

Vice Mayor J. Paul Kilgore called a regular monthly meeting of the Amherst Town Council to order on October 10, 2012 at 7:00 P.M. in the Council Chambers of the Town Hall at 186 S. Main Street. Council members Mike Mozingo and Richard Wydner were present. Mayor Jacob P. Bailey and Councilors Kenneth Bumgarner and Haney Mottley were absent. Town Manager Jack Hobbs, Police Chief Kelvin Brown, Director of Public Utilities Tom Fore, Office Manager Colan Davis, and Town Attorney Tom Berry were present.

Pastor Michael Fitzgerald from Clifford Baptist Church gave an invocation.

Amy Gallagher from Davidson, Doyle & Hilton came forward to give a presentation on her company's audit of the Town's books for the fiscal year that ended on June 30, 2012. There was a discussion on the Town's cash position and the need to update the Town's time card and overtime calculation practices. By consensus, the Council agreed to consider approving the audit report at the November meeting. The Town Manager was asked to take the lead on updating the Town's time card and overtime practices with the goal of having them in place before January 1, 2013.

Anne Marie Clarke from the Robert E. Lee Soil and Water Conservation District came forward to give a presentation on an updated Buffalo River watershed protection program contract. It was reported that Amherst County has approved the document and that approval by the District is anticipated before the end of the month. Mr. Wydner made a motion that was seconded by Mr. Mozingo and approved 3-0 to authorize the execution of the contract as presented. Messrs. Kilgore, Mozingo, and Wydner voted "Aye"; Messrs. Bumgarner and Mottley were absent.

Suny Monk and Mary Ellen Barron came forward to request Council support of a summer art program. This request was referred to the Community Relations Committee.

Mr. Tim Ware came forward to thank Council for the Town's support of his September 29 Cruise-In event.

After the Town Manager gave a report on the 60 West Water Line Replacement Project, Mr. Mozingo made a motion that was seconded by Mr. Wydner and approved 3-0 to approve a resolution that would have the effect of authorizing bond financing for the project as well as a series of supporting items. Messrs. Kilgore, Mozingo, and Wydner voted "Aye"; Messrs. Bumgarner and Mottley were absent. A copy of the resolution is attached and made a part of these minutes.

Mr. Mozingo made a motion that was seconded by Mr. Wydner and approved 3-0 to authorize the Town Manager to execute a contract with Prillaman & Pace to construct the 60 West Water Line Replacement Project after the financing for the project is in place. Messrs. Kilgore, Mozingo, and Wydner voted "Aye"; Messrs. Bumgarner and Mottley were absent.

Mr. Mozingo made a motion that was seconded by Mr. Wydner and approved 3-0 to approve the minutes from the September 12, 2012 meeting. Messrs. Kilgore, Mozingo, and Wydner voted "Aye"; Messrs. Bumgarner and Mottley were absent.

Mr. Kilgore led a discussion on the property at 119 First Street. The Town Manager reported that after a formal complaint and an appropriate process, on November 9, 2005 the Town Council ordered the demolition of a dilapidated building known as the Peters House at that location. The bill for the work was not paid (the property is tied up in an estate) and so the Town filed a property lien. In 2011 the county instituted its real estate tax collection process against the property and it appears that the property is to be auctioned on October 18. The Town staff and Town Attorney have kept the county's agent informed as to the Town's lien and also as to outstanding Town real estate taxes, but county's real estate tax lien (and probably its legal fees) might take precedence over the Town demolition and real estate tax liens. There was no action on this item.

The Town Manager reported that on January 11, 2012 the Town Council declared the building at 201 Washington Street, known as the Beverly House, a public health and safety risk and gave the owner until July 31 to have the building torn down. On August 8 the Town Council granted an extension to September 30 but the owner recently requested an extension to December 31. By consensus, Council asked the Town Attorney to take the lead in having the building demolished with the understanding that formal actions would probably need to be taken at the November meeting.

The Town Manager led a discussion on the issue of using a portion of the accumulated General Fund cash to fund utility improvements. The Utilities Committee was asked to prepare candidate projects for consideration by the Council in January.

The Director of Public Utilities gave an update on ongoing construction projects.

The Councilors discussed appointments to fill the Board of Zoning Appeals seat currently held by Bill Hopkins and also the seat formerly held by Bill Hathaway on the Planning Commission.

There being no further business, Mr. Mozingo made a motion that was seconded by Mr. Wydner and approved 3-0 to adjourn the meeting at 8:30 P.M. Messrs. Kilgore, Mozingo, and Wydner voted "Aye"; Messrs. Bumgarner and Mottley were absent.

