

**BERKELEY COUNTY**  
**PUBLIC SERVICE SEWER DISTRICT**

**Sewer Revenue Bonds, Series 2009 B**  
**(West Virginia Infrastructure Fund)**

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**BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT**

**SEWER REVENUE BONDS, SERIES 2009 B  
(WEST VIRGINIA INFRASTRUCTURE FUND)**

**BOND RESOLUTION**

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**BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT**

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT OF NOT MORE THAN \$1,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT:

**ARTICLE I**

**STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS**

Section 1.01. Authority for this Resolution. This Resolution (together with any order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is adopted pursuant to the provisions of Chapter 16, Article 13A and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

A. Berkeley County Public Service Sewer District (the "Issuer") is a public service district and public corporation and political subdivision of the State of West Virginia in Berkeley County of said State.

B. The Issuer presently owns and operates a public sewerage system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain additions, improvements and betterments to the existing public sewerage system of the Issuer, consisting of expansion of the Ecolab industrial wastewater pre-treatment plant together with all appurtenant facilities (collectively, the "Project"), which constitute properties for the collection, treatment, purification and disposal of liquid and solid waste, sewage and industrial waste (the existing public sewerage system of the Issuer, the Project and any further additions, betterments and improvements thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

C. The Issuer intends to permanently finance the costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"), in connection with the West Virginia Water Pollution Control Act.

D. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all costs of Operating Expenses of the System, the principal of and interest on the Bonds (as hereinafter defined) and to make payments into all funds and accounts and other payments provided for herein.

E. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds, Series 2009 B (West Virginia Infrastructure Fund, in the aggregate principal amount of not more than \$1,000,000 (the "Series 2009 B Bonds"), to permanently finance the costs of acquisition and construction of the Project. The remaining costs of the Project shall be funded from the sources set forth in Section 2.01 hereof. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest, if any, upon the Series 2009 B Bonds prior to and during acquisition and construction of the Project and for a period not exceeding 6 months after completion of acquisition and construction of the Project; amounts which may be deposited in any Reserve Account (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, fees and expenses of the Authority, discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2009 B Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the acquisition or construction of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2009 B Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

F. The period of usefulness of the System after completion of the Project is not less than 40 years.

G. It is in the best interests of the Issuer that its Series 2009 B Bonds be sold to the Authority (as hereinafter defined) pursuant to the terms and provisions of a loan agreement (the "Loan Agreement") by and between the Issuer and the Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council") in form satisfactory to the Issuer, the Authority and the Council, approved hereby if not previously approved by resolution of the Issuer.

H. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2009 B Bonds as to liens, pledge and source of and security for payment, being the Issuer's:

(i) Sewer Revenue Bonds, Series 1986 B (West Virginia Water Development Authority), dated March 7, 1986, issued in the original aggregate principal amount of \$1,638,194;

(ii) Sewer Revenue Bonds, Series 1990 A (West Virginia Water Development Authority), dated May 3, 1990, issued in the original aggregate principal amount of \$828,629;

(iii) Sewer Revenue Bonds, Series 1994 A (West Virginia Water Development Authority), dated October 5, 1994, issued in the original aggregate principal amount of \$494,288;

(iv) Sewer Revenue Bonds, Series 1994 C (West Virginia SRF Program), dated November 17, 1994, issued in the original aggregate principal amount of \$2,772,879;

(v) Sewer Revenue Bonds, Series 1995 A (West Virginia SRF Program), dated February 9, 1995, issued in the original aggregate principal amount of \$3,837,640;

(vi) Sewer Revenue Bonds, Series 1995 B (West Virginia SRF Program), dated December 29, 1995, issued in the original aggregate principal amount of \$2,138,506;

(vii) Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), dated February 13, 1996, issued in the original aggregate principal amount of \$319,902;

(viii) Sewer Revenue Bonds, Series 1996 B (West Virginia SRF Program), dated May 1, 1996, issued in the original aggregate principal amount of \$2,628,633;

(ix) Sewer Revenue Bonds, Series 1996 C (West Virginia SRF Program), dated May 1, 1996, issued in the original aggregate principal amount of \$837,579;

(x) Sewer Revenue Bonds, Series 1997 A (West Virginia SRF Program), dated June 12, 1997, issued in the original aggregate principal amount of \$148,000;

(xi) Sewer Revenue Bonds, Series 1997 B (West Virginia SRF Program), dated December 11, 1997, issued in the original aggregate principal amount of \$1,250,000;

(xii) Sewer Revenue Bonds, Series 1999 A (West Virginia SRF Program), dated October 28, 1999, issued in the original aggregate principal amount of \$30,707,296;

(xiii) Sewer Revenue Bonds, Series 2000 A (West Virginia SRF Program), dated May 25, 2000, issued in the original aggregate principal amount of \$937,500;

(xiv) Sewer Revenue Bonds, Series 2001 A (West Virginia Infrastructure Fund), dated March 30, 2001, issued in the original aggregate principal amount of \$429,000;

(xv) Sewer Revenue Bonds, Series 2001 B (West Virginia SRF Program), dated August 7, 2001, issued in the original aggregate principal amount of \$2,909,850;

(xvi) Sewer Revenue Bonds, Series 2002 A (West Virginia SRF Program), dated May 9, 2002, issued in the original aggregate principal amount of \$750,000;

(xvii) Sewer Revenue Bonds, Series 2002 B (West Virginia SRF Program), dated July 11, 2002, issued in the original aggregate principal amount of \$456,548;

(xviii) Sewer Revenue Bonds, Series 2002 C (West Virginia SRF Program), dated August 28, 2002, issued in the original aggregate principal amount of \$30,500,000;

(xix) Sewer Revenue Bonds, Series 2002 D (West Virginia Water Development Authority), dated August 28, 2002, issued in the original aggregate principal amount of \$4,965,465;

(xx) Sewer Revenue Bonds, Series 2002 E (West Virginia Water Development Authority), dated August 28, 2002, issued in the original aggregate principal amount of \$560,822;

(xxi) Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), dated August 14, 2003, issued in the original aggregate principal amount of \$252,922;

(xxii) Sewer Revenue Bonds, Series 2003 B (West Virginia SRF Program), dated August 14, 2003, issued in the original aggregate principal amount of \$330,862;

(xxiii) Sewer Revenue Bonds, Series 2004 A (West Virginia Infrastructure Fund), dated November 30, 2004, issued in the original aggregate principal amount of \$1,999,600;

(xxiv) Sewer Refunding Revenue Bonds, Series 2006 A (Bank-Qualified), dated October 1, 2006, issued in the original aggregate principal amount of \$3,665,000;

(xxv) Sewer Refunding Revenue Bonds, Series 2006 B (Non Bank-Qualified), dated October 1, 2006, issued in the original aggregate principal amount of \$240,000;

(xxvi) Sewer Revenue Bonds, Series 2007 A (Bank Qualified), dated March 6, 2007, issued in the original aggregate principal amount of \$3,970,000;

(xxvii) Sewer Revenue Bonds, Series 2007 B (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$9,000,000;

(xxviii) Sewer Revenue Bonds, Series 2007 C (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$9,000,000;

(xxix) Sewer Revenue Bonds, Series 2007 D (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$7,104,000;

(xxx) Sewer Revenue Bonds, Series 2007 E (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$500,000;

(xxxii) Sewer Revenue Bonds, Series 2007 F (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$4,999,900; and

(xxxii) Sewer Revenue Bonds, Series 2009 A, dated July 31, 2009, issued in the original aggregate principal amount of \$2,695,000 issued simultaneously herewith;

and senior and prior to the Issuer's Sewer Revenue Bonds, Series 1990 B, dated May 3, 1990, issued in the original aggregate principal amount of \$38,669.

The Series 1986 B Bonds, the Series 1990 A Bonds, the Series 1994 A Bonds, the Series 1994 C Bonds, the Series 1995 A Bonds, the Series 1995 B Bonds, the Series 1996 A Bonds, the Series 1996 B Bonds, the Series 1996 C Bonds, the Series 1997 A Bonds, the Series 1997 B Bonds, the Series 1999 A Bonds, the Series 2000 A Bonds, the Series 2001 A Bonds, the Series 2001 B Bonds, the Series 2002 A Bonds, the Series 2002 B Bonds, the Series 2002 C Bonds, the Series 2002 D Bonds, the Series 2002 E Bonds, the Series 2003 A Bonds, the Series 2003 B Bonds, the Series 2004 A Bonds, the Series 2006 A Bonds, the Series 2006 B Bonds, the Series 2007 A Bonds, the Series 2007 B Bonds, the

Series 2007 C Bonds, the Series 2007 D Bonds, the Series 2007 E Bonds, and the Series 2007 F Bonds are hereinafter collectively called the "First Lien Bonds"; and the Series 1990 B Bonds are hereinafter called the "Second Lien Bonds." The First Lien Bonds and the Second Lien Bonds are hereinafter collectively called the "Prior Bonds."

The Issuer also has outstanding its Sewer Capacity Improvement Fee Revenue Bonds, Series 2006 A, dated November 2, 2006, issued in the aggregate principal amount of \$15,405,000 (the "CIF Bonds"). The CIF Bonds will be repaid solely from and will be secured solely by the Capacity Improvement Fees of the Issuer and the Surplus Revenues of the System (all as more clearly hereinafter defined and described) and WILL NOT BE PAYABLE FROM OR SECURED BY THE NET REVENUES OF THE SYSTEM.

The Series 2009 B Bonds shall be issued on a parity with the First Lien Bonds and the Series 2009 A Bonds and senior and prior to the Second Lien Bonds with respect to liens, pledge and source of and security for payment and in all other respects. Prior to the issuance of the Series 2009 B Bonds, the Issuer will obtain (i) a certificate of an independent Certified Public Accountant stating that the coverage and parity tests of the First Lien Bonds are met; (ii) the written consent of the Holders of the First Lien Bonds to the issuance of the Series 2009 B Bonds on a parity with the First Lien Bonds; and (iii) the written consent of the Holders of the Second Lien Bonds the issuance of the Series 2009 B on a senior and prior basis to the Second Lien Bonds. Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenue or assets of the System. The Issuer is in compliance with the covenants of the Prior Bonds and the Prior Resolutions.

I. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to authorization of the acquisition, construction and operation of the Project and the System, including, without limitation, the imposition of rates and charges, and the issuance of the Series 2009 B Bonds, or will have so complied prior to issuance of any thereof, including, the approval of the Project and the financing thereof by the Council and the obtaining of a certificate of convenience and necessity and approval of this financing and necessary user rates and charges described herein from the Public Service Commission of West Virginia by final order.

J. The Project has been reviewed and determined to be technically and financially feasible by the West Virginia Infrastructure and Jobs Development Council as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2009 B Bonds by the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Bondholders of any and all of such Bonds, all which shall be of equal rank and without

preference, priority or distinction between any one Bond and any other Bonds and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. The following terms shall have the following meanings herein unless the context expressly requires otherwise:

"Act" means, collectively, Chapter 16, Article 13A and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended and in effect on the date of adoption hereof.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2009 B Bonds, or any other agency, board or department of the State of West Virginia that succeeds to the functions of the Authority, acting in its administrative capacity and upon authorization from the Council under the Act.

"Authorized Officer" means the Chairman of the Governing Body of the Issuer, or any other temporary Chairman duly selected by the Governing Body.

"Bondholder," "Holder of the Bonds," "Holder," "Registered Owner" or any similar term whenever used herein with respect to an outstanding Bond or Bonds, means the person or entity in whose name such Bond is registered.

"Bond Legislation," "Resolution," "Bond Resolution" or "Local Act" means this Bond Resolution and all orders and resolutions supplemental hereto or amendatory hereof.

"Bond Registrar" means the bank or other entity to be designated as such in this Bond Legislation or the Supplemental Resolution and its successors and assigns.

"Bonds" means, collectively, the Series 2009 B Bonds, the Prior Bonds, the Series 2009 B Bonds and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another resolution of the Issuer.

"Bond Year" means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, except that the first Bond Year shall begin on the Closing Date.

"Chairman" means the Chairman of the Governing Body.

"CIF Bonds" means the Sewer Capacity Improvement Fee Revenue Bonds, Series 2006 A, dated November 2, 2006, issued in the aggregate principal amount of \$15,405,000.

"CIF Resolutions" means, individually or collectively, the resolutions of the Issuer adopted October 17, 2006, authorizing the CIF Bonds.

"CIF Surplus Revenue Fund" means the fund of the Issuer, created in the CIF Resolutions, into which Surplus Revenues may be deposited.

"Closing Date" means the date upon which there is an exchange of the Series 2009 B Bonds for all or a portion of the proceeds of the Series 2009 B Bonds from the Authority and the Council.

"Code" means the Internal Revenue Code of 1986, as amended, and the Regulations.

"Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

"Consulting Engineers" means Pentree, Inc, Princeton, West Virginia, or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System, or portion thereof, in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or public corporation and political subdivisions.

"Costs" or "Costs of the Project" means those costs described in Section 1.02E hereof to be a part of the cost of acquisition and construction of the Project.

"Council" means the West Virginia Infrastructure and Jobs Development Council or any other agency of the State of West Virginia that succeeds to the functions of the Council.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns.

"FDIC" means the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

"First Lien Bonds" means collectively, the Issuer's: (i) Series 1986 B Bonds, (ii) Series 1990 A Bonds, (iii) Series 1994 A Bonds, (iv) Series 1994 C Bonds, (v) Series 1995 A Bonds, (vi) Series 1995 B Bonds, (vii) Series 1996 A Bonds, (viii) Series 1996 B Bonds, (ix) Series 1996 C Bonds, (x) Series 1997 A Bonds, (xi) Series 1997 B Bonds, (xii) Series 1999 A Bonds, (xiii) Series 2000 A Bonds, (xiv) Series 2001 A Bonds, (xv) Series 2001 B Bonds, (xvi) Series 2002 A Bonds, (xvii) Series 2002 B Bonds, (xviii) Series 2002 C Bonds, (xix) Series 2002 D Bonds, (xx) Series 2002 E Bonds, (xxi) Series

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"Fiscal Year" means each 12-month period beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the public service board of the Issuer, as it may now or hereafter be constituted.

"Government Obligations" means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 8.01 hereof) or any Tap Fees, as hereinafter defined.

"Herein," "hereto" and similar words shall refer to this entire Bond Legislation.

"Independent Certified Public Accountants" means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

"Investment Property" means:

- (A) any security (within the meaning of Section 165(g)(2)(A) or (B) of the Code),
- (B) any obligation,
- (C) any annuity contract,
- (D) any investment-type property, or
- (E) in the case of a bond other than a private activity bond, any residential rental property for family units which is not located

within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan.

Except as provided in the following sentence, the term "Investment Property" does not include any tax-exempt bond. With respect to an issue other than an issue a part of which is a specified private activity bond (as defined in section 57(a)(5)(c) of the Code), the term "Investment Property" includes a specified private activity bond (as so defined).

"Issuer" means Berkeley County Public Service Sewer District, a public service district and public corporation and political subdivision of the State of West Virginia, in Berkeley County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Loan Agreement" means the Loan Agreement heretofore entered, or to be entered, into between the Issuer and the Authority on behalf of the Council, providing for the purchase of the Series 2009 B Bonds from the Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified by the Supplemental Resolution.

"Net Proceeds" means the face amount of the Series 2009 B Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the any Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2009 B Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

"Net Revenues" means the balance of the Gross Revenues, remaining after deduction of Operating Expenses, as hereinafter defined.

"Nonpurpose Investment" means any Investment Property as defined in Section 148(b) of the Code, that is not a purpose investment.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the costs, fees and expenses of the Authority, fiscal agents, the Depository Bank, the Registrar and the Paying Agent (all as herein defined), other than those capitalized as part of the costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Outstanding," when used with reference to Bonds or Prior Bonds and as of any particular date, describes all Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond or Prior Bonds cancelled by the Bond Registrar or Registrar for the Prior Bonds, at or prior to said date; (ii) any Bond or Prior Bonds for the payment of which monies, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder, and set aside for such payment (whether upon or prior to maturity); (iii) any Bond or Prior Bonds deemed to have been paid as provided in Article X hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders or holders of Prior Bonds, any Bonds or Prior Bonds registered to the Issuer.

"Parity Bonds" means additional Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof.

"Paying Agent" means the Commission or such other entity or authority as may be designated as a Paying Agent for the Series 2009 B Bonds by the Issuer in the Supplemental Resolution.

"Prior Bonds" means collectively, the Issuer's (i) Series 1986 B Bonds, (ii) Series 1990 A Bonds, (iii) Series 1990 B Bonds, (iv) Series 1994 A Bonds, (v) Series 1994 C Bonds, (vi) Series 1995 A Bonds, (vii) Series 1995 B Bonds, (viii) Series 1996 A Bonds, (ix) Series 1996 B Bonds, (x) Series 1996 C Bonds, (xi) Series 1997 A Bonds, (xii) Series 1997 B Bonds, (xiii) Series 1999 A Bonds, (xiv) Series 2000 A Bonds, (xv) Series 2001 A Bonds, (xvi) Series 2001 B Bonds, (xvii) Series 2002 A Bonds, (xviii) Series 2002 B Bonds, (xix) Series 2002 C Bonds, (xx) Series 2002 D Bonds, (xxi) Series 2002 E Bonds, (xxii) Series 2003 A Bonds, (xxiii) Series 2003 B Bonds, (xxiv) Series 2004 A Bonds, (xxv) Series 2006 A Bonds, (xxvi) Series 2006 B Bonds, (xxvii) Series 2007 A Bonds, (xxviii) Series 2007 B Bonds, (xxix) Series 2007 C Bonds, (xxx) Series 2007 D Bonds, (xxxi) the Series 2007 E Bonds, and Series (xxxii) 2007 F Bonds.

"Prior Resolutions" means, collectively, the resolutions of the Issuer, as supplemented, authorizing the Prior Bonds.

"Private Business Use" means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit; provided that, use as a member of the general public shall not be taken into account.

"Project" means the Project as described in Section 1.02B hereof.

"Qualified Investments" means and includes any of the following:

- (a) Government Obligations;

(b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;

(c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

(d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that

the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

(h) The West Virginia "consolidated fund" managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the West Virginia Code of 1931, as amended; and

(i) Obligations of States or public corporation and political subdivisions or agencies thereof, the interest on which is exempt from federal income taxation, and which are rated at least "A" by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

"Rebate Fund" means the Rebate Fund established by Section 5.01 hereof.

"Registered Owner," "Bondholder," "Holder" or any similar term means whenever used herein with respect to an outstanding Bond or Bonds, the person in whose name such Bond is registered.

"Registrar" means the Bond Registrar.

"Regulations" means temporary and permanent regulations promulgated under the Code, or any predecessor thereto.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund established by the Prior Resolutions and continued hereby.

"Reserve Accounts" means, collectively, the reserve account established for the Series 2009 B Bonds and the Prior Bonds.

"Reserve Requirements" means, collectively, the respective amounts required to be on deposit in the Reserve Accounts.

"Revenue Fund" means the Revenue Fund established by the Prior Resolutions and continued hereby.

"RUS Bonds" means the Issuer's (i) Series 2007 B Bonds, (ii) Series 2007 C Bonds, (iii) Series 2007 D Bonds, (iv) Series 2007 E Bonds, and (v) Series 2007 F Bonds.

"Second Lien Bonds" means the Issuer's Series 1990 B Bonds.

"Secretary" means the Secretary of the Governing Body of the Issuer.

"Series 1986 B Bonds" means the Issuer's Sewer Revenue Bonds, Series 1986 B (West Virginia Water Development Authority), dated March 7, 1986, issued in the original aggregate principal amount of \$1,638,194.

"Series 1990 A Bonds" means the Issuer's Sewer Revenue Bonds, Series 1990 A (West Virginia Water Development Authority), dated May 3, 1990, issued in the original aggregate principal amount of \$828,629.

"Series 1990 B Bonds" means the Issuer's Sewer Revenue Bonds, Series 1990 B, dated May 3, 1990, issued in the original aggregate principal amount of \$38,669.

"Series 1994 A Bonds" means the Issuer's Sewer Revenue Bonds, Series 1994 A (West Virginia Water Development Authority), dated October 5, 1994, issued in the original aggregate principal amount of \$494,288.

"Series 1994 C Bonds" means the Issuer's Sewer Revenue Bonds, Series 1994 C (West Virginia SRF Program), dated November 17, 1994, issued in the original aggregate principal amount of \$2,772,879.

"Series 1995 A Bonds" means the Issuers Sewer Revenue Bonds, Series 1995 A (West Virginia SRF Program), dated February 9, 1995, issued in the original aggregate principal amount of \$3,837,640.

"Series 1995 B Bonds" means the Issuer's Sewer Revenue Bonds, Series 1995 B (West Virginia SRF Program), dated December 29, 1995, issued in the original aggregate principal amount of \$2,138,506.

"Series 1996 A Bonds" means the Issuer's Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), dated February 13, 1996, issued in the original aggregate principal amount of \$319,902.

"Series 1996 B Bonds" means the Issuer's Sewer Revenue Bonds, Series 1996 B (West Virginia SRF Program), dated May 1, 1996, issued in the original aggregate principal amount of \$2,628,633.

"Series 1996 C Bonds" means the Issuer's Sewer Revenue Bonds, Series 1996 C (West Virginia SRF Program), dated May 1, 1996, issued in the original aggregate principal amount of \$837,579.

“Series 1997 A Bonds” means the Issuer’s Sewer Revenue Bonds, Series 1997 A (West Virginia SRF Program), dated June 12, 1997, issued in the original aggregate principal amount of \$148,000.

“Series 1997 B Bonds” means the Issuer’s Sewer Revenue Bonds, Series 1997 B (West Virginia SRF Program), dated December 11, 1997, issued in the original aggregate principal amount of \$1,250,000.

“Series 1999 A Bonds” means the Issuer’s Sewer Revenue Bonds, Series 1999 A (West Virginia SRF Program), dated October 28, 1999, issued in the original aggregate principal amount of \$30,707,296.

“Series 2000 A Bonds” means the Issuer’s Sewer Revenue Bonds, Series 2000 A (West Virginia SRF Program), dated May 25, 2000, issued in the original aggregate principal amount of \$937,500.

“Series 2001 A Bonds” means the Issuer’s Sewer Revenue Bonds, Series 2001 A (West Virginia Infrastructure Fund), dated March 30, 2001, issued in the original aggregate principal amount of \$429,000.

“Series 2001 B Bonds” means the Issuer’s Sewer Revenue Bonds, Series 2001 B (West Virginia SRF Program), dated August 7, 2001, issued in the original aggregate principal amount of \$2,909,850.

“Series 2002 A Bonds” means the Issuer’s Sewer Revenue Bonds, Series 2002 A (West Virginia SRF Program), dated May 9, 2002, issued in the original aggregate principal amount of \$750,000.

“Series 2002 B Bonds” means the Issuer’s Sewer Revenue Bonds, Series 2002 B (West Virginia SRF Program), dated July 11, 2002, issued in the original aggregate principal amount of \$456,548.

“Series 2002 C Bonds” means the Issuer’s Sewer Revenue Bonds, Series 2002 C (West Virginia SRF Program), dated August 28, 2002, issued in the original aggregate principal amount of \$30,500,000.

“Series 2002 D Bonds” means the Issuer’s Sewer Revenue Bonds, Series 2002 D (West Virginia Water Development Authority), dated August 28, 2002, issued in the original aggregate principal amount of \$4,965,465.

“Series 2002 E Bonds” means the Issuer’s Sewer Revenue Bonds, Series 2002 E (West Virginia Water Development Authority), dated August 28, 2002, issued in the original aggregate principal amount of \$560,822.

“Series 2003 A Bonds” means the Issuer’s Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), dated August 14, 2003, issued in the original aggregate principal amount of \$252,922.

“Series 2003 B Bonds” means the Issuer’s Sewer Revenue Bonds, Series 2003 B (West Virginia SRF Program), dated August 14, 2003, issued in the original aggregate principal amount of \$330,862.

“Series 2004 A Bonds” means the Issuer’s Sewer Revenue Bonds, Series 2004 A (West Virginia Infrastructure Fund), dated November 30, 2004, issued in the original aggregate principal amount of \$1,999,600.

“Series 2006 A Bonds” means the Issuer’s Sewer Refunding Revenue Bonds, Series 2006 A (Bank-Qualified), dated October 1, 2006, issued in the original aggregate principal amount of \$3,665,000.

“Series 2006 B Bonds” means the Issuer’s Sewer Refunding Revenue Bonds, Series 2006 B (Non Bank-Qualified), dated October 1, 2006, issued in the original aggregate principal amount of \$240,000.

“Series 2007 A Bonds” means the Issuers Sewer Revenue Bonds, Series 2007 A (Bank Qualified), dated March 6, 2007, issued in the original aggregate principal amount of \$3,970,000.

“Series 2007 B Bonds” means the Issuer’s Sewer Revenue Bonds, Series 2007 B (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$9,000,000.

“Series 2007 C Bonds” means the Issuer’s Sewer Revenue Bonds, Series 2007 C (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$9,000,000.

“Series 2007 D Bonds” means the Issuer’s Sewer Revenue Bonds, Series 2007 D (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$7,104,000.

“Series 2007 E Bonds” means the Issuer’s Sewer Revenue Bonds, Series 2007 E (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$500,000.

“Series 2007 F Bonds” means the Issuer’s Sewer Revenue Bonds, Series 2007 F (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$4,999,900.

"Series 2009 A Bonds" means the Sewer Revenue Bonds, Series 2009 A dated July 31, 2009 issued in the aggregate principal amount of \$2,695,000.

"Series 2009 B Bonds" means the Sewer Revenue Bonds, Series 2009 B (West Virginia Infrastructure Fund), of the Issuer, authorized by this Resolution.

"Series 2009 B Bonds Construction Trust Fund" means the Construction Trust Fund for the Series 2009 B Bonds established by Section 5.01 hereof.

"Series 2009 B Bonds Reserve Account" means the Series 2009 B Bonds Reserve Account established by Section 5.02 hereof.

"Series 2009 B Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2009 B Bonds in the then current or any succeeding year.

"Series 2009 B Bonds Sinking Fund" means the Series 2009 B Bonds Sinking Fund established by Section 5.02 hereof.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution or order of the Issuer supplementing or amending this Resolution and, when preceded by the article "the," refers specifically to the supplemental resolution authorizing the sale of the Series 2009 B Bonds; provided, that any matter intended by this Resolution to be included in the Supplemental Resolution with respect to the Series 2009 B Bonds, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds, including, without limitation, the Reserve Accounts and the Renewal and Replacement Fund.

"System" means the complete existing sewerage system of the Issuer and all sewerage facilities owned by the Issuer and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with the sewerage system; and shall include the Project and any and all extensions, additions, betterments and improvements thereto hereafter acquired or constructed for the sewerage system from any sources whatsoever, both within and without the Issuer.

"Tap Fees" means the fees, if any, paid by prospective customers of the System in order to connect thereto.

“West Virginia Infrastructure Fund” means the West Virginia Infrastructure Fund established in accordance with Chapter 31, Article 15A, Section 9 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

Additional terms and phrases are defined in this Resolution as they are used. Accounting terms not specifically defined herein shall be given meaning in accordance with generally accepted accounting principles. Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof,” and any similar terms refer to this Resolution; and the term “hereafter” means after the date of adoption of this Resolution.

Articles, sections and subsections mentioned by number only are the respective articles, sections and subsections of this Resolution so numbered.

## ARTICLE II

### **AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT**

#### Section 2.01. Authorization of Acquisition and Construction of the Project.

There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost of not to exceed \$3,695,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Bonds shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, in an amount and otherwise compatible with the financing plan submitted to the Authority and the Council.

The cost of the Project is estimated not to exceed \$3,695,000 which \$2,695,000 will be obtained from proceeds of the Series 2009 A Bonds and \$1,000,000 will be obtained from proceeds of the Series 2009 B Bonds.

### ARTICLE III

#### **AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT**

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 2009 B Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the negotiable Series 2009 B Bonds of the Issuer. The Series 2009 B Bonds shall be issued as a single bond, designated "Sewer Revenue Bond, Series 2009 B (West Virginia Infrastructure Fund)", in the principal amount of not more than \$1,000,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2009 B Bonds remaining after funding of the Reserve Account (if funded from Bond proceeds) and capitalizing interest on the Series 2009 B Bonds, if any, shall be deposited in or credited to the Series 2009 B Bonds Construction Trust Fund established by Section 5.01 hereof and applied as set forth in Article VI hereof.

Section 3.02. Terms of Bonds. The Series 2009 B Bonds shall be issued in such principal amounts; shall bear interest at such rate or rates, not exceeding the then legal maximum rate, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in the Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 2009 B Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 2009 B Bonds shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2009 B Bonds shall initially be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 2009 B Bonds. The Series 2009 B Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form, in such denominations, dated such dates and bear interest at such rates as determined by a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2009 B Bonds shall be executed in the name of the Issuer by the Chairman, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Secretary. In case any one or more of the officers who shall have signed or sealed the Series 2009 B Bonds shall cease to be such officer of the Issuer before the Series 2009 B Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Bond Registrar; Authentication and Registration. The Bond Registrar with respect to the Series 2009 B Bonds shall be the bank to be designated as such in the Supplemental Resolution and its successors and assigns. No Series 2009 B Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Series 2009 B Bonds shall be conclusive evidence that such Series 2009 B Bonds has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2009 B Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Series 2009 B Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2009 B Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 2009 B Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2009 B Bonds remain outstanding, the Bond Registrar for the Series 2009 B Bonds shall keep and maintain books for the registration and transfer of such Bonds.

The registered Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Bonds or transferring the registered Bonds are exercised, all Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Bonds or, in the case of any proposed redemption of Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2009 B Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2009 B Bonds shall not, in any event, be or constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No holder or holders of the Series 2009 B Bonds shall ever have the right to compel the exercise of the taxing power, if any, of the Issuer to pay the Series 2009 B Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Lien Position with Respect to Prior Bonds. The payment of the debt service of all Series 2009 B Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues

derived from the System, on a parity with the lien on the Net Revenues in favor of the holders of the First Lien Bonds and Series 2009 A Bonds and senior and prior to the Second Lien Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest to make all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as they become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2009 B Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2009 B Bonds to the original purchasers upon receipt of the documents set forth below:

- (1) If other than the Authority, a list of the names in which the Series 2009 B Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;
- (2) A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2009 B Bonds to the original purchasers;
- (3) An executed and certified copy of the Bond Legislation;
- (4) An executed copy of the Loan Agreement; and
- (5) The unqualified approving opinion of bond counsel on the Series 2009 B Bonds.

Section 3.10. Form of Bonds. The text of the Series 2009 B Bonds shall be in substantially the following respective forms, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

(FORM OF SERIES 2009 B BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT  
SEWER REVENUE BOND, SERIES 2009 B  
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. BR-1

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

KNOW ALL MEN BY THESE PRESENTS: That on this the \_\_\_\_ day of \_\_\_\_\_, 2009, BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT, a public service district and public corporation and political subdivision of the State of West Virginia in Berkeley County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 200\_\_\_\_, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference, with interest payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 20\_\_\_\_, at the rate per annum as set forth in Exhibit B attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of The Huntington National Bank, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the next month preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Infrastructure and Jobs Development Council (the "Council"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority on behalf of the Council, dated \_\_\_\_\_, 2009.

This Bond is issued (i) to pay the costs of acquisition and construction of improvements and extensions to the existing public sewerage system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public sewerage system of the Issuer, the Project and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13A and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Resolution duly adopted by the Issuer on \_\_\_\_\_, 2009, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 2009 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S:

(1) SEWER REVENUE BONDS, SERIES 1986 B, DATED MARCH 7, 1986, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,638,194 (THE "SERIES 1986 B BONDS");

(2) SEWER REVENUE BONDS, SERIES 1990 A, DATED MAY 3, 1990, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$828,629 (THE "SERIES 1990 A BONDS");

(3) SEWER REVENUE BONDS, SERIES 1994 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED OCTOBER 5, 1994, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$494,288 (THE "SERIES 1994 A BONDS");

(4) SEWER REVENUE BONDS, SERIES 1994 C (WEST VIRGINIA SRF PROGRAM), DATED NOVEMBER 17, 1994, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,772,879 (THE "SERIES 1994 C BONDS");

(5) SEWER REVENUE BONDS, SERIES 1995 A (WEST VIRGINIA SRF PROGRAM), DATED FEBRUARY 9, 1995, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$3,837,640 (THE "SERIES 1995 A BONDS");

(6) SEWER REVENUE BONDS, SERIES 1995 B (WEST VIRGINIA SRF PROGRAM), DATED DECEMBER 29, 1995, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,138,506 (THE "SERIES 1995 B BONDS");

(7) SEWER REVENUE BONDS, SERIES 1996 A (WEST VIRGINIA SRF PROGRAM), DATED FEBRUARY 13, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$319,902 (THE "SERIES 1996 A BONDS");

(8) SEWER REVENUE BONDS, SERIES 1996 B (WEST VIRGINIA SRF PROGRAM), DATED MAY 1, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,628,633 (THE "SERIES 1996 B BONDS");

(9) SEWER REVENUE BONDS, SERIES 1996 C (WEST VIRGINIA SRF PROGRAM), DATED MAY 1, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$837,579 (THE "SERIES 1996 C BONDS");

(10) SEWER REVENUE BONDS, SERIES 1997 A (WEST VIRGINIA SRF PROGRAM), DATED JUNE 12, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$148,000 (THE "SERIES 1997 A BONDS");

(11) SEWER REVENUE BONDS, SERIES 1997 B (WEST VIRGINIA SRF PROGRAM), DATED DECEMBER 11, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,250,000 (THE "SERIES 1997 B BONDS");

(12) SEWER REVENUE BONDS, SERIES 1999 A (WEST VIRGINIA SRF PROGRAM), DATED OCTOBER 28, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$30,707,296 (THE "SERIES 1999 A BONDS");

(13) SEWER REVENUE BONDS, SERIES 2000 A (WEST VIRGINIA SRF PROGRAM), DATED MAY 25, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$937,500 (THE "SERIES 2000 A BONDS");

(14) SEWER REVENUE BONDS, SERIES 2001 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED MARCH 30, 2001, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$429,000 (THE "SERIES 2001 A BONDS");

(15) SEWER REVENUE BONDS, SERIES 2001 B (WEST VIRGINIA SRF PROGRAM), DATED AUGUST 7, 2001, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,909,850 (THE "SERIES 2001 B BONDS");

(16) SEWER REVENUE BONDS, SERIES 2002 A (WEST VIRGINIA SRF PROGRAM), DATED MAY 9, 2002, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$750,000 (THE "SERIES 2002 A BONDS");

(17) SEWER REVENUE BONDS, SERIES 2002 B (WEST VIRGINIA SRF PROGRAM), DATED JULY 11, 2002, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$456,548 (THE "SERIES 2002 B BONDS");

(18) SEWER REVENUE BONDS, SERIES 2002 C (WEST VIRGINIA SRF PROGRAM), DATED AUGUST 28, 2002, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$30,500,000 (THE "SERIES 2002 C BONDS");

(19) SEWER REVENUE BONDS, SERIES 2002 D (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED AUGUST 28, 2002, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$4,965,465 (THE "SERIES 2002 D BONDS");

(20) SEWER REVENUE BONDS, SERIES 2002 E (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED AUGUST 28, 2002, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$560,822 (THE "SERIES 2002 E BONDS");

(21) SEWER REVENUE BONDS, SERIES 2003 A (WEST VIRGINIA SRF PROGRAM), DATED AUGUST 14, 2003, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$252,922 (THE "SERIES 2003 A BONDS");

(22) SEWER REVENUE BONDS, SERIES 2003 B (WEST VIRGINIA SRF PROGRAM), DATED AUGUST 14, 2003, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$330,862 (THE "SERIES 2003 B BONDS");

(23) SEWER REVENUE BONDS, SERIES 2004 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED MAY 3, 2004, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,999,600 (THE "SERIES 2004 A BONDS");

(24) SEWER REFUNDING REVENUE BONDS, SERIES 2006 A, DATED OCTOBER 19, 2006, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$3,665,000 (THE "SERIES 2006 A BONDS");

(25) SEWER REFUNDING REVENUE BONDS, SERIES 2006 B, DATED OCTOBER 19, 2006, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$240,000 (THE "SERIES 2006 B BONDS");

(26) SEWER REVENUE BONDS, SERIES 2007 A, DATED MARCH 6, 2007, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$3,970,000 (THE "SERIES 2007 A BONDS");

(27) SEWER REVENUE BONDS, SERIES 2007 b, DATED MARCH 6, 2007, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$9,000,000 (THE "SERIES 2007 B BONDS");

(28) SEWER REVENUE BONDS, SERIES 2007 C (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED MARCH 6, 2007, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$9,000,000 (THE "SERIES 2007 C BONDS");

(29) SEWER REVENUE BONDS, SERIES 2007 D (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED MARCH 6, 2007, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$7,104,000 (THE "SERIES 2007 D BONDS");

(30) SEWER REVENUE BONDS, SERIES 2007 E (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED MARCH 6, 2007, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$500,000 (THE "SERIES 2007 E BONDS");

(31) SEWER REVENUE BONDS, SERIES 2007 F (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED MARCH 6, 2007, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$4,999,900 (THE "SERIES 2007 F BONDS") (COLLECTIVELY THE "FIRST LIEN BONDS"); AND

(32) SEWER REVENUE BONDS, SERIES 2009 A (\_\_\_\_\_), DATED \_\_\_\_\_, 2009, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,695,000 ISSUED CONCURRENTLY HEREWITH (THE "SERIES 2009 A BONDS")

AND SENIOR AND PRIOR TO THE ISSUER'S:

(1) SEWER REVENUE BONDS, SERIES 1990 B, DATED MAY 3, 1990, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$38,669 (THE "SERIES 1990 B BONDS" OR "SECOND LIEN BONDS").

