

## Board Meeting Agenda Item

### **AMHERST COUNTY SERVICE AUTHORITY**

**Meeting Date:** October 3, 2017

**Item No:** VIII.

**Topic:** Refinancing 2012 Bonds

**Board Action:** The Board is being asked to approve Resolution 2017-A-0004-R, authorizing issuance of the refunding bond, and direct ACSA staff, the financial consultant, and bond counsel to complete and finalize the paperwork for the October 17, 2017 closing.

**Attachment:**

- 1) Resolution 2017-A-0004-R
- 2) Exhibit A to Resolution – Bond Form (draft)
- 3) Bank Agreement (draft)

The two drafts will be finalized before the 10/17/2017 closing.

**Summary:** At the September 5, 2017 ACSA Board meeting, financial consultant R. T. Taylor, Davenport & Co., presented options to either re-fund the bonds with Virginia Resources Authority or refinance the bonds with a bank loan. Davenport solicited and received two proposals for loans. Mr. Taylor recommended the BB&T bank refinancing, which option was approved by the Board. Mr. Taylor said he would return to the October 3 Board meeting for approval by the Board of the necessary resolution for the October 17, 2017 closing of the refinancing of the bonds.

**Recommend:** That the ACSA Board approve Resolution 2017-A-0004-R and direct ACSA staff, the financial consultant, and bond counsel to complete and finalize the paperwork for the October 17, 2017 closing.

Robert A. Hopkins, P.E.  
Director of Public Utilities



Amherst County Service Authority Board  
County Resolution No. 2017-A-0004-R

**For consideration on October 3, 2017**

**A RESOLUTION, NO. 2017-A-0004-R**

A resolution, requesting the issuance, and providing for the form, details, and payment of a water and sewer system revenue refunding bond, series 2017, in a principal amount not to exceed \$6,200,000.

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Approved as to form by the County Attorney

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**BE IT RESOLVED BY THE AMHERST COUNTY SERVICE AUTHORITY BOARD:**

**I. That the Amherst County Service Authority Board hereby requests the issuance, and providing for the form, details, and payment of a water and sewer system revenue refunding bond, series 2017, in a principal amount not to exceed \$6,200,000, as follows:**

**WHEREAS**, the Amherst County Service Authority (**the "Authority"**) presently owns, operates and maintains water and sewer and sewage treatment facilities (**together, the "System"**) to provide for the water and sewer needs of the residents and businesses of Amherst County, Virginia (**the "County"**) pursuant to the Virginia Water and Waste Authorities Act (**the "Act"**); and

**WHEREAS**, the Authority has previously issued its \$9,915,000 Water and Sewer Revenue Refunding Bond, Series 2012 (**the "Series 2012 Bond"**) pursuant to a Local Bond Sale and Financing Agreement dated as of April 30, 2012 between the Virginia Resources Authority (**"VRA"**) and the Authority to provide funds used (i) to refund the Authority's Water and Sewer Revenue Bond, Series 2009 issued on September 29, 2009 in the original aggregate principal amount of \$8,044,000 (**the "Series 2009 Bond"**), (ii) refund the Authority's Water and Sewer Revenue Refunding Bond, Series 2010 issued on June 23, 2010 in the original aggregate principal amount of \$3,582,000, and (iii) to pay certain costs of issuance related to the Series 2012 Bond; and

**WHEREAS**, the Authority has directed Davenport & Company LLC (**the "Financial Advisor"**) to prepare a Request for Proposal (**the "RFP"**) to obtain financing proposals to refund and refinance all or a portion of the Series 2012 Bond to achieve debt service savings for the Authority; and

**WHEREAS**, the Financial Advisor has received responses to the RFP that reflect attractive debt service savings and, after reviewing the responses, the Financial Advisor has recommended that the Authority select the proposal dated August 29, 2017 (**the "Bank Proposal"**) from Branch Banking and Trust Company (**the "Bank"**); and

**WHEREAS**, the Authority desires to issue, offer and sell its water and sewer system revenue refunding bond in the maximum principal amount of \$6,200,000 (**the "Bond"**) to finance the costs of the refunding, defeasance and redemption of some or all of the portion of the Series 2012 Bond (**the "Refunded Bond"**) that refunded the Series 2009 Bond and the costs of issuing the Bond; and

**WHEREAS**, the Bond shall be secured by the Revenues (as defined in the Financing Agreement, defined below) on a parity basis with any Parity Bonds (as defined in the Financing Agreement) that the Authority may issue in accordance with the terms of the Financing Agreement; and

**WHEREAS**, there has been presented to this meeting a proposed financing arrangement to provide for the advance refunding, defeasance and redemption of the Refunded Bond and pay certain costs of issuance of the Bond, with the Bond to bear interest at a fixed rate through its maturity date, and with other terms as more particularly set forth in the Bank Proposal; and

**WHEREAS**, there has been presented to this meeting a draft of the Financing Agreement dated as of October 1, 2017 (**"Financing Agreement"**) between the Authority and the Bank, pursuant to which the Bond is to be issued, which the Authority proposes to execute, a copy of which shall be filed with the records of the Authority.

The form of the Bond has also been presented to this meeting.

**NOW, THEREFORE, BE IT RESOLVED BY THE AMHERST COUNTY  
SERVICE AUTHORITY BOARD:**

1. The Authority finds and determines that the refunding, defeasance and redemption of the Refunded Bond will be consistent with the purposes of the Act.
2. The Authority hereby authorizes the issuance of the Bond pursuant to the terms and conditions of the Financing Agreement, the Escrow Agreement (as defined below) and the Bank Proposal. The Authority shall use proceeds from the issuance of the Bond to advance refund, defease and redeem the Refunded Bond by funding an escrow account to be invested by the Escrow Agent for defeasance and redemption of the Refunded Bond, in accordance with the Escrow Agreement, and to pay costs of issuance of the Bond. The Bond shall be issued in the original principal amount not to exceed \$6,200,000, shall bear interest at an the annual rate of 2.89% , shall be issued as a fully registered bond, without coupons, shall be payable in annual installments of principal and semi-annual installments of interest with a final maturity date no later than November 1, 2037, and shall otherwise be in accordance with the terms of the Financing Agreement, the Escrow Agreement, the Bank Proposal and form of Bond approved at this meeting.
3. The Bond is secured by a pledge of Revenues, but in all events the pledge and granting of a security interest in the Revenues toward payment of the Bond shall be on a parity basis with any Parity Bonds that are existing or that the Authority may issue in the future. Such Parity Bonds shall be secured equally and ratably with the Bond, without preference, priority or distinction, provided, however, that any Parity Bond may have other security pledged to its payment and not to the payment of other

Parity Bonds.

4. All costs and expenses in connection with the undertaking toward issuance of the Bond, including the Authority's expenses and the fees and expenses of the Authority's attorney, financial advisor, Bond Counsel, the Bank, the Bank's counsel, the Escrow Agent, the Verification Agent, VRA and VRA's counsel shall be paid from the proceeds of the Bond or other funds of the Authority.
5. The Chairman of the Authority, the Vice Chairman of the Authority, the Authority Director, Sands Anderson PC as Bond Counsel to the Authority, the Financial Advisor and all other appropriate officers, representatives, agents and employees of the Authority shall take all actions and execute all certificates and documents as shall be necessary to carry out the provisions of this Resolution. The Chairman or Vice Chairman of the Authority, or either of them, is hereby authorized and directed to execute the Financing Agreement, which shall be in substantially the form submitted to this meeting, which is approved, with such completions, omissions, insertions and changes not inconsistent with this Resolution 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.
6. The Chairman and Vice Chairman of the Authority, either of whom may act, are hereby authorized and directed to execute the Bond by manual or facsimile signature, and the Secretary and Director of the Authority, either of whom may act, are hereby authorized to affix the seal of the Authority to or print a facsimile thereof on the Bond and attest the same by manual or facsimile signature, and the officers of the Authority are hereby authorized and directed to deliver the Bond to the Bank upon terms provided in the Financing Agreement. The Bond shall be in substantially the form as Exhibit A attached hereto, with such variations, insertions or deletions as may be approved by the officer executing the Bond on the Authority's behalf. The Secretary of the Authority is hereby appointed as the Registrar for the Bond.
7. The Chairman and Vice Chairman of the Authority, either of whom may act, are hereby authorized and directed to execute an escrow agreement in connection with the Bond (**the "Escrow Agreement"**) among the Authority, VRA and U.S. Bank National Association (**the "Escrow Agent"**). The Escrow Agreement shall be in the form approved by the Chairman or Vice Chairman of the Authority, or either of them, in collaboration with the Authority's bond counsel, the execution thereof 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 in an escrow account which shall be sufficient, when invested in noncallable, direct obligations of the United States Government (**the "Government Obligations"**), or otherwise, to provide for the payment of principal of and premium, if any, and interest on the Refunded Bond; provided, however, that such Bond proceeds shall be invested in such manner that the VRA Bonds will not be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (**the "Code"**). The Escrow Agent is authorized and directed to execute an initial and final subscription form for the purchase of the Government Obligations.
8. The officers of the Authority are hereby authorized and directed to execute, deliver and file all certificates and documents and to take all such further action as they may consider necessary or desirable in their sole and absolute discretion in connection