J. Paul Kilgore
Vice Mayor

Attest: _____
Clerk of Council

RESOLUTION

WHEREAS, pursuant to the Town Charter (the “Charter”) and the Public Finance Act, Chapter 26, Title 15.2 of the Code of Virginia, 1950, as amended (the “Public Finance Act”), the Town of Amherst, Virginia, (the “Town”) is duly incorporated and empowered to finance and refinance costs in connection with capital projects for essential governmental purposes for the benefit of the Town and to issue its general obligation bonds and notes to pay such costs, as described below; and

WHEREAS, the Town desires funds to pay capital costs to replace, construct and equip the Rt. 60 West water transmission line, including the acquisition, construction, installation and equipping of related water system facilities thereto (collectively, the “Project”); and

WHEREAS, in a letter from Virginia Resources Authority (“VRA”) to the Town, dated September 4, 2012 (a copy of which is attached hereto as Exhibit A, the “Commitment Letter”), among other correspondences from Virginia Department of Health (“VDH”), the Town was advised that the Project is eligible for financial assistance and award package; and

WHEREAS, the financial assistance shall consist of a total \$1,214,000 award to the Town (the “Financial Assistance”), which shall include two components, with up to \$607,000 portion thereof being provided under a Funding Agreement (defined below) for a “principal forgiveness” loan from the Drinking Water Supply Revolving Fund (the “Fund”), and the remaining up to \$607,000 portion thereof being provided under a Financing Agreement (defined below) for a 3% cost of funds loan from VRA, as Administrator of the Fund; and

WHEREAS, the Council held a public hearing, upon due notice therefore, on September 12, 2012, regarding the issuance by the Town from time to time of up to \$607,000 general obligation water revenue bond of the Town to be secured by the full faith and credit pledge of the Town, and further, a pledge of the Town’s water system revenues, all in accordance with the requirements of Section 15.2-2606 of the Public Finance Act; and

WHEREAS, pursuant to the Commitment Letter, the final terms of such Financial Assistance shall be set forth, among other documents, in a Funding Agreement, to be dated as of October 1, 2012 (or such other date as may be necessary or convenient), by and between VRA and the Town (the “Funding Agreement”, a substantially final form of which is attached hereto as Exhibit B), and in a Financing Agreement, to be dated as of October 1, 2012 (or such other date as may be necessary or convenient), by and between VRA, as Administrator of the Fund, and the Town (the “Financing Agreement”, a substantially final form of which is attached hereto as Exhibit C); and

WHEREAS, the Town now desires to approve the terms and provisions of the Financial Assistance in connection with the Project, all as further described below.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Amherst, Virginia, as follows:

1. It is hereby determined to be necessary and expedient for the Town to obtain a loan in the principal amount not to exceed \$607,000, to be used, together with other lawfully available funds therefore (as described herein), including monies to be provided under the Funding

Agreement, in order to pay the capital costs of the Project, including all or any portion of the issuance costs therefor (collectively, the "Project").

2. There is hereby authorized to be issued and sold to VRA, as Administrator of the Fund, a general obligation debt obligation of the Town to be designated up to "\$607,000 Town of Amherst, Virginia General Obligation Water Revenue Bond (Rt. 60 West Water Line Project), Series 2012" (the "Bond"), for the purpose of financing the Project, pursuant to the terms and conditions set forth herein.

3. The Town Council hereby accepts and approves the terms of the Funding Agreement and the Financing Agreement (sometimes referenced together as the "Agreements"). The text thereof is hereby incorporated in this Resolution as if fully set forth herein. The Mayor, the Vice-Mayor and the Town Manager, any one or more of whom may act (whether individually or collectively, the "Town Representative"), are each hereby authorized to execute and deliver the Agreements and any other instruments on behalf of the Town in connection therewith, all as may be required by VDH or VRA, as Administrator of the Fund, in connection with the Financial Assistance to pay the costs of the Project and to carry out the intent and purposes of this Resolution.

4. The Bond shall be a single, fully registered Bond, without coupons, shall be numbered R-1, shall be dated as of the date of its delivery to the VRA, as Administrator of the Fund and initial registered owner thereof, upon payment therefor (the "Closing Date"), shall bear a 3.0% Cost of Funds thereon (representing 2.50% interest and 0.50% administrative fee for management services thereon), and shall not exceed the principal amount of \$607,000. The Bond shall be substantially in the form attached hereto as **Exhibit D**.