THE (1) SERIES 1986 B BONDS, (2) SERIES 1990 A BONDS, (3) SERIES 1994 A BONDS, (4) SERIES 1994 C BONDS, (5) SERIES 1995 A BONDS, (6) SERIES 1995 B BONDS, (7) SERIES 1996 A BONDS, (8) SERIES 1996 B BONDS, (9) SERIES 1996 C BONDS, (10) SERIES 1997 A BONDS, (11) SERIES 1997 B BONDS, (12) SERIES 1999 A BONDS, (13) SERIES 2000 A BONDS, (14) SERIES 2001 A BONDS, (15) SERIES 2001 B BONDS, (16) SERIES 2002 A BONDS, (17) SERIES 2002 B BONDS, (18) SERIES 2002 C BONDS, (19) SERIES 2002 D BONDS, (20) SERIES 2002 E BONDS, (21) SERIES 2003 A BONDS, (22) SERIES 2003 B BONDS, (23) SERIES 2004 A BONDS, (24) SERIES 2006 A BONDS, (25) SERIES 2006 B BONDS, (26) SERIES 2007 A BONDS, (27) SERIES 2007 B BONDS, (28) SERIES 2007 C BONDS, (29) SERIES 2007 D BONDS, (30) SERIES 2007 E BONDS, (31) SERIES 2007 F BONDS, AND (32) SERIES 1990 B BONDS ARE SOMETIMES HEREINAFTER COLLECTIVELY REFERRED TO AS THE "PRIOR BONDS."

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the Holders of the First Lien Bonds and Series 2009 A Bonds and senior and prior to the Second Lien Bonds and from monies in the reserve account created under the Bond Legislation for the Bonds (the "Series 2009 B Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the monies in the Series 2009 B Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the First Lien Bonds and the Series 2009 A Bonds; provided that, so long as the First Lien Bonds and the Series 2009 A Bonds are no longer outstanding and in the event there exists in the Series 2009 B Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the First Lien Bonds and the Series 2009 A Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of The Huntington National Bank, Charleston, West Virginia, as registrar (the "Registrar"), by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT has caused this Bond to be signed by its Chairman, and its corporate seal to be hereunto affixed and attested by its Secretary, and has caused this Bond to be dated the day and year first written above.

[SEAL]

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2009 B Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_, 2009.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

\_\_\_\_\_  
Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

| <u>AMOUNT</u> | <u>DATE</u> | <u>AMOUNT</u> | <u>DATE</u> |
|---------------|-------------|---------------|-------------|
| (1) \$        |             | (19)          |             |
| (2)           |             | (20)          |             |
| (3)           |             | (21)          |             |
| (4)           |             | (22)          |             |
| (5)           |             | (23)          |             |
| (6)           |             | (24)          |             |
| (7)           |             | (25)          |             |
| (8)           |             | (26)          |             |
| (9)           |             | (27)          |             |
| (10)          |             | (28)          |             |
| (11)          |             | (29)          |             |
| (12)          |             | (30)          |             |
| (13)          |             | (31)          |             |
| (14)          |             | (32)          |             |
| (15)          |             | (33)          |             |
| (16)          |             | (34)          |             |
| (17)          |             | (35)          |             |
| (18)          |             | (36)          |             |

TOTAL \$ \_\_\_\_\_

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto \_\_\_\_\_  
the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_,  
Attorney to transfer the said Bond on the books kept for registration of the within Bond of the  
said Issuer with full power of substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

Section 3.11.Sale of Bonds; Approval and Ratification of Execution of Loan Agreement. The Series 2009 B Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous resolution, the Chairman is specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "Exhibit A" and made a part hereof, and the Secretary is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The Loan Agreement, including all schedules and exhibits attached thereto, are hereby approved and incorporated into this Bond Legislation.

Section 3.12.Filing of "Amended Schedule". Upon completion of the acquisition and construction of the Project, the Issuer will file with the Authority and the Council a schedule, the form of which will be provided by the Council, setting forth the actual costs of the Project and sources of funds therefor.

ARTICLE IV

[RESERVED]

## ARTICLE V

### **FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF**

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created (or continued if previously established by Prior Resolutions) with and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank and the Issuer and from each other:

- (1) Revenue Fund (established by the Prior Resolutions and continued hereby);
- (2) Operation and Maintenance Fund (established by the Prior Resolutions and continued hereby);
- (3) Renewal and Replacement Fund (established by the Prior Resolutions and continued hereby);
- (4) CIF Surplus Fund (established by the Prior Resolutions and continued hereby); and
- (5) Series 2009 B Bonds Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created with and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission and the Issuer and from each other:

- (1) Series 2009 B Bonds Sinking Fund; and
- (2) Series 2009 B Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in this Bond Legislation. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order and priority:

- (1) The Issuer shall first, each month, pay from the Revenue Fund the Operating Expenses of the System.

(2) The Issuer shall next, each month simultaneously, transfer from the Revenue Fund and remit to (i) the National Finance Office, the amounts required by the Prior Resolutions to pay interest on the RUS Bonds; (ii) the Commission the amounts required by Prior Resolution to pay interest on the Series 1990 A Bonds, Series 1994 A Bonds, Series 1997 A Bonds, Series 1997 B Bonds, Series 2002 D Bonds, Series 2002 E Bonds, Series 2006 A Bonds, Series 2006 B Bonds and Series 2007A Bonds; (iii) to the Commission the amounts required by the Series 2009 A Resolution to pay interest on the Series 2009 A Bonds; and (iv) remit to the Commission on the first day of each month, commencing 4 months prior to the first date of payment of interest on the Series 2009 B Bonds, for deposit in the Series 2009 B Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will become due on the Series 2009 B Bonds on the next ensuing quarterly interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2009 B Bonds Sinking Fund and the next quarterly interest payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.

(3) The Issuer shall next, each month simultaneously, transfer from the Revenue Fund and remit to (i) the National Finance Office, the amounts required by the Prior Resolutions to pay principal of the RUS Bonds; (ii) the Commission the amounts required by Prior Resolutions to pay principal on the First Lien Bonds, as appropriate, (iii) the Commission the amounts required by the Series 2009 A Resolution to pay principal on the Series 2009 A Bonds; and (iv) the Commission on the first day of each month, commencing 4 months prior to the first date of payment of principal of the Series 2009 B Bonds, for deposit in the Series 2009 B Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2009 B Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2009 B Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(4) The Issuer shall next, on the first day of each month simultaneously, transfer from the Revenue Fund and remit to (i) the Commission the amounts required by Prior Resolution to be deposited in the reserve accounts for the First Lien Bonds the amounts required by the Series 2009 A Bonds Resolution to be deposited in the Series 2009 A Bonds Reserve Account; and (ii) the Commission, commencing 4 months after the completion of construction of the Project, as certified by the Consulting Engineers, if not fully funded upon issuance of the Series 2009 B Bonds, for deposit in the Series 2009 B Bonds

Reserve Account, an amount equal to 1/120th of the Series 2009 B Bonds Reserve Requirement, until the amount in the Series 2009 B Bonds Reserve Account equals the Series 2009 B Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2009 B Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2009 B Bonds Reserve Requirement.

(5) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund, an amount equal to 2 ½% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Account; and shall use the monies therein as provided by the Prior Resolutions, except that any deficiencies in the debt service payments on the Series 2009 B Bonds shall be payable from the Renewal and Replacement Fund on a parity with the First Lien Bonds and the Series 2009 A Bonds and senior and prior to the Second Lien Bonds. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, repairs, improvements or extensions to the System; provided that, any deficiencies in any Reserve Accounts (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with monies from the Renewal and Replacement Fund.

(6) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission for deposit in the Sinking Fund for the Second Lien Bonds the amount required under the Prior Resolutions to pay principal of the Second Lien Bonds.

(7) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission for deposit in the Reserve Account for the Second Lien Bonds the amount required under the Prior Resolution.

(8) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund the amount, if any, required by the CIF Resolutions to be deposited into the CIF Surplus Fund.

(9) After all the foregoing provisions for use of monies in the Revenue Fund have been fully complied with, any monies remaining therein and not permitted to be retained therein may be used to prepay installments of the Bonds, pro rata, or for any lawful purpose of the System.

Monies in the Series 2009 B Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2009 B Bonds as the same shall become due. Monies in the Series 2009 B Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2009 B Bonds as the same shall come due, when other monies in the Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on monies in the Series 2009 B Bonds Sinking Fund shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, as applicable, be deposited in the Series 2009 B Bonds Construction Trust Fund, and following completion thereof, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 2009 B Bonds.

Any withdrawals from the Series 2009 B Bonds Reserve Account, which result in a reduction in the balance of such account to below the Reserve Requirement thereof, shall be restored from the first Net Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Series 2009 B Bonds are issued, provision shall be made for additional payments into the respective sinking funds sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective Reserve Accounts in an amount equal to the requirement thereof.

The Issuer shall not be required to make any further payments into the Series 2009 B Bonds Sinking Fund, or the Series 2009 B Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2009 B Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

Principal, interest or reserve payments, if applicable, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the First Lien Bonds, the Series 2009 A Bonds and the Series 2009 B Bonds and senior and prior to the Second Lien Bonds.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2009 B Bonds Sinking Fund, and the Series 2009 B Bonds Reserve Account created hereunder, and all amounts required for said accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited. If required by the Authority at anytime, the Issuer shall make the necessary arrangements whereby required payments into said accounts

shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Monies in the Series 2009 B Bonds Sinking Fund and the Series 2009 B Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2009 B Bonds Sinking Fund and the Series 2009 B Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2009 B Bonds, under the conditions and restrictions set forth herein.

B. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.

C. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required principal, interest and reserve payments with respect to the Series 2009 B Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited.

D. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan Agreement and submit a copy of said form along with a copy of its payment check to the Authority by the 5th day of such calendar month.

E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by the Authority at anytime, make the necessary arrangements whereby such required payments shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required.

F. The monies in excess of the maximum amounts insured by FDIC in all funds and accounts shall at all times be secured, to the full extent thereof in excess of such insured sum, by Government Obligations or by other Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

G. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as herein above provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 5.03, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

H. The Gross Revenues of the System shall only be used for purposes of the System.

I. If the Issuer is subject to the rebate requirements of Section 148(f) of the Code and not exempted from such requirements, the Issuer shall deposit, or cause to be deposited, in the Rebate Fund such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, as more fully described in Article VIII.

## ARTICLE VI

### **BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS**

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the monies received from the sale of the Series 2009 B Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2009 B Bonds, there shall first be deposited with the Commission in the Series 2009 B Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 2009 B Bonds for the period commencing on the date of issuance of the Series 2009 B Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. From the proceeds of the Series 2009 B Bonds, there shall be deposited with the Commission in the Series 2009 B Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 2009 B Bonds Reserve Account.

C. As the Issuer receives advances of the remaining monies derived from the sale of the Series 2009 B Bonds, such monies shall be deposited with the Depository Bank in the Series 2009 B Bonds Construction Trust Fund and applied solely to payment of costs of the Project in the manner set forth in Section 6.02 hereof and until so expended, are hereby pledged as additional security for the Series 2009 B Bonds.

D. After completion of construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2009 B Bonds shall be expended as directed by the Council.

Section 6.02. Disbursements From the Bond Construction Trust Fund. The Issuer shall each month provide the Council with a requisition for the costs incurred for the Project, together with such documentation as the Council shall require. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements of the proceeds of the Series 2009 B Bonds from the Series 2009 B Bonds Construction Trust Fund shall be made only after submission to, and approval from, the Council of a certificate, signed by an Authorized Officer, stating that:

- (1) None of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;

- (2) Each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;
- (3) Each of such costs has been otherwise properly incurred; and
- (4) Payment for each of the items proposed is then due and owing.

Pending such application, monies in the Series 2009 B Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

## ARTICLE VII

### ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 2009 B Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2009 B Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2009 B Bonds or the interest, if any, thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2009 B Bonds shall not be nor constitute a corporate indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of any Bonds shall ever have the right to compel the exercise of the taxing power, if any, of the Issuer to pay the Series 2009 B Bonds or the interest, if any, thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Position with Respect to Prior Bonds. The payment of the debt service of all the Series 2009 B Bonds shall be secured by a first lien on the Net Revenues derived from the System, on a parity with lien on the Net Revenues in favor of the Holders of the First Lien Bonds and the Series 2009 A Bonds and senior and prior to the Second Lien Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest, if any, on the Series 2009 B Bonds and the Prior Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided herein, to such payments as they become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Initial Schedule of Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal and the Issuer shall supply an opinion of counsel to such effect. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement and the Issuer shall supply a certificate of certified public accountant to such effect. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth and approved and described in the Recommended Decision of the Public Service Commission of West Virginia entered August 19, 2009, in Case No. 08-0311-PSD-PW-CN, and such rates are hereby adopted, which rates are incorporated herein by reference as a part hereof.

So long as the Prior Bonds and Series 2009 B Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Loan Agreement. In the event the schedule of rates and charges initially established for the System in connection with the Series 2009 B Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, lease, mortgage or in any manner dispose of or encumber the System, or any part thereof, except as provided in the Prior Resolutions and with the written consent of the Authority and the Council.

So long as the Series 2009 B Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority and the Council, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding, in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the Commission for deposit in the Series 2009 B Bonds Sinking Fund, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest on the Series 2009 B Bonds in accordance with Article X hereof. Any balance remaining after the payment of the Series 2009 B Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor is not in excess of \$50,000, the Issuer shall, in writing, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Issuer may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property shall be in excess of \$50,000 but not in excess of \$200,000, the Issuer shall first, in writing, determine with the written approval of the Consulting Engineers that such property comprising a part of the System is no longer

necessary, useful or profitable in the operation thereof, and the Governing Body may then, if it be so advised, by resolution duly adopted, approve and concur in such finding and authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds derived from any such sale, lease or other disposition of such property, in excess of \$50,000 and not in excess of \$200,000, shall be deposited by the Issuer into the Renewal and Replacement Fund. Such payments of such proceeds into the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said fund by other provisions of Prior Resolution and this Bond Legislation.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the fiscal year for such sales, leases or other dispositions of such properties, shall be in excess of \$200,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided for in Section 7.06 and Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Bonds. All obligations issued by the Issuer after the issuance of the Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Bonds and the interest thereon in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority and the Council prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the System, or any other obligations related to the Project or the System.

Section 7.07. Parity Bonds. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Resolutions shall be applicable. In addition, no Parity Bonds, payable out of the revenues of the System, shall be

issued after the issuance of the Series 2009 B Bonds pursuant to this Bond Legislation, without the prior written consent of the Authority and the Council and without complying with the conditions and requirements herein provided.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2009 B Bonds.

No such Parity Bonds shall be issued except for the purpose of financing the costs of the acquisition or construction of additions extensions, improvements or betterments to the System or refunding any outstanding Bonds, or both such purposes.

So long as the RUS Bonds are Outstanding, no Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Secretary a written statement by the Independent Certified Public Accountants, reciting the conclusion that the Net Revenues for the Fiscal Year following the year in which such Parity Bonds are to be issued shall be at least 120% of the average annual debt service requirements on the following:

- (1) The Bonds Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Resolution then Outstanding; and
- (3) The Parity Bonds then proposed to be issued.

The foregoing limitation may be waived or modified by the written consent of the Holders of the Prior Bonds, representing 75% of the then-outstanding principal indebtedness. In the event the foregoing limitation is waived or when the RUS Bonds are no longer outstanding, the following parity requirement shall be met:

No Parity Bonds shall be issued at any time, unless there has been procured and filed with the Secretary a written statement by the Independent Certified Public Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues expected to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest, if any, on the following:

- (1) The Bonds then Outstanding;

- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Resolution then Outstanding; and
- (3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues expected to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates adopted by the Issuer, the time for appeal of which shall have expired prior to the issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the Secretary prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period herein above referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System adopted by the Issuer, the time for appeal of which shall have expired prior to issuance of such Parity Bonds.

All covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this section. All Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System and their source of and security for payment from said revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior liens of the Series 2009 B Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2009 B Bonds.

No Parity Bonds shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Bond Legislation with respect to the Bonds then Outstanding, and any other payments provided for in this Bond Legislation, shall have been made in full as required to the date of delivery of the Parity

Bonds, and the Issuer then be in full compliance with all the covenants, agreements and terms of this Bond Legislation.

Section 7.08. Books; Records and Audit. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority and the Council or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority and the Council such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the Authority and the Council or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Governing Body. The Governing Body shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Governing Body shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Council and the Authority, or any other original purchaser of the Bonds, and shall mail in each year to any Holder or Holders of the Bonds, requesting the same, an annual report containing the following:

- (A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation and the status of all said funds and accounts.

(C) The amount of any Bonds, notes or other obligations payable from the revenues of the System outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants ( and to the extent legally required, in compliance with the applicable OMB Circular, or any successor thereto and the Single Audit Act, or any successor thereto), and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2009 B Bonds and shall submit said report to the Authority and the Council, or any other original purchaser of the Series 2009 B Bonds. Such audit report submitted to the Authority and the Council shall include a statement that the Issuer is in compliance with the terms and provisions of the Act, the Loan Agreement and this Bond Legislation and that the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the Loan Agreement and the Act, the Issuer has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared by the Consulting Engineers. All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Issuer.

The Issuer shall provide the Council with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in Exhibit E of the Loan Agreement or as promulgated from time to time.

The Issuer shall permit the Authority and the Council, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction and commencement of operation of the Project, the Issuer shall also provide the Authority and the Council, or their agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the Council with respect to the System pursuant to the Act.

Section 7.09.Rates. Prior to the issuance of the Series 2009 B Bonds, equitable rates or charges for the use of and service rendered by the System shall be established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Secretary, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce

Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Series 2009 B Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2009 B Bonds, including the Prior Bonds and the Series 2009 A Bonds; provided that, in the event that an amount equal to or in excess of the reserve requirement is on deposit in the Series 2009 B Bonds Reserve Account and any reserve accounts for obligations on a parity with the Series 2009 B Bonds including Prior Bonds and the Series 2009 A Bonds are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest on the Series 2009 B Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2009 B Bonds including Prior Bonds and the Series 2009 A Bonds. In any event, subject to any requirements of law, the Issuer shall not reduce the rates or charges for services described in Section 7.04 hereof.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority and the Council within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a registered professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a registered professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance within 30 days of adoption to the Authority and the Council, or to any Holder of the Bonds, who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Council, the Authority and any Holder of any Bonds or anyone acting for and on behalf of such Holder of any Bonds.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for 2 years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreement and forward a copy of such report to the Authority and the Council by the 10th day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers in the form attached to the Loan Agreement, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the Authority and the Council, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the Council is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

The Issuer shall provide and maintain competent and adequate engineering services satisfactory to the Authority and the Council covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority, the Council and the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

Section 7.12. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations

promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System and any services and facilities of the water system, if so owned by the Issuer, to all users of the services of the System delinquent in payment of charges for the services of either the System or the water system and will not restore such services of the System until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law.

Section 7.14.No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15.Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Loan Agreement, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the

order of the Authority, the Issuer, the contractors and subcontractors, as their interests may appear.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than \$500,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the construction contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

(4) FLOOD INSURANCE, if the facilities of the System are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

(5) BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

(6) FIDELITY BONDS will be provided as to every officer, member and employee of the Issuer having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

B. The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract. The Issuer shall verify such bonds prior to commencement of construction.

The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage

insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Authority and the Council and the Issuer shall verify such insurance prior to commencement of construction. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 7.16. Mandatory Connections. The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30-day notice of the availability of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 7.17. Completion of Project; Permits and Orders. The Issuer will complete the acquisition and construction of the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer will obtain all permits required by state and federal laws for the acquisition and construction of the Project, all orders and approvals from the Public Service Commission of West Virginia and the Council necessary for the acquisition and construction of the Project and the operation of the System and all approvals of issuance of the Series 2009 B Bonds required by State law, with all requisite appeal periods having expired without successful appeal and the Issuer shall supply an opinion of counsel to such effect.

Section 7.18. Compliance with Loan Agreement and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Loan Agreement and the

Act. Notwithstanding anything herein to the contrary, the Issuer will provide the Council with copies of all documents submitted to the Authority. The Issuer also agrees to comply with all applicable laws, rules and regulations issued by the Authority, the Council or other state, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

Section 7.19. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 2009 B Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 2009 B Bonds during the term thereof is, under the terms of the Series 2009 B Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2009 B Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 2009 B Bonds during the term thereof is, under the terms of the Series 2009 B Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 2009 B Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Series 2009 B Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of the portion of the Project to which such Private Business Use is related. All of the foregoing shall be determined in accordance with the Code.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% of the Net Proceeds of the Series 2009 B Bonds or \$5,000,000 are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 2009 B Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

D. INFORMATION RETURN. The Issuer will timely file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2009 B Bonds

and the interest thereon including, without limitation, the information return required under Section 149(e) of the Code.

E. **FURTHER ACTIONS.** The Issuer will take any and all actions that may be required of it (including, without limitation, those deemed necessary by the Authority) so that the interest on the Series 2009 B Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions or fail to take any actions (including, without limitation, those deemed necessary by the Authority), the result of which would adversely affect such exclusion.

Section 7.20. Securities Laws Compliance. The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 7.21. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2009 B Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Series 2009 B Bonds and shall be on a parity with the statutory mortgage lien in favor of the Holders of the First Lien Bonds and the Series 2009 A Bonds and senior and prior to the Subordinate Bonds.

Section 7.22. Contracts; Change Orders; Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2009 B Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to the Council for written approval. The Issuer shall obtain the written approval of the Council before expending any proceeds of the Series 2009 B Bonds held in "contingency" as set forth in the schedule attached to the certificate of the Consulting Engineer. The Issuer shall also obtain the written approval of the Council before expending any proceeds of the Series 2009 B Bonds made available due to bid or construction or project underruns.

C. The Issuer shall list the funding as being provided by the Authority and the Council in any press release, publication, program, bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any ground breaking or dedication of the Project.

## ARTICLE VIII

### INVESTMENT OF FUNDS

Section 8.01. Investments. Any monies held as a part of the funds and accounts created by this Bond Legislation other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Bond Legislation, the need for such monies for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8.01.

Any investment shall be held in and at all times deemed a part of the fund or account in which such monies were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year (or more often if reasonably requested by the Issuer), a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Bonds are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of interest on the Bonds from gross income for federal income tax purposes.

Section 8.02. Certificate as to Use of Proceeds; Covenants as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2009 B Bonds as a condition to issuance of the Series 2009 B Bonds. In addition, the Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2009 B Bonds as may be necessary in order to maintain the status of the Series 2009 B Bonds as public purpose bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the proceeds of the Series 2009 B Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority, the

Council or the DEP, as the case may be, from which the proceeds of the Series 2009 B Bonds are derived, to lose their status as tax-exempt bonds; and (iii) to take such action, or refrain from taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority, the Council or the DEP, to ensure compliance with the covenants and agreements set forth in this Section, regardless of whether such actions may be contrary to any of the provisions of this Resolution.

The Issuer shall annually furnish to the Authority information with respect to the Issuer's use of the proceeds of the Series 2009 B Bonds and any additional information requested by the Authority.

## ARTICLE IX

### DEFAULT AND REMEDIES

Section 9.01.Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2009 B Bonds:

- (1) If default occurs in the due and punctual payment of the principal of or interest, if any, on any series of the Series 2009 B Bonds; or
- (2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2009 B Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2009 B Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Bond;
- (3) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or
- (4) If default occurs with respect to the Prior Bonds or the Prior Resolutions.

Notwithstanding anything herein to the contrary, if default occurs in the due and punctual payment of the principal of or interest on the Series 2009 B Bonds or the Prior Bonds, it shall constitute an "Event of Default" with respect to the Series 2009 B Bonds.

Section 9.02.Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered

Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Series 2009 B Bonds shall be on a parity with the First Lien Bonds and Series 2009 A Bonds and senior and prior to the Second Lien Bonds.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his or her or its agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate and maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might do.

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Bond Legislation for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Bond Legislation shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of any Bonds shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of the System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

## ARTICLE X

### **PAYMENT OF BONDS**

Section 10.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid to the Holders of the Series 2009 B Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owner of the Series 2009 B Bonds, shall thereupon cease, terminate and become void and be discharged and satisfied; except as may otherwise be necessary to assure the exclusion of interest on the Series 2009 B Bonds from gross income for federal income tax purposes.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2009 B Bonds, this Resolution may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2009 B Bonds, no material modification or amendment of this Resolution, or of any resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2009 B Bonds, shall be made without the consent in writing of the Registered Owners of the Series 2009 B Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of the Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludability of interest on the Series 2009 B Bonds from gross income of the holders thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Series 2009 B Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Resolution should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution, the Supplemental Resolution or the Series 2009 B Bonds.

Section 11.04. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 11.05. Conflicting Provisions Repealed; Prior Resolutions. All orders or resolutions and or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed; provided that, this Section shall not be applicable to the Loan Agreement; and provided that in the event of any conflict between this

Resolution and the Prior Resolutions, the Prior Resolutions shall control (unless less restrictive), so long as the Prior Bonds or any portion thereof are Outstanding.

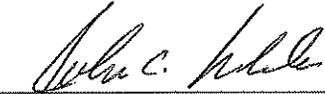
Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Resolution do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Chairman, the Secretary and members of the Governing Body were at all times when any actions in connection with this Resolution occurred and are duly in office and duly qualified for such office.

Section 11.07. Effective Date. This Resolution shall take effect immediately upon adoption.

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Adopted this 14th day of July, 2009.

BERKELEY COUNTY PUBLIC SERVICE  
SEWER DISTRICT

By:   
Its: Chairman

CERTIFICATION

Certified a true copy of a Resolution duly adopted by the Public Service Board of the BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT on the 14th day of July, 2009.

Dated: July 31, 2009

[SEAL]

  
Secretary

067740.00019

**BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT**

**Sewer Revenue Bonds Series 2009 B  
(West Virginia Infrastructure Fund)**

**SUPPLEMENTAL RESOLUTION**

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNTS, DATES, MATURITY DATES, REDEMPTION PROVISIONS, INTEREST RATES, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICES AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND), OF BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT; APPROVING AND RATIFYING THE LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Public Service Board (the "Governing Body") of Berkeley County Public Service Sewer District (the "Issuer") has duly and officially adopted a bond resolution on July 14, 2009 (the "Bond Resolution" or the "Resolution"), entitled:

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT OF NOT MORE THAN \$1,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Resolution when used herein;

WHEREAS, the Bond Resolution provides for the issuance of Sewer Revenue Bonds, Series 2009 B (West Virginia Infrastructure Fund), of the Issuer (the "Bonds"), in the aggregate principal amounts not to exceed \$1,000,000, and has authorized the execution and delivery of the loan agreement relating to the Series 2009 B Bonds, by and between the Issuer and the Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council") (the "Loan Agreement"), all in accordance with Chapter 16, Article 13A and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"); and in the Bond Resolution it is provided that the form of the Loan Agreement and the exact principal amount, dates, maturity dates, redemption provisions, interest rates, interest and principal payment dates, sale prices and other terms of the Bonds should be established by a supplemental resolution pertaining to the Bonds; and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Loan Agreement has been presented to the Issuer at this meeting;

WHEREAS, the Bonds are proposed to be purchased by the Authority pursuant to the Loan Agreement; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the Loan Agreement be approved and ratified by the Issuer, that the exact principal amounts, the dates, the maturity dates, the redemption provisions, the interest rates, the interest and principal payment dates, the sale prices and other terms of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT:

Section 1. Pursuant to the Bond Resolution and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the following bonds of the Issuer: Sewer Revenue Bonds, Series 2009 B (West Virginia Infrastructure Fund), of the Issuer, originally represented by a single Bond, numbered BR-1, in the principal amount of \$1,000,000. The Series 2009 B Bonds shall be dated the date of delivery thereof, shall finally mature September 1, 2029 and shall bear interest at the rate of 3%. The principal and interest of the Series 2009 B Bonds shall be payable quarterly, on March 1, July 1, September 1 and December 1 of each year, commencing December 1, 2009, to and including September 1, 2029, and in the amounts as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Series 2009 B Bonds. The Series 2009 B Bonds shall be subject to redemption upon the written consent of the Authority and the Council, and upon payment of the redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the registered owner of the Series 2009 B Bonds.

Section 2. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Bond Resolution.

Section 3. The Issuer does hereby authorize, approve, ratify and accept the Loan Agreement, copies of which are incorporated herein by reference, and the execution and delivery of the Loan Agreement by the Chairman, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed, ratified and approved. The Issuer hereby affirms all covenants and representations made in the Loan Agreement and in the applications to the Council and the Authority. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Bonds shall be advanced from time to time as requisitioned by the Issuer.

Section 4. The Issuer does hereby appoint and designate The Huntington National Bank, Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Bonds under the Bond Resolution and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Chairman, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, approved and directed.

Section 5. The Issuer does hereby appoint and designate the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Bonds under the Bond Resolution.

Section 6. The Issuer does hereby appoint and designate Susquehanna Bank, Martinsburg, West Virginia, to serve as Depository Bank under the Bond Resolution.

Section 7. Series 2009 B Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2009 B Bonds Sinking Fund, as capitalized interest.

Section 8. Series 2009 B Bonds proceeds in the amount of \$66,674 shall be deposited in the Series 2009 B Bonds Reserve Account.

Section 9. The balance of the proceeds of the Series 2009 B Bonds shall be deposited in or credited to the Bond Construction Trust Fund for payment of the costs of the Project, including, without limitation, costs of issuance of the Bonds and related costs.

Section 10. The Chairman and Secretary are hereby authorized and directed to execute and deliver such other documents, agreements, instruments and certificates required or desirable in connection with the Bonds to be issued hereby and by the Bond Resolution approved and provided for, to the end that the Bonds may be delivered on or about July 31, 2009, to the Authority pursuant to the Loan Agreement.

Section 14. The acquisition and construction of the Project and the financing thereof in part with proceeds of the Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 15. The Issuer hereby determines that it is in the best interest of the Issuer to invest all moneys in the funds and accounts established by the Bond Resolution held by the Depository Bank until expended, in repurchase agreements or time accounts, secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such moneys to be invested in such repurchase

agreements or time accounts, until further directed in writing by the Issuer. Moneys in the Sinking Funds, including the Reserve Accounts therein, shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 16. This Supplemental Resolution shall be effective immediately following adoption hereof.

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Adopted this 14th day of July, 2009.

BERKELEY COUNTY PUBLIC  
SERVICE SEWER DISTRICT

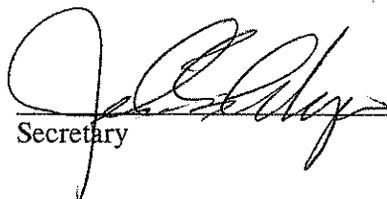
By:   
Its: Chairman

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Public Service Board of Berkeley County Public Service Sewer District on the 14th day of July, 2009.

Dated: July 31, 2009

[SEAL]

  
Secretary

IC-1  
(11/01/04)

LOAN AGREEMENT

THIS LOAN AGREEMENT, made and entered into in several counterparts, by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), acting on behalf of the WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL (the "Council"), and the governmental agency designated below (the "Governmental Agency").

BERKELEY COUNT PUBLIC SERVICE SEWER DISTRICT  
(2008S-1049)

(Governmental Agency)

W I T N E S S E T H:

WHEREAS, pursuant to the provisions of Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (the "Act"), the Authority is empowered upon request of the Council to make loans to governmental agencies for the acquisition or construction of projects by such governmental agencies, subject to such provisions and limitations as are contained in the Act;

WHEREAS, the Governmental Agency constitutes a governmental agency as defined by the Act;

WHEREAS, the Governmental Agency is authorized and empowered by the statutes of the State to acquire, construct, improve, operate and maintain a project, as defined by the Act, and to finance the cost of acquisition and construction of the same by borrowing money to be evidenced by revenue bonds issued by the Governmental Agency;

WHEREAS, the Governmental Agency intends to construct, is constructing or has constructed such a project at the location and as more particularly described and set forth in the Application, as hereinafter defined (the "Project");

WHEREAS, the Governmental Agency has completed and filed with the Authority an Application for a Construction Loan with attachments and exhibits and an

Amended Application for a Construction Loan also with attachments and exhibits (together, as further revised and supplemented, the "Application"), which Application is incorporated herein by this reference; and

WHEREAS, having reviewed the Application and made all findings required by the Act and having available sufficient funds therefor, the Council has authorized the Authority to lend the Governmental Agency the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Governmental Agency with money in the Infrastructure Fund, subject to the Governmental Agency's satisfaction of certain legal and other requirements of the Council's loan program (the "Program") as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Governmental Agency and the Authority hereby agree as follows:

## ARTICLE I

### Definitions

1.1 Except where the context clearly indicates otherwise, the terms "Authority," "cost," "Council," "governmental agency," "project," "waste water facility" and "water facility" have the definitions and meanings ascribed to them in the Act.

1.2 "Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser of the Bonds, acting in its administrative capacity pursuant to Section 10 of the Act and upon authorization from the Council.

1.3 "Consulting Engineers" means the professional engineer, licensed by the State, designated in the Application and any qualified successor thereto; provided, however, when a Loan is made for a Project financed, in part, by the Office of Abandoned Mine Lands, Consulting Engineers shall mean the West Virginia Department of Environmental Protection, or any successor thereto.

1.4 "Infrastructure Fund" means the West Virginia Infrastructure Fund established in accordance with Section 9 of the Act.

1.5 "Loan" means the loan to be made by the Authority to the Governmental Agency through the purchase of Local Bonds, as hereinafter defined, pursuant to this Loan Agreement.

1.6 "Local Act" means the official action of the Governmental Agency required by Section 4.1 hereof, authorizing the Local Bonds.

1.7 "Local Bonds" means the revenue bonds to be issued by the Governmental Agency pursuant to the provisions of the Local Statute, as hereinafter defined, to evidence the Loan and to be purchased by the Authority, all in accordance with the provisions of this Loan Agreement.

1.8 "Local Statute" means the specific provisions of the Code of West Virginia, 1931, as amended, pursuant to which the Local Bonds are issued.

1.9 "Operating Expenses" means the reasonable, proper and necessary costs of operation and maintenance of the System, as hereinafter defined, as should normally and regularly be included as such under generally accepted accounting principles.

1.10 "Project" means the project hereinabove referred to, to be constructed or being constructed by the Governmental Agency in whole or in part with the net proceeds of the Local Bonds.

1.11 "System" means the project owned by the Governmental Agency, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

1.12 Additional terms and phrases are defined in this Loan Agreement as they are used.

## ARTICLE II

### The Project and the System

2.1 The Project shall generally consist of the construction and acquisition of the facilities described in the Application, to be, being or having been constructed in accordance with plans, specifications and designs prepared for the Governmental Agency by the Consulting Engineers, the Authority and Council having found, to the extent applicable, that the Project is consistent with the Act.

2.2 Subject to the terms, conditions and provisions of this Loan Agreement and the Local Act, the Governmental Agency has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared for the Governmental Agency by the Consulting Engineers.

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Governmental Agency, subject to any mortgage lien or

other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property or any interest therein is approved by the Authority and Council.

2.4 The Governmental Agency agrees that the Authority and the Council and their duly authorized agents shall have the right at all reasonable times to enter upon the Project site and Project facilities and to examine and inspect the same. The Governmental Agency further agrees that the Authority and the Council and their duly authorized agents and representatives shall, prior to, during and after completion of construction and commencement of operation of the Project, have such rights of access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the Council with respect to the System pursuant to the pertinent provisions of the Act.

2.5 The Governmental Agency shall keep complete and accurate records of the cost of acquiring the Project site and the costs of constructing, acquiring and installing the Project. The Governmental Agency shall permit the Authority and the Council, acting by and through their directors or their duly authorized agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at any and all reasonable times for the purpose of audit and examination, and the Governmental Agency shall submit to the Authority and the Council such documents and information as they may reasonably require in connection with the construction, acquisition and installation of the Project, the operation and maintenance of the System and the administration of the Loan or of any State and federal grants or other sources of financing for the Project.

2.6 The Governmental Agency agrees that it will permit the Authority and the Council and their agents and representatives to have access to the records of the Governmental Agency pertaining to the operation and maintenance of the System at any reasonable time following completion of construction of the Project and commencement of operation thereof or if the Project is an improvement to an existing system at any reasonable time following commencement of construction.

2.7 The Governmental Agency shall require that each construction contractor furnish a performance bond and a payment bond, each in an amount at least equal to one hundred percent (100%) of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract and shall verify or have verified such bonds prior to commencement of construction.

2.8 The Governmental Agency shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Council and the Authority and shall verify or have verified such insurance prior to commencement of construction. Until the Project facilities are completed and accepted by the Governmental Agency, the Governmental Agency or (at the option of the Governmental Agency) the contractor shall maintain builder's risk insurance (fire and extended coverage) on a one hundred percent

(100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Governmental Agency, the prime contractor and all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Governmental Agency on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds is outstanding. Prior to commencing operation of the Project, the Governmental Agency must also obtain, and maintain so long as any of the Local Bonds are outstanding, business interruption insurance if available at a reasonable cost.

2.9 The Governmental Agency shall provide and maintain competent and adequate engineering services satisfactory to the Council and the Authority covering the supervision and inspection of the development and construction of the Project, and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority, the Council and the Governmental Agency at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

2.10 The Governmental Agency shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Governmental Agency shall employ qualified operating personnel properly certified by the State to operate the System during the entire term of this Loan Agreement.

2.11 The Governmental Agency hereby covenants and agrees to comply with all applicable laws, rules and regulations issued by the Council, the Authority or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

2.12 The Governmental Agency, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward a copy by the 10<sup>th</sup> of each month to the Authority and Council.

2.13 The Governmental Agency shall serve the additional customers at the location(s) as set forth in Schedule X. The Governmental Agency shall not reduce the amount of additional customers served by the project without the prior written approval of the WDA Board. Following completion of the Project the Governmental Agency shall certify to the Authority the number of customers added to the System.

2.14 The Governmental Agency shall perform an annual maintenance audit which maintenance audit shall be submitted to the WDA and the Public Service Commission of West Virginia.