with the prepayment, refunding and redemption in full of the Refunded Bond and the issuance, sale and delivery of the Bond, and any such action previously taken is hereby approved, ratified and confirmed. Such authorization includes but is not limited to (a) execution and delivery of a certificate setting forth the expected use and investment of the proceeds of the Bond to show that such expected use and investment will not violate the provisions of Section 148 of the Code, and regulations thereunder, applicable to "arbitrage bonds," (b) making any elections that such officers deem desirable regarding any provision requiring rebate to the United States of "arbitrage profits" earned on investment of proceeds of the Bond, (c) providing for the Authority to pay any such rebate amount, (d) filing Internal Revenue Service Form 8038-G, (e) procuring the issuance of a verification report from a verification agent (**the "Verification Agent"**) in relation to advance refunding the Refunded Bond and (f) the execution of such instruments to accomplish the refunding, defeasance and redemption in full of the Refunded Bond including those required by the Escrow Agent to fund the escrow account created by the Escrow Agreement in connection with the defeasance of the Refunded Bond, and to take all such further action as they may consider necessary or desirable in connection with the issuance and sale of the Bond and the refunding, defeasance and redemption of the Refunded Bond.

9. Any authorization herein to execute a document shall include authorization to deliver it to the other parties thereto and to record such document where appropriate.
10. The Authority designates the Bond as "qualified tax-exempt obligations" for the purpose of Section 265(b)(3) of the Code and represents and covenants as follows:
  - (a) The Authority will in no event designate more than \$10,000,000 of obligations as tax-exempt obligations in calendar year 2017 (excluding any bonds deemed designated pursuant to the provisions of Section 265(b)(3)(D)(ii) of the Code), including the Bond, for the purpose of such Section 265(b)(3);
  - (b) The Authority has no "subordinate entities" within the meaning of such Section 265(b)(3) or entities that issue tax-exempt obligations on behalf of the Authority and the Authority has not issued, in the aggregate, more than \$10,000,000 of tax-exempt obligations in calendar year 2017 (not including "private activity bonds" within the meaning of Code Section 141, other than "qualified 501(c)(3) bonds" within the meaning of Section 145 of the Code and further not including an obligation issued to refund, other than advance refund within the meaning of Code Section 149(d)(5), any obligation to the extent the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation);
  - (c) Barring circumstances unforeseen as of the date of delivery of the Bond, the Authority will not issue tax-exempt obligations if the issuance of such tax-exempt obligations would result in the Authority having issued a total of more than \$10,000,000 of tax-exempt obligations in calendar year 2017 (not including "private activity bonds" within the meaning of Code Section 141, other than "qualified 501(c)(3) bonds" within the meaning of Section 145 of the Code and further not including an obligation issued to refund, other than advance refund within the meaning of Code Section 149(d)(5), any obligation to the extent the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation);

- (d) It has no reason to believe that the Authority will issue tax-exempt obligations in calendar year 2017 in an aggregate amount that will exceed such \$10,000,000 limit.
11. The Authority will not take or omit to take any action the talking or omission of which will cause the Bond to be "arbitrage bonds" within the meaning of Section 148 of the Code or "private activity bonds" within the meaning of Section 141 of the Code, or otherwise cause interest on the Bond to be includable in gross income for federal income tax purposes. Without limiting the generality of the foregoing, the Authority will comply with any Code provision that may require the Authority at any time to pay to the United States any part of the earnings derived from the investment of the proceeds of the Bond. The Authority shall pay from its legally available funds any amount required to be rebated to the United States of America pursuant to the Code.
12. Any authorization herein to execute a document shall include authorization to deliver it to the other parties thereto and to record such document where appropriate.
13. The Post-Issuance Compliance Procedures for Tax Advantaged Governmental Bonds are approved in substantially the form submitted to this meeting, with such completions, omission, insertions, changes and revisions as may be approved by the officer executing such document in his or her sole discretion.
14. All other acts of the officers, directors, agents and representatives of the Authority that are in conformity with the purposes and intent of this resolution and in furtherance of the issuance and sale of the Bond, including issuance of a request for financing proposals to banks, whether such acts occurred before or after the adoption of this Resolution, are hereby approved and ratified.
15. In accordance with the requirements of Section 15.2-5126 of the Code of Virginia, a certified copy of this Resolution shall be filed with the clerk of the circuit court having jurisdiction over any of the political subdivisions that are members of the Authority.

**II. That this resolution shall be in force and effect upon adoption.**

Adopted this 3rd day of October, 2017.

\_\_\_\_\_  
Claudia D. Tucker, Chair  
Amherst County Service Authority Board

**ATTEST:**

\_\_\_\_\_  
Dean C. Rodgers, Secretary  
Amherst County Service Authority Board

**Ayes** \_\_\_\_\_ **Nays** \_\_\_\_\_ **Abstentions** \_\_\_\_\_  
ADOPTED THIS 3<sup>rd</sup> DAY OF OCTOBER, 2017.

The members of the Authority Board voted as follows on the adoption of this Bond Resolution:

<u>Ayes</u>	<u>Nays</u>	<u>Absent</u>	<u>Abstentions</u>
_____	_____	_____	_____

CERTIFICATE

I, Dean C. Rodgers, the undersigned Secretary of the Amherst County Service Authority **(the “Authority”)**, hereby certify that attached hereto is a true and correct copy of a Resolution adopted by the Authority on October 3, 2017, which Resolution has not been amended, modified or repealed as of the date hereof.

\_\_\_\_\_  
Dean C. Rodgers, Secretary  
Amherst County Service Authority

SEAL

No. R-1

\$ \_\_\_\_\_

**UNITED STATES OF AMERICA  
COMMONWEALTH OF VIRGINIA  
AMHERST COUNTY SERVICE AUTHORITY**

**Water and Sewer System Revenue Refunding Bond, Series 2017**

The **AMHERST COUNTY SERVICE AUTHORITY**, a public body politic and corporate of the Commonwealth of Virginia (**the "Authority"**), for value received, hereby promises to pay, solely from the revenues hereinafter described and pledged to the payment thereof, to **BRANCH BANKING AND TRUST COMPANY**, Charlotte, North Carolina or registered assigns by check or draft mailed or delivered to, or in any manner credited to the account of, the registered owner hereof, solely from the sources hereinafter provided, the principal amount of

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_)

in annual installments in the amounts set forth in Schedule A attached hereto payable on November 1, 2018 and annually on November 1 thereafter to and including November 1, 2037, together with interest from the date of this Bond on the unpaid principal balance, payable semi-annually on May 1 and November 1, beginning May 1, 2018, at the rate of two and eighty nine hundredths percent (2.89%) per year, as set forth in Schedule A attached hereto and in accordance with the provisions of the Financing Agreement (as defined herein).

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 by the Registrar of the Bond. This Bond shall be registered as to principal and interest. Interest on this Bond will be computed on the basis of a year of 360 days and twelve 30-day months. The final installment of principal shall be payable upon presentation and surrender hereof at the office of the Registrar of the Bond.