If principal disbursements up to the maximum authorized amount of the Bond are not made, the principal amount due on the Bond shall not include such undisbursed amount. Further, unless the Town and the VRA agree otherwise, in writing, until all amounts due under the Bond and the Financing Agreement shall have been paid in full, less than full disbursement of the maximum authorized amount of the Bond shall not postpone the due date of any semi-annual installment due on the Bond, or change the amount of such installment unless the principal amount due under the Bond is less than the amount of such installment.

The Town Representative is expressly authorized and directed hereunder to finally determine and approve all details of the Bond, including without limitation, the maximum principal amount authorized to be advanced thereunder, the maturity or payment dates and amounts and the final maturity date; *provided, however* that (i) the maximum principal amount authorized to be advanced under the Bond shall not exceed \$607,000, (ii) the Cost of Funds on the bond shall not exceed 3.0% per annum, and (iii) the final maturity of the Bond shall be no later than December 31, 2045. The principal payment schedule shall be set forth in the form of the Bond and approved by the Town Representative.

If any installment is not paid within ten (10) days after its due date, the Town shall be obligated to pay the registered owner an amount equal to five percent (5%) of the overdue installment. In addition to the payments of principal of the Bond, the Town agrees to pay on demand of the VRA, as Administrator of the Fund, certain Additional Payments (as defined in the Financing Agreement), including the five percent (5.0%) per annum late fee for any overdue installment from the due date of such Additional Payments until the date of payment thereof, all as set forth in the Financing Agreement.

Installments of principal shall be payable in lawful money of the United States of America by check or draft mailed (or other credit transfer being sent) to the registered owner of the Bond at its address as it appears on the registration books of the Registrar, except that the final installment shall be payable upon presentation and surrender of the Bond at the office of the Town Treasurer, who is hereby appointed Registrar.

5. In accordance with requirements of VRA, the Town hereby covenants to comply with the provisions of the Davis-Bacon Act and related acts, as amended (“Davis-Bacon”), with respect to the Project and require that all laborers and mechanics employed by contractors and subcontractors for the Project shall be paid wages at rates not less than those prevailing on projects of a similar character, as determined by the United States Secretary of Labor in accordance with Section 513 of the Federal Water Pollution Control Act, as amended.

6. The Bond shall be a taxable general obligation water revenue bond of the Town for the payment of principal of which its full faith and credit shall be irrevocably pledged. It is hereby covenanted and agreed with the holder of Bond that so long as any of the installments of principal and Cost of Funds on the Bond are outstanding and unpaid, the Town will levy and collect annually an *ad valorem* tax on all taxable property of the Town, without limitation as to rate or amounts, to the extent other monies of the Town are not lawfully available therefor, and the full faith and credit of the Town are pledged thereto, to pay the installments of principal and Cost of Funds on the Bond, as the same shall become due.

In addition, to further secure the payment and performance of the Town’s obligations under the Bond, the Town hereby pledges all of the Town's right, title and interest to the revenues and receipts (the “Revenues”) received by the Town from the water system (the “System”), subject to the Town's right to use the Revenues for the payment of the operation and maintenance expenses of the System. The pledge of the Revenues by the Town to secure the Bond shall be valid and binding from and after the date of issuance and delivery of the Bond. The Revenues, as received by the Town, shall be immediately subject to the lien of this pledge without any physical delivery of them or further act. The pledge of the Revenues to secure the payment and performance of the Town’s obligations under the Bond shall have priority over all subsequent obligations and liabilities of the Town. In addition, the lien of this pledge shall be valid and binding against all parties having claims of any kind against the Town regardless of whether such parties have notice thereof.

7. The Town Representative is hereby authorized to execute and deliver any monthly reports (or other periodic reports) as may be required by VDH or VRA, or both, and to submit such reports with each Request for Disbursement under the Financing Agreement and the Funding Agreement in order for payment requests to be processed. In addition to any other governmental requirements contained in the Financing Agreement or the Funding Agreement, or otherwise, the Town hereby agrees and covenants to comply with all applicable governmental requirements relating to the Project, including any contract inserts and procedural guidelines with respect to compliance with Davis-Bacon requirements and the use and application of funds, all as provided in the Agreements. Further, the Town acknowledges and agrees that the Financial Assistance as described herein constitutes a financial assistance package as contemplated under the Commitment Letter. Accordingly, the Town hereby agrees, confirms and accepts that (i) an early termination of the Funding Agreement (pursuant to Section 5.3(b) and (c) thereof), or (ii) a failure of the Town to comply with any of the requirements relating to the Project and the use and application of funds shall constitute an Event of Default under the Agreements, or either of them.