### ARTICLE III

#### Conditions to Loan; Issuance of Local Bonds

3.1 The agreement of the Authority and Council to make the Loan is subject to the Governmental Agency's fulfillment, to the satisfaction of the Authority and the Council, of each and all of those certain conditions precedent on or before the delivery date for the Local Bonds, which shall be the date established pursuant to Section 3.4 hereof. Said conditions precedent are as follows:

(a) The Governmental Agency shall have performed and satisfied all of the terms and conditions to be performed and satisfied by it in this Loan Agreement;

(b) The Governmental Agency shall have authorized the issuance of and delivery to the Authority of the Local Bonds described in this Article III and in Article IV hereof;

(c) The Governmental Agency shall either have received bids or entered into contracts for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application; provided that, if the Loan will refund an interim construction financing, the Governmental Agency must either be constructing or have constructed its Project for a cost and as otherwise compatible with the plan of financing described in the Application; and, in either case, the Authority and the Council shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit A;

(d) The Governmental Agency shall have obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, and the Authority and the Council shall have received a certificate of the Consulting Engineers to such effect;

(e) The Governmental Agency shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") and the Council necessary for the construction of the Project and operation of the System, with all requisite appeal periods having expired without successful appeal, and the Authority and the Council shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority and the Council, to such effect;

(f) The Governmental Agency shall have obtained any and all approvals for the issuance of the Local Bonds required by State law, and the Authority and the Council shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

(g) The Governmental Agency shall have obtained any and all approvals of rates and charges required by State law and shall have taken any other action required to establish and impose such rates and charges (imposition of such rates and charges is not, however, required to be effective until completion of construction of the Project), with all requisite appeal periods having expired without successful appeal, and the Authority and the Council shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority and the Council, to such effect;

(h) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof, and the Authority and the Council shall have received a certificate of the accountant for the Governmental Agency, or such other person or firm experienced in the finances of governmental agencies and satisfactory to the Authority and the Council, to such effect; and

(i) The net proceeds of the Local Bonds, together with all moneys on deposit or to be simultaneously deposited (or, with respect to proceeds of grant anticipation notes or other indebtedness for which a binding purchase contract has been entered, to be deposited on a date certain) and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, shall be sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and the Authority shall have received a certificate of the Consulting Engineers, or such other person or firm experienced in the financing of projects and satisfactory to the Authority and the Council, to such effect, such certificate to be in form and substance satisfactory to the Authority and the Council, and evidence satisfactory to the Authority and the Council of such irrevocably committed grants.

3.2 Subject to the terms and provisions of this Loan Agreement, the rules and regulations promulgated by the Authority, the Council or any other appropriate State agency and any applicable rules, regulations and procedures promulgated from time to time by the federal government, it is hereby agreed that the Authority shall make the Loan to the Governmental Agency and the Governmental Agency shall accept the Loan from the Authority, and in furtherance thereof it is agreed that the Governmental Agency shall sell to the Authority and the Authority shall make the Loan by purchasing the Local Bonds in the principal amount and at the price set forth in Schedule X hereto. The Local Bonds shall have such further terms and provisions as described in Article IV hereof.

3.3 The Loan shall be secured and shall be repaid in the manner hereinafter provided in this Loan Agreement.

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Governmental Agency by written notice to the Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Local Bonds shall be delivered to the Authority on a date as close as possible to the designated date and mutually agreeable to the Authority, the Council and the Governmental Agency. The date of delivery so designated or agreed upon is hereinafter referred to as the "Date of Loan Closing." Notwithstanding the foregoing, the Date of Loan Closing shall in no event occur more than ninety (90) days after the date of execution of this Loan Agreement by the Authority or such later date as is agreed to in writing by the Council.

3.5 The Governmental Agency understands and acknowledges that it is one of several governmental agencies which have applied to the Council for loans from the Infrastructure Fund to finance projects and that the obligation of the Authority to make any such loan is subject to the Council's authorization and the Governmental Agency's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing. The Governmental Agency specifically recognizes that the Authority will not purchase the Local Bonds unless and until sufficient funds are available in the Infrastructure Fund to purchase all the Local Bonds and that, prior to execution of this Loan Agreement, the Authority may commit to and purchase the revenue bonds of other governmental agencies for which it has sufficient funds available.

#### ARTICLE IV

Local Bonds; Security for Loan;  
Repayment of Loan; Interest on Loan;  
Fees and Charges

4.1 The Governmental Agency shall, as one of the conditions of the Authority to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Governmental Agency in accordance with the Local Statute, which shall, as adopted or enacted, contain provisions and covenants in substantially the form as follows, unless the specific provision or covenant is modified or waived by the Council:

(a) That the gross revenues of the System shall always be used for purposes of the System. Such gross revenues shall be used monthly, in the order of priority listed below:

- (i) to pay Operating Expenses of the System;
- (ii) to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document and beginning on the date set forth in Schedule X, to provide debt service on the Local Bonds by depositing in a sinking fund one-third (1/3) of the interest payment next coming due on the Local Bonds and one-third (1/3) of the

principal payment next coming due on the Local Bonds and, beginning three (3) months prior to the first date of payment of principal of the Local Bonds, if the reserve account for the Local Bonds (the AReserve Account@) was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof (which, with an approving opinion of bond counsel to the Governmental Agency, may be with a letter of credit or surety) in an amount equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the AReserve Requirement@), by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;

(iii) to create a renewal and replacement, or similar, fund in an amount equal to two and one-half percent (2-1/2%) of the gross revenues from the System, exclusive of any payments into the Reserve Account, for the purpose of improving or making emergency repairs or replacements to the System or eliminating any deficiencies in the Reserve Account; and

(iv) for other legal purposes of the System, including payment of debt service on other obligations junior, subordinate and inferior to the Local Bonds.

Provided, that if the Governmental Agency has existing outstanding indebtedness which has greater coverage or renewal and replacement fund requirements, then the greater requirements will prevail until said existing indebtedness is paid in full.

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by a pledge of either the gross or net revenues of the System, as more fully set forth in Schedule X attached hereto and in the Local Act;

(ii) That the schedule of rates or charges for the services of the System shall be sufficient to provide funds which, along with other revenues of the System, will pay all Operating Expenses and leave a balance each year equal to at least one hundred fifteen percent (115%) of the maximum amount required in any year for debt service on the Local Bonds and all other obligations secured by a lien on or payable from the revenues of the System prior to or on a parity with the Local Bonds or, if the Reserve Account is funded (whether by Local Bond proceeds, monthly deposits or otherwise) at an amount equal to the Reserve Requirement and any reserve account for any such prior or parity obligations is funded at least at the requirement therefor, equal to at least one hundred ten percent (110%) of the maximum amount required in any year for debt service on the Local Bonds and any such prior or parity obligations;

(iii) That the Governmental Agency shall complete the Project and operate and maintain the System in good condition;

(iv) That, except as otherwise required by State law or with the written consent of the Council and the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Local Bonds outstanding, with further restrictions on the disposition of portions of the System as are normally contained in such covenants;

(v) That the Governmental Agency shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if net revenues of the System prior to issuance of such parity bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on all Local Bonds and parity bonds theretofore and then being issued and on any obligations secured by a lien on or payable from the revenues of the System prior to the Local Bonds and with the prior written consent of the Authority and the Council; provided, however, that additional parity bonds may be issued to complete the Project, as described in the Application as of the date hereof, without regard to the foregoing;

(vi) That the Governmental Agency will carry such insurance as is customarily carried with respect to works and properties similar to the System, including those specified by Section 2.8 hereof;

(vii) That the Governmental Agency will not render any free services of the System;

(viii) That the Authority may, by proper legal action, compel the performance of the duties of the Governmental Agency under the Local Act, including the making and collection of sufficient rates or charges for services rendered by the System, and shall also have, in the event of a default in payment of principal or interest on the Local Bonds, the right to obtain the appointment of a receiver to administer the System or construction of the Project, or both, as provided by law;

(ix) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, all delinquent rates and charges, if not paid when due, shall become a lien on the premises served by the System;

(x) That, to the extent legally allowable, the Governmental Agency will not grant any franchise to provide any services which would compete with the System;

(xi) That the Governmental Agency shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority and

the Council, which report shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the Governmental Agency's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

(xii) That the Governmental Agency shall annually adopt a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding fiscal year and shall submit a copy of such budget to the Authority and the Council within 30 days of adoption thereof;

(xiii) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, prospective users of the System shall be required to connect thereto;

(xiv) That the proceeds of the Local Bonds, advanced from time to time, must (a) be deposited in a construction fund, which, except as otherwise agreed to in writing by the Authority, shall be held separate and apart from all other funds of the Governmental Agency and on which the owners of the Local Bonds shall have a lien until such proceeds are applied to the construction of the Project (including the repayment of any incidental interim financing) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim financing of such Governmental Agency, the proceeds of which were used to finance the construction of the Project; provided that, with the prior written consent of the Authority and the Council, the proceeds of the Local Bonds may be used to fund all or a portion of the Reserve Account, on which the owner of the Local Bonds shall have a lien as provided herein;

(xv) That, as long as the Authority is the owner of any of the Local Bonds, the Governmental Agency may not redeem any Local Bonds by it without the written consent of the Authority and the Council and otherwise in compliance with this Loan Agreement;

(xvi) That the West Virginia Municipal Bond Commission (the "Commission") shall serve as paying agent for the Local Bonds;

(xvii) That the Governmental Agency shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required interest, principal and reserve account payment. The Governmental Agency shall complete the Monthly Payment Form, attached hereto as Exhibit D and incorporated herein by reference, and submit a copy of said form along with a copy of the check or electronic transfer to the Authority by the 5th day of such calendar month. When required by the Authority, the Local Entity shall make monthly payments to the Commission by electronic transfer;

(xviii) That, unless it qualifies for an exception to the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, which exception shall be set forth in an opinion of bond counsel, the Governmental Agency will furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Internal Revenue Code of 1986, as amended, a certificate with respect to its rebate calculations and, at any time, any additional information requested by the Authority;

(xix) That the Governmental Agency shall take any and all action, or shall refrain from taking any action regarding the use of the proceeds of the Local Bonds, as shall be deemed necessary by the Authority to maintain the exclusion from gross income for federal income tax purposes of interest on the State=s general obligation bonds or any bonds secured by the Local Bonds;

(xx) That the Governmental Agency shall have obtained the certificate of the Consulting Engineer in the form attached hereto as Exhibit A, to the effect that the Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the Authority and the Council, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the Council is sufficient to pay the costs of acquisition and construction of the Project and all permits required by federal and State laws for construction of the Project have been obtained;

(xxi) That the Governmental Agency shall, to the full extent permitted by applicable law and the rules and regulations of the PSC, terminate the services of any water facility owned by it to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore the services of the water facility until all delinquent charges for the services of the System have been fully paid or, if the water facility is not owned by the Governmental Agency, then the Governmental Agency shall enter into a termination agreement with the water provider;

(xxii) That the Governmental Agency shall furnish to the Authority such information with respect to earnings on all funds constituting "gross proceeds" of the Local Bonds (as that term is defined in the Internal Revenue Code of 1986, as amended) from time to time as the Authority may request;

(xxiii) That the Governmental Agency shall submit all proposed change orders to the Council for written approval. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Local Bonds held in Acontingency@ as set forth in the final Schedule B attached to the certificate of the Consulting Engineer. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Local Bonds available due to bid/construction/project underruns;

(xxiv) That the Governmental Agency shall list the funding provided by the Authority and the Council in any press release, publication, program bulletin,

sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any groundbreaking or dedication of the Project; and

(xxv) That, unless it qualifies for an exception, the Governmental Agency shall comply with all the requirements of Chapter 21, Article 1C of the Code of West Virginia, 1931, as amended (the West Virginia Jobs Act) and shall require its contractors and subcontractors to comply with the West Virginia Jobs Act. The Governmental Agency shall provide the Council and the Authority with a certificate stating that (I) the Governmental Agency will comply with all the requirements of the West Virginia Jobs Act; (II) the Governmental Agency has included the provisions of the West Virginia Jobs Act in each contract and subcontract for the Project; (III) the Governmental Agency has received or will receive, prior to entering into contracts or subcontracts, from each contractor or subcontractor a certificate demonstrating compliance with Section 4 of the West Virginia Jobs Act or waiver certificates from the West Virginia Division of Labor (ADOL); and (IV) the Governmental Agency will file with the DOL and the Council copies of the waiver certificates and certified payrolls or comparable documents that include the number of employees, the county and state wherein the employees reside and their occupation, following the procedures established by the DOL. The monthly requisitions submitted to the Council shall also certify that the Governmental Agency is monitoring compliance by its contractors and subcontractors and that the required information has been submitted.

The Governmental Agency hereby represents and warrants that the Local Act has been or shall be duly adopted in compliance with all necessary corporate and other action and in accordance with applicable provisions of law. All legal matters incident to the authorization, issuance, validity, sale and delivery of the Local Bonds shall be approved without qualification by recognized bond counsel acceptable to the Authority in substantially the form of legal opinion attached hereto as Exhibit B.

4.2 The Loan shall be secured by the pledge and assignment by the Governmental Agency, as effected by the Local Act, of the fees, charges and other revenues of the Governmental Agency from the System as further set forth by and subject only to such reservations and exceptions as are described in Schedules X and Y hereto or are otherwise expressly permitted in writing by the Authority and the Council.

4.3 The principal of the Loan shall be repaid by the Governmental Agency on the days and in the years provided in Schedule X hereto. Interest payments on the Loan shall be made by the Governmental Agency on a quarterly basis as provided in said Schedule X.

4.4 The Loan shall bear interest from the date and at the rate or rates per annum set forth on Schedule X hereto. In no event shall the interest rate on or the net interest cost of the Local Bonds exceed any statutory limitation with regard thereto.

4.5 The Local Bonds shall be delivered to the Authority in fully registered form, transferable and exchangeable as provided in the Local Act at the expense of the

Governmental Agency. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series, as reflected by Schedule X hereto.

4.6 The Governmental Agency agrees to expend the net proceeds of the Local Bonds for the Project within 3 years of the issuance of the bonds which are the source of money used to purchase the Local Bonds, unless otherwise agreed to by the Council.

## ARTICLE V

### Certain Covenants of the Governmental Agency; Imposition and Collection of User Charges; Payments To Be Made by Governmental Agency to the Authority

5.1 The Governmental Agency hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Governmental Agency hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System and will take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and in compliance with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof.

5.2 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Local Bonds shall prove to be insufficient to produce the required sums set forth in the Local Act and this Loan Agreement, the Governmental Agency hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges (or where applicable, immediately file with the PSC for a rate increase) and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and this Loan Agreement.

5.3 In the event the Governmental Agency defaults in the payment due to the Authority pursuant to this Loan Agreement, the amount of such default shall bear interest at the interest rate of the installment of the Loan next due, from the date of the default until the date of the payment thereof.

5.4 The Governmental Agency hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Governmental Agency, the Authority may exercise any or all of the rights and powers granted under the Act and State law, including, without limitation, the right to an appointment of a receiver.

## ARTICLE VI

### Other Agreements of the Governmental Agency

6.1 The Governmental Agency hereby warrants and represents that all information provided to the Authority and the Council in this Loan Agreement, in the Application or in any other application or documentation with respect to financing the Project was at the time, and now is, true, correct and complete, and such information does not omit any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Prior to the Authority's making the Loan and receiving the Local Bonds, the Authority and the Council shall have the right to cancel all or any of their obligations under this Loan Agreement if (a) any representation made to the Authority and the Council by the Governmental Agency in connection with the Loan shall be incorrect or incomplete in any material respect or (b) the Governmental Agency has violated any commitment made by it in its Application or in any supporting documentation or has violated any of the terms of the Act or this Loan Agreement.

6.2 The Governmental Agency hereby covenants that it will rebate any amounts required by Section 148 of the Internal Revenue Code of 1986, as amended, and will take all steps necessary to make any such rebates. In the event the Governmental Agency fails to make any such rebates as required, then the Governmental Agency shall pay any and all penalties, obtain a waiver from the Internal Revenue Service and take any other actions necessary or desirable to preserve the exclusion from gross income for federal income tax purposes of interest on the Local Bonds.

6.3 Notwithstanding Section 6.2, the Authority may at any time, in its sole discretion, cause the rebate calculations prepared by or on behalf of the Governmental Agency to be monitored or cause the rebate calculations for the Governmental Agency to be prepared, in either case at the expense of the Governmental Agency.

6.4 The Governmental Agency hereby agrees to give the Authority and the Council prior written notice of the issuance by it of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project or otherwise related to the Project or the System.

6.5 The Governmental Agency hereby agrees to file with the Authority and the Council upon completion of acquisition and construction of the Project a schedule in substantially the form of Amended Schedule B to the Application, setting forth the actual costs of the Project and sources of funds therefor.

## ARTICLE VII

### Miscellaneous

7.1 Additional definitions, additional terms and provisions of the Loan and additional covenants and agreements of the Governmental Agency, if any, may be set forth in Schedule Z attached hereto and incorporated herein by reference, with the same effect as if contained in the text of this Loan Agreement.

7.2 Schedules X and Y shall be attached to this Loan Agreement by the Authority as soon as practicable after the Date of Loan Closing is established and shall be approved by an official action of the Governmental Agency supplementing the Local Act, a certified copy of which official action shall be submitted to the Authority and the Council.

7.3 The Authority shall take all actions required by the Council in making and enforcing this Loan Agreement.

7.4 If any provision of this Loan Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Loan Agreement, and this Loan Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.5 This Loan Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute any and all documents or other instruments and take such other actions as may be necessary to give effect to the terms of this Loan Agreement.

7.6 No waiver by either party of any term or condition of this Loan Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Loan Agreement.

7.7 This Loan Agreement supersedes all prior negotiations, representations and agreements between the parties hereto relating to the Loan and constitutes the entire agreement between the parties hereto in respect thereof.

7.8 The Authority acknowledges that certain terms and requirements in this Loan Agreement may not be applicable when the Project is financed in part by the West Virginia Department of Environmental Protection, Office of Abandoned Mine Lands and under that circumstance those terms and requirements are specifically waived or modified as agreed to by the Authority and set forth in the Local Act.

7.9 By execution and delivery of this Loan Agreement, notwithstanding the date hereof, the Governmental Agency specifically recognizes that it is hereby agreeing to sell its Local Bonds to the Authority and that such obligation may be specifically enforced or subject to a similar equitable remedy by the Authority.

7.10 This Loan Agreement shall terminate upon the earlier of:

- (i) the end of ninety (90) days after the date of execution hereof by the Authority or such later date as is agreed to in writing by the Council if the Governmental Agency has failed to deliver the Local Bonds to the Authority;
- (ii) termination by the Authority and the Council pursuant to Section 6.1 hereof; or
- (iii) payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Governmental Agency to the Authority, acting on behalf of the Council.

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be executed by their respective duly authorized officers as of the date executed below by the Authority.

BERKELEY COUNTY PUBLIC SERVICE  
SEWER DISTRICT

(SEAL)

Attest:

  
Its Secretary

By:   
Its: Chairman  
Date: July 31, 2009

WEST VIRGINIA WATER  
DEVELOPMENT AUTHORITY

(SEAL)

Attest:

  
Its: Secretary-Treasurer

By:   
Its: Executive Director  
Date: July 31, 2009

EXHIBIT A

FORM OF CERTIFICATE OF CONSULTING ENGINEER

\_\_\_\_\_  
(Issuer)

\_\_\_\_\_  
(Name of Bonds)

I, \_\_\_\_\_, Registered Professional Engineer, West Virginia License No. \_\_\_\_\_, of \_\_\_\_\_, Consulting Engineers, \_\_\_\_\_, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of \_\_\_\_\_ to the \_\_\_\_\_ system (the "Project") of \_\_\_\_\_ (the "Issuer"), to be constructed primarily in \_\_\_\_\_ County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the same meanings set forth in the bond \_\_\_\_\_ adopted or enacted by the Issuer on \_\_\_\_\_, and the Loan Agreement by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), dated \_\_\_\_\_.

2. The Bonds are being issued for the purposes of (i) \_\_\_\_\_, and (ii) paying certain issuance and other costs in connection therewith.

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by [DEP/BPH/PSC] and any change orders approved by the Issuer, the Council and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least \_\_\_ years if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in the Schedule B attached hereto as Exhibit A and my firm<sup>1</sup> has ascertained that all

<sup>1</sup>If another responsible party, such as the Issuer=s attorney, reviews the insurance and payment bonds, then insert the following: [and in reliance upon the opinion of \_\_\_\_\_,

successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the [DEP/BPH/PSC] and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) as of the effective date thereof, <sup>2</sup>the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project set forth in the Schedule B attached hereto and approved by the Council; and (xi) attached hereto as Exhibit A is the final amended ASchedule B - Final Total Cost of Project, Sources of Funds and Costs of Financing@ for the Project.

WITNESS my signature and seal on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

[SEAL]

\_\_\_\_\_  
By: \_\_\_\_\_  
West Virginia License No. \_\_\_\_\_

---

Esq.] and delete Any firm has ascertained that@.

<sup>2</sup>If the Rule 42 Exhibit and/or rate structure was prepared by an accountant, then insert the following: AIn reliance upon the certificate of \_\_\_\_\_ of even date herewith,@ at the beginning of (ix).

EXHIBIT B

OPINION OF BOND COUNSEL FOR GOVERNMENTAL AGENCY

[To Be Dated as of Date of Loan Closing]

West Virginia Infrastructure and  
Jobs Development Council  
300 Summers Street, Suite 980  
Charleston, West Virginia 25301

West Virginia Water Development Authority  
180 Association Drive  
Charleston, West Virginia 25311

Ladies and Gentlemen:

We are bond counsel to \_\_\_\_\_ (the  
“Governmental Agency”), a \_\_\_\_\_.

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a loan agreement dated \_\_\_\_\_, \_\_\_\_\_, including all schedules and exhibits attached thereto (the “Loan Agreement”), between the Governmental Agency and the West Virginia Water Development Authority (the “Authority”), on behalf of the West Virginia Infrastructure and Jobs Development Council (the “Council”), and (ii) the issue of a series of revenue bonds of the Governmental Agency, dated \_\_\_\_\_, (the “Local Bonds”), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are issued in the principal amount of \$\_\_\_\_\_, in the form of one bond, registered as to principal and interest to the Authority, with interest and principal payable quarterly on March 1, June 1, September 1 and December 1 of each year, beginning \_\_\_\_\_, 1, \_\_\_\_\_, and ending \_\_\_\_\_, 1, \_\_\_\_\_, as set forth in the “Schedule Y” attached to the Loan Agreement and incorporated in and made a part of the Local Bonds.

The Local Bonds are issued for the purposes of (i) \_\_\_\_\_, and  
(ii) paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of \_\_\_\_\_ of the Code of West Virginia, 1931, as amended (the “Local Statute”), and the bond \_\_\_\_\_ duly adopted or enacted by the Governmental Agency on \_\_\_\_\_, as supplemented by the supplemental resolution duly adopted by the Governmental Agency on \_\_\_\_\_ (collectively, the “Local Act”), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement has been undertaken. The Local Bonds are subject to redemption prior

to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion as follows:

1. The Loan Agreement has been duly authorized by and executed on behalf of the Governmental Agency and is a valid and binding special obligation of the Governmental Agency, enforceable in accordance with the terms thereof.

2. The Loan Agreement inures to the benefit of the Authority and the Council and cannot be amended so as to affect adversely the rights of the Authority or the Council or diminish the obligations of the Governmental Agency without the consent of the Authority and the Council.

3. The Governmental Agency is a duly organized and validly existing \_\_\_\_\_, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt or enact the Local Act and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Act and all other necessary orders and resolutions have been legally and effectively adopted or enacted by the Governmental Agency and constitute valid and binding obligations of the Governmental Agency, enforceable against the Governmental Agency in accordance with their terms. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds have been duly authorized, issued, executed and delivered by the Governmental Agency to the Authority and are valid, legally enforceable and binding special obligations of the Governmental Agency, payable from the net or gross revenues of the System set forth in the Local Act and secured by a first lien on and pledge of the net or gross revenues of the System, all in accordance with the terms of the Local Bonds and the Local Act.

6. The Local Bonds are, by statute, exempt \_\_\_\_\_, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for federal income tax purposes.

No opinion is given herein as to the effect upon enforceability of the Local Bonds of bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or in the exercise of judicial discretion in appropriate cases.

We have examined the executed and authenticated Local Bond numbered R-1, and in our opinion the form of said bond and its execution and authentication are regular and proper.

Very truly yours,

EXHIBIT C

MONTHLY FINANCIAL REPORT

Name of Governmental Agency \_\_\_\_\_  
 Name of Bond Issue(s) \_\_\_\_\_  
 Type of Project \_\_\_\_\_ Water \_\_\_\_\_ Wastewater \_\_\_\_\_  
 Fiscal Year \_\_\_\_\_ Report Month \_\_\_\_\_

| <u>Item</u>                              | <u>Current Month</u> | <u>Total Year To Date</u> | <u>Budget Year To Date</u> | <u>Budget Year To Date Minus Total Year To Date</u> |
|--|----------------------|---------------------------|----------------------------|---|
| 1. Gross Revenues                        | _____                | _____                     | _____                      | _____   |
| 2. Operating Expenses                    | _____                | _____                     | _____                      | _____   |
| 3. Bond Payments:                        |                      |                           |                            |   |
| <u>Type of Issue</u>                     |                      |                           |                            |   |
| Clean Water SRF                          | _____                | _____                     | _____                      | _____   |
| Drinking Water TRF                       | _____                | _____                     | _____                      | _____   |
| Infrastructure Fund                      | _____                | _____                     | _____                      | _____   |
| Water Development Authority              | _____                | _____                     | _____                      | _____   |
| Rural Utilities Service                  | _____                | _____                     | _____                      | _____   |
| Economic Development Administration      | _____                | _____                     | _____                      | _____   |
| Other (Identify)                         | _____                | _____                     | _____                      | _____   |
| _____                                    | _____                | _____                     | _____                      | _____   |
| _____                                    | _____                | _____                     | _____                      | _____   |
| 4. Renewal and Replacement Fund Deposits | _____                | _____                     | _____                      | _____   |

\_\_\_\_\_  
 Name of Person Completing Form

\_\_\_\_\_  
 Address

\_\_\_\_\_  
 Telephone

## INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

- Item 1 You will need a copy of the current fiscal year budget adopted by the Governmental Agency to complete Items 1 and 2. In Item 1, provide the amount of actual **Gross Revenues** for the current month and the total amount year-to-date in the respective columns. Divide the budgeted annual Gross Revenues by 12. For example, if Gross Revenues of \$1,200 are anticipated to be received for the year, each month the base would be increased by \$100 ( $\$1,200/12$ ). This is the incremental amount for the Budget Year-to-Date column.
- Item 2 Provide the amount of actual **Operating Expenses** for the current month and the total amount year-to-date in the respective columns. Any administrative fee should be included in the Operating Expenses. Divide the budgeted annual Operating Expenses by 12. For example, if Operating Expenses of \$900 are anticipated to be incurred for the year, each month the base would be increased by \$75 ( $\$900/12$ ). This is the incremental amount for the Budget Year-to-Date column.
- Item 3 Provide the **Bond Payments (principal, interest and reserve account)** for all the outstanding bonds of the Governmental Agency according to the source of funding. For example, Clean Water State Revolving Fund loan from Department of Environmental Protection, Drinking Water Treatment Revolving Fund loan from Bureau for Public Health, Infrastructure Fund loan from Infrastructure and Jobs Development Council, or a loan from the Water Development Authority, etc.
- Item 4 Provide the amount deposited into the **Renewal and Replacement Fund** each month. This amount is equal to 2.5% of Gross Revenues minus the total reserve account payments included in Item 3. If Gross Revenues are \$1,200, then \$30 (2.5% of \$1,200), LESS the amount of all reserve account payments in Item 3 should be deposited into the Renewal and Replacement Fund. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Governmental Agency.

**The Governmental Agency must complete the Monthly Financial Report and forward it to the Water Development Authority by the 10<sup>th</sup> day of each month, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project.**

EXHIBIT D

MONTHLY PAYMENT FORM

West Virginia Water Development Authority  
180 Association Drive  
Charleston, WV 25311

Re: [Name of bond issue]

Ladies and Gentlemen:

The following deposits were made to the West Virginia Municipal Bond Commission on behalf of [Name of Governmental Agency] on [Date].

Sinking Fund:

|                  |    |
|------------------|----|
| Interest         | \$ |
| Principal        | \$ |
| Total:           | \$ |
| Reserve Account: | \$ |

Witness my signature this \_\_\_\_ day of \_\_\_\_\_.

[Name of Governmental Agency]

By: \_\_\_\_\_  
Authorized Officer

Enclosure: copy of check(s)

## SCHEDULE X

### DESCRIPTION OF LOCAL BONDS

Principal Amount of Local Bonds \$1,000,000  
Purchase Price of Local Bonds \$1,000,000

The Local Bonds shall bear interest at the rate of 3% per annum. Commencing December 1, 2009, principal on the Local Bonds is payable quarterly. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

The Governmental Agency shall authorize the Commission to electronically debit its monthly payments. The Commission will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority.

The Local Bonds are fully registered in the name of the Authority as to interest, if any, and principal and the Local Bonds shall grant the Authority a first lien on the gross or net revenues of the Governmental Agency's system as provided in the Local Act.

The Governmental Agency may prepay the Local Bonds in full at any time at the price of par but only with the Council's written consent. The Governmental Agency shall request approval from the Authority and Council in writing of any proposed debt which will be issued by the Governmental Agency on a parity with the Local Bonds which request must be filed at least 60 days prior to the intended date of issuance.

As of the date of the Loan Agreement, the Local Bonds are on a parity as to liens, pledge and source of and security for payment with the following obligations of the Governmental Agency:

- (1) Berkeley County Public Service Sewer District Sewer Revenue Bonds, 1986 B, dated March 7, 1986, issued in the original aggregate principal amount of \$1,638,194;
- (2) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 1990 A, dated May 3, 1990, issued in the original aggregate principal amount of \$828,629;
- (3) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 1994 A, dated October 5, 1994, issued in the original aggregate principal amount of \$494,288;
- (4) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 1994 C, dated November 17, 1994, issued in the original aggregate principal amount of \$2,772,879;

- (5) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 1995 A, dated February 9, 1995, issued in the original aggregate principal amount of \$3,837,640;
- (6) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 1995 B, dated December 29, 1995, issued in the original aggregate principal amount of \$2,138,506;
- (7) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 1996 A, dated February 13, 1996, issued in the original aggregate principal amount of \$319,902;
- (8) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 1996 B, dated May 1, 1996, issued in the original aggregate principal amount of \$2,628,633;
- (9) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 1996 C, dated May 1, 1996, issued in the original aggregate principal amount of \$837,579;
- (10) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 1997 A, dated June 12, 1997, issued in the original aggregate principal amount of \$148,000;
- (11) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 1997 B, dated December 11, 1997, issued in the original aggregate principal amount of \$1,250,000;
- (12) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 1999 A, dated October 28, 1999, issued in the original aggregate principal amount of \$30,707,296;
- (13) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 2000 A, dated May 25, 2000, issued in the original aggregate principal amount of \$937,500;
- (14) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 2001 A, dated March 30, 2001, issued in the original aggregate principal amount of \$429,000;
- (15) Berkeley County Public Service Sewer District Sewer Revenue Bonds,

Series 2001 B, dated August 7, 2001, issued in the original aggregate principal amount of \$2,909,850;

(16) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 2002 A, dated May 9, 2002, issued in the original aggregate principal amount of \$750,000;

(17) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 2002 B, dated July 11, 2002, issued in the original aggregate principal amount of \$456,548;

(18) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 2002 C, dated August 28, 2002, issued in the original aggregate principal amount of \$30,500,000;

(19) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 2002 D, dated August 28, 2002, issued in the original aggregate principal amount of \$4,965,465;

(20) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 2002 E, dated August 28, 2002, issued in the original aggregate principal amount of \$560,822;

(21) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 2003 A, dated August 14, 2003, issued in the original aggregate principal amount of \$252,922;

(22) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 2003 B, dated August 14, 2003, issued in the original aggregate principal amount of \$330,862;

(23) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 2004 A, dated November 30, 2004, issued in the original aggregate principal amount of \$1,999,600;

(24) Berkeley County Public Service Sewer District Sewer Refunding Revenue Bonds, Series 2006 A, dated October 19, 2006, issued in the original aggregate principal amount of \$3,665,000;

(25) Berkeley County Public Service Sewer District Sewer Refunding Revenue Bonds, Series 2006 B, dated October 19, 2006, issued in the original aggregate principal amount of \$240,000;

(26) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 2007 A (Bank Qualified), dated March 6, 2007, issued in the original aggregate principal amount of \$3,970,000;

(27) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 2007 B (United States Department of Agriculture), dated March 6, 2007, issued in the aggregate principal amount of \$9,000,000;

(28) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 2007 C (United States Department of Agriculture), dated March 6, 2007, issued in the aggregate principal amount of \$9,000,000;

(29) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 2007 D (United States Department of Agriculture), dated March 6, 2007, issued in the aggregate principal amount of \$7,104,000;

(30) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 2007 E (United States Department of Agriculture), dated March 6, 2007, issued in the aggregate principal amount of \$500,000;

(31) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 2007 F (United States Department of Agriculture), dated March 6, 2007, issued in the aggregate principal amount of \$4,999,900; and

(32) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 2009 A Bonds to be issued simultaneously with the Series 2009 A Bonds in the aggregate principal amount of \$1,000,000.

There are outstanding obligations of the Issuer which will rank junior and subordinate to the Series 2009 B Bonds as to liens, pledge of and security for payment, being:

(1) Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 1990 B, dated May 3, 1990, issued in the original aggregate principal amount of \$828,629.

