

Mayor Jacob P. Bailey called a duly advertised special meeting of the Amherst Town Council to order on October 26, 2012 at 1:00 P.M. in the Council Chambers of the Town Hall at 186 S. Main Street. Other council members Kenneth Bumgarner, J. Paul Kilgore, Jr., Mike Mozingo and Richard Wydner were present. Councilor Haney Mottley was absent. Town Manager Jack Hobbs was present.

The Mayor reviewed bond counsel's request that the Town Council ratify its October 10 action approving the financing for the 60 West water line replacement project. Mr. Kilgore made a motion that was seconded by Mr. Mozingo and approved 4-0 to approve a resolution that would have the effect of ratifying the October 10 resolution. Messrs. Bumgarner, Kilgore, Mozingo, and Wydner voted "Aye" via the roll call method; Mr. Mottley was absent. A copy of the resolution is attached and made a part of these minutes.

There being no further business, the meeting was adjourned at 1:02 PM.

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Jacob P. Bailey  
Mayor

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

## APPROVING, RATIFYING, AND CONFIRMING RESOLUTION

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

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

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

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

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

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

WHEREAS, the Council members present and voting at the regular meeting of the Town Council on October 10, 2012, unanimously approved that certain Resolution in connection with the Town's issuance of such general obligation water revenue bond, among other things, and the Council now desires at this duly called special meeting to approve, ratify and confirm the terms and provisions thereof by the due adoption of this Approving, Ratifying and Confirming Resolution.

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

1. It is hereby determined to be necessary and expedient for the Town to obtain a loan in the principal amount not to exceed \$607,000, to be used, together with other lawfully available funds therefore (as described herein), including monies to be provided under the Funding Agreement, in order to pay the capital costs of the Project, including all or any portion of the issuance costs therefor (collectively, the "Project").

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

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

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

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

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

later than December 31, 2045. The principal payment schedule shall be set forth in the form of the Bond and approved by the Town Representative.

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

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

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

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

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

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

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

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

10. This Resolution shall take effect immediately.

Approved: October 26, 2012

**TOWN OF AMHERST, VIRGINIA**

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Jacob Parker Bailey, Mayor

**Attachments:**

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