

6-11-02 Minutes: Bond Resolution

**RESOLUTION AUTHORIZING THE ISSUANCE
AND SALE OF A \$1,498,900 GENERAL
OBLIGATION PUBLIC IMPROVEMENT
REFUNDING BOND, SERIES OF 2002, OF THE
CITY OF BEDFORD, VIRGINIA, PROVIDING FOR
THE FORM, DETAILS AND PAYMENT THEREOF,
AND PROVIDING FOR THE REFUNDING OF
CERTAIN GENERAL OBLIGATION PUBLIC
IMPROVEMENT BONDS OF THE CITY**

WHEREAS, on April 2, 1987, the City of Bedford, Virginia (the "City"), issued its \$3,400,000 General Obligation School Bonds, Series 1987 (the "1987 Bonds"); and

WHEREAS, on July 7, 1993, the City issued its \$1,750,000 General Obligation Public Improvement Bonds, Series 1993 (the "1993 Bonds"); and

WHEREAS, the City can effect considerable savings by issuing its general obligation public improvement refunding bonds to (a) refund all or a portion of (i) the outstanding 1987 Bonds maturing on April 1 in the years 2003 through 2007 in the aggregate principal amount of \$850,000 (the "Refunded 1987 Bonds"), and (ii) the outstanding 1993 Bonds maturing on August 1 in the years 2002 through 2008 in the aggregate principal amount of \$960,000 (the "Refunded 1993 Bonds" and, together with the Refunded 1987 Bonds, the "Refunded Bonds"), and (b) pay costs of refunding the Refunded Bonds and the costs of issuing refunding bonds; and

WHEREAS, the City's administration and a representative of Davenport & Company LLC, the City's financial advisor (the "Financial Advisor"), have recommended to the Council of the City (the "Council") that the City issue and sell a single issue of general obligation public improvement refunding bonds through a private placement; and

WHEREAS, the City's administration, in collaboration with the Financial Advisor, has solicited proposals for the private placement of such bonds with a bank or other financial institution and received five such proposals; and;

WHEREAS, the City's administration, in collaboration with the Financial Advisor, have recommended to the Council that the City accept the proposal of Wachovia Bank, National Association (the "Bank"), a copy of which is attached hereto as Exhibit A (the "Proposal");

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BEDFORD,
VIRGINIA:**

1. Issuance of Bonds. Pursuant to the Constitution and statutes of the Commonwealth of Virginia, including the City Charter and the Public Finance Act of 1991, there shall be issued and sold a general obligation public improvement refunding bond of the City in the principal amount of \$1,498,900 (the "Bond") to provide funds to refund the Refunded Bonds, including funds to pay principal of and premium and interest on the Refunded Bonds until their earliest redemption date and to pay costs incurred in connection with such refunding and a portion of the costs of issuing the Bond. The Bond shall be sold to the Bank pursuant to the terms of this Resolution and the Proposal.

2. Bond Details. The Bond shall be in the form of a single, typewritten bond, designated "General Obligation Public Improvement Refunding Bond, Series of 2002," shall be in registered form, shall be dated the date of its delivery and shall be numbered R-1. The Bond shall bear interest on the unpaid principal at the rate of 3.58% per year, calculated on the basis of a 360-day year of twelve 30-day months, payable semiannually on April 1 and October 1, commencing October 1, 2002. Principal of the Bond shall mature on April 1, 2009, and be payable in annual installments on April 1 of each year, commencing April 1, 2003, in amounts as determined by the City Manager.

Principal and interest shall be payable by the Registrar (as hereinafter defined) by check or draft mailed to the registered owners at their addresses as they appear on the registration books kept by the Registrar on the last Business Day (as hereinafter defined) of the month preceding each interest payment date. "Business Day" shall mean a day on which banking business is transacted, but not including a Saturday, Sunday or legal holiday, or any other day on which banking institutions are authorized by law to close in the Commonwealth of Virginia. Principal and interest shall be payable in lawful money of the United States of America.

3. Prepayment Provisions. The Bond is subject to redemption prior to maturity, at the option of the City, in whole or in part at any time upon payment of the 100% of the principal amount of the Bond to be prepaid plus interest accrued to the dated fixed for prepayment.

