchise Agreement.

13.9. No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, which Franchisee may have under federal or state law unless such waiver is expressly stated herein.

13.10. Incorporation by Reference

13.10.1. All presently and hereafter applicable conditions and requirements of federal, State and generally applicable local laws, including but not limited to the rules and regulations of the FCC and the State where the Franchise Area is located, as they may be amended from time to time, are incorporated herein by reference to the extent not enumerated herein. However, no such general laws, rules, regulations and codes, as amended, may alter the obligations, interpretation and performance of this Renewal Franchise to the extent that any provision of this Renewal Franchise conflicts with or is inconsistent with such laws, rules or regulations.

13.10.2. Should the State, the federal government or the FCC require Franchisee to perform or refrain from performing any act the performance or non-performance of which is inconsistent with any provisions herein, the Franchise Authority and Franchisee will thereupon, if they determine that a material provision herein is affected, modify any of the provisions herein to reflect such government action.

13.11. Calculation of Time. Where the performance or doing of any act, duty, matter, payment, or operation is required hereunder and the period of time or duration for the performance or doing thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first day and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation.

13.12. Annexation. Upon ninety (90) days written notice, any additions of territory to the Franchise Authority, by annexation or other legal means, contiguous to the Franchise Area, shall thereafter be subject to all the terms of this Agreement as though it were an extension made hereunder related to the Cable System located or operated within said territory.

13.13. Authority to Execute. Each party represents to the other that the person signing on its behalf has the legal right and authority to execute, enter into and bind such party to the commitments and obligations set forth herein.

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IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the last date set forth below:

Franchise Authority:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Franchisee:

By: \_\_\_\_\_

Print Name: Mary McLaughlin

Title: Regional Senior Vice President

Date: \_\_\_\_\_