Number of New Customers to Be Served: 0  
Location: N/A

SCHEDULE Y  
DEBT SERVICE SCHEDULE

**BOND DEBT SERVICE**  
**Berkeley County PSD**  
**20 Years**  
**3.0% Interest Rate**

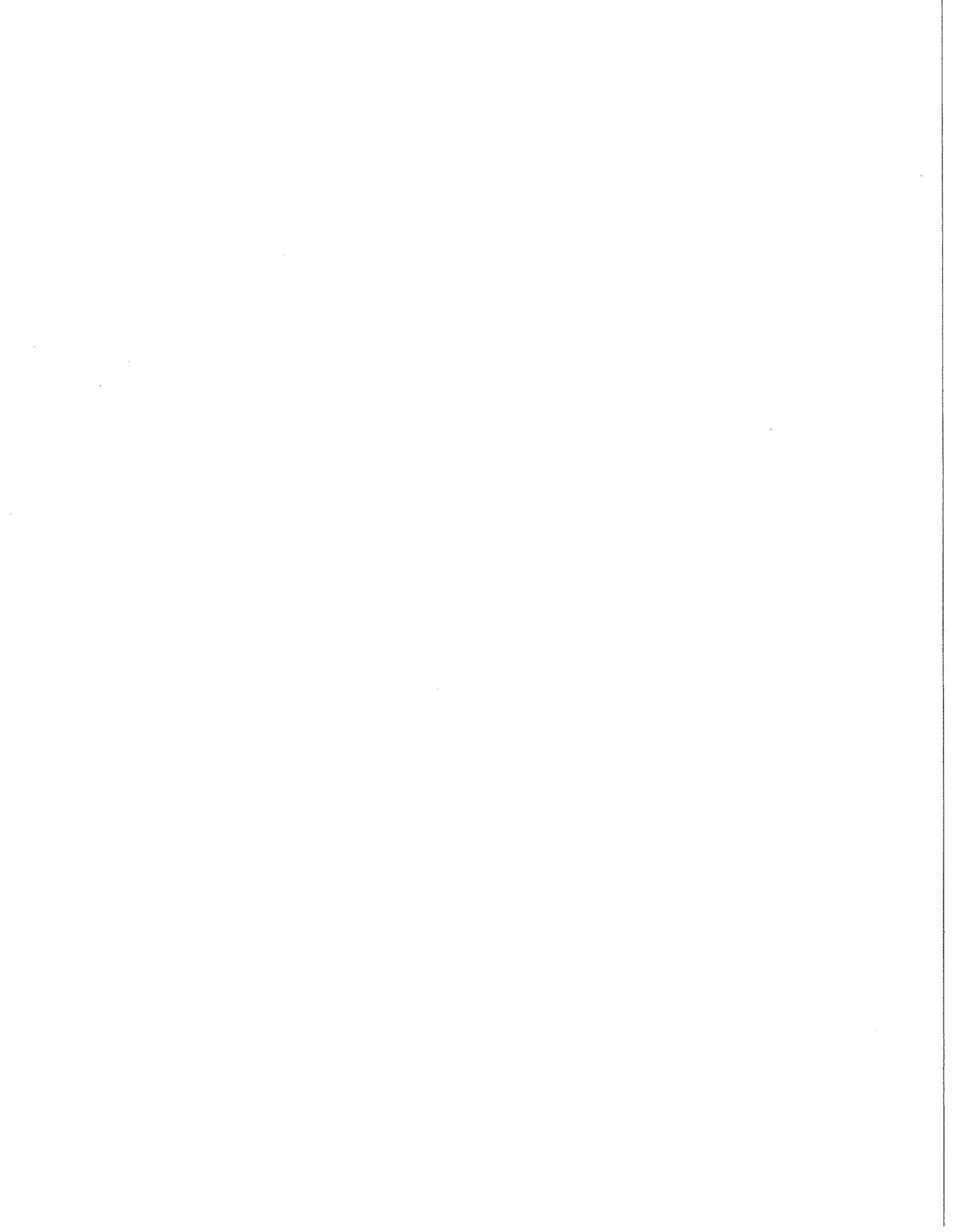
| Period<br>Ending | Principal | Coupon | Interest | Debt Service | Annual Debt<br>Service |
|------------------|-----------|--------|----------|--------------|------------------------|
| 7/31/2009        |           |        |          |              |                        |
| 12/1/2009        | 9,168     | 3.000% | 7,500.00 | 16,668.00    |                        |
| 3/1/2010         | 9,237     | 3.000% | 7,431.24 | 16,668.24    |                        |
| 6/1/2010         | 9,306     | 3.000% | 7,361.96 | 16,667.96    |                        |
| 9/1/2010         | 9,376     | 3.000% | 7,292.17 | 16,668.17    | 66,672.37              |
| 12/1/2010        | 9,446     | 3.000% | 7,221.85 | 16,667.85    |                        |
| 3/1/2011         | 9,517     | 3.000% | 7,151.00 | 16,668.00    |                        |
| 6/1/2011         | 9,589     | 3.000% | 7,079.63 | 16,668.63    |                        |
| 9/1/2011         | 9,660     | 3.000% | 7,007.71 | 16,667.71    | 66,672.19              |
| 12/1/2011        | 9,733     | 3.000% | 6,935.26 | 16,668.26    |                        |
| 3/1/2012         | 9,806     | 3.000% | 6,862.26 | 16,668.26    |                        |
| 6/1/2012         | 9,879     | 3.000% | 6,788.72 | 16,667.72    |                        |
| 9/1/2012         | 9,954     | 3.000% | 6,714.62 | 16,668.62    | 66,672.86              |
| 12/1/2012        | 10,028    | 3.000% | 6,639.97 | 16,667.97    |                        |
| 3/1/2013         | 10,103    | 3.000% | 6,564.76 | 16,667.76    |                        |
| 6/1/2013         | 10,179    | 3.000% | 6,488.99 | 16,667.99    |                        |
| 9/1/2013         | 10,256    | 3.000% | 6,412.64 | 16,668.64    | 66,672.36              |
| 12/1/2013        | 10,332    | 3.000% | 6,335.72 | 16,667.72    |                        |
| 3/1/2014         | 10,410    | 3.000% | 6,258.23 | 16,668.23    |                        |
| 6/1/2014         | 10,488    | 3.000% | 6,180.16 | 16,668.16    |                        |
| 9/1/2014         | 10,567    | 3.000% | 6,101.50 | 16,668.50    | 66,672.61              |
| 12/1/2014        | 10,646    | 3.000% | 6,022.25 | 16,668.25    |                        |
| 3/1/2015         | 10,726    | 3.000% | 5,942.40 | 16,668.40    |                        |
| 6/1/2015         | 10,806    | 3.000% | 5,861.96 | 16,667.96    |                        |
| 9/1/2015         | 10,887    | 3.000% | 5,780.91 | 16,667.91    | 66,672.52              |
| 12/1/2015        | 10,969    | 3.000% | 5,699.26 | 16,668.26    |                        |
| 3/1/2016         | 11,051    | 3.000% | 5,616.99 | 16,667.99    |                        |
| 6/1/2016         | 11,134    | 3.000% | 5,534.11 | 16,668.11    |                        |
| 9/1/2016         | 11,218    | 3.000% | 5,450.60 | 16,668.60    | 66,672.96              |
| 12/1/2016        | 11,302    | 3.000% | 5,366.47 | 16,668.47    |                        |
| 3/1/2017         | 11,386    | 3.000% | 5,281.70 | 16,667.70    |                        |
| 6/1/2017         | 11,472    | 3.000% | 5,196.31 | 16,668.31    |                        |
| 9/1/2017         | 11,558    | 3.000% | 5,110.27 | 16,668.27    | 66,672.75              |
| 12/1/2017        | 11,645    | 3.000% | 5,023.58 | 16,668.58    |                        |
| 3/1/2018         | 11,732    | 3.000% | 4,936.25 | 16,668.25    |                        |
| 6/1/2018         | 11,820    | 3.000% | 4,848.26 | 16,668.26    |                        |
| 9/1/2018         | 11,909    | 3.000% | 4,759.61 | 16,668.61    | 66,673.70              |
| 12/1/2018        | 11,998    | 3.000% | 4,670.29 | 16,668.29    |                        |
| 3/1/2019         | 12,088    | 3.000% | 4,580.30 | 16,668.30    |                        |
| 6/1/2019         | 12,179    | 3.000% | 4,489.64 | 16,668.64    |                        |
| 9/1/2019         | 12,270    | 3.000% | 4,398.30 | 16,668.30    | 66,673.53              |
| 12/1/2019        | 12,362    | 3.000% | 4,306.28 | 16,668.28    |                        |
| 3/1/2020         | 12,455    | 3.000% | 4,213.56 | 16,668.56    |                        |
| 6/1/2020         | 12,548    | 3.000% | 4,120.15 | 16,668.15    |                        |
| 9/1/2020         | 12,642    | 3.000% | 4,026.04 | 16,668.04    | 66,673.03              |
| 12/1/2020        | 12,737    | 3.000% | 3,931.22 | 16,668.22    |                        |
| 3/1/2021         | 12,833    | 3.000% | 3,835.70 | 16,668.70    |                        |
| 6/1/2021         | 12,929    | 3.000% | 3,739.45 | 16,668.45    |                        |
| 9/1/2021         | 13,026    | 3.000% | 3,642.48 | 16,668.48    | 66,673.85              |

**BOND DEBT SERVICE**  
 Berkeley County PSD  
 20 Years  
 3.0% Interest Rate

| Period Ending    | Principal | Coupon | Interest          | Debt Service        | Annual Debt Service |
|------------------|-----------|--------|-------------------|---------------------|---------------------|
| 12/1/2021        | 13,123    | 3.000% | 3,544.79          | 16,667.79           |                     |
| 3/1/2022         | 13,222    | 3.000% | 3,446.36          | 16,668.36           |                     |
| 6/1/2022         | 13,321    | 3.000% | 3,347.20          | 16,668.20           |                     |
| 9/1/2022         | 13,421    | 3.000% | 3,247.29          | 16,668.29           | 66,672.64           |
| 12/1/2022        | 13,522    | 3.000% | 3,146.63          | 16,668.63           |                     |
| 3/1/2023         | 13,623    | 3.000% | 3,045.22          | 16,668.22           |                     |
| 6/1/2023         | 13,725    | 3.000% | 2,943.05          | 16,668.05           |                     |
| 9/1/2023         | 13,828    | 3.000% | 2,840.11          | 16,668.11           | 66,673.01           |
| 12/1/2023        | 13,932    | 3.000% | 2,736.40          | 16,668.40           |                     |
| 3/1/2024         | 14,036    | 3.000% | 2,631.91          | 16,667.91           |                     |
| 6/1/2024         | 14,142    | 3.000% | 2,526.64          | 16,668.64           |                     |
| 9/1/2024         | 14,248    | 3.000% | 2,420.57          | 16,668.57           | 66,673.52           |
| 12/1/2024        | 14,354    | 3.000% | 2,313.71          | 16,667.71           |                     |
| 3/1/2025         | 14,462    | 3.000% | 2,206.06          | 16,668.06           |                     |
| 6/1/2025         | 14,571    | 3.000% | 2,097.59          | 16,668.59           |                     |
| 9/1/2025         | 14,680    | 3.000% | 1,988.31          | 16,668.31           | 66,672.67           |
| 12/1/2025        | 14,790    | 3.000% | 1,878.21          | 16,668.21           |                     |
| 3/1/2026         | 14,901    | 3.000% | 1,767.29          | 16,668.29           |                     |
| 6/1/2026         | 15,013    | 3.000% | 1,655.53          | 16,668.53           |                     |
| 9/1/2026         | 15,125    | 3.000% | 1,542.93          | 16,667.93           | 66,672.96           |
| 12/1/2026        | 15,239    | 3.000% | 1,429.49          | 16,668.49           |                     |
| 3/1/2027         | 15,353    | 3.000% | 1,315.20          | 16,668.20           |                     |
| 6/1/2027         | 15,468    | 3.000% | 1,200.05          | 16,668.05           |                     |
| 9/1/2027         | 15,584    | 3.000% | 1,084.04          | 16,668.04           | 66,672.78           |
| 12/1/2027        | 15,701    | 3.000% | 967.16            | 16,668.16           |                     |
| 3/1/2028         | 15,819    | 3.000% | 849.41            | 16,668.41           |                     |
| 6/1/2028         | 15,937    | 3.000% | 730.76            | 16,667.76           |                     |
| 9/1/2028         | 16,057    | 3.000% | 611.24            | 16,668.24           | 66,672.57           |
| 12/1/2028        | 16,177    | 3.000% | 490.81            | 16,667.81           |                     |
| 3/1/2029         | 16,299    | 3.000% | 369.48            | 16,668.48           |                     |
| 6/1/2029         | 16,421    | 3.000% | 247.24            | 16,668.24           |                     |
| 9/1/2029         | 16,544    | 3.000% | 124.08            | 16,668.08           | 66,672.61           |
| <b>1,000,000</b> |           |        | <b>333,457.49</b> | <b>1,333,457.49</b> | <b>1,333,457.49</b> |

SCHEDULE Z

None.



PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

FINAL

9/8/2008

Entered: August 19, 2008

CASE NO. 08-0311-PSD-PW-PC

BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT,  
a public utility, Martinsburg, Berkeley County.

Petition for consent and approval of a Third Amendment to the alternate mainline extension agreement between the District and Ecolab, Inc., and an intent to underwrite letter from Crews & Associates, a waiver of the filing requirements of a certificate of convenience and necessity for proposed modifications to the existing industrial wastewater treatment plant and for approval to borrow funds for the necessary treatment modifications.

RECOMMENDED DECISION

On March 6, 2008, Berkeley County Public Service Sewer District (District) filed a petition with the Commission for approval of a document entitled "Third Amendment to Alternate Mainline Extension Agreement" (Third Amendment) between the District and Ecolab, Inc. (Ecolab or Developer), along with an "intent to underwrite" letter from Crews & Associates dated January 22, 2008, which the District also submitted to the Commission for consideration and approval. The Third Amendment modifies the existing alternate mainline extension agreement between the District and Ecolab in order to provide for an expansion of the existing industrial wastewater pre-treatment plant.

The District additionally requested a waiver of the requirement for a certificate of convenience and necessity for the proposed modifications to the existing industrial wastewater treatment plant as contemplated in the Third Amendment and requested approval of borrowing in the amount of \$3,695,000 for the necessary treatment plant modifications. The District indicated that it had received an unwritten loan commitment from the West Virginia State Development Authority in the amount of \$1,000,000, which will replace an equal portion of the Crews & Associates' financing, provided that the terms are more favorable. Attached to the petition was the Third Amendment, executed by Ecolab, but not the District; the January 22, 2008 "intent to underwrite" letter referenced in the petition; and copies of the Commission's Orders in Case Nos. 99-0704-PSD-PC and 06-0732-PSD-PC.

In Case No. 99-0704-PSD-PC, the Commission approved the alternate mainline extension agreement and purchase agreement between the District and Ecolab, with conditions, and authorized the District to borrow funds from the West Virginia Infrastructure and Jobs Development Council (WVIJDC) in an amount not to exceed \$429,000, at the rate of 0% for years

1 through 5 and at the rate of 1% for years 6 through maturity, with a repayment period of 20 years; to accept a grant in the amount of \$871,000 from the West Virginia Development Office; and to accept a \$500,000 contribution in aid of construction from Ecolab. In Case No. 06-0732-PSD-PC, the Second Amendment to the alternate mainline extension agreement was approved, subject to the filing of the Health Department permit and the filing of a revised agreement that included the entire provision of Rule 5.5.h.10.C. of the Commission's Water Rules which states that the property owner or Developer will grant the utility the necessary easements to make future extensions into unserved areas.

On April 10, 2008, Staff Attorney Ronald E. Robertson, Jr., filed the Initial Joint Staff Memorandum, attached to which was the Initial Internal Memorandum prepared by Utilities Analysts Nathan Nelson and Troy Eggleton, of the Commission's Water and Wastewater Division, and Technical Analyst Dave Holley of the Commission's Engineering Division. Staff reviewed the filing, noting that the project cost of \$3,695,000 would be financed through bonds issued and underwritten by Crews & Associates at an interest rate of 6.5% for the tax exempt bonds, totaling \$3,575,000 payable over 20 years, and at a rate of 7.5% for the taxable bonds, totaling \$125,000, payable in the first two years, in addition to the unwritten \$1,000,000 loan commitment from the West Virginia State Development Authority which would replace an equal portion of the Crews & Associates' financing, provided that the terms are more favorable. Staff assumed that this would eliminate the \$125,000 in taxable bonds. While the District will be assuming the loans, Ecolab is constructing the project and guaranteeing the repayment of the bonds/loans. Therefore, there would be no impact on the District's current rates and charges. From a financial standpoint, Staff considered the project to be feasible and in the best interest of the District.

Commission Staff indicated that the issue regarding waiver of the requirement for a certificate of convenience and necessity was still being reviewed. Staff was evaluating several aspects of the project and whether it could be considered construction in the normal course of business. If it is determined that a certificate is required, the District and Ecolab likely would need to file the application as joint applicants. Further, if a certificate was required, the request for borrowing would be addressed in that case. Staff noted that the District must submit the commitment for the additional \$1,000,000 loan when it is received and indicate which bonds it will offset. Staff also requested that the District clarify why \$125,000 of the bond issuance is taxable and what the \$2,625 shown as a "rounding amount" represents. Staff indicated that it would review the filing and submit its final recommendation within the established time frame and recommended that the case be retained by the Commission for disposition.

Mr. Robertson noted that the form of agreement filed by the District herein combines the District's standard cooperative venture agreement (COVA) with a purchase agreement for the sewer collection mains and all related appurtenances constructed by Ecolab for the District. The agreement obligates the District to borrow funds in order to purchase the sewer system improvements built by the Developer. Effectively, the purchase reimburses the Developer up front for the sewer system improvements, with the Developer guaranteeing repayment of the

bonds/loans, along with its sewage treatment costs, to insure that the District's rates are not impacted.

On April 29, 2008, Commission Staff filed its first set of interrogatories and data requests to the District.

Also on April 29, 2008, Staff Attorney Robertson filed the Further Joint Staff Memorandum, noting that it was filing the data requests to obtain the additional information it needed to conclude its review. Commission Staff noted that, while the District will assume the loans to be used to finance the project, Ecolab is constructing the project and guaranteeing the repayment of the bonds/loans. If Ecolab's guarantee falls through, the District still has sufficient surplus funds to absorb the bond payments. Therefore, regardless of which party is responsible for those bonds/loan payments, the District's current rates and charges will not be impacted. Staff prepared a cash flow analysis presenting both scenarios, i.e., the District receiving the funds from Ecolab to make the loan payments and the District not receiving the funds from Ecolab, but still making the loan payments. The cash flow analysis reflected cash surpluses of \$1,650,637 and \$1,320,050, respectively. With respect to the issue of the requirement for a certificate of convenience and necessity, Technical Staff again indicated that the issue is still being reviewed. However, it noted that the construction under the prior agreements approved by the Commission did not require a certificate of convenience and necessity.

By Commission Order entered on May 14, 2008, this matter was referred to the Division of Administrative Law Judges for a decision to be rendered on or before October 16, 2008.

On June 4, 2008, Staff Attorney Robertson filed the Second Further Joint Staff Memorandum, to provide the Commission with an updated status of the case. Commission Staff concluded that it could not render a final recommendation at this time, because the District had not responded to the data requests filed by Staff on April 29, 2008. Once that information was received from the District and Staff concluded its review of the case, Staff would file its final recommendation. In the alternative, Staff may file a motion to compel the production of the requested information or recommend dismissal of the petition, if timely responses are not filed by the District.

On July 7, 2008, the District filed additional information with the Commission, including the WVNPDES Permit issued by the West Virginia Department of Environmental Protection, dated June 30, 2008. Included with the WVNPDES Permit was Administrative Order No. 6497, requiring the District to upgrade its treatment to meet the requirements of the Permit.

On July 9, 2008, the District filed its responses to Commission Staff's first set of interrogatories and data requests, including the construction drawings, the preliminary engineering report and the answers to the questions propounded by Commission Staff in its Initial Joint Staff Memorandum filed on April 10, 2008.

By Procedural Order issued on July 16, 2008, Commission Staff was directed to file its Final Joint Staff Memorandum, containing its final substantive recommendations on the petition filed herein, on or before

August 8, 2008. Further, the District was directed to file any response or objection to the Final Joint Staff Memorandum no later than ten (10) days after the filing thereof, but, in any event, no later than August 18, 2008.

On August 8, 2008, Staff Attorney Robertson filed the Final Joint Staff Memorandum in this matter, attached to which was the Final Internal Memorandum prepared by Mr. Nelson, Mr. Eggleton and Mr. Holley. As discussed by Technical Staff, the Third Amendment provides for an expansion of the existing industrial wastewater pre-treatment plant and replaces the First and Second Amendments to the alternate mainline extension agreement between the District and Ecolab. Ecolab produces cleaners and cleaning products. The Berkeley County facility is Ecolab's East Coast distribution facility.

Among other things, the Third Amendment increases the daily wastewater pre-treatment capacity from 30,000 gallons to 100,000 gallons, by adding a second wastewater pre-treatment unit. Ecolab agrees to discharge no more than 100,000 gallons per day of wastewater, containing, at all times, a maximum daily loading of different constituents, pursuant to a provided schedule. A revised NPDES permit was issued for this project on June 30, 2008, which increased the allowable discharge from Ecolab from 50,000 gallons per day to 100,000 gallons per day. According to the District's responses to the Staff's data requests, no permit is required from the West Virginia Bureau of Public Health, because that agency does not regulate industrial pre-treatment facilities. The modifications will not only increase the treatment capacity of the pre-treatment facility, but also will correct some treatment process problems. The modifications consist of the construction of a 200,000-gallon flow equalization tank in front of the treatment plant; increasing the existing 107,000-gallon influent aerated tank to 135,000 gallons; construction of a second sequencing batch reactor; installation of a second digester; installation of a sludge box de-watering system to prepare the sludge for sanitary landfill disposal; installation of chemical feed lines to allow chemicals to be added, to aid in the control of and to precipitate the suspended solids and phosphorus; and the installation of an enhanced control system which will use real-time monitoring to assist in control and improve the treatment process. Ecolab has contracted with a firm to design the modifications and will contract to have the modifications constructed and installed.

The project is estimated to cost \$3,695,000, consisting of a loan in the amount of \$2,695,000 from Crews & Associates, payable over a period of 20 years, at an interest rate of 6.5% for the tax exempt bonds and an interest rate of 7.5% for the taxable bonds, and a \$1,000,000 loan from the West Virginia State Development Office, with an interest rate of 3% with a 20-year term. While the District is assuming the two loans, Ecolab is constructing the project and, pursuant to the agreement, guarantees repayment of the bonds/loan. Staff noted that, if the guarantee by Ecolab is not upheld, the District still will have sufficient surplus funds to absorb the bond payments in their entirety. Thus, there will be no impact to the District's current rates and charges resulting from this project. The cash flow analysis attached to the Final Internal Memorandum describes two different scenarios. Under the first scenario, pursuant to which Ecolab fulfills its obligations under the contract and repays the bonds/loan, the District should have an

annual remaining cash surplus of \$1,673,554, with a debt service coverage factor of 148%. In the alternative, if Ecolab does not fulfill its obligations under the contract and the District must assume the responsibility for repaying the two loans, the District's current rates will still generate a remaining cash surplus of \$1,242,967, with a debt service coverage factor of 140%.

Having reviewed the previous Commission cases dealing with the Ecolab agreement, Commission Staff has determined that the District has not been complying with Section 7.04 of the agreement, which requires the District to provide an annual update regarding the project to the Public Service Commission. Staff also noted that the Commission did not require the District to obtain a certificate of convenience and necessity for the construction to be performed under the alternate mainline extension agreement and the two amendments thereto. Because the engineering and construction for the project are the responsibility of Ecolab, and because the financing will not result in an increase in rates for the District, even if Ecolab defaults on the guaranteed minimum payment, Staff does not believe that a certificate of convenience and necessity is necessary for the modifications proposed herein. Staff believes that the work is in the ordinary course of business for this Utility. Staff recommended approval of the Third Amendment; approval of the District's issuing the bonds and obtaining the loan, contingent upon receipt by the Commission of the commitment letter for the Development Office loan; the District be granted authority to proceed with the project as being in the ordinary course of business, and without the requirement of a certificate of convenience and necessity; and that the District comply with Section 7.04 of the alternate mainline extension agreement and provide an annual update to the Commission on the project. Commission Staff also recommended that Case Nos. 06-0732-PSD-PC and 99-0704-PSD-PC be reopened and that the contents of those case files be transferred to the instant proceeding, so that all of the Commission's actions relative to Ecolab and the District will be contained in one case number.

Upon consideration of all of the above, the undersigned is of the opinion that the Third Amendment to the alternate sewer mainline agreement between Ecolab and the District should be approved and that the construction to be conducted there under should be considered an ordinary extension of the District's existing system in the usual course of business, so that a certificate of convenience and necessity is not required for that construction. Additionally, the proposed financing should be approved, with the Staff proviso that the Commission receive a copy of the commitment letter from the West Virginia State Development Office. Further, it is reasonable that the District be required to comply with Section 7.04 of the agreement with Ecolab and provide an annual update to the Commission on the project, until the project is fully constructed and operational. With respect to the Staff recommendation regarding the reopening of the two prior cases, Case Nos. 99-0704-PSD-PC and 06-0732-PSD-PC, and the transfer of the contents of the 2006 proceeding and the instant proceeding into Case No. 99-0704-PSD-PC, that recommendation cannot be accomplished at this time. The Division of Administrative Law Judges does not have the authority to reopen closed cases.

The magnitude of the project and financing at issue herein normally would require that a certificate of convenience and necessity be

obtained, pursuant to W. Va. Code §24-2-11. However, the Commission has previously noted that the District has extensive experience with alternate mainline extension agreements/cooperative venture agreements, pursuant to which developers or large customers construct and finance extensions of the District's existing system to provide service to their property. Some of these alternate mainline extension agreements or COVAs have covered projects of a similar magnitude as the project herein. Accordingly, based upon the District's past practices and experience with alternate mainline extension agreements and cooperative venture agreements, it is reasonable to conclude, for this District only, that the Ecolab project is an ordinary extension of the District's existing system in the usual course of business.

#### FINDINGS OF FACT

1. By Commission Order entered on August 18, 2000, in Case No. 99-0704-PSD-PC, the Public Service Commission approved the alternate mainline extension agreement, with amendment, and a purchase agreement, between Berkeley County Public Service Sewer District and Ecolab, Inc., and authorized the District to borrow funds from the West Virginia Infrastructure and Jobs Development Council in an amount not to exceed \$429,000; to accept a grant from the West Virginia State Development Office in the amount of \$871,000; and to accept a \$500,000 contribution in aid of construction from Ecolab. The Commission subsequently approved a Second Amendment to the original agreement and amendment by Commission Order entered on July 12, 2006, in Case No. 06-0732-PSD-PC. (See, Case Nos. 99-0704-PSD-PC and 06-0732-PSD-PC).

2. On March 6, 2008, the District filed a petition with the Commission for approval of a Third Amendment to the Ecolab alternate mainline extension agreement, and approval of revised borrowing in the amount of \$3,695,000 for the necessary treatment plant modifications. (See, petition filed March 6, 2008).

3. The District has obtained an intent to underwrite letter from Crews and Associates to issue and underwrite bonds in the amount of \$2,695,000, payable over 20 years, at an interest rate of 6.5% for the tax-exempt bonds and an interest rate of 7.5% for the taxable bonds. The District has also received a commitment from the West Virginia State Development Office for a loan in the amount of \$1,000,000, at an interest rate of 3% for a 20-year term. (See, petition filed March 6, 2008; Final Joint Staff Memorandum and attachment filed August 8, 2008).

4. The West Virginia Department of Environmental Protection has issued a revised WVNPDES Permit to the District encompassing the modifications for the project which are reflected in the Third Amendment filed herein. No Health Department permit is required because the West Virginia Bureau of Public Health does not regulate industrial pre-treatment facilities. (See, WVNPDES Permit filed July 7, 2008; Final Joint Staff Memorandum and attachment filed August 8, 2008).

5. Among other things, the Third Amendment increases the daily wastewater pre-treatment capacity from 50,000 gallons to 100,000 gallons, by adding a second wastewater pre-treatment unit and provides for the construction of a 200,000-gallon flow equalization tank in front of the

treatment plant; the construction of a sludge box de-watering system; the installation of chemical feed lines; and the installation of an enhanced control system which will use real-time monitoring to assist in control and improve the treatment process. Ecolab has contracted with a firm for the design of the modifications and will contract to have the modifications constructed and/or installed. (See, petition filed March 6, 2008; Final Joint Staff Memorandum and attachment filed August 8, 2008).

6. Under the original agreement, Ecolab is obligated to make a monthly guaranteed minimum payment to the District until the District's debt is paid in full. The District is to pay the loans associated with the Ecolab project utilizing those monthly guaranteed minimum payments. That obligation of Ecolab to make a monthly guaranteed minimum payment does not include the normal operation and maintenance costs associated with the pre-treatment unit, which are to be billed separately, on a monthly basis, for the life of the system while it is under the District's operation. In the event that the monthly sewer bill for metered pre-treated sewer service exceeds the monthly guaranteed minimum payment, Ecolab is only responsible for the monthly guaranteed minimum payment plus any amount for monthly sewer service as calculated by its discharge wastewater flow meter in excess of that minimum payment. Ecolab is liable for only one payment for monthly service as it relates to the loan agreement. (See, Case No. 99-0704-PSD-PC; petition filed March 6, 2008; Final Joint Staff Memorandum and attachment filed August 8, 2008).

7. Even if, for some reason, Ecolab would not uphold the obligation to guarantee payment of the District's debt obligations associated with the alternate mainline extension agreement, the District has sufficient surplus funds to absorb those bond payments in their entirety. In the event that Ecolab fulfills its obligations under the agreement, the District's current rates should generate a cash flow surplus of \$1,673,554, with a debt service coverage factor of 148%. If Ecolab should fail to fulfill its obligations under the agreement, and the District must shoulder the burden of the debt service requirements associated with the Ecolab project, the District's current rates and charges will still generate an annual remaining cash surplus of \$1,342,967 and a debt service coverage factor of 140%. (See, Final Joint Staff Memorandum and attachments filed August 8, 2008).

8. Commission Staff recommended that the construction required under the alternate mainline extension agreement, as amended, be considered an ordinary extension of the District's existing system in the usual course of business, because the engineering and construction for the project are the responsibility of Ecolab, and the financing will not cause the District to seek an increase in rates, even if Ecolab defaults on the guaranteed minimum payment. (See, Final Joint Staff Memorandum and attachment filed August 8, 2008).

9. Commission Staff noted that, pursuant to Section 7.04 of the original agreement and its amendments, the District is obligated to provide an annual update of the Ecolab project to the Public Service Commission. However, the District has not been complying with that requirement. (See, Final Joint Staff Memorandum and attachment filed August 8, 2008).

CONCLUSIONS OF LAW

1. For the reasons set forth previously in this Order, the construction required under the agreement and subsequent amendments between Ecolab and the District constitute ordinary extensions of an existing system in the usual course of business, and, therefore, said construction does not require a certificate of convenience and necessity from the Public Service Commission.

2. The proposed financing is reasonable and should be approved.

3. The Third Amendment to the Alternate Mainline Extension Agreement between the District and Ecolab is reasonable and should be approved, without specifically approving the terms and conditions thereof.

4. The District must begin complying with Section 7.04 of the agreement and provide an annual update to the Commission on the Ecolab project. The first filing shall occur no later than August 31, 2009.

ORDER

IT IS, THEREFORE, ORDERED that the petition filed by the Berkeley County Public Service Sewer District on March 6, 2008, for approval of the Third Amendment to Alternate Mainline Extension Agreement between the District and Ecolab, Inc., be, and hereby is, approved, without specifically approving the terms and conditions thereof.

IT IS FURTHER ORDERED that proposed financing for the project covered by the alternate mainline extension agreement and subsequent amendments between the District and Ecolab, consisting of bonds underwritten and issued by Crews and Associates in amount not to exceed \$2,695,000, with a term of 20 years, at an interest rate of 6.5% for the tax-exempt bonds and an interest rate of 7.5% for the taxable bonds, and a loan from the West Virginia State Development Authority in the amount of \$1,000,000, at 3% interest over a 20-year term, be, and hereby is, approved, contingent upon Berkeley County Public Service Sewer District filing with the Commission a copy of the commitment letter for the West Virginia State Development Office loan no later than thirty (30) days from the date that this Order becomes final.

IT IS FURTHER ORDERED that Berkeley County Public Service Sewer District begin complying with Section 7.04 of the alternate mainline extension agreement and file annual updates with the Public Service Commission regarding the Ecolab project. The first annual filing shall occur no later than August 31, 2009.

IT IS FURTHER ORDERED that this proceeding be, and hereby is, removed from the Commission's docket of open cases.

The Executive Secretary is hereby ordered to serve a copy of this order upon the Commission by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen (15) days of the date this order is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served said exceptions.

If no exceptions are so filed this order shall become the order of the Commission, without further action or order, five (5) days following the expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's order by filing an appropriate petition in writing with the Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make any Administrative Law Judge's Order or Decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.



Melissa K. Marland  
Chief Administrative Law Judge

MKM:bam  
080311aa.wpd

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 22<sup>nd</sup> day of January, 2007.

CASE NO. 06-0016-PSD-T (Reopened)

**BERKELEY COUNTY PUBLIC SERVICE SEWER  
DISTRICT**

Tariff filing for approval of an increase in the Capacity Improvement Fees applicable to Developers.

**COMMISSION ORDER**

On October 24, 2006, the Commission entered an Order which approved the Berkeley County Public Service Sewer District's (District) tariff application for approval of an increase in the Capacity Improvement Fees applicable to Developers. Among other things, the Commission also approved Staff's recommended rates for use by the District.

On December 29, 2006, Staff filed a petition to reopen this case for a Corrective Order. Staff explained that the Commission entered an Order in Case No. 06-0630-PSD-T on July 19, 2006 approving the Staff-recommended tariff for an increase in the District's disconnect/reconnect/administrative fees and the return check charge. Staff added that the October 24, 2006 Order superseded the July 19, 2006 Order and did not include the increases to the District's disconnect/reconnect/administrative fees and the return check charge. Therefore, Staff attached a corrected tariff which incorporated changes from both cases.

**DISCUSSION**

The Staff-recommended tariff, as attached to the Final Joint Staff Memorandum filed in this case (Case No. 06-0016-PSD-T) on May 25, 2006 and approved by the Commission on October 24, 2006, did not include the increases to the District's disconnect/reconnect/administrative fees and the return check charge as previously approved in Case No. 06-0630-PSD-T. As such, it is reasonable to grant Staff's petition to reopen and approve the Staff-corrected tariff.

### FINDINGS OF FACT

1. In Case No. 06-0630-PSD-T, the Commission entered an Order on July 19, 2006 which approved the Staff-recommended tariff for an increase in the District's disconnect/reconnect/administrative fees and the return check charge.
2. On October 24, 2006, the Commission entered an Order approving the District's tariff application for approval of an increase in the Capacity Improvement Fees applicable to Developers. Among other things, the Commission also approved Staff's recommended rates for use by the District.
3. Staff's recommended tariff, as attached to the Final Joint Staff Memorandum filed on May 25, 2006 in this case (Case No. 06-0016-PSD-T), did not include the increases to the District's disconnect/reconnect/administrative fees and the return check charge as previously approved in Case No. 06-0630-PSD-T.
4. On December 29, 2006, Staff filed a petition to reopen this case for approval of a Staff-recommended corrected tariff which incorporated changes from both cases.

### CONCLUSIONS OF LAW

1. Staff's petition to reopen should be approved.
2. It is reasonable to approve Staff's recommended corrected tariff which incorporates changes from both Case No. 06-0630-PSD-T and this case (Case No. 06-0016-PSD-T).

### ORDER

IT IS, THEREFORE, ORDERED that Commission Staff's petition to reopen, filed on December 29, 2006, is hereby granted.

IT IS FURTHER ORDERED that Commission Staff's corrected recommended rates, attached hereto as Attachment A, are hereby approved for use by the Berkeley County Public Service Sewer District.

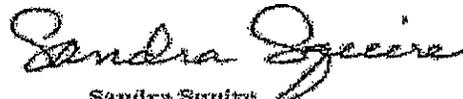
IT IS FURTHER ORDERED that the Berkeley County Public Service Sewer District file an original and five copies of the revised tariff, approved herein, with the Commission within ten (10) days of the date of this Order.

IT IS FURTHER ORDERED that all other conditions, as set forth in the Commission's Order of October 24, 2006 in this proceeding, are to remain in effect for this case.

IT IS FURTHER ORDERED that, upon entry hereof, this proceeding shall be removed from the Commission's active docket of cases.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.

A True Copy, Testes

  
Sandra Squire  
Executive Secretary

TBS/ljm  
060016cb.wpd

APPLICABILITY

Applicable to all customers served by the Berkeley County Public Service Sewer District other than the former customers of Sylvan Grove Waste Treatment, Inc.

- (C) AVAILABILITY OF SERVICE (Customers with a metered water supply)  
Available for general domestic, commercial and industrial service and sale for resale sewer service.

CHARGES

|                           |                                 |
|---------------------------|---------------------------------|
| Volumetric Charge:        | \$ 7.60 per 1,000 gallons usage |
| Service Charge:           | \$ 7.90 per month               |
| Flat Rate:                | \$42.08 per month               |
| Service Connection Charge | \$350.00                        |

DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid in full when due, ten percent (10%) will be added to the net amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is applicable

(C, I) DISCONNECT/RECONNECT/ADMINISTRATIVE FEES

Whenever water service has been disconnected for non-payment of sewer bills in conjunction with a water service termination agreement with Berkeley county Public Service Water District, a disconnection fee of \$20.00 shall be charged; or, in the event the delinquent sewer bill is collected by the water company, an administrative fee of \$20.00 shall be charged.

Whenever water service, which has been previously disconnected or otherwise withheld for nonpayment of a sewer bill in conjunction with a water service termination agreement with Berkeley County Public Service Water District, is reconnected, a reconnection fee of \$20.00 shall be charged.

- (C) Indicates change in text

LEAK ADJUSTMENT

\$0.53 per 1,000 gallons of water is to be used when a bill reflects unusual water consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

(N) RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the sewer utility up to a maximum of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

(C) SURFACE OR GROUND WATER SURCHARGE

An additional amount shall be charged where surface or ground water is introduced into the sanitary system where evidence of a violation exists.

Surcharge formula to be applied in cases where surface drainage is connected to the utility's sewer system.

Applicability

Whenever the utility has discovered that a customer's roof drain, downspout, storm sewer or similar facilities that conduct surface water have been connected to the utility's sewer system, and such customer has failed to take appropriate action, within thirty (30) days of receipt of a demand by the utility in accordance with the Rules of the Public Service Commission, to eliminate such connection, a surcharge will be imposed upon the customer calculated on the basis of the following formula:

$$S = A \times R \times .0006233 \times C$$

$$S = A \times R \times .0006233 \times C$$

S = The surcharge in dollars

A = The area under roof and/or the area of any other water collection surface connected to the sanitary sewer, in square feet.

R = The measured rainfall, in inches

.0006233 = A conversion factor to change inches of rain x square feet of surface to thousands of gallons of water

C = The utility's approved rate per thousand gallons of metered water usage.

(C,I) APPROVED CAPACITY IMPROVEMENT FEES (CIFs)  
 APPLICABLE TO DEVELOPERS ONLY

|     | <u>Meter Size</u> | <u>Factor</u> | <u>Collection CIF</u> | <u>Treatment CIF</u> |
|-----|-------------------|---------------|-----------------------|----------------------|
|     | 5/8 inch          | 1             | \$ 2,529              | 1,121                |
|     | 3/4 inch          | 1.1           | 2,782                 | 1,233                |
|     | 1 inch            | 1.4           | 3,541                 | 1,569                |
|     | 1- 1/2 inch       | 1.8           | 4,552                 | 2,018                |
| (C) | 2 inch Standard   | 2.5           | 6,323                 | 2,803                |
| (C) | 2 inch Compound   | 8.0           | 20,232                | 8,968                |
| (N) | 2 inch Turbine    | 10.0          | 25,290                | 11,210               |
|     | 3 inch Standard   | 11.0          | 27,819                | 12,331               |
|     | 3 inch Compound   | 16.0          | 40,464                | 17,936               |
| (N) | 3 inch Turbine    | 24.0          | 60,696                | 26,904               |
|     | 4 inch Standard   | 14.0          | 35,406                | 15,694               |
|     | 4 inch Compound   | 25.0          | 63,225                | 28,025               |
| (N) | 4 inch Turbine    | 42.0          | 106,218               | 47,082               |
|     | 6 inch Standard   | 21.0          | 53,109                | 23,541               |
|     | 6 inch Compound   | 50.0          | 126,450               | 56,050               |
| (N) | 6 inch Turbine    | 92.0          | 232,668               | 103,132              |
|     | 8 inch Standard   | 29.0          | 73,341                | 32,509               |
|     | 8 inch Compound   | 80.0          | 202,320               | 89,680               |
| (N) | 8 inch Turbine    | 160.0         | 404,640               | 179,360              |

Meters in excess of 8 inches will be individually evaluated.

CIFs are due as of the date of the final sewer availability letter issued by the Berkeley County Public Service Sewer District.

The following property owners are exempt from payment of the CIF – owners of existing or new (being constructed) single-family structures, where the person applying for service will be the customer of record, and the proposed service location is not part of a larger land tract under development, or a subdivided portion of a larger tract that was previously subdivided for commercial or residential development, for profit.

- (C) Indicates change in text
- (N) Indicates new

APPLICABILITY

Applicable to all former customers of Sylvan Grove Waste Treatment, Inc.

- (C) AVAILABILITY OF SERVICE (Customers with a metered water supply)  
Available for general domestic, commercial and industrial service and sale for resale sewer service

CHARGES

|          |                          |                          |
|----------|--------------------------|--------------------------|
| First    | 3,000 gallons per month  | \$8.05 per 1,000 gallons |
| Next     | 7,000 gallons per month  | \$7.02 per 1,000 gallons |
| All Over | 10,000 gallons per month | \$5.11 per 1,000 gallons |

MINIMUM CHARGE

No bill will be rendered for less than \$24.15 per month, which is the equivalent of 3,000 gallons of usage.

- (C) TAP FEE  
The following charge is to be made whenever the utility installs a new tap to serve an applicant.

A tap fee of \$250.00 will be charged to customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

- (C,I) DISCONNECT/RECONNECT/ADMINISTRATIVE FEES

Whenever water service has been disconnected for non-payment of sewer bills in conjunction with a water service termination agreement with Berkeley county Public Service Water District, a disconnection fee of \$20.00 shall be charged; or, in the event the delinquent sewer bill is collected by the water company, an administrative fee of \$20.00 shall be charged.

Whenever water service, which has been previously disconnected or otherwise withheld for nonpayment of a sewer bill in conjunction with a water service termination agreement with Berkeley County Public Service Water District, is reconnected, a reconnection fee of \$20.00 shall be charged.

- (C) Indicates change in text  
(I) Indicates increase

DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid in full when due, ten percent will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

LEAK ADJUSTMENT

\$0.47 per 1,000 gallons of water is to be used when a bill reflects unusual water consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical average usage.