4. Execution and Form of Bond. The Bond shall be signed by the Mayor or Vice Mayor and the City's seal shall be affixed thereon and attested by the Clerk or Deputy Clerk of Council. The Bond shall be issued as a typewritten bond in substantially the form of Exhibit B attached hereto, with such completions, omissions, insertions and changes not inconsistent with this Resolution as may be approved by the Mayor or Vice Mayor, whose approval shall be evidenced conclusively by the execution and delivery of the Bond.

5. Pledge of Full Faith and Credit. The full faith and credit of the City are irrevocably pledged for the payment of principal of and interest on the Bond. Unless other funds are lawfully available and appropriated for timely payment of the Bond, the Council shall levy and collect an annual ad valorem tax, over and above all other taxes authorized or limited by law and without limitation as to rate or amount, on all locally

taxable property in the City sufficient to pay when due the principal of and interest on the Bond.

6. Registration, Transfer and Owners of Bond. The Bond shall be issued in registered form without coupons, payable to the registered holders or registered assigns. The City Treasurer is hereby appointed paying agent and registrar for the Bond (the "Registrar"). The City may in its discretion appoint at any time a qualified bank or trust company as successor Registrar. The Registrar shall maintain registration books for the registration and registration of transfers of Bond. Upon presentation and surrender of the Bond at the office of the Registrar, together with an assignment duly executed by the registered owner or his duly authorized attorney or legal representative in such form as shall be satisfactory to the Registrar, the City shall execute and deliver in exchange, a new Bond or Bonds having an equal aggregate principal amount, in authorized denominations, of the same form and maturity, bearing interest at the same rate, and registered in names as requested by the then registered owner or his duly authorized attorney or legal representative. Any such exchange shall be at the expense of the City, except that the Registrar may charge the person requesting such exchange the amount of any tax or other governmental charge required to be paid with respect thereto.

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, except that interest payments shall be made to the person shown as owner on the registration books on the last Business Day of the month preceding each interest payment date.

7. Preparation and Delivery of Bond. The officers of the City are authorized and directed to take all proper steps to have the Bond prepared and executed in accordance with its terms and to deliver the Bond to the purchaser upon payment therefor.

8. Redemption of Refunded Bonds. The City Manager is authorized and directed to determine which of the Refunded Bonds, if any, shall be refunded. The Escrow Agreement (as hereinafter defined) shall provide for notice of redemption to be given in accordance with the resolutions providing for the issuance of the Refunded Bonds to the registered owners of the Refunded Bonds.

9. Escrow Deposit Agreement. The City Manager and the City Treasurer, or either of them, are authorized and directed to execute an escrow deposit agreement (the "Escrow Agreement") between the City and SunTrust Bank (the "Escrow Agent"). The Escrow Agreement shall be in the form approved by the City Manager, in collaboration with the City Attorney and the City's bond counsel, the execution thereof by the City Manager or the City Treasurer to constitute conclusive evidence of approval of the Escrow Agreement. The Escrow Agreement shall provide for the irrevocable deposit of a portion of the Bond proceeds (the "Refunding Portion") in an escrow fund which shall be sufficient, when invested in noncallable, direct obligations of the United States Government (the "Government Obligations"), to provide for payment of principal of and premium, if any, and interest on the Refunded Bonds; provided, however, that such Bond

proceeds shall be invested in such manner that the Bond will not be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and regulations issued pursuant thereto (the "Code"). The Escrow Agent is authorized and directed to execute an initial subscription form for the purchase of the Government Obligations.

10. Deposit of Bond Proceeds. The City Treasurer is authorized and directed (a) to provide for the delivery of the Refunding Portion to the Escrow Agent for deposit in the escrow fund established by the Escrow Agreement, in an amount that will be sufficient, together with the interest thereon when invested as provided in the Escrow Agreement, (i) to pay when due the interest on the Refunded Bonds to the first date on which they may be redeemed at the option of the City and (ii) to pay upon the earlier of maturity or redemption the principal of the Refunded Bonds, plus any interest accrued and unpaid to such redemption date, plus the applicable redemption premium, and (b) to provide for the deposit of the remaining proceeds of the Bond in a special account of the City to be used to pay the costs of refunding the Refunded Bonds and issuing the Bond. The City Treasurer is further authorized and directed to take all such further action as may be necessary or desirable in connection with the payment and refunding of the Refunded Bonds.