This Bond has been authorized by a resolution adopted by the Authority on October 3, 2017, (**the "Resolution"**), and is issued pursuant to the Virginia Water and Waste Authorities Act (Chapter 51, Title 15.2, Code of Virginia, 1950, as amended) (**the "Act"**) and a Financing Agreement, dated as of October 1, 2017 between the Authority and the Bank (**the "Financing Agreement"**) to refund, defease and redeem a portion of the Authority's \$9,915,000 Water and Sewer Revenue Refunding Bond, Series 2012 (**the "Refunded Bond"**) issued pursuant to a Local Bond Sale and Financing Agreement dated as of April 30, 2012 between the Authority and Virginia Resources Authority (**the "2012 Financing Agreement"**) and to pay certain costs of issuance of this Bond. Copies of the Resolution and the Financing Agreement are on file at the offices of the Authority. Reference is hereby made to the Resolution and the Financing Agreement and any amendments thereto for the definitions and provisions, among others, describing the pledge and covenants securing this Bond, the nature and extent of the security, the terms and conditions upon which this Bond is issued, and the rights and obligations of the Authority and the rights of the Bondholder(s). Unless otherwise defined herein, words and terms defined in the Financing Agreement shall have the same meaning when used in this Bond.



Both principal of and interest on this Bond are payable solely from the Revenues derived from the ownership or operation of the System as provided in the Financing Agreement, and nothing herein or in the Resolution or Financing Agreement shall be deemed to create or constitute 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.

**THIS BOND IS A LIMITED OBLIGATION OF THE AUTHORITY AND IS PAYABLE SOLELY FROM CERTAIN REVENUES TO BE DERIVED FROM THE OWNERSHIP OR OPERATION OF THE AUTHORITY'S WATER AND WASTEWATER SYSTEM AS THE SAME MAY FROM TIME TO TIME EXIST, WHICH REVENUES HAVE BEEN PLEDGED PURSUANT TO THE BOND RESOLUTION AND THE FINANCING AGREEMENT TO SECURE THE PAYMENT THEREOF. NEITHER THE COMMONWEALTH OF VIRGINIA NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE AUTHORITY, SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF OR INTEREST ON THIS 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 IS PLEDGED TO THE PAYMENT OF PRINCIPAL OF OR INTEREST ON THIS BOND OR OTHER COSTS INCIDENT THERETO. THE AUTHORITY HAS NO TAXING POWER.**

Principal of this Bond may be prepaid at the option of the Authority, in whole at any time on or before November 1, 2017 upon payment of 101% of the outstanding principal amount plus interest accrued to the prepayment date, and in whole at any time after November 1, 2017 upon payment of 100% of the outstanding principal amount plus interest accrued to the prepayment date.

Parity Bonds (as defined in the Financing Agreement) secured equally and ratably with this Bond, without preference, priority or distinction with this Bond, may be issued from time to time under the conditions, limitations and restrictions set forth in the Financing Agreement and the 2012 Financing Agreement, to finance the acquisition or construction of improvements, extensions, additions and replacements to the System, or to refund this Bond or any Parity Bonds or for any or all of such purposes, provided, however, that any such Parity Bond may have other security pledged to its payment and not to the payment of one or more other Parity Bonds, all as provided in the Financing Agreement.

Transfer of this Bond may be registered upon books maintained for that purpose by the Registrar of the Bond. Prior to due presentment for registration of transfer the Registrar of the Bond 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.

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.

**IN WITNESS WHEREOF**, the Amherst County Service Authority, by its Board of Directors has caused this Bond to be signed by its Chairman and attested by the Secretary of the Authority Board of Directors, by their manual or facsimile signatures, and its seal to be impressed or imprinted hereon, and this Bond to be dated as set forth above.

\_\_\_\_\_  
Chairman, Amherst County  
Service Authority

**(SEAL)**

ATTEST:

\_\_\_\_\_  
Secretary, Amherst County  
Service Authority

#### **CERTIFICATE OF AUTHENTICATION**

This Bond is the Bond described in the within-mentioned Resolution.

**REGISTRAR**

\_\_\_\_\_  
Secretary, Amherst County Service Authority

**DATE OF AUTHENTICATION:**

October \_\_, 2017

**[FORM OF ASSIGNMENT]**

For value received, the undersigned hereby sells, assigns, and transfers unto

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Please insert social security number or other tax identification number of assignee:

[ \_\_\_\_\_ ]

Name and address of assignee, including zip code:

\_\_\_\_\_ the within-mentioned Bond and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney-in-fact, to transfer the same on the registration books thereof maintained in the office of the within-mentioned Registrar with the full power of substitution in the premises.

**DATED:** \_\_\_\_\_

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**NOTE:** The signature to this assignment must correspond with the name of the registered holder that is written on the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or trust company.

**SCHEDULE A**

**FINANCING AGREEMENT**

**BETWEEN**

**BRANCH BANKING AND TRUST COMPANY**

**AND**

**AMHERST COUNTY SERVICE AUTHORITY**

Dated as of October 1, 2017

*Relating to the Amherst County Service Authority*  
\$ \_\_\_\_\_ *Water and Sewer System Revenue Refunding Bond, Series 2017*

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## EXHIBITS

Exhibit A – Form of Bond  
Exhibit B – Opinion of Authority's Counsel  
Exhibit C - Existing Parity Bonds

## FINANCING AGREEMENT

**THIS FINANCING AGREEMENT** is dated as of this 1st day of October, 2017, between **BRANCH BANKING AND TRUST COMPANY**, Charlotte, North Carolina (**the "Bank"**), and **AMHERST COUNTY SERVICE AUTHORITY**, a public body politic and corporate of the Commonwealth of Virginia (**the "Authority"**).

Pursuant to the Virginia Water and Waste Authorities Act, Chapter 51, Title 15.2 of the Code of Virginia (1950), as amended (**the "Act"**), the County of Amherst, Virginia (**the "County"**) created the Authority as an authority under the Act.

The Authority intends to issue and sell to the Bank its water and sewer system revenue refunding bond, Series 2017, in the principal amount not to exceed \$6,200,000 (**the "Bond"**) to provide for the refunding, defeasance and redemption of the Refunded 2012 Bond (defined herein) and the costs of issuing the Bond.

In this Financing Agreement, the Authority and the Bank desire to set forth certain terms and conditions with respect to the issuance of the Bond by the Authority to the Bank and the purchase of the Bond by the Bank.

### **ARTICLE I** **DEFINITIONS**

**Section 1.1. Definitions.** The capitalized terms contained in this Agreement and not defined above shall have the meanings set forth below unless the context requires otherwise and any capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in the Act:

**"2012 Bond"** means the Authority's Water and Sewer System Revenue Refunding Bond, Series 2012, dated as of May 13, 2012 and sold to VRA.

**"2012A VRA Bonds"** means the Virginia Resources Authority Infrastructure and State Moral Obligation Revenue Bonds (Virginia Pooled Financing Program), Series 2012A and any bonds issued by VRA to refund the 2012A VRA Bonds in whole or in part.

**"Agreement"** or **"Financing Agreement"** means this Financing Agreement, together with any amendments or supplements hereto.

**"Authorized Representative"** means the Director of Public Utilities of the Authority and any member, official or employee of the Authority authorized by resolution, ordinance or other official act of the governing body of the Authority to perform the act or sign the document in question.

**"Bond"** means the Bond in substantially the form attached to this Financing Agreement as Exhibit A issued by the Authority to the Bank pursuant to this Agreement.

**"Bond Proceeds"** means the proceeds of the sale of the Bond to the Bank pursuant to this Agreement.

**"Bond Resolution"** means all resolutions adopted by the governing body of the Authority approving the transactions contemplated by and authorizing the execution and delivery of this Agreement and the execution, issuance and delivery of the Bond.

**"Closing Date"** means the date of the delivery of the Bond to the Bank.

**"Code"** means the Internal Revenue Code of 1986, as amended, and applicable regulations, procedures and rulings thereunder.

**"Consulting Engineer"** means (i) the Local Engineer or (ii) such other firm of independent consulting engineers experienced and of recognized standing in the field of water and sewer engineering and licensed as professional engineers in Virginia as the Authority may designate from time to time.

**"Default"** means an event or condition the occurrence of which would, with the lapse of time or the giving of notice or both, become an Event of Default

**"Escrow Agent"** means U.S. Bank National Association, Richmond, Virginia, or its successors serving in such capacity.

**"Escrow Agreement"** means the Escrow Agreement among the Authority, VRA and the Escrow Agent, dated as of October 1, 2017 providing for the defeasance and redemption of the Refunded 2012 Bond.

