

Reviewed by:

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Amherst County Service Authority Board  
ACSA Resolution No. 2021-A-0002-R  
**For consideration on April 6, 2021**

### **A RESOLUTION, NO. 2021-A-0002-R**

A resolution of the Board of Directors of Amherst County Service Authority approving issuance of a water and sewer system revenue refunding bond in a principal amount not to exceed \$6,100,000, and providing for the form, details and payment thereof

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Approved as to form and legality by the Amherst County Attorney

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**BE IT RESOLVED BY THE AMHERST COUNTY SERVICE AUTHORITY BOARD:** WHEREAS, the Amherst County Service Authority (**the "Authority"**) presently owns, operates and maintains water, wastewater and 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 \$6,177,000 Water and Sewer System Revenue Refunding Bond, Series 2017 (**the "Refunded Bond"**) pursuant to a Financing Agreement dated as of October 1, 2017, between the Authority and Branch Banking and Trust Company, now known as Truist Bank (**the "Bank"**), the proceeds of which were used to refund portions of its \$9,915,000 Water and Sewer Revenue Refunding Bond, Series 2012 (**the "Series 2012 Bond"**) held by the Virginia Resources Authority (**"VRA"**) and to pay certain costs of issuance related to the Refunded Bond, and the Series 2012 Bond provided 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's financial advisor, Davenport & Company LLC (**the "Financial Advisor"**) has advised the Authority that it may achieve debt service savings by refinancing all or a portion of the remaining outstanding balance of the Refunded Bond; and

WHEREAS, the Financial Advisor has recommended that the Authority approve the proposal dated February 19, 2021 (**the "Bank Proposal"**) from 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 \$6,100,000 (**the "Bond"**) to finance the costs of the refunding, defeasance and redemption of the Refunded 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 the Existing Parity Bonds and any Parity Bonds (each 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 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 April 1, 2021 (**the “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:**

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 and the Bank Proposal. The Authority shall use proceeds from the issuance of the Bond to refund, defease and redeem the Refunded Bond and to pay costs of issuance of the Bond. The Bond shall be issued in the original principal amount not to exceed \$6,100,000, shall bear interest at an the annual rate of 2.01% absent an Event of Taxability, as defined in the Financing Agreement, and subject to other terms as set forth therein, 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 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 and the Verification Agent shall be paid from the proceeds of the Bond or other funds of the Authority.



5. The Chair of the Authority, the Vice Chair of the Authority, the Secretary 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 Chair or Vice Chair of the Authority 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 Chair and Vice Chair 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 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 the Refunded Bond as an advance refunding bond being refunded by the Bond as a current refunding bond and (f) the execution of such instruments and agreements to accomplish the refunding, defeasance and redemption in full of the Refunded Bond including a Wire Transfer Agreement with the Bank, 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.
8. 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.



9. To the extent that the principal amount of the Bond is not treated as deemed designated as a “qualified tax-exempt obligation” under of Section 265(b)(3) of the Code, 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 2021 (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 2021 (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 2021 (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 2021 in an aggregate amount that will exceed such \$10,000,000 limit.
10. 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.
11. 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.

12. 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.
13. 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 Amherst County Circuit Court.

**BE IT FURTHER RESOLVED:**

That the Amherst County Service Authority Board of Directors, located in Amherst County, VA, does hereby authorize the Board Chair to sign this Resolution 2021-A-0002-R.

**II. That this Resolution 2021-A-0002-R shall be in force and effect upon adoption.**

Adopted this 6<sup>th</sup> day of April, 2021.

Certification

I hereby certify that the foregoing Resolution 2021-A-0002-R was duly considered by the Amherst County Service Authority Board of Directors at a regular Board meeting in Amherst County, Virginia, at which a quorum was present, and that the same was passed this 6<sup>th</sup> day of April, 2021.



David W. Pugh, Chair  
Amherst County Service Authority Board

**ATTEST:**



Robert A. Hopkins, PE, Board Secretary  
Amherst County Service Authority Board

	Aye	Nay	Abstention	Absent
Chair Pugh	<u>X</u>	<u>Ø</u>	<u>Ø</u>	
Vice Chair Martin	<u>X</u>	<u>Ø</u>	<u>Ø</u>	
Director Moore	<u>X</u>	<u>Ø</u>	<u>Ø</u>	
Director Woods	<u>X</u>	<u>Ø</u>	<u>Ø</u>	
Director Perrow	<u>      </u>	<u>      </u>	<u>      </u>	<u>X</u>