(N) RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the sewer utility up to a maximum of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by the bank due to insufficient funds.

(N) Indicates new

(C) SURFACE OR GROUND WATER SURCHARGE

An additional amount shall be charged where surface or ground water is introduced into the sanitary system where evidence of a violation exists.

Surcharge formula to be applied in cases where surface drainage is connected to the utility's sewer system.

Applicability

Whenever the utility has discovered that a customer's roof drain, downspout, storm sewer or similar facilities that conduct surface water have been connected to the utility's sewer system, and such customer has failed to take appropriate action, within thirty (30) days of receipt of a demand by the utility in accordance with the Rules of the Public Service Commission, to eliminate such connection, a surcharge will be imposed upon the customer calculated on the basis of the following formula:

$$S = A \times R \times .0006233 \times C$$

$$S = A \times R \times .0006233 \times C$$

S = The surcharge in dollars

A = The area under roof and/or the area of any other water collection surface connected to the sanitary sewer, in square feet.

R = The measured rainfall, in inches

.0006233 = A conversion factor to change inches of rain x square feet of surface to thousands of gallons of water

C = The utility's approved rate per thousand gallons of metered water usage.

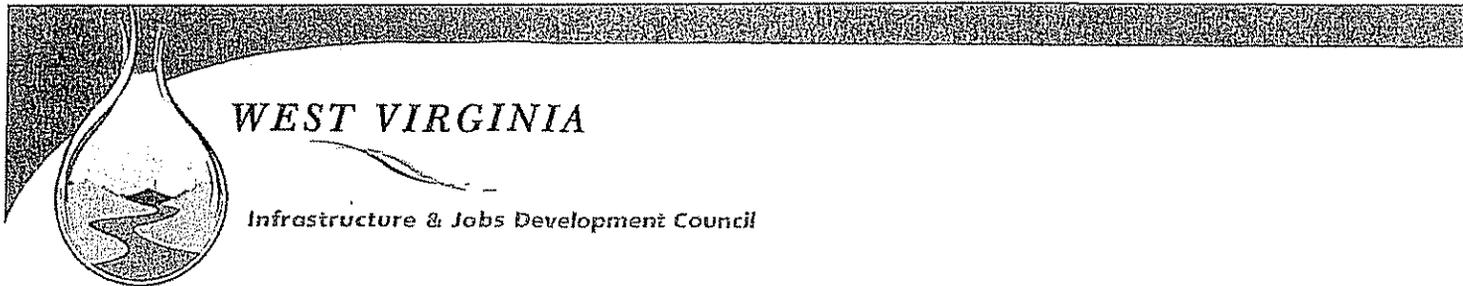
(C) Indicates change in text

## CAPACITY IMPROVEMENT FEE CHARGES

| Meter Size      | Factor | Collection CIF | Treatment CIF | Total     |
|-----------------|--------|----------------|---------------|-----------|
| 5/8 inch        | 1      | \$2,529        | \$1,121       | \$3,650   |
| 3/4 inch        | 1.1    | \$2,782        | \$1,233       | 4,015     |
| 1 inch          | 1.4    | \$3,541        | \$1,569       | 5,110     |
| 1 1/2 inch      | 1.8    | \$4,552        | \$2,018       | \$6,570   |
| 2 inch Standard | 2.5    | \$6,323        | \$2,803       | \$9,126   |
| 2 inch Compound | 8      | \$20,232       | \$8,968       | \$29,200  |
| 2 inch Turbine  | 10     | \$25,290       | \$11,210      | \$36,500  |
| 3 inch Standard | 11     | \$27,819       | \$12,331      | \$40,150  |
| 3 inch Compound | 16     | \$40,464       | \$17,936      | \$58,400  |
| 3 inch Turbine  | 24     | \$60,696       | \$26,904      | \$87,600  |
| 4 inch Standard | 14     | \$35,406       | \$15,694      | \$51,100  |
| 4 inch Compound | 25     | \$63,225       | \$28,025      | \$91,250  |
| 4 inch Turbine  | 42     | \$106,218      | \$47,082      | \$153,300 |
| 6 inch Standard | 21     | \$53,109       | \$23,541      | \$76,650  |
| 6 inch Compound | 50     | \$126,450      | \$56,050      | \$182,500 |
| 6 inch Turbine  | 92     | \$232,668      | \$103,132     | \$335,800 |
| 8 inch Standard | 29     | \$73,341       | \$32,509      | \$105,850 |
| 8 inch Compound | 80     | \$202,320      | \$89,680      | \$292,000 |
| 8 inch Turbine  | 160    | \$404,640      | \$179,360     | \$584,000 |

Meters in excess of 8 inches will be individually evaluated.

CIFs are due as of the date of the final sewer availability letter issued by the Berkeley County Public Service Sewer District.



Gov. Joe Manchin, III  
Chairman

February 19, 2009

Kenneth Lowe, Jr.  
Public Member

Curtis Keller, General Manager  
Berkeley County Public Sewer Service District  
P. O. Box 944  
Martinsburg, West Virginia 25402

Dwight Calhoun  
Public Member

David "Bones" McComas  
Public Member

Re: Loan Commitment Letter  
[Sewer Project 2008S-1049]  
**Action Required by March 1, 2009**

Ron Justice  
Public Member

Barbara J. Pauley  
Administrative Secretary

Dear Mr. Keller:

The West Virginia Infrastructure and Jobs Development Council (the "Infrastructure Council") provides this binding offer of a loan (the "Loan") in the principal amount of not more than \$1,000,000 to the Berkeley County Public Sewer Service District (the "Borrower") for the completion of an expansion and upgrade of a pre-treatment facility (the "Facility"), which is part of the Borrower's wastewater treatment system (the "System") located in Berkeley County, West Virginia, providing services to Ecolab ("Ecolab") from 50,000 to 100,000 gallons per day (such expansion and upgrade being referred to herein as the "Project"). This commitment is contingent upon the Borrower's acceptance and satisfaction of all of the terms and conditions outlined below. The Infrastructure Council has set aside funds in the Infrastructure Fund to make the Loan upon the Borrower's compliance with the program requirements. The Loan will be between the West Virginia Water Development Authority (the "Authority"), acting on behalf of the Infrastructure Council, and the Borrower.

- (1) Commitment. This Loan commitment is based upon and shall remain contingent upon the continued validity and accuracy, without adverse material change, of all of the information and material submitted to the Infrastructure Council in connection with the Borrower's application for the Loan.
- (2) Expiration Date. This commitment will expire on the earlier of (i) December 31, 2009, unless that time is extended in writing by the Infrastructure Council, or (ii) upon the Borrower's written notification to the Infrastructure Council that the Borrower does not desire to obtain the Loan.

- (3) Term. The Loan shall be for a term of 20 years (240 months).
- (4) Rate of Interest. The Loan shall bear interest at a fixed rate per annum equal to 3%. Interest shall accrue from the date of closing on the amounts advanced by the Authority.
- (5) Permanent Financing. The Loan shall be for permanent financing only. The Loan will be closed and disbursed only upon (i) the substantial completion of the Project, as determined by the Infrastructure Council, in its sole discretion and (ii) the satisfaction of all other terms and conditions contained herein. The obligations of Borrower with respect to the Loan may not be assigned to any party without the Authority's prior written consent, which may be withheld in the Authority's sole discretion.
- (6) Repayment Terms. The Loan shall be evidenced by a promissory note or bond (the "Note") executed by the Borrower in the amount of the Loan. Payments of principal and interest shall be made through the West Virginia Municipal Bond Commission in equal quarterly installments beginning on the first day of the 4th month immediately after the date of the Note and continuing thereafter as set forth on the amortization schedule prepared by the Infrastructure Council. The Note may be prepaid, in whole or in part, at anytime without penalty. Partial prepayments shall be applied to installments due in inverse order of maturity.
- (7) Acceleration of Payment. The Loan shall be due upon the sale, lease or other transfer of all or any portion of the Project or the Borrower's System in any manner whatsoever by the Borrower to any person, firm, corporation or other entity without the prior written consent of the Infrastructure Council and Authority.
- (8) Source of Funds.

|   |                  |
|---|------------------|
| Infrastructure Council Loan                 | \$1,000,000      |
| Proceeds from Crews and Associate Financing | <u>2,148,700</u> |
| TOTAL                                       | \$3,148,700      |

- (9) Security. The Loan will be secured by:
- (a) a shared first lien on the Net Revenues of the System, which lien shall be shared on a pro rata basis with all outstanding bonds and notes of the Borrower and the bonds sold to Crews and Associates ("Crews"); and
- (b) a shared first statutory mortgage lien on the System.

- (10) Insurance. Prior to the closing of the Loan, Borrower shall provide the Infrastructure Council with a copy of its liability insurance in amounts and coverages of not less than \$1,000,000 per occurrence and otherwise satisfactory to the Infrastructure Council, naming the Authority as an additional insured. A copy of the liability insurance policy must be submitted at the closing of the Loan and annually thereafter.
- (11) Archaeological and Environmental Clearance. Prior to the closing of the Loan, the Borrower shall provide the Infrastructure Council:
- (a) Evidence that the Project has received all necessary archaeological and environmental approvals by all applicable federal and state governmental agencies, and
  - (b) Copies of any environmental reports prepared in connection with the Project; and,
  - (c) Borrower shall also conduct and provide the Infrastructure Council with at least a Phase I environmental assessment of the Project prepared by a qualified engineering firm to conduct such assessment, which assessment shall be acceptable to the Infrastructure Council in all respects.
- (12) Survey. Prior to the closing of the Loan, the Borrower shall provide a current "as built" survey of the Project prepared by a registered professional engineer or land surveyor showing the boundary lines, encroachments and completed improvements located thereon, including any streets, alleys, rights-of-way, easements and other statements of facts acceptable to the Council, and otherwise prepared in accordance with the minimum standard detail requirements for ALTA/ACSM.
- (13) Ecolab Agreement. Prior to the closing of the Loan, the Borrower shall provide the Infrastructure Council with an executed copy of an agreement between Borrower and Ecolab, in form and substance acceptable to the Infrastructure Council, which shall provide, among other things, for the payment by Ecolab of (i) all debt service costs incurred by Borrower in connection with the construction of the Project (including but not limited to the Loan and the Crews' financing), (ii) the issuance of a letter of credit or other surety securing the debt service payments on the Loan, and (iii) all ongoing operation and maintenance costs associated with the Facility.

- (14) Cost Overruns/Underruns. The Project shall be completed for a cost not to exceed an aggregate of \$3,148,700, as set forth above. If the cost of the Project exceeds \$3,148,700, then the Infrastructure Council shall not be obligated to close the Loan until the Borrower shall have secured from funds separate from the proceeds of the Loan hereunder, such additional amounts as shall be equal to the difference between such increased cost and \$3,148,700. If the actual cost of the Project is less than \$3,148,700, the amount of the Loan shall be reduced by an amount equal to \$3,148,700 less the actual cost of the Project.
- (15) Legal Fees. The Borrower shall be responsible for all Loan closing costs and expenses, including, but not limited to, reasonable attorney's fees incurred by the Infrastructure Council in connection with the Loan. Borrower further understands and agrees that it shall be responsible for the payment of Infrastructure Council's attorneys' fees and expenses even if the Loan does not close.
- (16) Employment Report. The Borrower shall provide to the Infrastructure Council, on or before the 1st day of December of each year, a report showing the total number of permanent and part-time employees working on the Project site on the 30th day of June and the aggregate total wages paid during the twelve month period ending on the 30th day of June of the same year. This report shall be provided annually for the term of the Loan.
- (17) Inspections. Personnel of the Infrastructure Council, the Authority and the West Virginia Development Office, and agents of each of these agencies shall be authorized to enter upon the Project and into any building thereon, whether permanent or temporary, jointly or separately, to carry out inspections. These inspections may be scheduled or unscheduled, and will be at a reasonable time.
- (18) Other Conditions. All documents, conditions or requirements which may be reasonably requested by the Council or its counsel will be complied with even though not specifically set forth herein, including but not limited to:
  - (a) Certificate of a certified public accountant regarding the parity and coverage test with respect to the Borrower's outstanding debt;
  - (b) Title opinion;
  - (c) PSC Order approving the Project and the Loan; and
  - (d) Bond counsel opinion.

In addition to the above terms, and for your information, the following is a partial list of items that will expedite the closing of the Loan at the appropriate time:

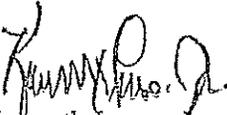
- i. Copies of letters of credit, etc. that impact the Project.
- ii. Appropriate insurance certificates as outlined above.

- iii. Copies of all deeds, invoices or other documents relating to the completion of the Project.
- iv. A legal description of the Project.

No statements or representations made before or after the issuance of this commitment letter by any person, member of the Infrastructure Council, or agent or employee of the Authority shall be construed as approval to alter or amend this commitment letter, as all such amendments or alterations shall only be made in writing after approval of the Infrastructure Council.

The Loan shall be made by the Authority at the direction of the Infrastructure Council only upon satisfaction of all of the terms and conditions set out above. If this commitment letter is acceptable to the Borrower, please execute two copies of this letter and return to the Infrastructure Council at the above stated address not later than March 1, 2009. If the Infrastructure Council does not receive the acknowledged commitment letter by March 1, 2009, the Infrastructure Council shall consider this commitment rejected.

Sincerely,



Kenneth Lowe, Jr.

MP/km

cc: Debbie Legg, WVDO  
Samme Gee, Jackson Kelly

NOTE: This letter is sent in triplicate. Please acknowledge receipt on two copies and return them to the Infrastructure Council immediately. This commitment shall not be binding until the return acknowledgment is received by the Infrastructure Council.

ACCEPTED BY:

Berkeley County Public Sewer Service District

By \_\_\_\_\_

Its Chairman

Date \_\_\_\_\_

# West Virginia Infrastructure & Jobs Development Council

Public Members:  
Kenneth Lowe, Jr.  
Shepherdstown  
Dwight Calhoun  
Petersburg  
Dave McComas  
Prichard  
Ron Justice  
Morgantown

300 Summers Street, Suite 980  
Charleston, West Virginia 25301  
Telephone: (304) 558-4607  
Facsimile: (304) 558-4609

Jefferson E. Brady, PE  
Executive Director

Jefferson.Brady@verizon.net

July 17, 2008

Curtis Keller, General Manager  
Berkeley County Public Sewer Service District  
P.O. Box 944  
Martinsburg, West Virginia 25402

Re: Berkeley County Public Sewer Service District  
Sewer Project 2008S-1049

Dear Mr. Keller:

The West Virginia Infrastructure and Jobs Development Council (the "Council") has reviewed the Berkeley County Public Sewer Service District's (the "District") preliminary application to increase hydraulic capacity of Ecolab pretreatment facility (the "Project").

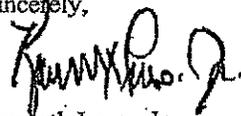
Based on the findings of the Sewer Technical Review Committee, the Council has determined that the Project is technically feasible within the guidelines of the Infrastructure and Jobs Development Act. The District should carefully review the enclosed comments of the Sewer Technical Review Committee as the District may need to address certain issues raised in said comments as it proceeds with the Project.

Upon consideration of the preliminary application, the Council determined that the District should utilize a \$2,149,700 Crews & Associates loan to fund this \$3,149,700 project.

The Council also determined that the District may be eligible for a \$1,000,000 Economic Development Infrastructure Fund loan pending final determination of the project's eligibility and readiness to proceed. **This letter is not a commitment letter of Infrastructure Funds.** The Project will be placed on the Council's pending list of projects.

If you have any questions regarding this matter, please contact Jeff Brady at 558-4607.

Sincerely,



Kenneth Lowe, Jr.

Enclosure

cc: Mike Johnson, P.E., DEP (w/o enclosure)  
Greg Isaacs, Crews & Associates  
Region IX Planning & Development Council  
John Tuggle, P.E., Pentree, Inc.

BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT

Sewer Revenue Bonds, Series 2009 B  
(West Virginia Infrastructure Fund)

CROSS-RECEIPT FOR SERIES 2009 B BONDS AND BOND PROCEEDS

On this 31st day of July, 2009, the undersigned authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the Authority, and the undersigned Chairman of Berkeley County Public Service Sewer District (the "Issuer"), for and on behalf of the Issuer, hereby certify as follows:

1. On the date hereof, the Authority received the Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 2009 B (West Virginia Infrastructure Fund), issued in the principal amount of \$1,000,000, as a single, fully registered Bond, numbered BR-1 and dated July 31, 2009 (the "Series 2009 B Bonds").

2. At the time of such receipt of the Series 2009 B Bonds upon original issuance, the Series 2009 B Bonds had been executed by the Chairman and the Secretary of the Issuer, by their respective manual signatures, and the official seal of the Issuer had been affixed upon the Series 2009 B Bonds.

3. The Issuer has received and hereby acknowledges receipt from the Authority, as the original purchaser of the Series 2009 B Bonds, of the sum of \$1,000,000, being the entire the principal amount of the Series 2009 B Bonds.

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Dated as of the day and year first written above.

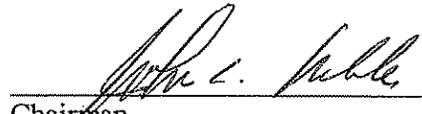
WEST VIRGINIA WATER DEVELOPMENT  
AUTHORITY



---

Authorized Representative

BERKELEY COUNTY PUBLIC SERVICE SEWER  
DISTRICT



---

Chairman

06.29.09  
067740.00019

BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT

Sewer Revenue Bonds, Series 2009 B  
(West Virginia Infrastructure Fund)

DIRECTION TO AUTHENTICATE AND DELIVER SERIES 2009 B BONDS

The Huntington National Bank, as  
Bond Registrar for the Series 2009 B Bonds  
Charleston, West Virginia

Ladies and Gentlemen:

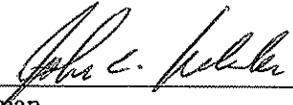
There are delivered to you herewith on this 31st day of July, 2009.

- (1) Bond No. BR-1, constituting the entire original issue of the Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 2009 B (West Virginia Infrastructure Fund), in the principal amount of \$1,000,000, dated July 31, 2009 (the "Series 2009 B Bonds"), executed by the Chairman and Secretary of Berkeley County Public Service Sewer District (the "Issuer") and bearing the official seal of the Issuer, authorized to be issued under and pursuant to a Bond Resolution duly adopted by the Issuer on July 14, 2009, and a Supplemental Resolution duly adopted by the Issuer on July 14, 2009 (collectively, the "Bond Legislation");
- (2) A copy of the Bond Legislation authorizing the above-described Bond issue, duly certified by the Secretary of the Issuer;
- (3) Executed counterparts of the loan agreement dated July 31, 2009 (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"); and
- (4) An executed opinion of nationally recognized bond counsel regarding the validity of the Loan Agreement and the Series 2009 B Bonds.

You are hereby requested and authorized to deliver the Series 2009 B Bonds to the Authority upon payment to the Issuer of the sum of \$1,000,000, representing the entire principal amount of the Series 2009 B Bonds. Prior to such delivery of the Series 2009 B Bonds, you will please cause the Series 2009 B Bonds to be authenticated and registered by an authorized officer, as Bond Registrar for the Series 2009 B Bonds, in accordance with the form of Certificate of Authentication and Registration thereon.

Dated as of the day and year first written above.

BERKELEY COUNTY PUBLIC SERVICE  
SEWER DISTRICT

  
\_\_\_\_\_  
Chairman

06.29.09  
067740.00019

SPECIMEN

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT  
SEWER REVENUE BOND, SERIES 2009 B  
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. BR-1

\$1,000,000

KNOW ALL MEN BY THESE PRESENTS: That on this the 31st day of July, 2009, BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT, a public service district and public corporation and political subdivision of the State of West Virginia in Berkeley County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum ONE MILLION DOLLARS (\$1,000,000), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2009, to and including September 1, 2029, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference, with interest payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2009, at the rate per annum as set forth in Exhibit B attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of The Huntington National Bank, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the next month preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Infrastructure and Jobs Development Council (the "Council"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority on behalf of the Council, dated July 31, 2009.

This Bond is issued (i) to pay the costs of acquisition and construction of improvements and extensions to the existing public sewerage system of the Issuer (the "Project"); (ii) funding the series 2009 B Bonds reserve account; and (iii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public sewerage system of the Issuer, the Project and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia,

including particularly Chapter 16, Article 13A and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Resolution duly adopted by the Issuer on July 14, 2009, and a Supplemental Resolution duly adopted by the Issuer on July 14, 2009 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S:

(1) SEWER REVENUE BONDS, SERIES 1986 B, DATED MARCH 7, 1986, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,638,194 (THE "SERIES 1986 B BONDS");

(2) SEWER REVENUE BONDS, SERIES 1990 A, DATED MAY 3, 1990, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$828,629 (THE "SERIES 1990 A BONDS");

(3) SEWER REVENUE BONDS, SERIES 1994 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED OCTOBER 5, 1994, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$494,288 (THE "SERIES 1994 A BONDS");

(4) SEWER REVENUE BONDS, SERIES 1994 C (WEST VIRGINIA SRF PROGRAM), DATED NOVEMBER 17, 1994, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,772,879 (THE "SERIES 1994 C BONDS");

(5) SEWER REVENUE BONDS, SERIES 1995 A (WEST VIRGINIA SRF PROGRAM), DATED FEBRUARY 9, 1995, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$3,837,640 (THE "SERIES 1995 A BONDS");

(6) SEWER REVENUE BONDS, SERIES 1995 B (WEST VIRGINIA SRF PROGRAM), DATED DECEMBER 29, 1995, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,138,506 (THE "SERIES 1995 B BONDS");

(7) SEWER REVENUE BONDS, SERIES 1996 A (WEST VIRGINIA SRF PROGRAM), DATED FEBRUARY 13, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$319,902 (THE "SERIES 1996 A BONDS");

(8) SEWER REVENUE BONDS, SERIES 1996 B (WEST VIRGINIA SRF PROGRAM), DATED MAY 1, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,628,633 (THE "SERIES 1996 B BONDS");

(9) SEWER REVENUE BONDS, SERIES 1996 C (WEST VIRGINIA SRF PROGRAM), DATED MAY 1, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$837,579 (THE "SERIES 1996 C BONDS");

(10) SEWER REVENUE BONDS, SERIES 1997 A (WEST VIRGINIA SRF PROGRAM), DATED JUNE 12, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$148,000 (THE "SERIES 1997 A BONDS");

(11) SEWER REVENUE BONDS, SERIES 1997 B (WEST VIRGINIA SRF PROGRAM), DATED DECEMBER 11, 1997, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,250,000 (THE "SERIES 1997 B BONDS");

(12) SEWER REVENUE BONDS, SERIES 1999 A (WEST VIRGINIA SRF PROGRAM), DATED OCTOBER 28, 1999, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$30,707,296 (THE "SERIES 1999 A BONDS");

(13) SEWER REVENUE BONDS, SERIES 2000 A (WEST VIRGINIA SRF PROGRAM), DATED MAY 25, 2000, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$937,500 (THE "SERIES 2000 A BONDS");

(14) SEWER REVENUE BONDS; SERIES 2001 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED MARCH 30, 2001, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$429,000 (THE "SERIES 2001 A BONDS");

(15) SEWER REVENUE BONDS, SERIES 2001 B (WEST VIRGINIA SRF PROGRAM), DATED AUGUST 7, 2001, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,909,850 (THE "SERIES 2001 B BONDS");

(16) SEWER REVENUE BONDS, SERIES 2002 A (WEST VIRGINIA SRF PROGRAM), DATED MAY 9, 2002, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$750,000 (THE "SERIES 2002 A BONDS");

(17) SEWER REVENUE BONDS, SERIES 2002 B (WEST VIRGINIA SRF PROGRAM), DATED JULY 11, 2002, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$456,548 (THE "SERIES 2002 B BONDS");

(18) SEWER REVENUE BONDS, SERIES 2002 C (WEST VIRGINIA SRF PROGRAM), DATED AUGUST 28, 2002, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$30,500,000 (THE "SERIES 2002 C BONDS");

(19) SEWER REVENUE BONDS, SERIES 2002 D (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED AUGUST 28, 2002, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$4,965,465 (THE "SERIES 2002 D BONDS");

(20) SEWER REVENUE BONDS, SERIES 2002 E (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED AUGUST 28, 2002, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$560,822 (THE "SERIES 2002 E BONDS");

(21) SEWER REVENUE BONDS, SERIES 2003 A (WEST VIRGINIA SRF PROGRAM), DATED AUGUST 14, 2003, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$252,922 (THE "SERIES 2003 A BONDS");

(22) SEWER REVENUE BONDS, SERIES 2003 B (WEST VIRGINIA SRF PROGRAM), DATED AUGUST 14, 2003, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$330,862 (THE "SERIES 2003 B BONDS");

(23) SEWER REVENUE BONDS, SERIES 2004 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED MAY 3, 2004, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$1,999,600 (THE "SERIES 2004 A BONDS");

(24) SEWER REFUNDING REVENUE BONDS, SERIES 2006 A, DATED OCTOBER 19, 2006, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$3,665,000 (THE "SERIES 2006 A BONDS");

(25) SEWER REFUNDING REVENUE BONDS, SERIES 2006 B, DATED OCTOBER 19, 2006, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$240,000 (THE "SERIES 2006 B BONDS");

(26) SEWER REVENUE BONDS, SERIES 2007 A, DATED MARCH 6, 2007, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$3,970,000 (THE "SERIES 2007 A BONDS");

(27) SEWER REVENUE BONDS, SERIES 2007 b, DATED MARCH 6, 2007, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$9,000,000 (THE "SERIES 2007 B BONDS");

(28) SEWER REVENUE BONDS, SERIES 2007 C (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED MARCH 6, 2007, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$9,000,000 (THE "SERIES 2007 C BONDS");

(29) SEWER REVENUE BONDS, SERIES 2007 D (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED MARCH 6, 2007, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$7,104,000 (THE "SERIES 2007 D BONDS");

(30) SEWER REVENUE BONDS, SERIES 2007 E (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED MARCH 6, 2007, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$500,000 (THE "SERIES 2007 E BONDS");

(31) SEWER REVENUE BONDS, SERIES 2007 F (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED MARCH 6, 2007, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$4,999,900 (THE "SERIES 2007 F BONDS") (COLLECTIVELY THE "FIRST LIEN BONDS"); AND

(32) SEWER REVENUE BONDS, SERIES 2009 A, DATED JULY 31, 2009, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,695,000 ISSUED CONCURRENTLY HEREWITH (THE "SERIES 2009 A BONDS")

AND SENIOR AND PRIOR TO THE ISSUER'S:

(1) SEWER REVENUE BONDS, SERIES 1990 B, DATED MAY 3, 1990, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$38,669 (THE "SERIES 1990 B BONDS" OR "SECOND LIEN BONDS").

THE (1) SERIES 1986 B BONDS, (2) SERIES 1990 A BONDS, (3) SERIES 1994 A BONDS, (4) SERIES 1994 C BONDS, (5) SERIES 1995 A BONDS, (6) SERIES 1995 B BONDS, (7) SERIES 1996 A BONDS, (8) SERIES 1996 B BONDS, (9) SERIES 1996 C BONDS, (10) SERIES 1997 A BONDS, (11) SERIES 1997 B BONDS, (12) SERIES 1999 A BONDS, (13) SERIES 2000 A BONDS, (14) SERIES 2001 A BONDS, (15) SERIES 2001 B BONDS, (16) SERIES 2002 A BONDS, (17) SERIES 2002 B BONDS, (18) SERIES 2002 C BONDS, (19) SERIES 2002 D BONDS, (20) SERIES 2002 E BONDS, (21) SERIES 2003 A BONDS, (22) SERIES 2003 B BONDS, (23) SERIES 2004 A BONDS, (24) SERIES 2006 A BONDS, (25) SERIES 2006 B BONDS, (26) SERIES 2007 A BONDS, (27) SERIES 2007 B BONDS, (28) SERIES 2007 C BONDS, (29) SERIES 2007 D BONDS, (30) SERIES 2007 E BONDS, (31) SERIES 2007 F BONDS, AND (32) SERIES 1990 B BONDS ARE SOMETIMES HEREINAFTER COLLECTIVELY REFERRED TO AS THE "PRIOR BONDS."

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the Holders of the First Lien Bonds and Series 2009 A Bonds and senior and prior to the Second Lien Bonds and from monies in the reserve account created under the Bond Legislation for the Bonds (the "Series 2009 B Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the monies in the Series 2009 B Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds, including the First Lien Bonds and the Series 2009 A Bonds; provided that, so long as the First Lien Bonds and the Series 2009 A Bonds are

no longer outstanding and in the event there exists in the Series 2009 B Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, including the First Lien Bonds and the Series 2009 A Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of The Huntington National Bank, Charleston, West Virginia, as registrar (the "Registrar"), by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

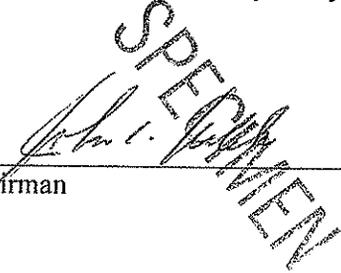
IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT has caused this Bond to be signed by its Chairman, and its corporate seal to be hereunto affixed and attested by its Secretary, and has caused this Bond to be dated the day and year first written above.

[SEAL]

  
\_\_\_\_\_  
Chairman

ATTEST:

  
\_\_\_\_\_  
Secretary

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2009 B Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: July 31, 2009.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

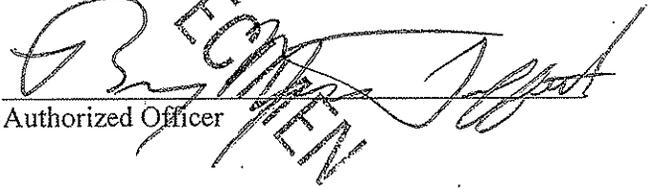
  
Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

| <u>AMOUNT</u>   | <u>DATE</u> | <u>AMOUNT</u> | <u>DATE</u> |
|-----------------|-------------|---------------|-------------|
| (1) \$1,000,000 | 7/31/09     | (19)          |             |
| (2)             |             | (20)          |             |
| (3)             |             | (21)          |             |
| (4)             |             | (22)          |             |
| (5)             |             | (23)          |             |
| (6)             |             | (24)          |             |
| (7)             |             | (25)          |             |
| (8)             |             | (26)          |             |
| (9)             |             | (27)          |             |
| (10)            |             | (28)          |             |
| (11)            |             | (29)          |             |
| (12)            |             | (30)          |             |
| (13)            |             | (31)          |             |
| (14)            |             | (32)          |             |
| (15)            |             | (33)          |             |
| (16)            |             | (34)          |             |
| (17)            |             | (35)          |             |
| (18)            |             | (36)          |             |

TOTAL \$ \_\_\_\_\_

EXHIBIT B

DEBT SERVICE SCHEDULE

**BOND DEBT SERVICE**  
 Berkeley County PSD  
 20 Years  
 3.0% Interest Rate

| Period Ending | Principal | Coupon | Interest | Debt Service | Annual Debt Service |
|---------------|-----------|--------|----------|--------------|---------------------|
| 7/31/2009     |           |        |          |              |                     |
| 12/1/2009     | 9,168     | 3.000% | 7,500.00 | 16,668.00    |                     |
| 3/1/2010      | 9,237     | 3.000% | 7,431.24 | 16,668.24    |                     |
| 6/1/2010      | 9,306     | 3.000% | 7,361.96 | 16,667.96    |                     |
| 9/1/2010      | 9,376     | 3.000% | 7,292.17 | 16,668.17    | 66,672.37           |
| 12/1/2010     | 9,446     | 3.000% | 7,221.85 | 16,667.85    |                     |
| 3/1/2011      | 9,517     | 3.000% | 7,151.00 | 16,668.00    |                     |
| 6/1/2011      | 9,589     | 3.000% | 7,079.63 | 16,668.63    |                     |
| 9/1/2011      | 9,660     | 3.000% | 7,007.71 | 16,667.71    | 66,672.19           |
| 12/1/2011     | 9,733     | 3.000% | 6,935.26 | 16,668.26    |                     |
| 3/1/2012      | 9,806     | 3.000% | 6,862.26 | 16,668.26    |                     |
| 6/1/2012      | 9,879     | 3.000% | 6,788.72 | 16,667.72    |                     |
| 9/1/2012      | 9,954     | 3.000% | 6,714.62 | 16,668.62    | 66,672.86           |
| 12/1/2012     | 10,028    | 3.000% | 6,639.97 | 16,667.97    |                     |
| 3/1/2013      | 10,103    | 3.000% | 6,564.76 | 16,667.76    |                     |
| 6/1/2013      | 10,179    | 3.000% | 6,488.99 | 16,667.99    |                     |
| 9/1/2013      | 10,256    | 3.000% | 6,412.64 | 16,668.64    | 66,672.36           |
| 12/1/2013     | 10,332    | 3.000% | 6,335.72 | 16,667.72    |                     |
| 3/1/2014      | 10,410    | 3.000% | 6,258.23 | 16,668.23    |                     |
| 6/1/2014      | 10,488    | 3.000% | 6,180.16 | 16,668.16    |                     |
| 9/1/2014      | 10,567    | 3.000% | 6,101.50 | 16,668.50    | 66,672.61           |
| 12/1/2014     | 10,646    | 3.000% | 6,022.25 | 16,668.25    |                     |
| 3/1/2015      | 10,726    | 3.000% | 5,942.40 | 16,668.40    |                     |
| 6/1/2015      | 10,806    | 3.000% | 5,861.96 | 16,667.96    |                     |
| 9/1/2015      | 10,887    | 3.000% | 5,780.91 | 16,667.91    | 66,672.52           |
| 12/1/2015     | 10,969    | 3.000% | 5,699.26 | 16,668.26    |                     |
| 3/1/2016      | 11,051    | 3.000% | 5,616.99 | 16,667.99    |                     |
| 6/1/2016      | 11,134    | 3.000% | 5,534.11 | 16,668.11    |                     |
| 9/1/2016      | 11,218    | 3.000% | 5,450.60 | 16,668.60    | 66,672.96           |
| 12/1/2016     | 11,302    | 3.000% | 5,366.47 | 16,668.47    |                     |
| 3/1/2017      | 11,386    | 3.000% | 5,281.70 | 16,667.70    |                     |
| 6/1/2017      | 11,472    | 3.000% | 5,196.31 | 16,668.31    |                     |
| 9/1/2017      | 11,558    | 3.000% | 5,110.27 | 16,668.27    | 66,672.75           |
| 12/1/2017     | 11,645    | 3.000% | 5,023.58 | 16,668.58    |                     |
| 3/1/2018      | 11,732    | 3.000% | 4,936.25 | 16,668.25    |                     |
| 6/1/2018      | 11,820    | 3.000% | 4,848.26 | 16,668.26    |                     |
| 9/1/2018      | 11,909    | 3.000% | 4,759.61 | 16,668.61    | 66,673.70           |
| 12/1/2018     | 11,998    | 3.000% | 4,670.29 | 16,668.29    |                     |
| 3/1/2019      | 12,088    | 3.000% | 4,580.30 | 16,668.30    |                     |
| 6/1/2019      | 12,179    | 3.000% | 4,489.64 | 16,668.64    |                     |
| 9/1/2019      | 12,270    | 3.000% | 4,398.30 | 16,668.30    | 66,673.53           |
| 12/1/2019     | 12,362    | 3.000% | 4,306.28 | 16,668.28    |                     |
| 3/1/2020      | 12,455    | 3.000% | 4,213.56 | 16,668.56    |                     |
| 6/1/2020      | 12,548    | 3.000% | 4,120.15 | 16,668.15    |                     |
| 9/1/2020      | 12,642    | 3.000% | 4,026.04 | 16,668.04    | 66,673.03           |
| 12/1/2020     | 12,737    | 3.000% | 3,931.22 | 16,668.22    |                     |
| 3/1/2021      | 12,833    | 3.000% | 3,835.70 | 16,668.70    |                     |
| 6/1/2021      | 12,929    | 3.000% | 3,739.45 | 16,668.45    |                     |
| 9/1/2021      | 13,026    | 3.000% | 3,642.48 | 16,668.48    | 66,673.85           |

**BOND DEBT SERVICE**  
 Berkeley County PSD  
 20 Years  
 3.0% Interest Rate

| Period<br>Ending | Principal        | Coupon | Interest          | Debt Service        | Annual Debt<br>Service |
|------------------|------------------|--------|-------------------|---------------------|------------------------|
| 12/1/2021        | 13,123           | 3.000% | 3,544.79          | 16,667.79           |                        |
| 3/1/2022         | 13,222           | 3.000% | 3,446.36          | 16,668.36           |                        |
| 6/1/2022         | 13,321           | 3.000% | 3,347.20          | 16,668.20           |                        |
| 9/1/2022         | 13,421           | 3.000% | 3,247.29          | 16,668.29           | 66,672.64              |
| 12/1/2022        | 13,522           | 3.000% | 3,146.63          | 16,668.63           |                        |
| 3/1/2023         | 13,623           | 3.000% | 3,045.22          | 16,668.22           |                        |
| 6/1/2023         | 13,725           | 3.000% | 2,943.05          | 16,668.05           |                        |
| 9/1/2023         | 13,828           | 3.000% | 2,840.11          | 16,668.11           | 66,673.01              |
| 12/1/2023        | 13,932           | 3.000% | 2,736.40          | 16,668.40           |                        |
| 3/1/2024         | 14,036           | 3.000% | 2,631.91          | 16,667.91           |                        |
| 6/1/2024         | 14,142           | 3.000% | 2,526.64          | 16,668.64           |                        |
| 9/1/2024         | 14,248           | 3.000% | 2,420.57          | 16,668.57           | 66,673.52              |
| 12/1/2024        | 14,354           | 3.000% | 2,313.71          | 16,667.71           |                        |
| 3/1/2025         | 14,462           | 3.000% | 2,206.06          | 16,668.06           |                        |
| 6/1/2025         | 14,571           | 3.000% | 2,097.59          | 16,668.59           |                        |
| 9/1/2025         | 14,680           | 3.000% | 1,988.31          | 16,668.31           | 66,672.67              |
| 12/1/2025        | 14,790           | 3.000% | 1,878.21          | 16,668.21           |                        |
| 3/1/2026         | 14,901           | 3.000% | 1,767.29          | 16,668.29           |                        |
| 6/1/2026         | 15,013           | 3.000% | 1,655.53          | 16,668.53           |                        |
| 9/1/2026         | 15,125           | 3.000% | 1,542.93          | 16,667.93           | 66,672.96              |
| 12/1/2026        | 15,239           | 3.000% | 1,429.49          | 16,668.49           |                        |
| 3/1/2027         | 15,353           | 3.000% | 1,315.20          | 16,668.20           |                        |
| 6/1/2027         | 15,468           | 3.000% | 1,200.05          | 16,668.05           |                        |
| 9/1/2027         | 15,584           | 3.000% | 1,084.04          | 16,668.04           | 66,672.78              |
| 12/1/2027        | 15,701           | 3.000% | 967.16            | 16,668.16           |                        |
| 3/1/2028         | 15,819           | 3.000% | 849.41            | 16,668.41           |                        |
| 6/1/2028         | 15,937           | 3.000% | 730.76            | 16,667.76           |                        |
| 9/1/2028         | 16,057           | 3.000% | 611.24            | 16,668.24           | 66,672.57              |
| 12/1/2028        | 16,177           | 3.000% | 490.81            | 16,667.81           |                        |
| 3/1/2029         | 16,299           | 3.000% | 369.48            | 16,668.48           |                        |
| 6/1/2029         | 16,421           | 3.000% | 247.24            | 16,668.24           |                        |
| 9/1/2029         | 16,544           | 3.000% | 124.08            | 16,668.08           | 66,672.61              |
|                  | <b>1,000,000</b> |        | <b>333,457.49</b> | <b>1,333,457.49</b> | <b>1,333,457.49</b>    |

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto \_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

In the presence of:

\_\_\_\_\_



July 31, 2009

Berkeley County Public Service Sewer District  
Sewer Revenue Bonds, Series 2009 B  
(West Virginia Infrastructure Fund)

Berkeley County Public Service Sewer District  
Martinsburg, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

West Virginia Infrastructure and Jobs Development Council  
Charleston, West Virginia

Ladies and Gentlemen:

We have served as bond counsel in connection with the issuance by Berkeley County Public Service Sewer District (the "Issuer"), a public service district and political subdivision organized and existing under the laws of the State of West Virginia, of its \$1,000,000 Sewer Revenue Bonds, Series 2009 B (West Virginia Infrastructure Fund), dated the date hereof (the "Bonds").