**"Event of Default"** shall have the meaning set forth in Section 11.1.

**"Existing Parity Bonds"** means the bonds or other obligations of the Authority listed under Existing Parity Bonds in Exhibit C.

**"Financial Advisor"** means Davenport & Company LLC or such other municipal advisor industry professional or professionals duly qualified to act in such capacity in accordance with applicable law and regulations.

**"Fiscal Year"** means the period of twelve months beginning on January 1 of one year and ending on December 31 of the same year or such other twelve-month period established by the Authority as its annual accounting period.

**"Local Engineer"** means any employee of the Authority licensed as a professional engineer in Virginia and with recognized standing in the field of water and sewer engineering.

**"Net Proceeds"** means the gross proceeds from any insurance recovery or condemnation award remaining after payment of attorneys' fees and expenses of the Authority and all other expenses incurred in the collection of such gross proceeds.

**"Net Revenues Available for Debt Service"** means the Revenues less amounts necessary to pay Operation and Maintenance Expenses.

**"Operation and Maintenance Expenses"** means the costs of operating and maintaining the System determined under generally accepted accounting principles, exclusive of (i) interest on any debt payable from Revenues, (ii) depreciation and other items not requiring the expenditure of cash, (iii) any amounts expended for capital replacements, repairs and maintenance not recurring either annually or biannually, depending on the customary practice of performing operation and maintenance, or reserves therefor, and (iv) reserves for administration, operation and maintenance occurring in the normal course of business.

**"Parity Bonds"** means the Bond and any of the Authority's bonds, notes, or other evidences of indebtedness secured by a pledge of Revenues, on parity with the lien of the pledge in Section 5.1 without preference, priority or distinction, including the Existing Parity Bonds listed on Exhibit C hereto provided, however, that any such Parity Bond may have other security pledged to its payment and not pledged to the payment of one or more other Parity Bonds.

**"Qualified Independent Consultant"** means an independent professional consultant having the skill and experience necessary to provide the particular certificate, report or approval require by the provision of this Agreement in which such requirement appears, including without limitation a Consulting Engineer (other than a Local Engineer), and an independent certified public accountant or firm of independent certified public accountants.

**"Refunded 2012 Bond"** shall mean the portion of the 2012 Bond being refunded from proceeds of the Bond and defeased pursuant to the Escrow Agreement.

**"Revenues"** means (i) all rates, fees, rentals, charges, and other income properly allocable to the System under generally accepted accounting principles or resulting from the Authority's ownership or operation of the System and all rights to receive the same, whether now existing or hereafter coming into existence, exclusive of user and other deposits subject to refund until such deposits have become the Authority's property, (ii) the proceeds of any insurance covering business interruption loss relating to the System, (iii) interest on any money or securities related to the System held by or on behalf of the Authority except as otherwise provided by documents providing for security for the 2012A VRA Bonds and (iv) any other money from other sources now or hereafter pledged or specifically made available by or on behalf of the Authority to or for the payment of debt service on the Bond or Parity Bonds.

**"Subordinate Bonds"** means bonds, notes or other evidences of indebtedness of the Authority secured by a pledge of Revenues expressly made subordinate to the pledge of Revenues securing the Bond.

"System" means all plants, systems, facilities, equipment or property owned, operated or maintained by the Authority and used in connection with the supply, treatment, storage or distribution of water or treatment of waste water, as the same may from time to time exist.

"VRA" shall mean the Virginia Resources Authority, a public body corporate and a political subdivision of the Commonwealth of Virginia.

**Section 1.2. Rules of Construction.** The following rules shall apply to the construction of this Agreement unless the context requires otherwise:

- (a) Singular words shall connote the plural number as well as the singular and vice versa.
- (b) All references in this Agreement to particular Sections or Exhibits are references to Sections or Exhibits of this Agreement unless otherwise indicated.
- (c) The headings and table of contents as used in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

## **ARTICLE II** **REPRESENTATIONS**

**Section 2.1. Representations by Authority.** The Authority makes the following representations as the basis for its undertakings under this Agreement:

- (a) The Authority is a duly created and validly existing Authority (as such term is defined in Section 15.2-5101 of the Act) and is vested with the rights and powers conferred upon it by the Act.
- (b) The Authority has full right, power and authority to (i) adopt the Bond Resolution and execute and deliver this Agreement and the other documents related thereto, (ii) issue, sell and deliver the Bond to the Bank, (iii) own and operate the System, (iv) refund, defease and redeem the Refunded 2012 Bond by borrowing money for such purpose pursuant to this Agreement and the issuance of the Bond, and (v) carry out and consummate all of the transactions contemplated by the Bond Resolution, this Agreement and the Bond.
- (c) This Agreement and the Bond were duly authorized by the Bond Resolution and are in substantially the same form as presented to the governing body of the Authority at its meeting at which the Resolution was adopted.
- (d) All governmental permits, licenses, registrations, certificates, authorizations and approvals required to have been obtained as of the date of the delivery of this Agreement have been obtained for (i) the Authority's adoption of the Resolution, (ii) the execution and delivery by the Authority of this Agreement and the Bond, (iii) the performance and enforcement of the obligations of the Authority thereunder, (iv) the refunding, defeasance

and redemption of the Refunded 2012 Bond, and (v) the operation and use of the System. The Authority knows of no reason why any such required governmental permits, licenses, registrations, certificates, authorizations and approvals not obtained as of the date hereof cannot be obtained as needed.

(e) This Agreement has been executed and delivered by duly authorized officials of the Authority.

(f) The issuance of the Bond and the execution and delivery of this Agreement and the performance by the Authority of its obligations thereunder are within the powers of the Authority and will not conflict with, or constitute a breach or result in a violation of, (i) to the best of the Authority's knowledge, any federal or Virginia constitutional or statutory provision, including the Authority's charter, (ii) any agreement or other instrument to which the Authority is a party or by which it is bound or (iii) any order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the Authority or its property.

(g) The Authority is not in default in the payment of the principal of or interest on any of its indebtedness for borrowed money and is not in default under any instrument under and subject to which any indebtedness for borrowed money has been incurred. No event or condition has happened or existed, or is happening or existing, under the provisions of any such instrument, including but not limited to this Agreement, which constitutes, or which, with notice or lapse of time, or both, would constitute an event of default thereunder.

(h) The Authority (i) to the best of the Authority's knowledge, is not in violation of any existing law, rule or regulation applicable to it in any way which would have a material adverse effect on its financial condition or its ability to perform its obligations under this Agreement or the Bond and (ii) is not in default under any indenture, mortgage, deed of trust, lien, lease, contract, note, order, judgment, decree or other agreement, instrument or restriction of any kind to which the Authority is a party or by which it is bound or to which any of its assets is subject, which would have a material adverse effect on its financial condition or its ability to perform its obligations under this Agreement or the Bond. The execution and delivery by the Authority of this Agreement or the Bond and the compliance with the terms and conditions thereof will not conflict with or result in a breach of or constitute a default under any of the foregoing.

(i) There are not pending nor, to the best of the Authority's knowledge, threatened against the Authority, any actions, suits, proceedings or investigations of a legal, equitable, regulatory, administrative or legislative nature (i) affecting the creation, organization or existence of the Authority or the title of its officers to their respective offices, (ii) seeking to prohibit, restrain or enjoin the approval, execution, delivery or performance of the Resolution, this Agreement or the Bond or the issuance or delivery of the Bond, (iii) in any way contesting or affecting the validity or enforceability of the Resolution, this Agreement, the Bond or any agreement or instrument relating to any of the foregoing, (iv) in which a judgment, order or resolution may have a material adverse effect on the Authority or its business, assets, condition (financial or otherwise), operations or prospects or on its ability to perform its obligations under the Resolution, this Agreement or the Bond, (v) in any way affecting or contesting the refunding,

defeasance or redemption of the Refunded 2012 Bond, or (vi) contesting or challenging the power of the Authority to pledge the Revenues to the payment of the Bond.

(j) No material adverse change has occurred in the financial condition of the Authority as indicated in the financial statements, applications and other information furnished to the Bank.

(k) Except as may otherwise be approved by the Bank or permitted by the terms of this Agreement, the System at all times is and will be owned by the Authority and will not be operated or controlled by any other entity or person.