8. The Town Representative, the Clerk of the Town Council, and all such other officers of the Town as may be requested by VDH or VRA from time to time, are each hereby authorized and directed to take all proper steps to (i) have the Bond and the Financing Agreement prepared and executed in accordance with their respective terms and to deliver the Bond upon payment therefor pursuant to directions provided by the VRA, (ii) have the Funding Agreement prepared and executed in accordance with its respective terms, and (iii) execute such additional instruments, agreements, documents, and certificates, all as may be requested by legal counsel or bond counsel to the Town or VRA, or as otherwise required by the Agreements in furtherance of the purposes set forth herein. All such further actions shall be conclusively deemed as having been accepted and approved as authorized herein without any further acts or approvals. All such actions previously taken are hereby ratified and confirmed in their entirety.

9. The appropriate officers of the Town, any one of whom may act, are each hereby authorized and directed to coordinate with legal counsel in order to see to the filing of a certified copy of this Resolution in the Clerk's Office of the Circuit Court of Amherst County, Virginia.

10. This Resolution shall take effect immediately.

Approved: October 10, 2012

TOWN OF AMHERST, VIRGINIA

J. Paul Kilgore, Jr.
Vice Mayor

Attachments:

Exhibit A: Commitment Letter, dated September 4, 2012
Exhibit B: Form of Funding Agreement
Exhibit C: Form of Financing Agreement
Exhibit D: Form of Bond

R-1

UNITED STATES OF AMERICA

COMMONWEALTH OF VIRGINIA

TOWN OF AMHERST, VIRGINIA

GENERAL OBLIGATION WATER REVENUE BOND
(RT. 60 WEST WATER LINE PROJECT), SERIES 2012

MATURITY DATE

DATED DATE

October __, 2012

REGISTERED OWNER: VIRGINIA RESOURCES AUTHORITY, AS ADMINISTRATOR
OF VIRGINIA WATER SUPPLY REVOLVING FUND

PRINCIPAL AMOUNT: SIX HUNDRED SEVEN THOUSAND DOLLARS (\$607,000)

The TOWN OF AMHERST, VIRGINIA (the "Town"), for value received, promises to pay, solely from the sources described below and pledged to the payment of this Bond, to the registered owner of this Bond or legal representative, the principal sum stated above, together with 3.0% Cost of Funds (representing 2.5% interest hereon and 0.5% administrative fees), together with Additional Payments, if any, all as set forth in the Financing Agreement (described below).

This Bond shall be payable as follows. On _____ 1, 2013, only the Cost of Funds hereon shall be due and payable. Beginning on _____ 1, 2014, and continuing semi-annually thereafter on each _____ 1 and _____ 1 for the term hereof, equal installments of the principal of and Cost of Funds hereon shall be payable each in the amount of \$_____, with the final installment hereof in the amount of \$_____ being due and payable on _____ 1, 204__, when, if not sooner paid, all amounts due hereunder and under the Financing Agreement (defined below) shall be due and payable in full, upon presentation and surrender of this Bond at the office of the Town Treasurer, who is appointed as Registrar.

Installments shall be payable in lawful money of the United States of America by check or draft (or other credit transfer) mailed or otherwise sent to the registered owner of this Bond at its address as it appears on the registration books of the Registrar, except that the final installment shall be payable at the office of the Registrar upon presentation and surrender of this Bond. If any installment hereunder is not paid within ten (10) days of its due date, the Town agrees to pay to the registered owner on demand a late payment charge in an amount equal to five percent (5.0%) of the overdue installment, as well as any amount(s) due under the Financing Agreement, dated as of October 1, 2012 (the "Financing Agreement"), between the Town and Virginia Resources Authority ("VRA"), as Administrator of Virginia Water Supply Revolving Fund (the "Fund"). Such late payment charge is further described in the Financing Agreement in Section 6.1 thereof and shall be

due and payable by the Town on demand by VRA, as Administrator of the Fund. VRA, as Administrator of the Fund, shall deliver to the Town a certificate as to the amount of such late payment charge due hereunder setting forth in reasonable detail the basis for the late payment charge and the manner of calculation thereof. The certificate shall be conclusive (absent manifest error) as to the amount of late payment charge set forth therein.