We have examined the law and certified copies of proceedings and other papers relating to the authorization of a loan agreement, dated July 31, 2009, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), and the Bonds, which are to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Bonds are originally issued in the form of one Bond, registered as to principal and interest to the Authority, bearing interest at the rate of three percent (3%) per annum. The principal of and interest on the Bonds are payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing December 1, 2009, to and including September 1, 2029, all as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Bonds.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13A and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), for the purposes of (i) paying the costs of acquisition and construction of improvements and extensions to the existing public sewerage system of the Issuer (the "Project"); (ii) funding the Series 2009 B Bonds Reserve Account; and (iii) paying certain costs of issuance and related costs.

We have also examined the applicable provisions of the Act, the Bond Resolution duly adopted by the Issuer on July 14, 2009, as supplemented by a Supplemental Resolution duly adopted by the Issuer on July 14, 2009 (collectively, the "Bond Legislation"), pursuant to and under which Act and Bond Legislation the Bonds are authorized and issued, and the Loan Agreement has been entered into. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Bond Legislation and the Loan Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Legislation and the Loan Agreement when used herein.

Based upon the foregoing, and upon our examination of such other documents as we have deemed necessary, we are of the opinion, under existing law, as follows:

1. The Issuer is a duly created and validly existing public service district, public corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt the Bond Legislation and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Loan Agreement has been duly authorized by and executed on behalf of the Issuer, is a valid and binding special obligation of the Issuer, enforceable in accordance with the terms thereof, and inures to the benefit of the Authority and the Council and cannot be amended so as to affect adversely the rights of the Authority or the Council or diminish the obligations of the Issuer without the written consent of the Authority and the Council.

3. The Bond Legislation and all other necessary orders and resolutions have been duly adopted by the Issuer in connection with the issuance and sale of the Bonds and constitute valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their terms. The Bond Legislation contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

4. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System referred to in the Bond Legislation and

secured by a first lien on and pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's:

(i) Sewer Revenue Bonds, Series 1986 B (West Virginia Water Development Authority), dated March 7, 1986, issued in the original aggregate principal amount of \$1,638,194;

(ii) Sewer Revenue Bonds, Series 1990 A (West Virginia Water Development Authority), dated May 3, 1990, issued in the original aggregate principal amount of \$828,629;

(iii) Sewer Revenue Bonds, Series 1994 A (West Virginia Water Development Authority), dated October 5, 1994, issued in the original aggregate principal amount of \$494,288;

(iv) Sewer Revenue Bonds, Series 1994 C (West Virginia SRF Program), dated November 17, 1994, issued in the original aggregate principal amount of \$2,772,879;

(v) Sewer Revenue Bonds, Series 1995 A (West Virginia SRF Program), dated February 9, 1995, issued in the original aggregate principal amount of \$3,837,640;

(vi) Sewer Revenue Bonds, Series 1995 B (West Virginia SRF Program), dated December 29, 1995, issued in the original aggregate principal amount of \$2,138,506;

(vii) Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), dated February 13, 1996, issued in the original aggregate principal amount of \$319,902;

(viii) Sewer Revenue Bonds, Series 1996 B (West Virginia SRF Program), dated May 1, 1996, issued in the original aggregate principal amount of \$2,628,633;

(ix) Sewer Revenue Bonds, Series 1996 C (West Virginia SRF Program), dated May 1, 1996, issued in the original aggregate principal amount of \$837,579;

(x) Sewer Revenue Bonds, Series 1997 A (West Virginia SRF Program), dated June 12, 1997, issued in the original aggregate principal amount of \$148,000;

(xi) Sewer Revenue Bonds, Series 1997 B (West Virginia SRF Program), dated December 11, 1997, issued in the original aggregate principal amount of \$1,250,000;

(xii) Sewer Revenue Bonds, Series 1999 A (West Virginia SRF Program), dated October 28, 1999, issued in the original aggregate principal amount of \$30,707,296;

(xiii) Sewer Revenue Bonds, Series 2000 A (West Virginia SRF Program), dated May 25, 2000, issued in the original aggregate principal amount of \$937,500;

(xiv) Sewer Revenue Bonds, Series 2001 A (West Virginia Infrastructure Fund), dated March 30, 2001, issued in the original aggregate principal amount of \$429,000;

(xv) Sewer Revenue Bonds, Series 2001 B (West Virginia SRF Program), dated August 7, 2001, issued in the original aggregate principal amount of \$2,909,850;

(xvi) Sewer Revenue Bonds, Series 2002 A (West Virginia SRF Program), dated May 9, 2002, issued in the original aggregate principal amount of \$750,000;

(xvii) Sewer Revenue Bonds, Series 2002 B (West Virginia SRF Program), dated July 11, 2002, issued in the original aggregate principal amount of \$456,548;

(xviii) Sewer Revenue Bonds, Series 2002 C (West Virginia SRF Program), dated August 28, 2002, issued in the original aggregate principal amount of \$30,500,000;

(xix) Sewer Revenue Bonds, Series 2002 D (West Virginia Water Development Authority), dated August 28, 2002, issued in the original aggregate principal amount of \$4,965,465;

(xx) Sewer Revenue Bonds, Series 2002 E (West Virginia Water Development Authority), dated August 28, 2002, issued in the original aggregate principal amount of \$560,822;

(xxi) Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), dated August 14, 2003, issued in the original aggregate principal amount of \$252,922;

(xxii) Sewer Revenue Bonds, Series 2003 B (West Virginia SRF Program), dated August 14, 2003, issued in the original aggregate principal amount of \$330,862;

(xxiii) Sewer Revenue Bonds, Series 2004 A (West Virginia Infrastructure Fund), dated November 30, 2004, issued in the original aggregate principal amount of \$1,999,600;

(xxiv) Sewer Refunding Revenue Bonds, Series 2006 A (Bank-Qualified), dated October 1, 2006, issued in the original aggregate principal amount of \$3,665,000;

(xxv) Sewer Refunding Revenue Bonds, Series 2006 B (Non Bank-Qualified), dated October 1, 2006, issued in the original aggregate principal amount of \$240,000;

(xxvi) Sewer Revenue Bonds, Series 2007 A (Bank Qualified), dated March 6, 2007, issued in the original aggregate principal amount of \$3,970,000;

(xxvii) Sewer Revenue Bonds, Series 2007 B (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$9,000,000;

(xxviii) Sewer Revenue Bonds, Series 2007 C (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$9,000,000;

(xxix) Sewer Revenue Bonds, Series 2007 D (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$7,104,000;

(xxx) Sewer Revenue Bonds, Series 2007 E (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$500,000;

(xxxii) Sewer Revenue Bonds, Series 2007 F (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$4,999,900; and

(xxxiii) Sewer Revenue Bonds, Series 2009 A, dated July 31, 2009, issued in the original aggregate principal amount of \$2,695,000 issued simultaneously herewith;

and senior and prior to the Issuer's Sewer Revenue Bonds, Series 1990 B, dated May 3, 1990, issued in the original aggregate principal amount of \$38,669 all in accordance with the Bonds and the Bond Legislation.

5. Interest on the Bonds is not excludible from gross income for Federal income tax purposes. We express no other opinion as to the federal tax consequences of purchasing, holding or disposing of the Bonds.

6. Interest on the Bonds is not excludible from gross income for West Virginia income tax purposes. We express no other opinion as to the West Virginia tax consequences of purchasing, holding or disposing of the Bonds.

It is to be understood that the rights of the holders of the Bonds and the enforceability of the Bonds, the Loan Agreement and the Bond Legislation, and the liens and pledges set forth therein, may be subject to and limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter adopted to the extent constitutionally applicable and that their enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

We have examined the executed and authenticated Bond numbered BR-1, and in our opinion the form of said Bond and its execution and authentication are regular and proper.

Very truly yours,

  
STEP JOE & JOHNSON PLLC

**BERKELEY COUNTY  
PUBLIC SERVICE SEWER DISTRICT**

P.O. BOX 944  
Martinsburg, WV 25402  
Phone: (304) 263-8566  
Fax: (304) 267-7478

Board of Directors:

John C. Kunkle, *Chairman*  
John E. Myers, *Secretary*  
Ronald K. Collins, *Treasurer*



William F. Rohrbaugh  
*General Counsel*

July 31, 2009

Berkeley County Public Service Sewer District  
Sewer Revenue Bonds, Series 2009 B  
(West Virginia Infrastructure Fund)

Berkeley County Public Service Sewer District  
Martinsburg, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

West Virginia Infrastructure and Jobs Development Council  
Charleston, West Virginia

Steptoe & Johnson PLLC  
Charleston, West Virginia

Ladies and Gentlemen:

I am counsel to Berkeley County Public Service Sewer District, a public service district, in Berkeley County, West Virginia (the "Issuer"). As such counsel, I have examined copies of the approving opinion of Steptoe & Johnson PLLC, as bond counsel, a loan agreement for the Series 2009 B Bonds dated July 31, 2009, including all schedules and exhibits attached thereto, by and between the Issuer and the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council") (the "Loan Agreement"), the Bond Resolution duly adopted by the Issuer on July 14, 2009, as supplemented by the Supplemental Resolution duly adopted by the Issuer on July 14, 2009 (collectively, the "Bond Legislation"), and other documents, papers, agreements, instruments and certificates relating to the above-captioned Bonds of the Issuer (collectively, the "Bonds") and orders of The County Commission of Berkeley County relating to the Issuer and the appointment of the members of the Public Service Board of the Issuer. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Legislation and the Loan Agreement when used herein.

I am of the opinion that:

1. The Issuer has been duly created and is validly existing as a public service district and public corporation and political subdivision of the State of West Virginia.

2. The Loan Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding agreement of the Issuer, enforceable in accordance with its terms.

3. The members and officers of the Public Service Board of the Issuer have been duly, lawfully and properly elected or appointed, as applicable, have taken the requisite oaths, and are authorized to act in their respective capacities on behalf of the Issuer.

4. The Bond Legislation has been duly adopted by the Issuer and is in full force and effect.

5. The execution and delivery of the Bonds and the Loan Agreement and the consummation of the transactions contemplated by the Bonds, the Loan Agreement and the Bond Legislation and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute, on the part of the Issuer, a breach of or default under any resolution, order, agreement or other instrument to which the Issuer is a party or by which the Issuer or its properties are bound or any existing law, regulation, court order or consent decree to which the Issuer is subject.

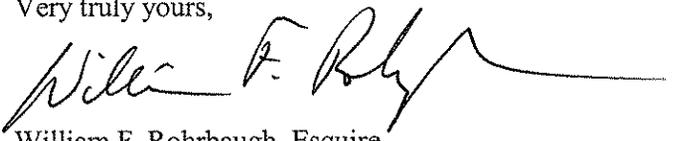
6. The Issuer has received all permits, licenses, approvals, consents, certificates, orders, exemptions and authorizations necessary for the creation and existence of the Issuer, the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges have been entered and/or received, including, without limitation, all requisite orders, certificates, consents and approvals from the Council and The County Commission of Berkeley County.

7. The Issuer has received all orders, certificates and authorizations from the Public Service Commission of West Virginia necessary for the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the implementation of rates and charges, and the Issuer has taken any other action required for the imposition of such rates and charges, including, without limitation, the adoption of a resolution prescribing such rates and charges. The Issuer has received a Recommended Decision of the Public Service Commission of West Virginia entered on August 19, 2008, 2009, which became Final Order on September 8, 2008, in Case No. 08-0311-PSD-CN, among other things, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project. The time for appeal of such Order has expired prior to the date hereof.

8. To the best of my knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Loan Agreement, the Bonds and the Bond Legislation, the acquisition and construction of the Project, the operation of the System, the validity of the Bonds or the collection or pledge of the Net Revenues therefor.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Very truly yours,



William F. Rohrbaugh, Esquire

067740.00019

*RESERVED*

**BERKELEY COUNTY  
PUBLIC SERVICE SEWER DISTRICT**

P.O. BOX 944  
Martinsburg, WV 25402  
Phone: (304) 263-8566  
Fax: (304) 267-7478

Board of Directors:

John C. Kunkle, *Chairman*  
John E. Myers, *Secretary*  
Ronald K. Collins, *Treasurer*



William F. Rohrbaugh  
*General Counsel*

**FINAL TITLE OPINION**

July 31, 2009

West Virginia Infrastructure and Jobs Development Council  
Charleston, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

Re: Berkeley County Public Service Sewer District

Dear Ladies & Gentlemen:

This firm represents Berkeley County Public Service Sewer District (the "District") with regard to a proposed project to increase the daily wastewater pre-treatment capacity of the ECOLAB wastewater pre-treatment plant from 50,000 gallons to 100,000 gallons per day by adding a second wastewater pre-treatment unit, constructing a 200,000 gallon flow equalization tank in front of the treatment plant, constructing a sludge box dewatering system, installing chemical feed lines and installing an enhanced control system that will use real time monitoring to assist in control and improve the treatment process, together with all appurtenant facilities (the "Project"), and provides this final title opinion on behalf of the District to satisfy the requirements of the West Virginia Infrastructure and Jobs Development Council (the "Council") with regard to the financing proposed for the Project. Please be advised of the following:

1. That I am of the opinion that the District is a duly created and existing public service district possessed with all the powers and authority granted to public service districts under the laws of the State of West Virginia and has the full power and authority to construct, operate and maintain the Project as approved by the West Virginia

Bureau of Public Health and the West Virginia Department of Environmental Protection (NPDES Permit).

2. That the District has obtained approval for all necessary permits and approvals for the construction of the Project.

3. That I have investigated and ascertained the location of and am familiar with the legal description of the necessary sites, including easements and/or rights of way, required for the Project as set forth in the plans for the Project prepared by Pentree Engineering, Inc., the consulting engineers for the Project.

4. That I have examined the records on file in the Office of the Clerk of the County Commission of Berkeley County, West Virginia, the county in which the Project is to be located, and, in my opinion, the District has acquired legal title or such other estate or interest in the necessary site components for the Project sufficient to assure undisturbed use and possession for the purpose of construction, operation and maintenance for the estimated life of the facilities to be constructed.

5. That all deeds or other documents which have been acquired to date by the District have been duly recorded in the aforesaid Clerk's Office in order to protect the legal title to and interest of the District.

Sincerely,

A handwritten signature in black ink, appearing to read "William F. Rohrbaugh". The signature is fluid and cursive, with a prominent initial "W" and a long, sweeping tail.

William F. Rohrbaugh, Esquire  
General Counsel (WVSB No. 5048)

BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT

Sewer Revenue Bonds, Series 2009 B  
(West Virginia Infrastructure Fund)

GENERAL CERTIFICATE OF ISSUER AND ATTORNEY ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. CERTIFICATION OF COPIES OF DOCUMENTS
6. INCUMBENCY AND OFFICIAL NAME
7. LAND AND RIGHTS-OF-WAY
8. MEETINGS, ETC.
9. CONTRACTORS' INSURANCE, ETC.
10. LOAN AGREEMENTS
11. RATES
12. PUBLIC SERVICE COMMISSION ORDER
13. SIGNATURES AND DELIVERY
14. BOND PROCEEDS
15. PUBLICATION OF NOTICE OF PSC FILING
16. SPECIMEN BONDS
17. CONFLICT OF INTEREST
18. EXECUTION OF COUNTERPARTS

On this 31st day of July, 2009, we, the undersigned CHAIRMAN and the undersigned SECRETARY of the Public Service Board of Berkeley County Public Service Sewer District in Berkeley County, West Virginia (the "Issuer"), and the undersigned COUNSEL TO THE ISSUER, hereby certify in connection with the Issuer's Sewer Revenue Bonds, Series 2009 B (West Virginia Infrastructure Fund), dated the date hereof (the "Bonds" or the "Series 2009 B Bonds"), as follows:

1. **TERMS:** All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning as set forth in the Bond Resolution of the Issuer duly adopted July 14, 2009, and a Supplemental Resolution of the Issuer duly adopted July 14, 2009 (collectively, the "Bond Legislation"), when used herein.

2. **NO LITIGATION:** Except as described below, no controversy or litigation of any nature is now pending or threatened, restraining, enjoining or affecting in

any manner the issuance, sale or delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the receipt of the Net Revenues, or in any way contesting or affecting the validity of the Bonds, or any proceedings of the Issuer taken with respect to the issuance or sale of the Bonds, the pledge or application of the Net Revenues or any other monies or security provided for the payment of the Bonds or the existence or the powers of the Issuer insofar as they relate to the authorization, sale and issuance of the Bonds, the payment of the Notes, the acquisition and construction of the Project, the operation of the System, the pledge or application of monies and security or the collection of the Gross Revenues or the pledge of Net Revenues as security for the Bonds

3. GOVERNMENTAL APPROVALS AND BIDDING: All applicable and necessary approvals, permits, exemptions, consents, authorizations, registrations, licenses, orders and certificates required by law for the acquisition and construction of the Project, the operation of the System, including, without limitation, the imposition of rates and charges, and the issuance of the Bonds have been duly and timely obtained and remain in full force and effect. Competitive bids for the acquisition and construction of the Project were heretofore solicited in accordance with Chapter 5G, Article 22, Section 1 of the West Virginia Code of 1931, as amended and the Project has been completed.

4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the Issuer since the approval, execution and delivery by the Issuer of the Loan Agreement, and the Issuer has met all conditions prescribed in the Loan Agreement. The Issuer has or can provide the financial, institutional, legal and managerial capabilities necessary to complete the Project.

There are outstanding obligations of the Issuer which will rank either on a parity with or junior and subordinate to the Series 2009 B Bonds as to liens, pledge and source of and security for payment, which obligations are designated and have the lien positions with respect to the Series 2009 B Bonds as follows:

Designation

1. Sewer Revenue Bonds, Series 1986 B, dated March 7, 1986, issued in the original aggregate principal amount \$1,638,194 (the "Series 1986 B Bonds");
2. Sewer Revenue Bonds, Series 1990 A, dated May 3, 1990, issued in the original aggregate principal amount of \$828,629 (the "Series 1990 A Bonds");
3. Sewer Revenue Bonds, Series 1994 A (West Virginia Water Development Authority), dated October 5, 1994, issued in the original aggregate principal amount of \$494,288 (the "Series 1994 A Bonds");

4. Sewer Revenue Bonds, Series 1994 C (West Virginia SRF Program), dated November 17, 1994, issued in the original aggregate principal amount of \$2,772,879 (the "Series 1994 C Bonds");
5. Sewer Revenue Bonds, Series 1995 A (West Virginia SRF Program), dated February 9, 1995, issued in the original aggregate principal amount of \$3,837,640 (the "Series 1995 A Bonds");
6. Sewer Revenue Bonds, Series 1995 B (West Virginia SRF Program), dated December 29, 1995, issued in the original aggregate principal amount of \$2,138,506 (the "Series 1995 B Bonds");
7. Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), dated February 13, 1996, issued in the original aggregate principal amount of \$319,902 (the "Series 1996 A Bonds");
8. Sewer Revenue Bonds, Series 1996 B (West Virginia SRF Program), dated May 1, 1996, issued in the original aggregate principal amount of \$2,628,633 (the "Series 1996 B Bonds");
9. Sewer Revenue Bonds, Series 1996 C (West Virginia SRF Program), dated May 1, 1996, issued in the original aggregate principal amount of \$837,579 (the "Series 1996 C Bonds");
10. Sewer Revenue Bonds, Series 1997 A (West Virginia SRF Program), dated June 12, 1997, issued in the original aggregate principal amount of \$148,000 (the "Series 1997 A Bonds");
11. Sewer Revenue Bonds, Series 1997 B (West Virginia SRF Program), dated December 11, 1997, issued in the original aggregate principal amount of \$1,250,000 (the "Series 1997 B Bonds");
12. Sewer Revenue Bonds, Series 1999 A (West Virginia SRF Program), dated October 28, 1999, issued in the original aggregate principal amount of \$30,707,296 (the "Series 1999 A Bonds");
13. Sewer Revenue Bonds, Series 2000 A (West Virginia SRF Program), dated May 25, 2000, issued in the original aggregate principal amount of \$937,500 (the "Series 2000 A Bonds");
14. Sewer Revenue Bonds, Series 2001 A (West Virginia Infrastructure Fund), dated March 30, 2001, issued in the original aggregate principal amount of \$429,000 (the "Series 2001 A Bonds");

15. Sewer Revenue Bonds, Series 2001 B (West Virginia SRF Program), dated August 7, 2001, issued in the original aggregate principal amount of \$2,909,850 (the "Series 2001 B Bonds");
16. Sewer Revenue Bonds, Series 2002 A (West Virginia SRF Program), dated May 9, 2002, issued in the original aggregate principal amount of \$750,000 (the "Series 2002 A Bonds");
17. Sewer Revenue Bonds, Series 2002 B (West Virginia SRF Program), dated July 11, 2002, issued in the original aggregate principal amount of \$456,548 (the "Series 2002 B Bonds");
18. Sewer Revenue Bonds, Series 2002 C (West Virginia SRF Program), dated August 28, 2002, issued in the original aggregate principal amount of \$30,500,000 (the "Series 2002 C Bonds");
19. Sewer Revenue Bonds, Series 2002 D (West Virginia Water Development Authority), dated August 28, 2002, issued in the original aggregate principal amount of \$4,965,465 (the "Series 2002 D Bonds");
20. Sewer Revenue Bonds, Series 2002 E (West Virginia Water Development Authority), dated August 28, 2002, issued in the original aggregate principal amount of \$560,822 (the "Series 2002 E Bonds");
21. Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), dated August 14, 2003, issued in the original aggregate principal amount of \$252,922 (the "Series 2003 A Bonds");
22. Sewer Revenue Bonds, Series 2003 B (West Virginia SRF Program), dated August 14, 2003, issued in the original aggregate principal amount of \$330,862 (the "Series 2003 B Bonds");
23. Sewer Revenue Bonds, Series 2004 A (West Virginia Infrastructure Fund), dated November 30, 2004, issued in the original aggregate principal amount of \$1,999,600 (the "Series 2004 A Bonds");
24. Sewer Revenue Bonds, Series 2006 A, dated October 19, 2006, issued in the original aggregate principal amount of \$3,665,000 (the "Series 2006 A Bonds");
25. Sewer Revenue Bonds, Series 2007 A (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$3,970,000 (the "Series 2007 A Bonds");

26. Sewer Revenue Bonds, Series 2007 B (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$9,000,000 (the "Series 2007 B Bonds");
27. Sewer Revenue Bonds, Series 2007 C (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$9,000,000 (the "Series 2007 C Bonds");
28. Sewer Revenue Bonds, Series 2007 D (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$7,104,000 (the "Series 2007 D Bonds");
29. Sewer Revenue Bonds, Series 2007 E (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$500,000 (the "Series 2007 E Bonds");
30. Sewer Revenue Bonds, Series 2007 F (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$4,999,900 (the "Series 2007 F Bonds");
31. Sewer Revenue Bonds, Series 2009 A, dated July 31, 2009, issued in the original aggregate principal amount of \$2,695,000 (the "Series 2009 A Bonds"); and
32. Sewer Revenue Bonds, Series 1990 B, dated May 3, 1990, issued in the original aggregate principal amount of \$38,669 (the "Series 1990 B Bonds").

The Series 1986 B Bonds, the Series 1990 A Bonds, the Series 1994 A Bonds, the Series 1994 C Bonds, the Series 1995 A Bonds, the Series 1995 B Bonds, the Series 1996 A Bonds, the Series 1996 B Bonds, the Series 1996 C Bonds, the Series 1996 D Bonds, the Series 1997 A Bonds, the Series 1997 B Bonds, the Series 1999 A Bonds, the Series 2000 A Bonds, the Series 2001 A Bonds, the Series 2001 B Bonds, the Series 2002 A Bonds, the Series 2002 B Bonds, the Series 2002 C Bonds, the Series 2002 D Bonds, the Series 2002 E Bonds, the Series 2003 A Bonds, the Series 2003 B Bonds, the Series 2004 A Bonds, the Series 2006 A Bonds, the Series 2007 A, the Series 2007 B Bonds, the Series 2007 C Bonds, the Series 2007 D Bonds, the Series 2007 E Bonds, and the Series 2007 F Bonds are hereinafter collectively called the "First Lien Bonds"; and the Series 1990 B Bonds are hereinafter called the "Second Lien Bonds". The First Lien Bonds and the Second Lien Bonds are hereinafter collectively called the "Prior Bonds."

The Issuer also has outstanding its Sewer Capacity Improvement Fee Revenue Bonds, Series 2006 A, dated November 2, 2006, issued in the aggregate principal amount of \$15,405,000 (the "CIF Bonds"). The CIF Bonds will be repaid solely from and will be secured solely by the Capacity Improvement Fees of the Issuer and the Surplus Revenues of the System (all as more clearly hereinafter defined and described) and WILL NOT BE PAYABLE FROM OR SECURED BY THE NET REVENUES OF THE SYSTEM.

The Series 2009 B Bonds shall be issued on a parity with the First Lien Bonds and the Series 2009 A Bonds, and senior and prior to the Second Lien Bonds with respect to liens, pledge and source of and security for payment and in all other respects. The Issuer has met the coverage and parity requirements for issuance of parity bonds of the First Lien Bonds and the resolutions authorizing the First Lien Bonds and has substantially complied with all other parity requirements, except to the extent that noncompliance with any such other parity requirements is not of a material nature. The Issuer has obtained the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the First Lien Bonds are met. The Issuer has obtained the written consent of the Holders of the First Lien Bonds to the issuance of the Series 2009 B Bonds on a parity with the First Lien Bonds and the written consent of the Holders of the Second Lien Bonds to the issuance of the Series 2009 B Bonds on a senior and prior basis to the Second Lien Bonds. Other than the Prior Bonds, there are no outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

5. CERTIFICATION OF COPIES OF DOCUMENTS: The copies of the below-listed documents hereto attached or delivered herewith or heretofore delivered are true, correct and complete copies of the originals of the documents of which they purport to be copies, and such original documents are in full force and effect and have not been repealed, rescinded, amended, supplemented or changed in any way unless modification appears from later documents also listed below:

Bond Resolution

Supplemental Resolution

Series 2009 B Bonds Loan Agreement

Public Service Commission Order

Infrastructure and Jobs Development Council Approval

County Commission Orders Creating District

County Commission Orders Appointing Current Boardmembers

Oaths of Office of Current Boardmembers

Rules of Procedure

Affidavit of Publication on Prefiling Notice

Minutes of Current Year Organizational Meeting

Minutes on Adoption of Bond Resolution and Supplemental Resolution

NPDES Permit

Prior Bond Resolutions

Consent of West Virginia Water Development Authority

Consent of United States Department of Agriculture

Evidence of Insurance

6. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is "Berkeley County Public Service Sewer District." The Issuer is a public service district and public corporation duly created by The County Commission of Berkeley County and presently existing under the laws of, and a political subdivision of, the State of West Virginia. The governing body of the Issuer is its Public Service Board consisting of 3 duly appointed, qualified and acting members whose names and dates of commencement and termination of current terms of office are as follows:

| <u>Name</u>       | <u>Date of Commencement of Office</u> | <u>Date of Termination of Office</u> |
|-------------------|---------------------------------------|--------------------------------------|
| John E. Myers     | July 1, 2009                          | June 30, 2015                        |
| John C. Kunkle    | July 1, 2009                          | June 30, 2010                        |
| Ronald L. Collins | July 1, 2005                          | June 30, 2011                        |

The names of the duly elected and/or appointed, qualified and acting officers of the Public Service Board of the Issuer for the calendar year 2009 are as follows:

|           |   |                   |
|-----------|---|-------------------|
| Chairman  | - | John Kunkle       |
| Secretary | - | John Myers        |
| Treasurer | - | Ronald L. Collins |

The duly appointed and acting counsel to the Issuer is William F. Rohrbaugh, Esquire, Martinsburg, West Virginia.

7. LAND AND RIGHTS-OF-WAY: All land in fee simple and all rights-of-way and easements necessary for the acquisition and construction of the Project and the operation and maintenance of the System have been acquired or can and will be acquired by purchase, or, if necessary, by condemnation by the Issuer and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions which would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties which may have to be acquired by condemnation, are, in the opinion of all the undersigned, within the ability of the Issuer to pay for the same without jeopardizing the security of or payments on the Bonds.

8. MEETINGS, ETC.: All actions, resolutions, orders and agreements taken by and entered into by or on behalf of the Issuer in any way connected with the issuance of the Bonds and the acquisition, construction, operation and financing of the Project and the System were authorized or adopted at regular or special meetings of the Governing Body of the Issuer duly and regularly called and held pursuant to the Rules of Procedure of the Governing Body and all applicable statutes, including, without limitation, Chapter 6, Article 9A of the West Virginia Code of 1931, as amended, and a quorum of duly elected or appointed, as applicable, qualified and acting members of the Governing Body was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

9. CONTRACTORS' INSURANCE, ETC.: All contractors were required to maintain Worker's Compensation, public liability and property damage insurance, and builder's risk insurance where applicable in accordance with the Bond Legislation and the Loan Agreement. All insurance for the System required by the Bond Legislation and the Loan Agreement is in full force and effect.

10. LOAN AGREEMENT: As of the date hereof, (i) the representations of the Issuer contained in the Loan Agreement are true and correct in all material respects as if made on the date hereof; (ii) the Loan Agreement does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) to the best knowledge of the undersigned, no event affecting the Issuer has occurred since the date of the Loan Agreement which should be disclosed for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information in the Loan Agreement not misleading; and (iv) the Issuer is in compliance with all covenants, terms and representations in the Loan Agreement.

11. RATES: The Issuer has received the Commission Order of the Public Service Commission of West Virginia entered on January 22, 2007, in Case No. 06-

0026-PSD-CN, among other things, approving the rates and charges for the services of the System, and has adopted a resolution prescribing such rates and charges. The time for appeal of such Order has not expired on the date hereof. The parties to such Order have stated that they do not intend to appeal such Order. The Issuer hereby certifies that it will not appeal such Order. Such rates and charges are currently in effect.

12. PUBLIC SERVICE COMMISSION ORDER: The Issuer has received the Recommended Decision of the Public Service Commission of West Virginia entered on August 19, 2009, in Case No. 08-0311-PSD-PC, among other things approving permanent financing for the Project. The time for appeal of such Order has not expired on the date hereof. The parties to such Order have stated that they do not intend to appeal such Order. The Issuer hereby certifies that it will not appeal such Order. Such Order remains in full force and effect.

13. SIGNATURES AND DELIVERY: On the date hereof, the undersigned Chairman did officially sign the Bonds of the aforesaid issue, consisting upon original issuance of a single Bond, numbered BR-1, dated the date hereof, by his or her manual signature, and the undersigned Secretary did officially cause the official seal of the Issuer to be affixed upon the Bonds and to be attested by his or her manual signature, and the Registrar did officially authenticate and deliver the Bonds to a representative of the Authority as the original purchaser of the Bonds under the Loan Agreement. Said official seal is also impressed above the signatures appearing on this certificate.

14. BOND PROCEEDS: On the date hereof, the Issuer received \$1,000,000 from the Council and the Authority, being the entire principal amount of the Series 2009 B Bonds and applied all such proceeds to the payment of the entire outstanding principal of and all interest accrued on the Notes.

15. PUBLICATION OF NOTICE OF PSC FILING: The Issuer has published the required notice with respect to, among other things, the acquisition and construction of the Project, anticipated user rates and charges and filing of a formal application for a certificate of public convenience and necessity with the Public Service Commission of West Virginia, in accordance with the Chapter 16, Article 13A, Section 25 of the West Virginia Code of 1931, as amended.

16. SPECIMEN BONDS: Delivered concurrently herewith is a true and accurate specimens of the Bonds.

17. CONFLICT OF INTEREST: No member, officer or employee of the Issuer has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or in the sale of any land, materials, supplies or services to the Issuer or to any contractor supplying the Issuer, relating to the Bonds, the Bond Legislation and/or the Project, including, without limitation, with respect to the Depository Bank. For purposes of this paragraph, a "substantial financial interest" shall

include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

18. EXECUTION OF COUNTERPARTS: This document may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same document.

[Remainder of Page Intentionally Blank]

WITNESS our signatures and the official seal of BERKELEY COUNTY  
PUBLIC SERVICE SEWER DISTRICT as of the day and year first written above.

[CORPORATE SEAL]

| <u>SIGNATURE</u> | <u>OFFICIAL TITLE</u> |
|------------------|-----------------------|
| <br>_____        | Chairman              |
| <br>_____        | Secretary             |
| <br>_____        | Counsel to Issuer     |
| NA<br>_____      | Special PSC Counsel   |

06.30.09  
067740.00019

BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT

Sewer Revenue Bonds, Series 2009 B  
(West Virginia Infrastructure Fund)

CERTIFICATE OF ENGINEER

I, John W. Tuggle, Registered Professional Engineer, West Virginia License No. 11845, of Pentree, Inc., Princeton, West Virginia, hereby certify this 31st day of July, 2009 as follows:

1. My firm is engineer for the acquisition and construction of improvements and extensions to the existing public sewerage system (the "Project") of Berkeley County Public Service District (the "Issuer") to be constructed primarily in Berkeley County, West Virginia, which acquisition and construction are being permanently financed by the proceeds of the above-captioned bonds (collectively, the "Bonds") of the Issuer. Capitalized terms used herein and not defined herein shall have the same meaning set forth in the Bond Resolution adopted by the Issuer on July 14, 2009, as supplemented by the Supplemental Resolution adopted by the Issuer on July 14, 2009, and the Loan Agreement for the Series 2009 B Bonds, by and between the Issuer and the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), dated July 31, 2009 (the "Loan Agreement").

2. The Bonds are being issued for the purposes of (i) paying a portion of the costs of acquisition and construction of the Project; (ii) funding the Series 2009 B Bonds Reserve Account; and (iii) paying costs of issuance and related costs.

3. To the best of our knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the Authority, the Council and the West Virginia Bureau for Public Health, and any change orders approved by the Issuer, the Council, the Authority, and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least twenty years, if properly constructed, operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in the Schedule B's attached hereto as Exhibit A and the Issuer's counsel, William Rohrbaugh, Esquire, has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the West Virginia Bureau for Public Health and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every

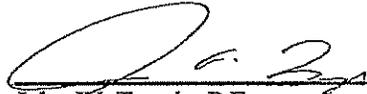
item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and the operation of the System; (ix) in reliance upon the certificate of the Issuer's certified public accountant, Yount, Hyde, & Barbour, P.C., as of the effective date thereof, the rates and charges for the System as adopted by the Issuer and approved by the Public Service Commission of West Virginia will be sufficient to comply with the provisions of the Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the Authority and the Council; and (xi) attached hereto as Exhibit A is the final amended "Schedule B - Final Total Cost of Project, Sources of Funds and Cost of Financing" for the Project.

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WITNESS my signature and seal on the day and year first written above.

PENTREE, INC.