(l) There is no indebtedness of the Authority secured by or payable from a pledge of Revenues on a parity with or prior to the lien of the pledge of Revenues securing the Bond except any Existing Parity Bonds set forth on Exhibit C.

(m) No Event of Default or Default has occurred and is continuing.

### **ARTICLE III** **ISSUANCE AND DELIVERY OF THE BOND**

**Section 3.1. Loan to Authority and Purchase of the Bond.** The Authority agrees to borrow from the Bank and the Bank agrees to lend to the Authority the principal amount of \$ \_\_\_\_\_, for the purposes herein set forth. The Authority's obligation shall be evidenced by the Bond, which shall be in substantially the form of Exhibit A attached hereto and made a part hereof and delivered to the Bank on the Closing Date. The Secretary of the Authority is hereby appointed Registrar of the Bond. The office of the Registrar shall be at the address for the Authority set forth in Section 12.6. Transfer of the 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 interest and the exercise of all other rights and powers of the owner.

**Section 3.2. Conditions Precedent to Purchase of the Bond.** The Bank shall not be required to make the loan to Authority and purchase the Bond unless the Bank shall have received the following, all in form and substance satisfactory to the Authority:

- (a) The Bond.
- (b) A certified copy of the Bond Resolution.
- (c) A certificate of appropriate officials of the Authority as to the matters set forth in Section 2.1.
- (d) Evidence satisfactory to the Bank that the Authority has performed and satisfied all of the terms and conditions contained in this Agreement to be performed and satisfied by it as of such date.

(e) An Opinion of Counsel, substantially in the form of Exhibit B, addressed to the Bank and the Authority.

(f) Evidence reasonably satisfactory to the Bank that the Authority has satisfied all conditions precedent to the issuance of the Bond as a "Parity Bond" under the Local Bond Sale and Financing Agreement dated as of April 30, 2012 between the Authority and VRA related to issuance of the 2012 Bond.

#### **ARTICLE IV**

#### **BOND PROCEEDS AND PROVISIONS REGARDING SYSTEM**

##### **Section 4.1. Application of Proceeds.**

(a) On the Closing Date, the Bank shall disburse proceeds of the Bond in the amount of \$ \_\_\_\_\_ to the Escrow Agent to accomplish the refunding, defeasance and redemption of the Refunded 2012 Bond as set forth in the Escrow Agreement.

(b) On the Closing Date, the Bank shall disburse in the amount of \$ \_\_\_\_\_ for costs of issuance of the Bond as directed in the Closing Memorandum prepared by the Financial Advisor.

##### **Section 4.2. [Reserved].**

**Section 4.3. Permits.** The Authority, at its sole cost and expense, shall comply with, and shall obtain all permits, consents and approvals required by local, state or federal laws, ordinances, rules, regulations or requirements in connection with the acquisition, construction, equipping, occupation, operation or use of the System. The Authority shall, upon request, promptly furnish to the Bank copies of all such permits, consents and approvals.

**Section 4.4. Construction Contractors.** Each construction contractor employed in the accomplishment of the System shall be required in the construction contract to furnish a performance bond and a payment bond when and as required by the Virginia Public Procurement Act. Each contractor shall be required to maintain during the construction period covered by the particular construction contract builder's risk insurance, workers' compensation insurance, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Consulting Engineer. Upon request of the Bank, the Authority shall cause each contractor to furnish evidence of such bonds and insurance to the Bank.

**Section 4.5. Engineering Services.** The Authority shall retain a Consulting Engineer to provide engineering services covering the operation of the System.



## **ARTICLE V**

### **PLEDGE**

**Section 5.1. Pledge of Revenues.** Subject to the Authority's right to apply Revenues to the payment of Operation and Maintenance Expense, the Revenues are hereby pledged to the Bank to secure the payment of the principal of and interest on the Bond and the payment and performance of the Authority's obligations under this Agreement. This pledge shall be valid and binding from and after the execution and delivery of this Agreement. The Revenues, as received by the Authority, shall immediately be subject to the lien of this pledge in accordance with the terms hereof without any physical delivery of them or further act. The lien of this pledge of the Revenues is in all respects on parity with the lien of the pledge securing, and to the terms of all documents related to, issuance of any Parity Bonds, provided, however, that any such Parity Bond may have other security pledged to its payment and not pledged to the payment of one or more other Parity Bonds. The Authority may issue additional Parity Bonds in accordance with Section 10.7 hereof. So long as no Event of Default hereunder has occurred and is continuing and no event has occurred and is continuing or condition exists that, with the giving of notice or the passage of time, or both, would become an Event of Default hereunder, the Authority may use for any lawful purpose any Revenues that the Authority has accumulated. NOTHING IN THE BOND OR THIS AGREEMENT SHALL BE DEEMED TO CONSTITUTE A PLEDGE OF THE FAITH AND CREDIT OF THE COMMONWEALTH OF VIRGINIA OR ANY OF ITS POLITICAL SUBDIVISIONS, INCLUDING THE AUTHORITY OR THE COUNTY. THE ISSUANCE OF THE BOND SHALL NOT DIRECTLY, INDIRECTLY OR CONTINGENTLY OBLIGATE THE COMMONWEALTH OF VIRGINIA OR ANY OF ITS POLITICAL SUBDIVISIONS, INCLUDING THE AUTHORITY OR THE COUNTY, TO PLEDGE ITS FAITH AND CREDIT OR LEVY ANY TAXES FOR THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM, IF ANY, AND INTEREST ON THE BOND OR OTHER COSTS INCIDENT THERETO OR MAKE ANY APPROPRIATION FOR THEIR PAYMENT EXCEPT FROM THE REVENUES AND OTHER FUNDS PLEDGED FOR SUCH PURPOSE. THE AUTHORITY HAS NO TAXING POWER.

## **ARTICLE VI**

### **PAYMENTS**

**Section 6.1. Payment and Details of Bond.** The Bond shall be dated the date of its delivery to the Bank, shall be issuable only as a fully registered bond in the denomination of \$ \_\_\_\_\_, shall be numbered R-1 shall require repayment of principal in annual installments in the amounts set forth in Schedule A attached to the Bond payable on November 1, 2018 and annually on November 1 thereafter to and including November 1, 2037, together with interest from the date of the Bond on the unpaid principal balance at the rate of 2.89% per annum, payable semi-annually on May 1 and November 1, beginning May 1, 2018, at the rate of two and eighty nine hundredths percent (2.89%) per year, as set forth in Schedule A attached to the Bond. The final payment of principal of and premium, if any, on the Bond shall be payable to the registered holder of the Bond upon the surrender of the Bond to the Registrar of the Bond. Scheduled payments of principal and interest on the Bond shall be payable by check or draft mailed to the registered owner at its address as it appears on the registration books kept by the

Registrar. Principal, premium, if any, and interest shall be payable in lawful money of the United States of America. Interest shall be calculated on the basis of a 360-day year with twelve 30 day months.

**Section 6.2. Payment of Additional Payments.** In addition to the payments of principal of and interest on the Bond, the Authority agrees to pay on demand of the Bank all expenses, including reasonable attorneys' fees, relating to any amendments, waivers, consents or collection or enforcement proceedings pursuant to the provisions hereof.

## **ARTICLE VII PREPAYMENTS**

**Section 7.1. Prepayment of Bond.** At its option and after giving at least fifteen (15) days written notice to the Bank, principal of the Bond may be prepaid at the option of the Authority, in whole at any time on or before November 1, 2027 upon payment of 101% of the outstanding principal amount plus interest accrued to the prepayment date, and in whole at any time after November 1, 2027 upon payment of 100% of the outstanding principal amount plus interest accrued to the prepayment date.

## **ARTICLE VIII OPERATION AND USE OF SYSTEM**

**Section 8.1. Ownership and Operation of System.** Except as may otherwise be approved by the Bank or permitted by the terms hereof, the System at all times shall be owned by the Authority and shall not be operated or controlled by any other entity or person.

**Section 8.2. Maintenance.** At its own cost and expense, the Authority shall operate the System in a proper, sound and economical manner and in compliance with all legal requirements, shall maintain the System in good repair and operating condition and from time to time shall make all necessary repairs, renewals and replacements.