In addition, pursuant to Section 6.2 of the Financing Agreement, the Town shall pay certain Additional Payments (as further described in the Financing Agreement) on the demand and at the direction of VRA, as Administrator of the Fund. Specific reference is hereby made to such provision set forth in the Financing Agreement for the terms and conditions under which Additional Payments, if any, shall be due and payable hereunder by the Town.

The issuance of this Bond has been duly authorized by the Town Council (the "Council") of the Town by a Resolution duly adopted on October 10, 2012, after the holding of a duly noticed public hearing therefor on September 12, 2012 (the "Authorizing Resolution"), among other official actions in accordance with law. The Town shall use the proceeds of the Bond, together with other monies lawfully available to the Town (as described below) to pay capital costs to replace, construct and equip the Rt. 60 West water transmission line, including the acquisition, construction, installation and equipping of related water system facilities thereto (collectively, the "Project").

This Bond shall be a taxable general obligation of the Town for the payment of principal of and Cost of Funds on which its full faith and credit shall be irrevocably pledged and shall be payable from *ad valorem* taxes without limitation of rate or amount. In addition, to secure the payment and performance of the Town's obligations hereunder, the Town hereby pledges all of the Town's right, title and interest to the revenues and receipts (the "Revenues") received by the Town from the water system (the "System"), subject to the Town's right to use the Revenues for the payment of the operation and maintenance expenses of the System. The pledge of the Revenues by the Town to secure the Bond shall be valid and binding from and after the date of issuance and delivery of this Bond. The Revenues, as received by the Town, shall be immediately subject to the lien of this pledge without any physical delivery of them or further act. The lien of the pledge of the Revenues to secure the payment and performance of the Town's obligations under this Bond shall have priority over all subsequent obligations and liabilities of the Town, and shall be valid and binding against all parties having claims of any kind against the Town regardless of whether such parties have notice thereof.

This Bond is issued pursuant to the terms of the Authorizing Resolution, the Financing Agreement, the Constitution and statutes of the Commonwealth of Virginia, including the Public Finance Act of 1991, Chapter 26, Title 15.2 of the Code of Virginia of 1950, as amended, and the Town Charter. The obligations of the Town under this Bond shall terminate when all amounts due and to become due pursuant to this Bond and the Financing Agreement have been paid in full.

Capitalized terms not otherwise defined in this Bond shall be assigned the meaning as set forth in the Authorizing Resolution.

Pursuant to the Authorizing Resolution, among other documents, the Town has agreed, confirmed and accepted that (i) an early termination of the Funding Agreement (pursuant to Section 5.3(b) and (c) thereof), or (ii) a failure of the Town to comply with any of the requirements relating to the Project and the use and application of funds as contemplated under the Commitment Letter, as amended, shall constitute an Event of Default under the Financing Agreement.

Transfer of this Bond may 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 the exercise of all other rights and powers of the owner.

No notation is required to be made on this Bond of the payment of any principal on normal semi-annual payment dates, as set forth above. **HENCE, THE FACE AMOUNT OF THIS BOND MAY EXCEED THE PRINCIPAL SUM REMAINING OUTSTANDING AND DUE HEREUNDER.**

At its option and after giving at least ten (10) days' written notice to VRA, as Administrator of the Fund, the Town may prepay this Bond at any time, in whole or in part and without penalty. Such written notice shall specify the date on which the Town will make such prepayment and whether this Bond will be prepaid in full or in part, and if in part, the principal amount to be prepaid. Any such partial prepayment shall be applied against the principal amount outstanding under this Bond but shall not postpone the due date of any subsequent payment on this Bond, or change the amount of such installment, unless the Town and VRA, as Administrator of the Fund, agree otherwise in writing.

It is hereby certified and recited that all acts, conditions and things required by the Constitution and statutes of the Commonwealth of Virginia and the Town Charter to happen, exist or be performed precedent to the issuance of this Bond have happened, exist or been performed in due time, form and manner as so required, and that the indebtedness evidenced by this Bond is within every debt and other limit prescribed by the Constitution and statutes of the Commonwealth of Virginia.

IN WITNESS WHEREOF, the Council of the Town of Amherst, Virginia, has caused this Bond to be signed by the Mayor, the seal of the Town to be affixed and attested by the signature of the Clerk of Town Council, and this Bond to be dated the Dated Date set forth above.

[Seal]

TOWN OF AMHERST, VIRGINIA

By: _____

Specimen
Mayor
Town of Amherst, Virginia

ATTEST:

Town Manager/ Clerk of Town Council
Town of Amherst, Virginia