  
John W. Tuggle, P.E.  
West Virginia License No. 11845

067740.00019

SCHEDULE B  
Berkeley County PSSD - Ecolab

|                                    | TOTAL        | IJDC         | Crews        |
|------------------------------------|--------------|--------------|--------------|
| <b>A. COST OF PROJECT:</b>         |              |              |              |
| 1 Construction                     | 2,623,992.43 | 815,823.31   | 1,808,169.12 |
| 2 Equipment                        | 63,300.02    | 0.00         | 63,300.02    |
| 3 <i>Equipment</i>                 | 99,773.69    | 0.00         | 99,773.69    |
| 4 Lab Equipment                    | 16,289.73    | 0.00         | 16,289.73    |
| 5 Engineering                      | 385,502.64   | 0.00         | 385,502.64   |
| 6 Legal/Accounting                 | 0.00         | 0.00         | 0.00         |
| 7 Interest                         | 17,764.89    | 0.00         | 17,764.89    |
| 8 Permits                          | 12,300.00    | 0.00         | 12,300.00    |
| 9 Other                            | 12,950.10    | 0.00         | 12,950.10    |
| 10 TOTAL                           | 3,231,873.50 | 815,823.31   | 2,416,050.19 |
| <b>B. COST OF FINANCING</b>        |              |              |              |
| 11 Funded Reserve                  | 292,251.50   | 66,674.00    | 225,577.50   |
| 12 Registrar fees                  | 500.00       | 500.00       | 0.00         |
| 13 Bond Counsel                    | 60,000.00    | 60,000.00    | 0.00         |
| 14 Underwriter Discount            | 67,375.00    | 14,002.69    | 53,372.31    |
| 15 Underwriters Counsel            | 40,000.00    | 40,000.00    | 0.00         |
| 16 Printing / Registrar            | 3,000.00     | 3,000.00     | 0.00         |
| 17 Cost of Financing               | 463,126.50   | 184,176.69   | 278,949.81   |
| 18 TOTAL Cost of Project           | 3,695,000.00 | 1,000,000.00 | 2,695,000.00 |
| <b>C SOURCES OF FUNDS</b>          |              |              |              |
| 19 State Grants                    | 0.00         | 0.00         | 0.00         |
| 20 Other sources                   | 0.00         | 0.00         | 0.00         |
| 21 Total Grants                    | 0.00         | 0.00         | 0.00         |
| 22 Net Proceeds from Bond Issuance | 3,695,000.00 | 1,000,000.00 | 2,695,000.00 |
| 23 OID                             | (26,384.40)  | 0.00         | (26,384.40)  |
| 24 TOTAL                           | 3,668,615.60 | 1,000,000.00 | 2,668,615.60 |

Note: 2% of 2,695,000 = 53,900.00

  
Berkeley County PSSD

7-31-09

  
Engineer

7-31-09



[FORM OF CERTIFICATE OF CERTIFIED PUBLIC ACCOUNTANT]

July 31, 2009

Berkeley County Public Service Sewer District  
Sewer Revenue Bonds, Series 2009 A  
and  
Sewer Revenue Bonds, Series 2009 B  
(West Virginia Infrastructure Fund)

West Virginia Water Development Authority  
Charleston, West Virginia

West Virginia Infrastructure & Jobs Development Council  
Charleston, West Virginia

Berkeley County Public Service Sewer District  
Martinsburg, West Virginia

United States Department of Agriculture  
Elkins, West Virginia

Ladies and Gentlemen:

Based upon the rates and charges set forth in the Commission Orders of the Public Service Commission of West Virginia, entered September 14, 2006, and February 15, 2008, in Case No.06-0026-PSD-CN, and projected operation and maintenance expenses and anticipated customer usage as furnished to us by Berkeley County Public Service Sewer District (the "Issuer"), it is our opinion that the Gross Revenues will be sufficient to provide revenues which, together with other revenues of the sewerage system (the "System") of the Issuer, will pay all operating expenses of the System and leave a balance each year equal to at least 115% of the maximum amount required in any year for debt service on the Issuer's Sewer Revenue Bonds, Series 2009 A and Sewer Revenue Bonds, Series 2009 B (West Virginia Infrastructure Fund) (collectively, the "Series 2009 Bonds"), and all other obligations secured by or payable from the Net Revenues of the System, on a parity with or junior to the Series 2009 Bonds, including the Issuer's:

(i) Sewer Revenue Bonds, Series 1986 B (West Virginia Water Development Authority), dated March 7, 1986, issued in the original aggregate principal amount of \$1,638,194;

(ii) Sewer Revenue Bonds, Series 1990 A (West Virginia Water Development Authority), dated May 3, 1990, issued in the original aggregate principal amount of \$828,629;

(iii) Sewer Revenue Bonds, Series 1994 A (West Virginia Water Development Authority), dated October 5, 1994, issued in the original aggregate principal amount of \$494,288;

(iv) Sewer Revenue Bonds, Series 1994 C (West Virginia SRF Program), dated November 17, 1994, issued in the original aggregate principal amount of \$2,772,879;

(v) Sewer Revenue Bonds, Series 1995 A (West Virginia SRF Program), dated February 9, 1995, issued in the original aggregate principal amount of \$3,837,640;

(vi) Sewer Revenue Bonds, Series 1995 B (West Virginia SRF Program), dated December 29, 1995, issued in the original aggregate principal amount of \$2,138,506;

(vii) Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), dated February 13, 1996, issued in the original aggregate principal amount of \$319,902;

(viii) Sewer Revenue Bonds, Series 1996 B (West Virginia SRF Program), dated May 1, 1996, issued in the original aggregate principal amount of \$2,628,633;

(ix) Sewer Revenue Bonds, Series 1996 C (West Virginia SRF Program), dated May 1, 1996, issued in the original aggregate principal amount of \$837,579;

(x) Sewer Revenue Bonds, Series 1997 A (West Virginia SRF Program), dated June 12, 1997, issued in the original aggregate principal amount of \$148,000;

(xi) Sewer Revenue Bonds, Series 1997 B (West Virginia SRF Program), dated December 11, 1997, issued in the original aggregate principal amount of \$1,250,000;

(xii) Sewer Revenue Bonds, Series 1999 A (West Virginia SRF Program), dated October 28, 1999, issued in the original aggregate principal amount of \$30,707,296;

(xiii) Sewer Revenue Bonds, Series 2000 A (West Virginia SRF Program), dated May 25, 2000, issued in the original aggregate principal amount of \$937,500;

(xiv) Sewer Revenue Bonds, Series 2001 A (West Virginia Infrastructure Fund), dated March 30, 2001, issued in the original aggregate principal amount of \$429,000;

(xv) Sewer Revenue Bonds, Series 2001 B (West Virginia SRF Program), dated August 7, 2001, issued in the original aggregate principal amount of \$2,909,850;

(xvi) Sewer Revenue Bonds, Series 2002 A (West Virginia SRF Program), dated May 9, 2002, issued in the original aggregate principal amount of \$750,000;

(xvii) Sewer Revenue Bonds, Series 2002 B (West Virginia SRF Program), dated July 11, 2002, issued in the original aggregate principal amount of \$456,548;

(xviii) Sewer Revenue Bonds, Series 2002 C (West Virginia SRF Program), dated August 28, 2002, issued in the original aggregate principal amount of \$30,500,000;

(xix) Sewer Revenue Bonds, Series 2002 D (West Virginia Water Development Authority), dated August 28, 2002, issued in the original aggregate principal amount of \$4,965,465;

(xx) Sewer Revenue Bonds, Series 2002 E (West Virginia Water Development Authority), dated August 28, 2002, issued in the original aggregate principal amount of \$560,822;

(xxi) Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), dated August 14, 2003, issued in the original aggregate principal amount of \$252,922;

(xxii) Sewer Revenue Bonds, Series 2003 B (West Virginia SRF Program), dated August 14, 2003, issued in the original aggregate principal amount of \$330,862;

(xxiii) Sewer Revenue Bonds, Series 2004 A (West Virginia Infrastructure Fund), dated November 30, 2004, issued in the original aggregate principal amount of \$1,999,600;

(xxiv) Sewer Refunding Revenue Bonds, Series 2006 A (Bank-Qualified), dated October 1, 2006, issued in the original aggregate principal amount of \$3,665,000;

(xxv) Sewer Refunding Revenue Bonds, Series 2006 B (Non Bank-Qualified), dated October 1, 2006, issued in the original aggregate principal amount of \$240,000;

(xxvi) Sewer Revenue Bonds, Series 2007 A (Bank Qualified), dated March 6, 2007, issued in the original aggregate principal amount of \$3,970,000;

(xxvii) Sewer Revenue Bonds, Series 2007 B (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$9,000,000;

(xxviii) Sewer Revenue Bonds, Series 2007 C (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$9,000,000;

(xxix) Sewer Revenue Bonds, Series 2007 D (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$7,104,000;

(xxx) Sewer Revenue Bonds, Series 2007 E (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$500,000;

(xxxii) Sewer Revenue Bonds, Series 2007 F (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$4,999,900; and

(xxxiii) Sewer Revenue Bonds, Series 1990 B, dated May 3, 1990, issued in the original aggregate principal amount of \$38,669. (collectively, the "Prior Bonds")

It is our further opinion that the Net Revenues actually derived from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of the Series 2009 Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the issuance of the Series 2009 Bonds, are not less than 115% of the largest aggregate amount that will mature and become due in any succeeding fiscal year for the principal of and interest on the Prior Bonds and the Series 2009 Bonds.

It is also our further opinion that the current schedule of rates and charges are sufficient to generate revenues equal to 100% of the annual payment of principal of and interest on all obligations payable from the Net Revenues, including but not limited to the Sewer Net Revenue Bonds and the Subordinate Sewer Net Revenue Bonds, and the Series 2006 A CIF Bonds and any obligations on a parity with the Series 2006 A CIF Bonds.

Very truly yours,

*Yount, Hyde & Barbour, P.C.*

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Yount, Hyde & Barbour, P.C.

BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT

Water Revenue Bonds, Series 2009 B  
(West Virginia Infrastructure Fund)

CERTIFICATE AS TO USE OF PROCEEDS

The undersigned Chairman of the Public Service Board of Berkeley Public Service Sewer District in Berkeley County, West Virginia (the "Issuer"), being one of the officials of the Issuer duly charged with the responsibility for the issuance of \$1,000,000 Water Revenue Bonds, Series 2009 B (West Virginia Infrastructure Fund), of the Issuer, dated July 31, 2009 (the "Bonds"), hereby certify this 31st day of July, 2009 as follows:

1. I am one of the officers of the Issuer duly charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances and estimates herein certified and duly authorized to execute and deliver this certificate on behalf of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Bond Resolution duly adopted by the Issuer on July 14, 2009 and the Supplemental Resolution duly adopted by the Issuer on July 14, 2009 (collectively, the "Bond Resolution"), authorizing the Bonds.

2. This certificate may be relied upon as the certificate of the Issuer.

3. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on July 31, 2009, the date on which the Bonds are being physically delivered in exchange for an initial advance of the principal amount of the Series 2009 B Bonds, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

4. In the Bond Resolution pursuant to which the Bonds are issued, the Issuer has covenanted that it shall not take, or permit or suffer to be taken, any action with respect to Issuer's use of the proceeds of the Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Internal Revenue Code of 1986, as amended, and the temporary and permanent regulations promulgated thereunder or under any predecessor thereto (collectively, the "Code"), issued by the West Virginia Water Development Authority (the "Authority") or the West Virginia Infrastructure and Jobs Development Council (the "Council"), as the case may be, from which the proceeds of the Bonds are derived, to lose their status as tax-exempt bonds. The Issuer hereby covenants to take all actions necessary to comply with such covenant.

5. The Series 2009 B Bonds were sold on July 31, 2009, to the Authority, pursuant to a loan agreement dated July 31, 2009, by and between the Issuer and the Authority, on behalf of the Council, for an aggregate purchase price of \$1,000,000 (100% of par), at which

time, the Issuer received \$1,000,000 from the Authority and the Council, being the entire principal amount of the Series 2009 B Bonds. No accrued interest has been or will be paid on the Series 2009 B Bonds.

6. The Series 2009 B Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of the Project; (ii) funding the Series 2009 B Bonds Reserve Account; and (iii) paying certain costs of issuance and related costs.

7. Within 30 days after the delivery of the Bonds, the Issuer shall enter into agreements which require the Issuer to expend at least 5% of the net sale proceeds of the Bonds on the Project, constituting a substantial binding commitment. The allocation of the net sale proceeds of the Bonds to expenditures of the Project shall commence immediately and shall proceed with due diligence to completion all of the proceeds from the sale of the Bonds, together with any investment earnings thereon, will be expended for payment of costs of the Project on or before September 1, 2009.

8. The total cost of the Project is estimated at \$3,695,000. Sources and uses of funds for the Project are as follows:

SOURCES

|                                     |                       |
|-------------------------------------|-----------------------|
| Proceeds of the Series 2009 B Bonds | \$1,000,000.00        |
| Proceeds of the Series 2009 A Bonds | 2,695,000.00          |
| Total Sources                       | <u>\$3,695,000.00</u> |

USES

|  |                       |
|--|-----------------------|
| Costs of Acquisition and Construction of the Project | \$3,231,873.50        |
| Series 2009 B Bonds Reserve Account                  | 66,674.00             |
| Series 2009 A Bonds Reserve Account                  | 225,577.50            |
| Registrar Fee for Series 2009 B                      | 500.00                |
| Underwriter Discount for Series 2009 A               | 67,375.00             |
| Underwriter Counsel for Series 2009 A                | 40,000.00             |
| Bond Counsel (Series 2009 A & Series 2009 B)         | 60,000.00             |
| Printing/Registrar (Series 2009 A)                   | 3,000.00              |
| Total Uses   | <u>\$3,695,000.00</u> |

9. Pursuant to Article V of the Bond Resolution, the following special funds or accounts have been created or continued relative to the Series 2009 B Bonds:

- (1) Revenue Fund;
- (2) Renewal and Replacement Fund;
- (3) Series 2009 B Bonds Construction Trust Fund;
- (4) Series 2009 B Bonds Sinking Fund; and
- (5) Series 2009 B Bonds Reserve Account.

10. Pursuant to Article VI of the Bond Resolution, the proceeds of the Bonds will be deposited as follows:

(1) Series 2009 B Bond proceeds in the amount of \$-0- will be deposited in the Series 2009 B Bonds Sinking Fund as capitalized interest and applied to payment of interest on the Series 2009 B Bonds for a period not to exceed six months following completion thereof.

(2) Series 2009 B Bonds proceeds in the amount of \$66,674 will be deposited in the Series 2009 B Bonds Reserve Account.

(3) The balance of the proceeds of the Series 2009 B Bonds will be deposited in the Series 2009 B Bonds Construction Trust Fund as received from time to time and applied solely to payment of costs of the Project, including costs of issuance of the Series 2009 B Bonds and related costs.

11. Monies held in the Series 2009 B Bonds Sinking Fund will be used solely to pay principal of and interest, if any, on the Series 2009 B Bonds and will not be available to meet costs of the Project. All investment earnings on monies in the Series 2009 B Bonds Sinking Fund and Series 2009 B Bonds Reserve Account, if any, will be withdrawn therefrom and deposited, not less than once each year, in the Revenue Fund, and such amounts will be applied as set forth in the Bond Resolution.

12. The acquisition and construction of the Project is complete.

13. The Issuer will take such steps as requested by the Authority to ensure that the Authority's bonds meet the requirements of the Code.

14. With the exception of the amount deposited in the Series 2009 B Bonds Sinking Fund for payment of interest, if any, on the Bonds and the amount deposited in the

Series 2009 B Bonds Reserve Account, if any, all of the proceeds of the Bonds will be expended on the Project by September 1, 2009.

15. The Issuer does not expect to sell or otherwise dispose of the Project in whole or in part prior to the last maturity date of the Bonds.

16. The amount designated as costs of issuance of the Bonds consists only of costs which are directly related to and necessary for the issuance of the Bonds.

17. All property financed with the proceeds of the Bonds will be owned and held by (or on behalf of) a qualified governmental unit.

18. No proceeds of the Bonds will be used, directly or indirectly, in any trade or business carried on by any person who is not a governmental unit.

19. The original proceeds of the Bonds will not exceed the amount necessary for the purposes of the issue.

20. The Issuer shall use the Bond proceeds solely for the costs of the Project, and the Project will be operated solely for a public purpose as a local governmental activity of the Issuer.

21. The Bonds are not federally guaranteed.

22. The Issuer has retained the right to amend the Bond Resolution authorizing the issuance of the Bonds if such amendment is necessary to assure that the Bonds remain public purpose bonds.

23. The Issuer has either (a) funded the Series 2009 B Bonds Reserve Account at the maximum amount of principal and interest which will mature and become due, on the Bonds in the then current or any succeeding year with the proceeds of the Bonds, or (b) created the Series 2009 B Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until such Series 2009 B Bonds Reserve Account hold an amount equal to the maximum amount of principal and interest which will mature and become due, respectively, on the Bonds in the then current or any succeeding year. Monies in the Series 2009 B Bonds Reserve Account and the Series 2009 B Bonds Sinking Fund will be used solely to pay principal of and interest on each series of the Bonds and will not be available to pay costs of the Project.

24. There are no other obligations of the Issuer which (a) are to be issued at substantially the same time as the Series 2009 B Bonds, (b) are to be sold pursuant to a common plan of financing together with the 2009 B Bonds and (c) will be paid out of substantially the same sources of funds of funds or will have substantially the same claim to be paid out of substantially the same sources of funds as the Bonds.

25. To the best of my knowledge, information and belief, there are no other facts, estimates and circumstances which would materially change the expectations herein expressed.

26. The Issuer will comply with instructions as may be provided by the Authority, at any time, regarding use and investment of proceeds of the Bonds, rebates and rebate calculations.

27. To the best of my knowledge, information and belief, the foregoing expectations are reasonable.

[Remainder of Page Intentionally Blank]

WITNESS my signature on the day and year first written above.

BERKELEY COUNTY PUBLIC SERVICE  
SEWER DISTRICT

  
Chairman

Minute Book No. 25 County Commission of Berkeley County, West Virginia

Commission Minutes of Nov. 27, 1979 cont'd

IN RE: CHECKS SIGNED WITH THE PRESIDENTS' STAMP

The following checks were signed with the Presidents' stamp.

|                                     |     |         |       |
|-------------------------------------|-----|---------|-------|
| Jail Improvement and Operating..... | No. | 35      |       |
| Dog Tax Fund.....                   | No. | 857 -   | 858   |
| General Co. Fund.....               | No. | 27339 - | 27361 |

IN RE: ORDER - CREATING BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT

Commissioner Burkhardt moved the Commission sign and record an ORDER creating Berkeley County Public Service Sewer District, and recorded NUNC PRO TUNC.  
Commissioner Wright seconded. So ordered.

ORDER

Pursuant to the authority vested in the County Commission of Berkeley County, West Virginia, by West Virginia Code, 16-13A-2, the County Commission of Berkeley County, West Virginia, on this 10th day of April, 1979, at 10:30 o'clock a.m. held, pursuant to an Order entered March 2, 1979, by this Commission, and after the prescribed notice, a public hearing on the creation of a public service district for providing sewerage services for Berkeley County, West Virginia.

At this public hearing held this 10th day of April, 1979 all persons residing in or owning or having any interest in property in this proposed public service district had an opportunity to be heard for and against its creation. After hearing all interested persons, the County Commission of Berkeley County considered and determined the feasibility of the creation of this proposed public service district.

Further, the County Commission of Berkeley County, West Virginia, has determined that the construction or acquisition by purchase or otherwise and maintenance, operation, improvement, and extension of public service properties by such public service district will be conducive to the preservation of public health, comfort and convenience of this area. It is therefore the order of the County Commission of Berkeley County, West Virginia that there be created a public service district for providing sewerage services for Berkeley County, West Virginia with the territory to be embraced by this public service district to be all of Berkeley County, West Virginia. The public service district shall be called the Berkeley County Public Service Sewer District.

This Order shall be effective and entered this 10th day of April, 1979.

County Commission of Berkeley  
County, West Virginia  
S/S by John Evans Wright  
Its President

ORDERED Commission Recess to Meet Friday, November 30, 1979 at 9:30 A.M.

*John Evans Wright* President

November 21, 1979

In Vacation of Court.

IN RE: SYMPATHY EXTENDED TO COMMISSIONER DOWNEY

Commissioners Wright and Burkhardt join in extending this heart felt sympathy to Commissioner Harold A. Downey at the time of the loss of his beloved wife Dorothy "Rice" E. Downey and hereby order that the Court House be closed to business from the end of the work day Wednesday, November 23 until the beginning of the work day on Monday, November 26, 1979.

This is done as a expression of respect and sympathy.

Also, be it know, Commissioner Downey is excused from the usual Commission activities by reason of necessity during the time of his bereavement.

November 30, 1979

In Vacation of Court.

IN RE: ABSTRACT FROM COMMISSIONER'S ORDERS - SPEED ZONING STUDY

Pursuant to authority vested in the Commissioner by Chapter 17C, Article 6, Section 2, of the Official Code of West Virginia, Director, Traffic Engineering Division, and the concurrence of the Chief Engineer-Development and the State Highway Engineer, hereby ORDERS that the attached summary of the results of a SPEED ZONING STUDY be recorded and County Route 13/1 in BERKELEY COUNTY, DISTRICT FIVE, be signed in accordance with the conclusions thereof.

This order shall be effective when appropriate signs giving notice to the public have been erected.

Entered this 15th day of November, 1979.  
S/S by Charles L. Miller  
West Virginia Commissioner of Highways

CC  
AEX  
CH  
HD  
DP  
PJ  
District  
Five  
County  
Commission  
Dept. of  
Public  
Safety  
WV Motor  
Truck Assoc.  
Contractors  
Assoc. of  
WV

STATE OF WEST VIRGINIA, }  
COUNTY OF BERKELEY, } TO WIT:

I, JOHN W. SMALL, JR, Clerk of the County Court of Berkeley County,  
a Court of record in and for said County and State, do certify that the foregoing is a true, ac-  
curate and complete copy of COMMISSION MINUTES OF NOVEMBER 27, 1979

as the same appears of record in the Office of the said Clerk of the County Court in MINUTE  
Book No. 25, Page 227

IN WITNESS WHEREOF, I have hereto set my hand and the seal of said court, at my office,  
in said County, this 13 TH day of JUNE, ~~xxx~~ 2006

John W. Small, Jr.  
Clerk of the County Court of Berkeley County, W. Va.

A TRUE COPY  
ATTEST

John W. Small, Jr., Clerk  
Berkeley County Court

By Theresa D. Fairland  
Deputy Clerk

**Present:**

**Ronald K. Collins, President**

**William L. Stubblefield, Commissioner**

**Anthony J. Petrucci, Commissioner**

**Deborah Hammond, County Administrator**

**Norwood Bentley, County Counsel**

Also Present: Penny Miller, County Commission, Alan Davis, Deputy County Administrator, Gwen Campbell, Finance, Gary Collis, Berkeley County Emergency Ambulance Authority Director, Jay Russell, Facilities Director, Sheriff Kenneth LeMaster

The Morning Prayer was led by Nathaniel Wright, Lily of the Valley Evangel Church followed by the prayer led by Gwen Campbell.

**Re: Agenda**

President Collins read the Agenda for the July 16, 2009 Berkeley County Commission Meeting. Commissioner Petrucci made a motion to accept the Agenda as read by President Collins. Commissioner Stubblefield seconded the motion. The motion carried.

**Re: Consent Agenda**

**1. Purchase Order Log**

Commissioner Stubblefield questioned page 12 for Roach and Sons and why were not all vehicles covered under the gas Fleet program. Ms. Campbell replied that the maximum amount for the Fleet was \$28,000 and with the price of gas per gallon not all vehicles could be covered under the Fleet at this time.

**2. Minutes**

There were no changes to the July 9, 2009 Commission Meeting Minutes.

**3. Hiring Recommendations and Changes in Status**

There were no hiring recommendations or changes in status.

#### **4. Commission Calendars**

President Collins reviewed the Commission Calendars for the month of July. Commissioner Stubblefield added there would be a meeting held on July 30<sup>th</sup> with the Secretary of Cabinet, Mr. Spears which would be held in the Homeland Security Conference Room.

#### **5. Board and Commission Calendars**

President Collins reviewed the Board and Commission Calendars for the month of July.

#### **6. Resolution – Community Participation Grant Program – 4-H Camp Frame, Inc.**

President Collins reviewed the Community Participation Grant for 4-H Camp Frame.

#### **7. Resolution and Contract – Emergency Shelter Grants Program – Community Networks, Inc.**

President Collins reviewed the Emergency Shelter Grant Program Resolution.

#### **Re: Consent Agenda Approval**

Commissioner Petrucci made a motion to approve the Consent Agenda for the July 16, 2009 Berkeley County Commission Meeting. Commissioner Stubblefield seconded the motion. The motion carried.

#### **Re: Correction of Assessments Log, Apportionment of Assessment Applications and Consolidation of Properties Applications – Assessor's Office**

Commissioner Stubblefield made a motion to approve the Personal Property Correction of Assessments Log as presented by Ms. Kilmer, Assessor. Commissioner Petrucci seconded the motion. The motion carried.

Commissioner Stubblefield made a motion to approve the Real Estate Correction of Assessments Log as presented by Ms. Kilmer, Assessor. Commissioner Petrucci seconded the motion. The motion carried.

Commissioner Stubblefield made a motion to approve the one Consolidation of Property received from Ms. Kilmer, Assessor. Commissioner Petrucci seconded the motion. The motion carried.

#### **Re: Board and Commission Meeting Reports**

Commissioner Stubblefield attended the Fire Board Meeting. He stated that Greg Rhoe was elected the new Chairman of the Board.

Commissioner Stubblefield also attended the Water District Meeting. He also attended the Transportation Authority Meeting in preparation for Secretary Spears' visit.

Commissioner Stubblefield also attended the Rails to Trails meeting and stated that Matthew Pennington of the Planning Department did a wonderful job of organizing and coordinating this event.

Commissioner Stubblefield stated that he would be meeting with Judge Wilkes this afternoon to discuss the Fire Board.

Commissioner Petrucci attended the Solid Waste Authority Meeting. He stated that he will be meeting this afternoon with the selected committee on the Berkeley County Employee and Community Recognition Program.

Commissioner Petrucci also stated that he had received the minutes from the Airport Authority Meeting and will distribute copies to the other Commissioners.

President Collins stated that he had attended the Sewer Board Meeting and the Bond for Essroc had been signed.

President Collins stated that he and Ms. Hammond would be meeting with Judge Wilkes this afternoon to discuss the use of office space during the HVAC work in the Dunn Building.

**Re: Board and Commission Vacancies**

President Collins stated that one vacancy on the Region 9 Board had been filled with one remaining vacancy. The applicant for that vacancy will be interviewed next week.

President Collins also requested Ms. Hammond to schedule Mr. Martin and Mr. Heichel on next week's Commission Agenda to be interviewed for the Berkeley County Emergency Ambulance Authority Board.

Ms. Hammond also advised that a letter had been received from John Myers expressing his interest in serving another term on the Sewer Board.

Commissioner Petrucci made a motion to reappoint Mr. Myers to the Sewer Board. Commissioner Stubblefield seconded the motion. The motion carried.

**Re: Jay Russell, Facilities Supervisor  
Proposals – Tree Trimming – County Sites**

Ms. Hammond stated that the tree trimming needed to be done for the purpose of the site views for the security cameras. Ms. Hammond explained the security cameras needed a direct line of sight. Ms. Hammond also stated that three proposals had been received.

Commissioner Stubblefield questioned if any of the trees would be in danger. Ms. Hammond explained this would be trimming only and the trees would not be harmed.

Commissioner Stubblefield made a motion to accept the lowest proposal from King's Lawn Care to have the trees trimmed at the Judicial Center. Commissioner Petrucci seconded the motion. The motion carried.

**Re: Deborah Hammond, County Administrator**

## **1. Meeting Report**

Ms. Hammond attended the Dunn Building Progress Meeting. She stated the contractors had been working at night when the building was empty to have more access to some of the offices.

Ms. Hammond also stated she would be meeting with Judge Wilkes concerning the relocating of offices in the Dunn Building.

Ms. Hammond reported that she had met with the City of Martinsburg regarding the proposed Raleigh Street Stormwater Management plan.

Ms. Hammond stated that attended the meeting on Monday, July 13<sup>th</sup> in preparation for Secretary Spears visit.

## **2. Project Updates**

Ms. Hammond stated that the Records Management Grant final report had been completed with funds due totaling \$3,195.73.

Ms. Hammond also reported that the Court Security Grant reimbursement in the amount of \$3,200 has been received and reimbursement to the coal severance fund noted in the Purchase Order Log.

Ms. Hammond advised that the grant extension on the Litter Control Vehicle Grant has been approved and received.

## **3. Purchase Order Requests, Requisitions and Encumbrances**

Ms. Hammond stated that the Blue Ridge College, CTC, was having some concerns with the heat buildup in the IT room and a change needed to be made to the original scope for the Dunn Building project totaling \$932.00. Ms. Hammond advised the funds were to be paid by the CTC College.

Commissioner Stubblefield made a motion to approve the change in scope with the stipulation that the CTC College would be paying this invoice. Commissioner Petrucci seconded the motion. The motion carried.

## **4. Bid Award Recommendation – Building Commission Audit**

Ms. Hammond stated that she had reviewed the four bids received for the Building Commission Audit. Ms. Hammond stated that there are three categories of criteria that must be met and cost is not the most important. Ms. Hammond stated that there is a scoring process which must be completed by two individuals and she and Alan Davis, Deputy County Administrator had both completed the scoring process. Ms. Hammond stated that she was recommending Lisa Thornburg, CPA. She stated that Ms. Thornburg was previously the Deputy Chief Inspector for the State Auditor's Office and was familiar with the criteria.

Commissioner Stubblefield made a motion to award the Audit Contract to Lisa Thornburg, CPA. Commissioner Petrucci seconded the motion. The motion carried.

**5. State Budget Revision #1 – Coal Severance Fund**

Ms. Hammond reviewed the State Budget Revision #1 to the Coal Severance Fund.

Commissioner Stubblefield made a motion to approve the State Budget Revision #1. Commissioner Petrucci seconded the motion. The motion carried.

**6. Crossroads Community Church – Request for Waiver of Planning Commission Fees**

Ms. Hammond stated that after checking with the Planning Department and the Engineering Department, no prior action has been taken to waive fees for any local churches.

Commissioner Stubblefield stated that while he is sympathetic with the church, he is not in favor of setting a new precedence.

Commissioner Stubblefield made a motion to deny the request of the Crossroads Community Church to waive the Planning Commission fees. Commissioner Petrucci seconded the motion. The motion carried.

**Re: Curtis Keller, BCPSSD Manager  
Report on Current Activities – Sewer Board**

Curtis Keller, Manager of the BCPSSD, appeared before the Commission to give a report and update on the current activities of the Sewer Board. Mr. Keller stated that the Inwood Baker Heights work was wrapping up. He also stated that at the last Board Meeting the bond closing for Ecolab was completed. Mr. Keller stated that the North Berkeley project was being wrapped up with Administrative issues and complaints being addressed.

Commissioner Stubblefield stated there was a strong odor coming from the Opequon Creek plant and questioned if that would be resolved.

Mr. Keller stated that they were working on correcting the situation.

Mr. Keller stated that they are working with the DEP on the Septic Receiving Policy. He also stated that some upcoming projects will include the upgrade to Hedgesville Waste Plan and capacity improvements.

Commissioner Stubblefield asked if there were any outstanding complaints issued by DEP and Mr. Keller stated that there were not.

Mr. Keller stated that the Capacity Improvement Fees were being questioned on both the Water and Sewer Department's side. Mr. Keller also stated that they would be meeting with the WV Public Service Commission as they have the authority to look at and adjust these rates.

Mr. Keller stated that a proposal had been submitted to the DEP for infrastructure for the Inwood Project and has been preapproved. He also stated the timeline for this project to be underway is February, 2010.

Commissioner Petrucci stated that he appreciated Mr. Keller coming in and updating the Commission.

Commissioner Stubblefield thanked Mr. Keller for updating the Commission.

President Collins also thanked Mr. Keller for his presentation to the Commission.

**Re: The Honorable Kenneth Lemaster, Sheriff  
Presentation of Service Weapon to Retiring Deputy**

The Honorable Kenneth Lemaster, Sheriff, appeared before the Commission to present Retiring Lt. Richard Copenhaver with his service weapon. President Collins presented the service weapon to Lt. Richard Copenhaver and thanked him for his years of service. Commissioner Stubblefield and Commissioner Petrucci also thank Lt. Copenhaver for his years of service.

**Re: Robert Bates, Rural Housing Preservation Association  
Presentation – Potential bond Issuance – Housing Refurbishment in Berkeley, Jefferson  
and Hardy Counties  
Pat McMillian – City of Martinsburg**

Robert Bates appeared before the Commission to request the Commission to authorize a twenty million five hundred dollar tax exempt bond. Mr. Bates stated that Berkeley, Jefferson and Hardy Counties have received USDA 15 Authorization and Funding to refurbish units at approximately \$25,000 per unit.

Mr. Bates stated the Rural Housing Preservation Association is presently up and operating at about a 96% occupancy rate and are upgrading appliances and remodeling homes up to today's standards. He also stated the rehab goal is for affordable housing.

Norwood Bentley, County Counsel stated that the first paragraph of the resolution indicates in "Berkeley County". Mr. Bentley also stated that the Resolution read "Foundation II" and should read "Fountainhead II". Mr. Cam Seigrist, who was phone conferenced in, stated he would have the correction made and resend the Resolution to Mr. Bentley.

Mr. Bates also stated they were contacting Jefferson and Hardy Counties to see if they will allow this to be a joint Resolution.

Mr. Bates also stated the Berkeley County would not be responsible should funds default. He stated that Berkeley County would simply be an issuer to facilitate the private enterprise process.

Mr. Bates also stated this will not require any additional workload for the County Administrator, that all work will be performed by Bowles Rice. Pat McMillian also stated this would be an opportunity to leverage funds for the Home Consortium to get people into homes and make them first time home owners.

Commissioner Stubblefield made a motion to approve the Resolution naming the Berkeley County Commission to act as issuer of the tax exempt bonds for the multi-county project. Commissioner Petrucci seconded the motion. The motion carried.

**Re: Phil Shelton, AGC Nuisance Control  
Donna McMahon, Berkeley County Animal Control  
Presentation on Business Offerings**

Phil Shelton appeared before the Commission to discuss his company, AGC Nuisance Control and their functions. Mr. Shelton stated he and two business partners had started a business called "All God's Creatures". He stated that they are licensed through the Department of Natural Resources and receive calls from 911 Dispatch, The Sheriff's Department, State Police and Animal Control.

Mr. Shelton stated that they will perform services that Animal Control is not equipped to handle such as trapping or catching mammals, birds, reptiles, ground hogs, skunks and raccoons. He stated that they could also take care of deer, bear and beaver. Mr. Shelton stated he has a one-time fee for some animals of \$25.00 and others are charged a three day set up fee depending on the situation. Mr. Shelton stated that they are available 24/7 for emergencies.

Mr. Shelton stated that he felt there was a need for this service in Berkeley County as many residents that he had provided services for were upset they had to pay for this service and it wasn't offered as a service by the County. Mr. Shelton is looking for a way to get information of his services out to the residents of Berkeley County.

Mr. Bentley stated that Mr. Shelton's information for his business could be listed on the County web page under Animal Control and if any other businesses of this nature existed they would be able to be listed as well. President Collins stated that Animal Control could give Mr. Shelton's information to those residents calling in that Animal Control was unable to handle.

**Re: Items from the Public**

There were no items from the Public.

**Adjourn:**

Commissioner Stubblefield made a motion to adjourn the July 16, 2009 Berkeley County Commission meeting at 11:15 A.M.

**Approved:** \_\_\_\_\_

**Ronald K. Collins, President**



# County Commission of Berkeley County



126 WEST KING STREET  
MARTINSBURG, WEST VIRGINIA 25401  
PHONE (304) 264-1923

## THE COMMISSION

HOWARD L. STRAUSS, COMMISSIONER  
POST OFFICE BOX 1812  
MARTINSBURG, WEST VIRGINIA 25402

STEVEN C. TEUFEL, COMMISSIONER  
POST OFFICE BOX 1050  
MARTINSBURG, WEST VIRGINIA 25402

JOHN E. WRIGHT, COMMISSIONER  
POST OFFICE BOX 357  
BUNKER HILL, WEST VIRGINIA 25413

[www.berkeleycountycomm.org](http://www.berkeleycountycomm.org)

DEBORAH HAMMOND  
COUNTY ADMINISTRATOR

SHERRY A. CAIN  
ADMINISTRATIVE SECRETARY

July 8, 2004

John Kunkle  
115 Lina Lane  
Martinsburg, WV 25401

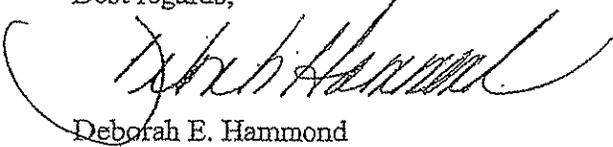
Dear Mr. Kunkle:

The Berkeley County Commission, at its meeting on July 8, 2004 re-appointed you to serve as a member on the Berkeley County Public Service Sewer District Board effective July 1, 2004. Your term will expire on June 30, 2010.

In order to legally serve in this capacity, you must report to the County Clerk's Office in the Berkeley County Courthouse, 100 West King Street, to sign your Oath of Office. Please take this letter to the Courthouse with you for purposes of oath preparation.

If you have any questions or do not wish to serve, please contact me at 264-1923.

Best regards,

  
Deborah E. Hammond  
County Administrator

Doc: kunkle2/ps

Cc: John W. Small, Jr., County Clerk  
Charlotte Hollandsworth  
Curtis B. Keller, General Manager



# County Commission of Berkeley County



126 WEST KING STREET  
MARTINSBURG, WEST VIRGINIA 25401  
PHONE (304) 264-1923

THE COMMISSION

HOWARD L. STRAUSS, COMMISSIONER  
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DEBORAH HAMMOND  
COUNTY ADMINISTRATOR

SHERRY A. CAIN  
ADMINISTRATIVE SECRETARY

June 12, 2003

John Myers  
2114 Street of Dreams  
Martinsburg, WV 25401

Dear Mr. Myers:

The Berkeley County Commission, at its meeting on June 12, 2003 re-appointed you to serve as a member on the Berkeley County Public Service Sewer District effective July 1, 2003. Your term will expire on June 30, 2009.

In order to legally serve in this capacity, you must report to the County Clerk's Office in the Berkeley County Courthouse, 100 West King Street, to sign your Oath of Office. Please take this letter to the Courthouse with you for purposes of oath preparation.

If you have any questions or do not wish to serve, please contact me at 264-1923.