**Section 8.3. Additions and Modifications.** At its own expense, the Authority from time to time may make any additions, modifications or improvements to the System which it deems desirable and which do not materially reduce the value of the System or the structural or operational integrity of any part of the System, provided that all such additions, modifications or improvements comply with all applicable federal, state and local laws, rules, regulations, orders, permits, authorizations and requirements. All such renewals, replacements, additions, modifications and improvements shall become part of the System.

**Section 8.4. Use of System.** The Authority shall comply with all lawful requirements of any governmental authority regarding the System, whether now existing or subsequently enacted, whether foreseen or unforeseen or whether involving any change in governmental policy or requiring structural, operational and other changes to the System. The Authority, however, at its expense may contest in good faith any requirement of any governmental

authority. If such a contest occurs, the Authority need not comply with the requirement during the period of the contest and any subsequent appeal.

**Section 8.5. Inspection of System and Authority's Books and Records.** The Bank and its duly authorized representatives and agents shall have such reasonable rights of access to the System as may be necessary to determine whether the Authority is in compliance with the requirements of this Agreement and shall have the right at all reasonable times and upon reasonable prior notice to the Authority to examine and copy the books and records of the Authority insofar as such books and records relate to the System.

**Section 8.6. Sale or Encumbrance.** No part of the System shall be sold, exchanged, leased, mortgaged, encumbered or otherwise disposed of except as provided in any one of the following subsections:

(a) The Authority 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;

(b) The Authority may sell or otherwise dispose of property constituting part of the System if it uses the proceeds of such disposition and any other necessary funds to replace such property with property serving the same or a similar function;

(c) The Authority may sell or otherwise dispose of property constituting part of the System; provided, however, no such property shall be sold or otherwise disposed of unless there is filed with the Bank a certificate of the Authority, signed by an Authorized Representative, stating that such property is no longer needed or useful in the operation of the System, and, if the proceeds of such sale or disposition, together with the aggregate value of any other property sold or otherwise disposed of during the Fiscal Year, shall exceed \$150,000, there shall also be filed with the Authority and the Bank a certificate of the Consulting Engineer stating that such property is not necessary or useful to the operation of the System;

(d) The Authority may otherwise sell or dispose of property constituting part of the System if the proceeds to be received from such sale or disposition are first applied to payment or prepayment of the Bond or any Parity Bonds, such application to be within the discretion of the Authority; and

(e) Nothing in this Section is intended to prohibit (i) the acquisition by the Authority of real or personal property constituting a part of the System that is not part of the System on the date hereof under any operating lease or any financing lease pursuant to which the Authority grants a purchase money security interest in or lien on any such acquired property; or (ii) the granting of liens or security interests with respect to any part of the System to secure indebtedness or liabilities (including guaranties) otherwise permitted under this Agreement.

**Section 8.7. Lawful Charges.** The Authority shall pay when due all taxes, fees, assessments, levies and other governmental charges of any kind whatsoever (**collectively, the "Governmental Charges"**) which are (i) assessed, levied or imposed against the System or the

Authority's interest in it, or (ii) incurred in the operation, maintenance, use and occupancy of the System. The Authority shall pay or cause to be discharged, or shall make adequate provision to pay or discharge, all lawful claims and demands for labor, materials, supplies or other objects which, if unpaid, might by law become a lien upon all or any part of the System or the Revenues (collectively, the "Mechanics' Charges"). The Authority, however, after giving the Bank ten (10) days' notice of its intention to do so, at its own expense and in its own name, may contest in good faith any Governmental Charges or Mechanics' Charges. If such a contest occurs, the Authority may permit the same to remain unpaid during the period of the contest and any subsequent appeal unless, in the reasonable opinion of the Bank, such action may impair the lien on Revenues granted by this Agreement, in which event, such Governmental Charges or Mechanics' Charges promptly shall be satisfied or secured by posting with the Bank or an appropriate court a bond in form and amount reasonably satisfactory to the Bank. Upon request, the Authority shall furnish to the Bank proof of payment of all Governmental Charges and the Mechanics' Charges required to be paid by the Authority under this Agreement. The Authority shall use its best efforts to collect all rates, fees and other charges due to it. The Authority shall, to the full extent permitted by law, prevent access to the services and facilities of the System to users of the System who are delinquent beyond any customary grace periods in the payment of rates, fees and other charges due to the Authority.

## **ARTICLE IX**

### **INSURANCE, DAMAGE AND DESTRUCTION**

**Section 9.1. Insurance.** Unless the Bank otherwise agrees in writing, the Authority continuously shall maintain or cause to be maintained insurance against such risks as are customarily insured against by public bodies operating systems similar in size and character to the System, including, without limitation:

(a) Insurance in the amount of the full replacement cost of the System's insurable portions against loss or damage by fire and lightning, with broad form extended coverage endorsements to the extent available covering damage by windstorm, explosion, aircraft, smoke, sprinkler leakage, vandalism, malicious mischief and such other risks as are normally covered by such endorsements (limited only as may be provided in the standard form of such endorsements at the time in use in Virginia). The determination of replacement cost shall be made by a recognized appraiser or insurer selected by the Authority and reasonably acceptable to the Authority.

(b) Comprehensive general liability insurance with a combined single limit of \$1,000,000 per year against liability for bodily injury, including death resulting therefrom, and for damage to property, including loss of use thereof, arising out of the ownership, maintenance, operation or use of the System.

(c) Unless the Authority qualifies as a self-insurer under the laws of Virginia, workers' compensation insurance.

The Bank shall not have any responsibility or obligation with respect to (i) the procurement or maintenance of insurance or the amounts or the provisions with respect to policies of insurance, or (ii) the application of the proceeds of insurance.

The Authority shall provide no less often than annually and upon the written request of the Bank a certificate or certificates of the respective insurers evidencing the fact that the insurance required by this Section is in force and effect.

**Section 9.2. Requirements of Policies.** All insurance required by Section 9.1 shall be maintained with generally recognized, responsible insurance companies selected by the Authority and reasonably acceptable to the Bank. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other utility systems of like size and character to the System. If any such insurance is not maintained with an insurer licensed to do business in Virginia or placed pursuant to the requirements of the Virginia Surplus Lines Insurance Law (Chapter 48, Title 38.2, Code of Virginia of 1950, as amended) or any successor provision of law, the Authority shall provide evidence reasonably satisfactory to the Bank that such insurance is enforceable under Virginia law. In lieu of policies of insurance written by commercial insurance companies meeting the requirements of this Section, the Authority may maintain a program of self insurance or participate in group risk financing programs, risk pools, risk retention groups, purchasing groups and captive insurance companies, and in state or federal insurance programs; provided, however, that such alternative is reasonably acceptable to the Bank (based on a favorable written opinion of an independent insurance consultant having a favorable reputation for skill and experience in such work).

**Section 9.3. Notice of Damage, Destruction and Condemnation.** In the case of (i) any damage to or destruction of any material part of the System, (ii) a taking of all or any part of the System or any right therein under the exercise of the power of eminent domain, (iii) any loss of the System because of failure of title, or (iv) the commencement of any proceedings or negotiations which might result in such a taking or loss, the Authority shall give prompt notice thereof to the Bank describing generally the nature and extent of such damage, destruction, taking, loss, proceedings or negotiations.

**Section 9.4. Damage and Destruction.** If all or any part of the System is destroyed or damaged by fire or other casualty, and the Authority shall not have exercised its option to prepay in full the Bond pursuant to Article VII, the Authority shall restore promptly the property damaged or destroyed to substantially the same condition as before such damage or destruction, with such alterations and additions as the Authority may determine and which will not impair the capacity or character of the System for the purpose for which it then is being used or is intended to be used. The Authority may apply so much as may be necessary of the Net Proceeds of insurance received on account of any such damage or destruction to payment of the cost of such restoration, either on completion or as the work progresses. If such Net Proceeds are not sufficient to pay in full the cost of such restoration, the Authority shall pay so much of the cost as may be in excess of such Net Proceeds. Any balance of such Net Proceeds remaining after payment of the cost of such restoration shall promptly be applied to prepayment of the Bond pursuant to Article VII.

**Section 9.5. Condemnation and Loss of Title.** If title to or the temporary use of all or any part of the System shall be taken under the exercise of the power of eminent domain or lost because of failure of title, and the Authority shall not have exercised its option to prepay in full the Bond pursuant to Article VII, the Authority shall cause the Net Proceeds from any such condemnation award or from title insurance to be applied to the restoration of the System to substantially its condition before the exercise of such power of eminent domain or failure of title. If such Net Proceeds are not sufficient to pay in full the cost of such restoration, the Authority shall pay so much of the cost as may be in excess of such Net Proceeds.