11. Arbitrage Covenants. (a) The City represents that there have not been issued, and covenants that there will not be issued, any obligations that will be treated as part of the same issue of obligations as the Bond within the meaning of Treasury Regulations Section 1.150-1(c).

(b) The City covenants that it shall not take or omit to take any action the taking or omission of which will cause the Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code, or otherwise cause interest on the Bond to be includable in the gross income of the registered owners thereof under existing law. Without limiting the generality of the foregoing, the City shall comply with any provision of law which may require the City at any time to rebate to the United States any part of the earnings derived from the investment of the gross proceeds of the Bond, unless the City receives an opinion of nationally recognized bond counsel that such compliance is not required to prevent interest on the Bond from being includable in the gross income of the registered owners thereof under existing law. The City shall pay any such required rebate from its legally available funds.

12. Non-Arbitrage Certificate and Elections. Such officers of the City as may be requested are authorized and directed to execute an appropriate certificate setting forth the expected use and investment of the proceeds of the Bond in order to show that such expected use and investment will not violate the provisions of Section 148 of the Code, and any elections such officers deem desirable regarding rebate of earnings to the United States for purposes of complying with Section 148 of the Code. Such certificate and elections shall be in such form as may be requested by bond counsel for the City.

13. Limitation on Private Use. The City covenants that it shall not permit the proceeds of the Bond or the facilities refinanced with the proceeds of the Bond to be used in any manner that would result in (a) 5% or more of such proceeds or the facilities refinanced with such proceeds being used in a trade or business carried on by any person other than a governmental unit, as provided in Section 141(b) of the Code, (b) 5% or more of such proceeds or the facilities refinanced with such proceeds being used with respect to any output facility (other than a facility for the furnishing of water), within the meaning of Section 141(b)(4) of the Code, or (c) 5% or more of such proceeds being used directly or indirectly to make or finance loans to any persons other than a governmental unit, as provided in Section 141(c) of the Code; provided, however, that if the City receives an opinion of nationally recognized bond counsel that any such covenants need not be complied with to prevent the interest on the Bond from being includable in the gross income for federal income tax purposes of the registered owners thereof under existing law, the City need not comply with such covenants.

14. Qualified Tax-Exempt Obligations. The Bond shall be deemed designated as a "qualified tax-exempt obligation" for the purpose of Section 265(b)(3) of the Code pursuant to the provisions of resolutions adopted by the Council on February 10, 1987, and June 8, 1993, providing for the issuance of the 1987 Bonds and the 1993 Bonds, respectively, and Section 265(b)(3)(D)(ii) of the Code.

15. Ongoing Financial Information. For so long as the Bond is outstanding, the City shall provide to the Bank annually a copy of its audited financial statements and approved budget.

15. Other Actions. All other actions of officers of the City in conformity with the purposes and intent of this Resolution and in furtherance of the issuance and sale of the Bond are approved and confirmed. The officers of the City are authorized and directed to execute and deliver all certificates and instruments and to take all such further action as may be considered necessary or desirable in connection with the issuance, sale and delivery of the Bond.

16. Repeal of Conflicting Resolutions. All resolutions or parts of resolutions in conflict herewith are repealed.

1. **Effective Date.** This Resolution shall take effect immediately.
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REGISTERED
No. R-1

REGISTERED
June __, 2002

UNITED STATES OF AMERICA
COMMONWEALTH OF VIRGINIA
CITY OF BEDFORD

General Obligation Public Improvement Refunding Bond

Series of 2002

The City of Bedford, Virginia (the "City"), for value received, promises to pay, to WACHOVIA BANK NATIONAL ASSOCIATION, or registered assigns or legal representative, the principal sum of **ONE MILLION FOUR HUNDRED NINETY-EIGHT THOUSAND NINE HUNDRED DOLLARS (\$1,498,900.00)**, together with interest on the unpaid principal at the rate of 3.58% per year, calculated on the basis of a 360-day year of twelve 30-day months. Interest shall be payable semiannually on each April 1 and October 1, beginning October 1, 2002. Principal of this bond shall be payable in annual installments on April 1 of each year in the amounts set forth below:

2003	\$	2007	\$
2004		2008	
2005		2009	
2006			

If the date on which any payment is due with respect to this bond is not a Business Day (as hereinafter defined), the payment shall be made on the next succeeding Business Day. "Business Day" shall mean a day on which banking business is transacted, but not including a Saturday, Sunday or legal holiday, or any other day on which banking institutions are authorized by law to close in the Commonwealth of Virginia. Principal and interest are payable in lawful money of the United States of America by the City Treasurer, who has been appointed paying agent and registrar for the bonds (the "Registrar").

This bond is issued pursuant to the Constitution and statutes of the Commonwealth of Virginia, including the City Charter and the Public Finance Act of 1991. This bond has been authorized and issued pursuant to a resolution adopted by the Council on June 11, 2002, to provide funds to refund (a) \$_____ principal amount of the City's \$3,400,000 General Obligation School Bonds, Series 1987, maturing on April 1, ____ through ____, and (b) \$_____ principal amount of the City's \$1,750,000 General

Obligation Public Improvement Bonds, Series 1993, maturing on August 1, ____ through ____.

This bond is subject to redemption, at the option of the City, in whole or in part at any time upon payment of 100% of the principal amount to be redeemed plus interest accrued to the date fixed for prepayment.

[to be refined -- (1) Upon the loss of bank qualified status or (2) upon an event of taxability with respect to this Bond resulting in the inclusion of interest on this Bond in the gross income of the Bank for federal income tax purposes, the interest rate will be adjusted to that level necessary to ensure that the anticipated after tax yield on this Bond is equal to the anticipated after tax yield on this Bond contemplated by the Bank at the time of the purchase of this Bond. The City will also pay to the Bank any resulting tax penalties.]

The full faith and credit of the City are irrevocably pledged for the payment of principal of and interest on this bond.

The City has designated this bond as a "qualified tax-exempt obligation" for the purpose of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

The Registrar shall treat the registered owner of this bond as the person exclusively entitled to payment of principal of and interest on this bond and the exercise of all rights and powers of the owner, except that interest payments shall be made to the person shown as the owner on the registration books on the last Business Day of the month preceding each interest payment date.

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, and, together with all other indebtedness of the City, is within every debt and other limit prescribed by the Constitution and statutes of the Commonwealth of Virginia.

IN WITNESS WHEREOF, the City of Bedford, Virginia, has caused this bond to be to be signed by its Mayor or Vice Manager, its seal to be affixed hereto and attested by the Clerk of the Council, and this bond to be dated June __, 2002.

(SEAL)

Mayor, City of Bedford, Virginia

(ATTEST)

Clerk of the Council, City of Bedford,

Virginia

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sell(s), assign(s) and transfer(s) unto

(Please print or type name and address, including zip code, of Transferee)

PLEASE INSERT SOCIAL SECURITY OR OTHER

IDENTIFYING NUMBER OF TRANSFEREE:

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the within bond and all rights thereunder, hereby irrevocably constituting and appointing _____, Attorney, to transfer said bond on the books kept for the registration thereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed

NOTICE: Signature(s) must be guaranteed (Signature of Registered Owner)

by an Eligible Guarantor Institution such as

a Commercial Bank, Trust Company,

NOTICE: The signature above must

Securities Broker/Dealer, Credit Union, or correspond with the name of the registered

Savings Association who is a member of a owner as it appears on the front of this bond

medallion program approved by The

in every particular, without alteration or

Securities Transfer Association, Inc.

enlargement or any change whatsoever.

TRANSFER OF BOND

Transfer of this bond may be registered by the registered owner or its duly authorized attorney upon presentation hereof to the Registrar who shall make note of such transfer in books kept by the Registrar 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>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____