## **ARTICLE X**

### **SPECIAL COVENANTS**

**Section 10.1. Maintenance of Existence.** The Authority shall maintain its existence as a public body politic and corporate of the Commonwealth of Virginia and, without consent of the Bank, shall not dissolve or otherwise dispose of all or substantially all of its assets or consolidate or merge with or into another entity. Notwithstanding the foregoing, the Authority may consolidate or merge with or into, or sell or otherwise transfer all or substantially all of its assets to a political subdivision of the Commonwealth of Virginia, and the Authority thereafter may dissolve, if the surviving, resulting or transferee political subdivision, if other than the Authority, assumes, in written form acceptable to the Bank, all of the obligations of the Authority contained in the Bond and this Agreement.

**Section 10.2. Financial Records and Statements.** The Authority shall maintain proper books of record and account in which proper entries shall be made in accordance with generally accepted government accounting standards, consistently applied, of all its business and affairs related to the System. The Authority shall have an annual audit of the financial condition of the Authority made by an independent certified public accountant no later than October 1 each year. The Authority shall furnish to the Bank copies of such report immediately after it is submitted to the Authority. Such report shall include statements in reasonable detail, certified by such accountant, reflecting the Authority's financial position as of the end of such Fiscal Year and the results of the Authority's operations and changes in the financial position of its funds for the Fiscal Year.

**Section 10.3. Further Assurances.** The Authority shall to the fullest extent permitted by law pass, make, do, execute, acknowledge and deliver such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable to carry out the purposes of this Agreement.

**Section 10.4. Other Indebtedness.** The Authority agrees to pay when due all amounts required by any other bonded indebtedness and to perform all of its obligations in connection therewith.

**Section 10.5. Rate Covenant.** (a) The Authority covenants and agrees that it will fix and collect rates, fees and other charges for the use of and for services furnished or to be furnished by the System, and will from time to time revise such rates, fees and other charges so that in each Fiscal Year the Net Revenues Available for Debt Service will equal at least 115% of

the amount required during the Fiscal Year to provide for the following: (i) the principal of and interest on the Bond, any Parity Bonds, any Subordinate Bonds and all other indebtedness of the Authority, including without limitation indebtedness under leases that are treated as capital leases under generally accepted accounting principles, payable from Revenues and (ii) any shortfalls in any then existing debt service reserve fund in respect of any Parity Bonds. If, for any reason, the Revenues are insufficient to satisfy the foregoing covenant, the Authority shall within ninety days increase its rates, fees and other charges or reduce its Operation and Maintenance Expenses so as to provide sufficient Revenues to satisfy such requirement.

(b) On or before the last day of each Fiscal year, the Authority shall review the adequacy of its rates, fees and other charges for the next Fiscal Year, and, if such review indicates the Authority's rates, fees and other charges are insufficient to satisfy the rate covenant in subsection (a) of this Section, the Authority shall take appropriate action within 90 days to increase its rates, fees and other charges or reduce its Operation and Maintenance Expenses to cure any deficiency.

**Section 10.6. General Tax-Exemption Covenant.** The Authority agrees not to take any action or fail to take any action which would adversely affect the exclusion of interest on the Bond from gross income for federal income tax purposes under Sections 103(a) and 141 of the Code. Any officer of the Authority is hereby authorized and directed to execute a Tax and Nonarbitrage Certificate setting forth the expected use of the proceeds of the Bond and containing such covenants as may be necessary to show compliance with the provisions of the Code relating to the exclusion of interest on the Bond from gross income for federal income tax purposes. The Authority hereby covenants that the proceeds from the issuance and sale of the Bond will be expended as set forth in such Certificate and that the Authority shall comply with the covenants and representations contained therein. The covenants and agreements made by the Authority as set forth in such Certificate may be relied upon and enforced by the Bank as if such covenants and agreements were set forth herein.

**Section 10.7. Parity Bonds.** (a) The Authority may issue Parity Bonds ranking on parity with the Bond and the Existing Parity Bonds with respect to the pledge of Revenues to (i) pay the cost of the acquisition or construction of improvements, extensions, additions or replacements to equipment or betterments of and any property, rights or easements deemed by the Authority to be necessary, useful or convenient for the System, (ii) refund some or all of the Bond (subject to the conditions of Section 7.1), Parity Bonds or Subordinate Bonds or (iii) effect some combination of (i) and (ii), provided in each case the following conditions are satisfied. Before any Parity Bonds are issued or delivered, the Authority shall deliver to the Bank the following in form and substance satisfactory to the Bank:

(1) Certified copies of all resolutions of the Authority authorizing the issuance of the Parity Bonds.

(2) A certificate of an Authorized Representative setting forth the purposes for which the Authority is issuing the Parity Bonds and the manner in which the Authority will apply the proceeds from the issuance and sale of the Parity Bonds.

(3) If the Parity Bonds are authorized for any purpose other than the refunding of the Bond, Parity Bonds or Subordinate Bonds, a certificate of the Consulting Engineer (who is not a Local Engineer) to the effect that (i) the improvements or property which the proceeds from the issuance of the Parity Bonds will finance or refinance will be a part of, or are necessary, useful or convenient for, the System, (ii) the funds available to the Authority from the issuance of the Parity Bonds and other specified sources will be sufficient to pay the estimated cost of such improvements or property (or refinancing the same), (iii) the period of time which will be required to complete such improvements or property, and (iv) (A) the failure to make such improvements or acquire or construct such property will result in an interruption or reduction, or the continuance of an interruption or reduction, of Revenues, or (B) during the first two complete Fiscal Years following the completion of the improvements or the acquisition or construction of the property (or refinancing the same), the projected Net Revenues Available for Debt Service will satisfy the rate covenant of Section 10.5. In providing this certificate, the Consulting Engineer (who is not a Local Engineer) may take into consideration future System rate increases, provided that such rate increases have been duly approved by the Authority's governing body and any other person and entity required to give approval for the rate increase to become effective. In addition, the Consulting Engineer (who is not a Local Engineer) may take into consideration additional future Revenues to be derived under then existing contractual agreements entered into by the Authority and from reasonable estimates of growth in the Authority's customer base.

(4) If the Parity Bonds are authorized solely to refund the Bond, Parity Bonds or Subordinate Bonds either (i) a certificate or report of a Qualified Independent Consultant that the refunding Parity Bonds will have annual debt service requirements in each of the years the Bond, Parity Bonds or Subordinate Bonds to be refunded (the "Refunded Bonds") would have been outstanding which are lower than the annual debt service requirements in each such year on the Refunded Bonds, or (ii) a certificate of a Consulting Engineer (who is not a Local Engineer) or a Qualified Independent Consultant to the effect that in such Consulting Engineer (who is not a Local Engineer) or Qualified Independent Consultant's opinion, during the first two complete Fiscal Years following the issuance of the refunding Parity Bonds, the projected Net Revenues Available for Debt Service will satisfy the rate covenant of Section 10.5. In providing the certificate described in clause (ii), the Consulting Engineer (who is not a Local Engineer) or the Qualified Independent Consultant may take into account the positive factors described in the last two sentences of subsection (a)(3) of this Section.

(5) If requested by the Bank, an opinion of nationally-recognized bond counsel, subject to customary exceptions and qualifications, approving the form of the resolution authorizing the issuance of the Parity Bonds and stating that its terms and provisions conform with the requirements of this Agreement, that the certificates and documents delivered to the Bank constitute compliance with the provisions of this Section, and that the issuance of the Parity Bonds will have no adverse effect on the exclusion of the interest on the Bond from gross income for federal income tax purposes.



(b) If the Authority is unable or unwilling to satisfy the conditions set forth in subsection (a) to the issuance and delivery of any issue of Parity Bonds, the Bank may determine, in its sole discretion, to waive any or all of such conditions.

## **ARTICLE XI**

### **DEFAULTS AND REMEDIES**

**Section 11.1. Events of Default.** Each of the following events shall be an "Event of Default":

(a) The failure to pay when due any payment of principal or interest due hereunder or to make any other payment required to be made under the Bond or this Agreement;

(b) The Authority's failure to perform or observe any of the other covenants, agreements or conditions of the Bond or this Agreement and the continuation of such failure for a period of thirty (30) days after the Bank gives the Authority written notice specifying such failure and requesting that it be cured, unless the Bank shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice is correctable but cannot be corrected within the applicable period, the Bank will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Authority within the applicable period and diligently pursued until the Default is corrected;

(c) Any warranty, representation or other statement by or on behalf of Authority contained in this Agreement or in any instrument furnished in compliance with or in reference to this Agreement or in connection with the issuance and sale of the Bond is false or misleading in any material respect;

(d) The occurrence of a default by the Authority under the terms of any Parity Bonds and the failure to cure such default or obtain a waiver thereof within any period of time permitted thereunder;

(e) An order or decree shall be entered, with the Authority's consent or acquiescence, appointing a receiver or receivers of the System or any part thereof or of the Revenues thereof, or if such order or decree, having been entered without the Authority's consent or acquiescence, shall not be vacated, discharged or stayed on appeal within sixty (60) days after the entry thereof;

(f) Any proceeding shall be instituted, with the Authority's consent or acquiescence, for the purpose of effecting a composition between the Authority and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable from Revenues; or

(g) Any bankruptcy, insolvency or other similar proceeding shall be instituted by or against the Authority under any federal or state bankruptcy or insolvency law now or

hereinafter in effect and, if instituted against the Authority, is not dismissed within sixty (60) days after filing.

**Section 11.2. Notice of Default.** The Authority agrees to give the Bank prompt written notice if any order, decree or proceeding referred to in Section 11.1(e), (f) or (g) is entered or instituted against the Authority or of the occurrence of any other event or condition which constitutes a Default or an Event of Default immediately upon becoming aware of the existence thereof.

**Section 11.3. Remedies on Default.** Whenever any Event of Default referred to in Section 11.1 shall have happened and be continuing, the Bank shall, in addition to any other remedies provided herein or by law, have the right, at its option without any further demand or notice, to take one or both of the following remedial steps:

(a) Declare immediately due and payable all payments due or to become due on the Bond and under this Agreement, and upon notice to the Authority, the same shall become immediately due and payable by the Authority without further notice or demand; and

(b) Take whatever other action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due on the Bond and under this Agreement or to enforce any other of the Bank's rights under this Agreement or to enforce performance by the Authority of its covenants, agreements or undertakings contained herein or in the Bond, provided however that any such action shall not prejudice in any material respect the rights of the holders of the Parity Bonds.

**Section 11.4. Delay and Waiver.** No delay or omission to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Default or Event of Default or acquiescence therein, and every such right or power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Default or Event of Default under this Agreement shall extend to or shall affect any subsequent Default or Event of Default or shall impair any rights or remedies consequent thereto.

## **ARTICLE XII** **MISCELLANEOUS**

**Section 12.1. Successors and Assigns.** This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

**Section 12.2. Amendments.** The Authority and the Bank shall have the right to amend from time to time any of the terms and conditions of this Agreement, provided that all amendments shall be in a writing and shall be signed by or on behalf of the Authority and the Bank.

**Section 12.3. Limitation of Authority's Liability.** (a) Neither the Bond nor this Agreement shall be deemed to create or constitute a debt or a pledge of the faith and credit of the Authority and the Authority shall not be obligated to pay the principal of or interest on the Bond or other costs incident thereto except from the funds pledged therefor.

(b) The Bond is a limited obligation of the Authority payable solely from the moneys and property pledged and assigned to secure payment of the Bond. The principal of and interest on the Bond will not be deemed to constitute a general obligation debt or a pledge of the faith and credit of the Commonwealth of Virginia or any of its political subdivisions, including the Authority and the County. NEITHER THE FAITH AND CREDIT OF THE COMMONWEALTH NOR THE FAITH AND CREDIT OF ANY COUNTY, CITY, TOWN OR OTHER SUBDIVISION OF THE COMMONWEALTH, INCLUDING THE COUNTY, ARE PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THE BOND. THE ISSUANCE OF THE BOND UNDER THE PROVISIONS OF THE ACT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE COMMONWEALTH OR ANY COUNTY, CITY, TOWN OR OTHER SUBDIVISION OF THE COMMONWEALTH, INCLUDING THE COUNTY, TO LEVY ANY TAXES WHATEVER THEREFOR OR TO MAKE ANY APPROPRIATION FOR ITS PAYMENT EXCEPT FROM THE FUNDS PLEDGED THEREFOR. THE AUTHORITY HAS NO TAXING POWER.

(c) No covenant, condition, agreement or obligation contained herein shall be deemed to be a covenant, condition, agreement or obligation of any past, present or future member, officer, employee or agent of the Authority in his individual capacity, and neither the members of the Authority nor any officer thereof executing this Financing Agreement or the Bond shall be liable personally hereon or thereon or be subject to any personal liability with respect to any other action taken by him pursuant to this Financing Agreement or the Bond; provided, that such member, officer, employee or agent has not acted in bad faith.

**Section 12.4. Applicable Law.** This Agreement shall be governed by the applicable laws of Virginia.

**Section 12.5. Severability.** If any clause, provision or section of this Agreement shall be held illegal or invalid by any court, the illegality or invalidity of such clause, provision or section shall not affect the remainder of this Agreement which shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained in this Agreement. If any agreement or obligation contained in this Agreement is held to be in violation of law, then such agreement or obligation shall be deemed to be the agreement or obligation of the Bank and the Authority, as the case may be, only to the extent permitted by law.

**Section 12.6. Notices.** Unless otherwise provided for herein, all demands, notices, approvals, consents, requests, opinions and other communications under the Bond or this Agreement shall be in writing and shall be deemed to have been given when delivered in person or mailed by first class registered or certified mail, postage prepaid, addressed as follows:

**Bank:** BB&T Governmental Finance

5130 Parkway Plaza Boulevard  
Building 9  
Charlotte, NC 28217  
Attention: Account Administration/Municipal

**Authority:** Amherst County Service Authority  
Post Office Box 100  
113 Phelps Road  
Madison Heights, Virginia 24572  
Attention: Director of Public Utilities

The Authority and the Bank may designate, by notice given hereunder, any further or different addresses to which subsequent demands, notices, approvals, consents, requests, opinions or other communications shall be sent or persons to whose attention the same shall be directed.

**Section 12.7. Headings.** The headings of the several articles and sections of this Agreement are inserted for convenience only and do not comprise a part of this Agreement.

**Section 12.8. Term of Agreement.** This Agreement shall be effective upon its execution and delivery, provided that the Bond previously or simultaneously shall have been executed and delivered. Except as otherwise specified, the Authority's obligations under the Bond and this Agreement shall expire upon payment in full of the Bond and all other amounts payable by the Authority under this Agreement.

**Section 12.9. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

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

WITNESS the following signatures, all duly authorized.

**BRANCH BANKING AND TRUST COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**AMHERST COUNTY SERVICE AUTHORITY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**FORM OF BOND**  
**AMHERST COUNTY SERVICE AUTHORITY**

[To come from Authority's Bond Counsel]

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**EXHIBIT B**

**OPINION OF AUTHORITY'S COUNSEL**

[To come from Authority's Bond Counsel]

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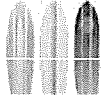
**EXHIBIT C**  
**EXISTING PARITY BONDS**  
**AMHERST COUNTY SERVICE AUTHORITY**

**Existing Parity Bonds:**

\$9,915,000 Water and Sewer System Revenue Refunding Bond, Series 2012 that has been defeased  
in part from proceeds of the Authority's Water and Sewer System Revenue Refunding Bond,  
Series 2017

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**Resolution 2017-A-0004-R**  
Rachel A Carton to: Regina M Rice

09/25/2017 10:05 AM

Regina,

Please find attached the latest version of the above referenced resolution. I have been told by Mike that this whole package will have changes all the way through until next Monday.



2017-A-0004-R ACSA Water and Sewer System Revenue Refunding Bond Series 2017.pdf

Thank you and as always, please call or email with any questions.

Rachel A Carton, Executive Assistant  
Office of the Amherst County Attorney  
153 Washington Street  
P. O. Box 390  
Amherst, Virginia 24521  
PH: (434) 946-9431  
FAX: (434) 946-9370  
racarton@CountyofAmherst.com

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