Best regards,

Deborah E. Hammond  
County Administrator

Doc: myers/ps

Cc: John W. Small, Jr., County Clerk  
Walt Sebert  
Robert Grove



# County Commission of Berkeley County



400 WEST STEPHEN STREET, SUITE 201  
MARTINSBURG, WEST VIRGINIA 25401  
PHONE (304) 264-1923

THE COMMISSION

HOWARD L. STRAUSS, COMMISSIONER  
STEVEN C. TEUFEL, COMMISSIONER  
RONALD X. COLLINS, COMMISSIONER

[www.berkeleycountycomin.org](http://www.berkeleycountycomin.org)

DEBORAH HAMMOND  
COUNTY ADMINISTRATOR

SHERRY A. CAIN  
ADMINISTRATIVE SECRETARY

June 9, 2005

Ronald Collins  
C/o Berkeley County Commission  
400 West Stephen Street, Suite 201  
Martinsburg, WV 25401

Dear Mr. Collins:

The Berkeley County Commission, at its meeting on June 9, 2005 re-appointed you to serve as a member on the Berkeley County Public Service Sewer District Board effective July 1, 2005. Your new term will expire on June 30, 2011.

In order to legally serve in this capacity, you must report to the County Clerk's Office in the Berkeley County Courthouse, 100 West King Street, to sign your Oath of Office. Please take this letter to the Courthouse with you for purposes of oath preparation.

If you have any questions or do not wish to serve, please contact me at 264-1923.

Best regards,

Deborah E. Hammond  
County Administrator

Doc: collins r/ps

Cc: John W. Small, Jr., County Clerk  
Charlotte Hollandsworth  
Curtis B. Keller

A TRUE COPY  
ATTEST

John W. Small, Jr., Clerk  
Berkeley County Court

By Deputy Clerk

State of West Virginia,  
Berkeley County, Sct.:

Before me, JOHN W. SMALL, JR. Clerk of the Court of the County and State aforesaid,  
personally appeared JOHN KUNKLE who  
has been duly REAPPOINTED to the office of  
MEMBER OF THE BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT BOARD

and took and subscribed the following:

I, JOHN KUNKLE do solemnly swear that I will  
support the Constitution of the United States and the Constitution of the State of West Virginia.

I, JOHN KUNKLE do solemnly swear that I will  
faithfully discharge the duties of the office of  
MEMBER OF THE BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT BOARD

to the best of my skill and judgment. So help me God.

TERM EXPIRES JUNE 30, 2010

Given under my hand this 16 day of July, 2004

John W. Small  
Clerk of the County Court of Berkeley County.

State of West Virginia, Berkeley County, Sct.:

Before me, JOHN W. SMALL, JR. Clerk of the Court of the County and State aforesaid, personally appeared JOHN MYERS who has been duly RE-APPOINTED to the office of MEMBER OF THE BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT

and took and subscribed the following:

I, JOHN MYERS do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia.

I, JOHN MYERS do solemnly swear that I will faithfully discharge the duties of the office of MEMBER OF THE BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT

to the best of my skill and judgment. So help me God.

TERM EXPIRES JUNE 30, 2009

Given under my hand this 8 day of August 2003

John W. Small, Jr. Clerk of the County Court of Berkeley County.

OFFICIAL OATHS NO. 3, SEPTEMBER 1, 1988, BY JOHN W. SMALL, JR., CLERK

State of West Virginia, Berkeley County, Sct.:

Before me, JOHN W. SMALL, JR. Clerk of the Court of the County and State aforesaid, personally appeared CLARENCE MARTIN who has been duly APPOINTED to the office of MEMBER OF THE BERKELEY COUNTY DEVELOPMENT AUTHORITY

and took and subscribed the following:

I, CLARENCE MARTIN do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia.

I, CLARENCE MARTIN do solemnly swear that I will faithfully discharge the duties of the office of MEMBER OF THE BERKELEY COUNTY DEVELOPMENT AUTHORITY

to the best of my skill and judgment. So help me God.

TERM EXPIRES DECEMBER 31, 2005

Given under my hand this 12TH day of AUGUST 2003

Clarence Martin

State of West Virginia,

Berkeley County, Sch.: 27139

Before me, JOHN W. SMALL, JR. Clerk of the Court of the County and State aforesaid,

personally appeared RONALD COLLINS who

has been duly REAPPOINTED to the office of

MEMBER OF THE BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT BOARD

and took and subscribed the following:

I, RONALD COLLINS do solemnly swear that I will

support the Constitution of the United States and the Constitution of the State of West Virginia.

I, RONALD COLLINS do solemnly swear that I will

faithfully discharge the duties of the office of

MEMBER OF THE BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT BOARD

to the best of my skill and judgment. So help me God.

TERM EXPIRES JUNE 30, 2011

*Ronald K. Collins*



Given under my hand this 17th day of June

*John W. Small, Jr.*

Clerk of the County Court of Berkeley County.

RULES OF PROCEDURE

BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT

ARTICLE I

NAME AND PLACE OF BUSINESS

Section 1. Name: BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT.

Section 2. The principal office of this Public Service Sewer District will be located at 65 District Way, Martinsburg, Berkeley County, West Virginia.

Section 3. The Common Seal of the District shall consist of 2 concentric circles between which circles shall be inscribed Berkeley County Public Service Sewer District, and in the center "seal" as follows:

Section 4: The fiscal year of the District shall begin on July 1 of each year and shall end on the following June 30.

ARTICLE II

PURPOSE

This District is organized exclusively for the purposes set forth in Chapter 16, Article 13A of the Code of West Virginia of 1931, as amended (the "Act").

## ARTICLE III

### MEMBERSHIP

Section 1. The members of the Public Service Board of this District shall be those persons appointed by The County Commission of Berkeley County, West Virginia, or otherwise appointed pursuant to the Act, who shall serve for such terms as may be specified in the order of the County Commission or otherwise.

Section 2. Should any member of the Public Service Board resign or otherwise become legally disqualified to serve as a member of the Public Service Board, the Secretary shall immediately notify the County Commission or other entity provided under the Act and request the appointment of a qualified person to fill such vacancy. Prior to the end of the term of any member of the Public Service Board, the Secretary shall notify the County Commission or other entity provided under the Act of the pending termination and request the County Commission or other entity provided under the Act to enter an order of appointment or re-appointment to maintain a fully qualified membership of the Public Service Board.

## ARTICLE IV

### MEETINGS OF THE PUBLIC SERVICE BOARD

Section 1. The members of the Public Service Board of this District shall hold regular meetings on every other Tuesday, at such place and hour as the members shall determine from time to time. If the day stated shall fall on a legal holiday, the meeting shall be held on the following day. Special meetings of the Public Service Board may be called at any time by the Chairman or by a quorum of the Board.

Section 2. At any meeting of the Public Service Board of the District, 2 members shall constitute a quorum. Each member of the Public Service Board shall have one vote at any membership meeting and if a quorum is not present, those present may adjourn the meeting to a later date.

Section 3. Unless otherwise agreed, notice to members of regular meetings shall not be required. Unless otherwise waived, notice of each special meeting of the membership shall be given to all members by the Secretary by fax, telephone, mail or other satisfactory means at least 3 days before the date fixed for such special meeting. The notice of any special meeting shall state briefly the purposes of such meeting and the nature of the business to be transacted thereat, and no business other than that stated in the notice or incidental thereto shall be transacted at any such special meeting.

## PUBLIC NOTICE OF MEETINGS

Section 4. Pursuant to Section 3, Article 9A, Chapter 6 of the West Virginia Code of 1931, as amended (1999 Revision), notice of the date, time, place and agenda of all regularly scheduled meetings of such Public Service Board, and the date, time, place and purpose of all special meetings of such Public Service Board, shall be made available, in advance, to the public and news media (except in the event of an emergency requiring immediate action) as follows:

A. Regular Meetings. A notice shall be posted and maintained by the Secretary of the Public Service Board of the Public Service Sewer District at the front door or bulletin board of the Berkeley County Courthouse and at the front door or bulletin board of the place fixed for regular meetings of the Public Service Board of the date, time and place fixed and entered of record by the Public Service Board for the holding of regularly scheduled meetings. In addition, a copy of the agenda for each regularly scheduled meeting shall be posted at the same locations by the Secretary of the Public Service Board not less than 72 hours before such regular meeting is to be held. If a particular regularly scheduled meeting is cancelled or postponed, a notice of such cancellation or postponement shall be posted at the same locations as soon as feasible after such cancellation or postponement has been determined.

B. Special Meetings. A notice shall be posted by the Secretary of the Public Service Board at the front door or bulletin board of the Berkeley County Courthouse and at the front door or bulletin board of the place fixed for the regular meetings of the Public Service Board not less than 72 hours before a specially scheduled meeting is to be held, stating the date, time, place and purpose for which such special meeting shall be held. If the special meeting is cancelled, a notice of such cancellation shall be posted at the same locations as soon as feasible after such cancellation has been determined.

## ARTICLE V

### OFFICERS

Section 1. The officers of the Public Service Board shall be a Chairman, a Secretary and a Treasurer. The Chairman shall be elected from the members of the Public Service Board. The Secretary and Treasurer need not be members of the Public Service Board, and may be the same person.

Section 2. The officers of the Public Service Board shall be elected each year by the members at the first meeting held in such year. The officers so elected shall serve until the next annual election by the membership and until their successors are duly elected and qualified. Any vacancy occurring among the officers shall be filled by the members of the Public Service Board at a regular or special meeting. Persons selected to fill vacancies shall serve until the following January meeting of the Board when their successors shall be elected hereinabove provided.

## ARTICLE VI

### DUTIES OF OFFICERS

Section 1. When present, the Chairman shall preside as Chairman at all meetings of the Public Service Board. The Chairman shall, together with the Secretary, sign the minutes of all meetings at which he or she shall preside. The Chairman shall attend generally to the executive business of the Board and exercise such powers as may be conferred by the Board, by these Rules of Procedure, or as prescribed by law. The Chairman shall execute, and if necessary, acknowledge for record, any deeds, deeds of trust, contracts, notes, bonds, agreements or other papers necessary, requisite, proper or convenient to be executed by or on behalf of the Board when and if directed by the members of the Board.

Section 2. The Secretary shall keep a record of all proceedings of the Board which shall be available for inspection as other public records. The Secretary shall, together with the Chairman, sign the minutes of the meetings at which he or she is present. The Secretary shall have charge of the minute book, be the custodian of the Common Seal of the District and all deeds and other writings and papers of the Board. The Secretary shall also perform such other duties as he or she may have under law by virtue of the office or as may be conferred from time to time by the members of the Board, these Rules of Procedure or as prescribed by law.

Section 3. The Treasurer shall be the lawful custodian of all funds of the District and shall disburse funds of the District on orders authorized or approved by the Board. The Treasurer shall keep or cause to be kept proper and accurate books of accounts and proper receipts and vouchers for all disbursements made by or through him and shall prepare and submit such reports and statements of the financial condition of the Board as the members may from time to time prescribe. He shall perform such other duties as may be required of him by law or as may be conferred upon him by the members of the Board, these Rules of Procedure or as prescribed by law.

Section 4. If the Chairman, Secretary or Treasurer is absent from any meeting, the remaining members of the Board shall select a temporary chairman, secretary

or treasurer, as necessary, who shall have all of the powers of the absent officer during such period of absence.

## ARTICLE VII

### AMENDMENTS TO RULES OF PROCEDURE

These Rules of Procedure may be altered, changed, amended, repealed or added to at any regular or special meeting of the Board by a majority vote of the entire Board, or at any regular or special meeting of the members when a quorum is present in person and a majority of those present vote for the amendment; but no such change, alteration, amendment, repeal or addition shall be made at any special meeting unless notice of the intention to propose such change, alteration, amendment, repeal or addition and a clear statement of the substance thereof be included in the written notice calling such meeting.

These Rules of Procedure shall replace any and all previous rules of procedure, bylaws or similar rules heretofore adopted by the District.

Adopted this 29th day of July, 2002.

08/04/03  
067740.00010

**BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT  
65 DISTRICT WAY  
MARTINSBURG, WEST VIRGINIA 25404**

**MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING  
JANUARY 20, 2009**

**Members Present:**

Chairman John C. Kunkle  
Secretary John E. Myers  
Treasurer Ronald K. Collins

**Members Absent:**

**Staff Members Present:**

General Manager Curtis Keller  
General Counsel William Rohrbaugh  
Human Resource Director Regina Keller

**Others Present:**

Mike Parker, Woolpert, Inc.  
Jamie Weist, Woolpert, Inc.  
Ed Mitchell, Woolpert, Inc.  
Flint Holkbrook, Woolpert, Inc.

**CALL TO ORDER**

Chairman John C. Kunkle called the Regular Meeting of the Board of Directors of the Berkeley County Public Service Sewer District to order at 7:02 p.m. Roll call was taken at that time. Chairman John Kunkle welcomed everyone to the meeting.

**APPROVAL OF AGENDA AND PACKET**

**Motion** made by Treasurer Collins, seconded by Secretary Myers to approve agenda and packet as presented.

**Unanimously approved.**

**ELECTION OF OFFICERS**

**Motion** made by Secretary Myers, seconded by Treasurer Collins to have the officer's positions remain the same for the current year.

**Unanimously approved.**

**READING, CORRECTION AND APPROVAL OF MINUTES rc/jm**

**Motion** made by Treasurer Collins, seconded by Secretary Myers to approve the minutes from December 9, 2008.

Unanimously approved.

## CITIZEN PARTICIPATION

None in attendance

## PROJECTS

### NORTH BERKELEY PROJECT

Mike Parker from Woolpert updated the BOD with the following information:

All pump stations are now operating except Dupont. Contractors have various items they are working on. All District and contractor work is finished with the exception of the variety of work to be completed in the Spring. Chairman Kunkle questioned if letters regarding work being done in the Spring had been sent out. Mike Parker informed Chairman Kunkle that they had been sent out.

Items that need taken care of will be discussed as soon as the meeting is rescheduled. General Counsel Rohrbaugh told the BOD that by agreement the PSC complaint case involving Mr. Lam & Mr. Howell had been dismissed. The District agreed on certain items and a timetable to get them completed.

Chairman Kunkle asked how many customers still are not connected. General Manager Keller stated he was not sure of the number. General Manager Keller will get an updated number on connections completed.

Jamie Weist from Woolpert, Inc. informed the BOD of the status of the wastewater treatment plant issues. Woolpert is having biweekly meetings with General Manager Keller and the design engineer to keep him updated on the progress of the wastewater treatment plant corrections. Woolpert, Inc. will be providing progress meeting notes following those meetings for the BOD. A progress meeting was held this morning concerning the corrections. Everything will be put in as a change order. Jamie Weist informed the BOD that they are drafting an agreement. The Digester is still in the layout stage. They are looking to make sure the District has enough land should they need to double or triple the size of the plant. Woolpert wants to make sure everything will fit in future. Once everyone agrees with layout that is needed it will take about 1 ½ year to complete. The Adams pump station and Carousel Lane pump station have issues that need worked on. Woolpert has ideas of how to resolve those and are working to resolve them.

### INWOOD LAND DRAINAGE AND WATER QUALITY PROJECT

Flint Holbrook, from Woolpert, Inc. gave an update to the BOD on the project. Structure inventory is moving along nicely. Door hangers have been made for residents. There have been several folks asking questions. They are identifying new or not identified sink holes that have not been located on previously sink hole inventories. They did find underground detention areas as well. Field monitoring is moving forward, rain gages are installed and they are working on flow monitoring devices. Karst area watershed areas have been identified and they are working with residents to find out what is going underground. There is a meeting scheduled with Edgar Mason to gather information from him. Charlie Bennett from Knouse Foods is also scheduled to meet with Woolpert

to review their facilities. Woolpert is in process of scheduling a public meeting the week of February 24 at Musselman High School. They have put together a newspaper press release about the project as well. Chairman Kunkle thanked Woolpert, Inc. for the update.

### INWOOD WWTP UPGRADE

Approval of Substantial Completion for Inwood Wastewater Treatment Plant Upgrade

**Motion** made by Treasurer Collins, seconded by Secretary Myers to approve Substantial Completion of Inwood Wastewater Treatment Plant Upgrade as presented based on General Manager Keller's and Pentree's recommendation.

**Unanimously approved.**

### BAKER HEIGHTS WWTP UPGRADE

Approval of Substantial Completion for Baker Heights Wastewater Treatment Plant Upgrade

**Motion** made by Treasurer Collins, seconded by Secretary Myers to approve Substantial Completion of Baker Heights Wastewater Treatment Plant Upgrade as presented based on General Manager Keller's and Pentree's recommendation

**Unanimously approved.**

### APACHE PUMPSTATION UPGRADE

**Motion** made by Secretary Myers, seconded by Treasurer Collins to approve pay request No. 5 for Apache pump station Upgrade to Snyder Environmental in the amount of \$42,331.00.

**Unanimously approved.**

### MANAGEMENT REPORTS

Human Resource Director Regina Keller updated the BOD with the following information:

Two employees were terminated in December, one in the Maintenance Department and one in the Construction Department. The District is leaving the two positions unfilled for now. Cost of those two District employees with benefits is probably \$60,000 per year. An electrician position was filled and the new employee started last week. There is one employee out on leave and one is ill. Harassment training was done with Claudia Bentley. An update to the Leave of Absence policy was included in the BOD packets. The Family Medical Leave Act changed and the changes to the policy are in accordance with Federal FMLA changes.

**Motion** made by Treasurer Collins, seconded by Secretary Myers to approve the Leave of Absence Policy as presented and discussed.

**Unanimously approved.**

General Counsel Rohrbaugh discussed with the BOD the following information:

- One condemnation will go to trial on February 10th, which is Gladwell.
- Fritz Blafel, a resident who lives near Howard Speaks subdivision is claiming that there was blasting damage that cracked his pool in 2007. He submitted a claim to the insurance company. General Counsel Rohrbaugh is getting records on the blasting to review.
- With respect to the two developers that have been slow in paying under their AMLE's, Whitmore has been paying and is current but Springdale Farms has not. They have been put on notice and the District may have to draw on the letters of credit.
- NPDES permit decision has been reached but has not been released publicly.
- The District was served with a new lawsuit for Rocky Glenn MHP. The owner claims piles of rocks were not removed and the package plants need to be removed. Last May (2008), the package plant was disconnected.
- Condemnation for Wine in Mill Ridge. The District has been talking to him to try to reach an agreement. Mr. Wine has indicated he may have other damage claims to assert. BOD felt offer that was made is fair and should not be increased at this time.
- Sewer back up in apartments on half street from new Apache pump station. Not sure what damage amount from claim will be. It consisted of 7 apartments, which had different degrees of damage.

General Manager Keller discussed with the BOD the following information:

- In the last packet there was copy of general complaints incurred throughout last year for the entire District.
- In the last packet and this packet were Fiscal Officer DeLawder's internal financial statements.
- From a financial stand point, cash flow is still an issue. It is more about the timing of customers making payments. As of today, we still had \$700,000 outstanding in Accounts Receivable. Fiscal Officer DeLawder has put preliminary numbers together and a rate increase would be in the 10-15% range. General Manager Keller feels this will help but won't make people pay quicker. In November and December the District had \$15,000 in accounts that skipped out without paying their bill. General Manager Keller said he would bring additional information and details to the next meeting.
- Meeting with Jamie Weist with Woolpert, Inc. tomorrow to discuss the project over runs and the WWTP corrections. Chairman Kunkle asked if General Manager Keller agreed with approach on cost sharing. General Manager said he agreed and thought they want to make sure everyone was clear on who was responsible with what, which included a draft agreement.
- PSC BOD member seminar in February but the BOD does not have to go. It will be held in Charleston.

**APPROVAL OF FINANCIALS/PAYROLL**

Motion made by Secretary Myers, seconded by Treasurer Collins to approve the Accounts Payable and Payroll for January 20, 2009.

**Unanimously approved.**

**EXECUTIVE SESSION**

Executive Session was not needed.

**ADJOURNMENT**

Motion made by Treasurer Collins, seconded by Secretary Myers to adjourn the meeting at 9:07 p.m.

**Unanimously approved.**

BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT

Sewer Revenue Bonds, Series 2009 A  
and  
Sewer Revenue Bonds, Series 2009 B  
(West Virginia Infrastructure Fund)

EXCERPT OF MINUTES ON ADOPTION OF BOND RESOLUTIONS,  
SUPPLEMENTAL RESOLUTIONS, DRAW RESOLUTION AND  
SWEEP RESOLUTION

The undersigned SECRETARY of the Public Service Board of Public Service Sewer District hereby certifies that the following is a true and correct excerpt of the minutes of a regular meeting of the said Public Service Board:

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The Public Service Board of Berkeley Public Service Sewer District met, pursuant to notice duly posted, on the 14th day of July, 2009, in Martinsburg, West Virginia.

PRESENT:           John Kunkle  
                      John Myers  
                      Ronald L. Collins

John Kunkle, Chairman, presided, and John Myers, acted as Secretary. The Chairman announced that a quorum of members was present and that the meeting was open for any business properly before it.

The Board held a public hearing on TEFRA Notice for the Project. No comments were received.

Thereupon, the Chairman presented a proposed Bond Resolution in writing entitled:

A RESOLUTION AUTHORIZING THE ISSUANCE OF SEWER REVENUE BONDS, SERIES 2009 A (BANK QUALIFIED), OF THE DISTRICT IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$2,695,000, THE PROCEEDS OF WHICH SHALL BE EXPENDED TO FINANCE, IN PART, THE ACQUISITION AND CONSTRUCTION OF CERTAIN PUBLIC SERVICE PROPERTIES CONSISTING OF ADDITIONS,

IMPROVEMENTS AND EXTENSIONS TO THE BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT'S EXISTING SEWERAGE SYSTEM AND TO PAY COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING A BOND PURCHASE AGREEMENT, AN OFFICIAL STATEMENT, A CONTINUING DISCLOSURE AGREEMENT AND OTHER DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS WITH RESPECT TO SUCH BONDS.

and caused the same to be read and there was discussion. Thereupon, on motion duly made by John Myers and seconded by Ronald Collins, it was unanimously ordered that the said Bond Resolution be adopted and be in full force and effect on and from the date hereof.

Thereupon, the Chairman then presented a proposed Supplemental Parameters Resolution in writing entitled:

SUPPLEMENTAL RESOLUTION PROVIDING PARAMETERS AS TO DATES, AMOUNTS, MATURITIES, INTEREST RATES, REDEMPTION PROVISIONS, PURCHASE PRICE AND OTHER DETAILS AS TO THE SEWER REVENUE BONDS, SERIES 2009 A (BANK QUALIFIED) OF BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT; AUTHORIZING AND APPROVING A BOND PURCHASE AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT, A REGISTRAR AGREEMENT, AN OFFICIAL STATEMENT, AND OTHER INSTRUMENTS RELATING TO THE BONDS; AUTHORIZING THE CHAIRMAN TO SELECT A BOND INSURER FOR THE SERIES 2009 A BONDS AND THE IMPLEMENTATION OF ANY AND ALL COVENANTS AND PROVISIONS REQUIRED AS A CONDITION TO OBTAINING SUCH MUNICIPAL BOND INSURANCE POLICY ON THE SERIES 2009 A BONDS; APPOINTING A REGISTRAR, PAYING AGENT, AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

and caused the same to be read and there was discussion. Thereupon, upon motion duly made by Ronald Collins and seconded by John Myers, it was unanimously ordered that the said Supplemental Parameters Resolution be adopted and be in full force and effect on and from the date hereof.

Thereupon, the Chairman presented a proposed Bond Resolution in writing entitled:

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT OF NOT MORE THAN \$1,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

and caused the same to be read and there was discussion. Thereupon, on motion duly made by Ronald Collins and seconded by John Myers, it was unanimously ordered that the said Bond Resolution be adopted and be in full force and effect on and from the date hereof.

Thereupon, the Chairman then presented a proposed Supplemental Resolution in writing entitled:

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNTS, DATES, MATURITY DATES, REDEMPTION PROVISIONS, INTEREST RATES, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICES AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND), OF BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT; APPROVING AND RATIFYING THE LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

and caused the same to be read and there was discussion. Thereupon, upon motion duly made by John Myers and seconded by Ronald Collins, it was unanimously ordered that the said Supplemental Resolution be adopted and be in full force and effect on and from the date hereof.

Next, the Chairman presented a proposed Draw Resolution for the approval of invoices. Thereupon, on motion duly made by Ronald Collins and seconded by John Myers, it was unanimously ordered that the said Draw Resolution be adopted.

Next, the Chairman presented a proposed Sweep Resolution for the authorization of electronic monthly debt service and reserve fund payments to the Municipal Bond Commission. Thereupon, on motion duly made by Ronald Collins and seconded by John Myers, it was unanimously ordered that the said Sweep Resolution be adopted.

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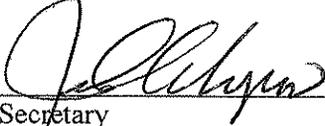
There being no further business to come before the meeting, on motion duly made and seconded, it was unanimously ordered that the meeting adjourn.

[Remainder of Page Intentionally Blank]

CERTIFICATION

I hereby certify that the foregoing is a true copy of the minutes of Berkeley County Public Service Sewer District and that such actions remain in full force and effect and have not been amended, rescinded, superseded, repealed or changed.

Dated: July 31, 2009

  
Secretary

067740.00019

**WV MUNICIPAL BOND COMMISSION**  
 1207 Quarrier Street  
 Suite 401  
 Charleston, WV 25301  
 (304) 558-3971

**NEW ISSUE REPORT FORM**

Date of Report: 31-Jul-09

(See Reverse for Instructions)

|   |   |
|---|---|
| ISSUE: <u>Berkeley County Public Service Sewer District</u><br><u>Sewer Revenue Bonds, Series 2009 B (West Virginia Infrastructure Fund)</u>  |   |
| ADDRESS: <u>P.O. Box 944, Martinsburg, WV 25402</u>   | COUNTY: <u>Berkeley</u>                   |
| PURPOSE OF ISSUE:<br>New Money: <u>  x  </u><br>Refunding: <u>      </u>  |   |
| REFUNDS ISSUE(S) DATED: <u>  NA  </u>   | CLOSING DATE: <u>  31-Jul-09  </u>        |
| ISSUE DATE: <u>  31-Jul-09  </u>  | RATE: <u>      3%      </u>               |
| ISSUE AMOUNT: <u>  \$1,000,000  </u>  | 1ST DEBT SERVICE DUE: <u>  1-Dec-09  </u> |
| 1ST DEBT SERVICE AMOUNT <u>  \$16,668  </u>   | 1ST PRINCIPAL DUE <u>  1-Dec-09  </u>     |
| PAYING AGENT: <u>  Municipal Bond Commission  </u>  |   |
| <b>BOND COUNSEL:</b><br>Firm: <u>  Steptoe &amp; Johnson PLLC  </u><br>Contact: <u>  John Stump, Esquire  </u><br>Phone: <u>  (304) 353.8196  </u>  |   |
| <b>UNDERWRITERS COUNSEL:</b><br>Firm: <u>  Jackson Kelly, PLLC  </u><br>Contact: <u>  Samme Gee, Esquire  </u><br>Phone: <u>  (304) 340-1318  </u>  |   |
| <b>CLOSING BANK:</b><br>Bank: <u>  Susquehanna Bank  </u><br>Contact: <u>  Kimberly McGarrah  </u><br>Phone: <u>  304.264.5000  </u>  |   |
| <b>ESCROW TRUSTEE:</b><br>Firm: <u>                          </u><br>Contact: <u>                          </u><br>Phone: <u>                          </u>   |   |
| <b>KNOWLEDGEABLE ISSUER CONTACT:</b><br>Contact: <u>  Curtis Keller  </u><br>Position: <u>  General Manager  </u><br>Phone: <u>  304.263.8566  </u><br><u>  cbkeller@bcpspd.com  </u>   |   |
| <b>OTHER:</b><br>Agency: <u>  West Virginia Infrastructure &amp; Jobs Development Council  </u><br>Contact: <u>  Angela Chestnut, P.E.  </u><br>Position: <u>  Executive Director  </u><br>Phone: <u>  304.558.4607  </u>   |   |
| <b>DEPOSITS TO MBC AT CLOSE</b><br>By: <u>  x  </u> Wire <u>                          </u> Accrued Interest: \$ <u>                          </u><br><u>      </u> Check <u>                          </u> Capitalized Interest: \$ <u>                          </u><br><u>  x  </u> Reserve Account: \$ <u>  66,674  </u><br><u>                          </u> Other: \$ <u>                          </u>  |   |
| <b>REFUNDS &amp; TRANSFERS BY MBC AT CLOSE</b><br>By: <u>      </u> Wire <u>                          </u> To Escrow Trustee \$ <u>                          </u><br><u>      </u> Check <u>                          </u> To Issuer \$ <u>                          </u><br><u>      </u> IGT <u>                          </u> To Cons. Invest. Fund \$ <u>                          </u><br><u>                          </u> To Other: <u>                          </u> \$ <u>                          </u> |   |
| NOTES: <u>  The Series 2009 B Bonds Reserve Account is fully funded with bond proceeds.  </u><br><u>                          </u><br><u>                          </u>   |   |
| <b>FOR MUNICIPAL BOND COMMISSION USE ONLY:</b><br>DOCUMENTS REQUIRED: <u>                          </u><br>TRANSFERS REQUIRED: <u>                          </u><br><u>                          </u>   |   |

BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT

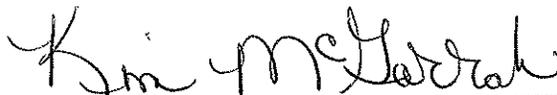
Sewer Revenue Bonds, Series 2009 B  
(West Virginia Infrastructure Fund)

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

Susquehanna Bank, Martinsburg, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Resolution of the Berkeley County Public Service Sewer District (the "Issuer"), adopted July 14, 2009, and a Supplemental Resolution of the Issuer adopted July 14, 2009 (collectively, the "Bond Legislation"), authorizing issuance of the Issuer's Sewer Revenue Bonds, Series 2009 B (West Virginia Infrastructure Fund), dated July 31, 2009, in the principal amount of \$1,000,000 (the "Bonds") and agrees to serve as Depository Bank in connection with the Bonds, all as set forth in the Bond Legislation.

WITNESS my signature on this 31st day of July, 2009.

SUSQUEHANNA BANK



Authorized Officer

BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT

Sewer Revenue Bonds, Series 2009 B  
(West Virginia Infrastructure Fund)

ACCEPTANCE OF DUTIES AS REGISTRAR OF SERIES 2009 B BONDS

The Huntington National Bank, Charleston, West Virginia, hereby accepts appointment as Registrar in connection with the Berkeley County Public Service Sewer District Sewer Revenue Bonds, Series 2009 B (West Virginia Infrastructure Fund), dated July 31, 2009, in the principal amount of \$1,000,000 ("the Bonds") and agrees to perform all duties of Registrar in connection with the Bonds, all as set forth in the Bond Legislation authorizing issuance of the Bonds.

WITNESS my signature on this 31st day of July, 2009.

THE HUNTINGTON NATIONAL BANK

By:   
Its: Authorized Officer

067740.00019

CH4962886.1

BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT

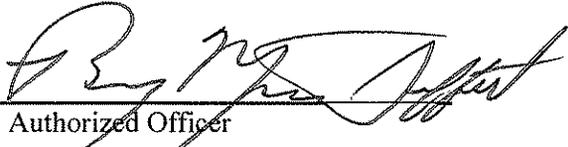
Sewer Revenue Bonds, Series 2009 B  
(West Virginia Infrastructure Fund)

CERTIFICATE OF REGISTRATION OF SERIES 2009 B BONDS

THE HUNTINGTON NATIONAL BANK, Charleston, West Virginia, as Registrar under the Bond Legislation and Registrar's Agreement providing for the above-captioned bond issue of the Berkeley County Public Service Sewer District (the "Issuer"), hereby certifies that on the date hereof, the single, fully registered Berkeley County Public Service District Sewer Revenue Bond, Series 2009 B (West Virginia Infrastructure Fund), of the Issuer, dated July 31, 2009, in the principal amount of \$1,000,000, numbered BR-1, is registered as to principal and interest in the name of "West Virginia Water Development Authority" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of The Huntington National Bank, as Registrar.

WITNESS my signature on this 31st day of July, 2009.

THE HUNTINGTON NATIONAL BANK

By:   
Its: Authorized Officer

067740.00019

CH4955746.1

BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT

Sewer Revenue Bonds, Series 2009 B  
(West Virginia Infrastructure Fund)

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 31st day of July, 2009, by and between the BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT, a public service district and public corporation and political subdivision of the State of West Virginia (the "Issuer"), and THE HUNTINGTON NATIONAL BANK, Charleston, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$1,000,000 Sewer Revenue Bonds, Series 2009 B (West Virginia Infrastructure Fund), in fully registered form (the "Series 2009 B Bonds"), pursuant to a Bond Resolution of the Issuer duly adopted July 14, 2009, and a Supplemental Resolution of the Issuer duly adopted July 14, 2009 (collectively, the "Bond Legislation");

WHEREAS, capitalized words and terms used in this Registrar's Agreement and not otherwise defined herein shall have the respective meanings given them in the Bond Legislation, a copy of which is attached as EXHIBIT A hereto and incorporated herein by reference;

WHEREAS, the Bond Legislation provides for an appointment by the Issuer of a Registrar for the Bonds; and

WHEREAS, the Issuer desires to appoint, and by the Bond Legislation and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Bond Legislation and to take certain other actions hereinafter set forth;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Upon the execution of this Registrar's Agreement by the Issuer and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the powers and duties of Registrar for the Bonds, all as set forth in the Bond Legislation, such duties including, among other things, the duties to authenticate, register and deliver Bonds upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exemption of interest on the Bonds from federal income taxation, in

accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as the Issuer advises it of and with generally accepted industry standards.

2. The Registrar agrees to furnish the Issuer with appropriate records of all transactions carried out by it as Registrar and to furnish the Issuer with the names and specimen signatures of the Registrar's authorized officers for the purposes of acting as the Registrar and with such other information and reports as the Issuer may from time to time reasonably require.

3. The Registrar shall have no responsibility or liability for any action taken by it at the specific direction of the Issuer.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Issuer hereby agrees to pay to the Registrar the compensation for services rendered as provided in the annexed schedule.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Bond Legislation with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Bond Legislation, the terms of the Bond Legislation shall govern.

6. The Issuer and the Registrar each warrants and represents that it is duly authorized and empowered to execute and enter into this Registrar's Agreement and that neither such execution nor the performance of its duties hereunder or under the Bond Legislation will violate any order, decree or agreement to which it is a party or by which it is bound.

7. This Registrar's Agreement may be terminated by either party upon 60 days' written notice sent by registered or certified mail to the other party, at the following respective addresses:

ISSUER: Berkeley County Public Service Sewer District  
Post Office Box 944  
Martinsburg, West Virginia 25401  
Attention: Chairman

REGISTRAR: The Huntington National Bank  
One Huntington Square  
Charleston, West Virginia 25301  
Attention: Corporate Trust Department

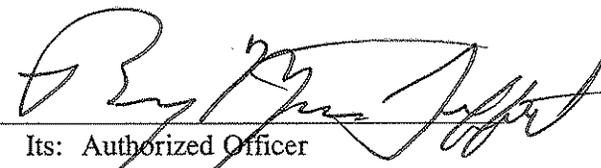
8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Bond Legislation.

IN WITNESS WHEREOF, the parties hereto have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the day and year first above-written.

BERKELEY COUNTY PUBLIC SERVICE  
SEWER DISTRICT

By:   
Its: Chairman

THE HUNTINGTON NATIONAL BANK

By:   
Its: Authorized Officer

06.30.09  
067740.00019

EXHIBIT A

Bond Legislation included in bond transcript as Documents No. 1 and No. 2

SCHEDULE OF COMPENSATION

(See attached)

Private Financial Group  
P.O. Box 633 - WE3013  
Charleston, West Virginia 25322-0633



STATEMENT OF REGISTRAR'S FEES  
Invoice Date July 31, 2009

Berkeley County Public Service Sewer District  
Sewer Revenue Bond, Series 2009 B  
C/o John C. Stump  
Steptoe & Johnson, PLLC  
P.O. Box 1588  
Charleston, WV 25326-1588

SUMMARY OF ACCOUNT

\*\*\*\*\*  
FEE CALCULATION FOR July, 2009  
\*\*\*\*\*

|                  |           |                      |
|------------------|-----------|----------------------|
| TOTAL AMOUNT     | \$        | 500.00               |
| <b>TOTAL DUE</b> | <b>\$</b> | <b><u>500.00</u></b> |

- \* FEE INVOICES ARE PAYABLE WITHIN 30 DAYS. IF PAYMENT \*
- \* IS NOT RECEIVED, FEES WILL BE DEDUCTED FROM THE PLAN \*
- \* .. MAIL CHECK TO: HUNTINGTON NATIONAL BANK, ATTN: BARRY. . \*
- \* .. GRIFFITH, PO BOX 633, CHARLESTON, WV 25322-0633 . . . . . \*

**PLEASE INCLUDE A COPY OF THIS INVOICE WITH YOUR PAYMENT**

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT  
Barry Morgan Griffith at (304)348-5035

ALJ  
5/14/08

08-0311-PSD-PW-PC PSC ✓



west virginia department of environmental protection

Division of Water and Waste Management  
601 57th Street SE  
Charleston, West Virginia 25304-2345  
Phone: 304-926-0495  
Fax: 304-926-0496

Joe Manchin III, Governor  
Randy C. Huffman, Cabinet Secretary  
www.wvdep.org

June 30, 2008

CURTIS KELLER, GENERAL MGR.  
BERKELEY COUNTY PSSD  
PO BOX 944  
MARTINSBURG, WV 25402

RECEIVED  
2008 JUL - 7 PM 12:11  
W VA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

CERTIFIED RETURN RECEIPT REQUESTED

Dear Permittee:

Enclosed please find WV/NPDES Permit Number WV0082759 dated June 30, 2008.

The Division wishes to address the specific issues raised in the comment letters submitted on behalf of the PSSD, the Ecolab industrial user, and the LCS Services industrial user. We wish to address these comments in the order as they have been presented.

Comment No. 1 : BCPSSD - Request to remove Nutrient Requirements - Section F of the permit

The Division believes that the nutrient requirements found in Section F of this permit are appropriate and that these requirements were developed to adequately protect the terms and conditions provided for in West Virginia's Chesapeake Bay Tributary Strategy. Please be aware that these requirements were previously imposed during the issuance of a couple of permit modifications of the previous permit and these requirements are only being carried forward in this permit.

Also, the Division has recognized in Section F.3 of this final permit that the PSSD has submitted a nutrient reduction plan of action for the four (4) WWTPs identified herein and is currently preapring a response to this plan. Section F.3 has been revised to require appropriate submittals relative to the plan of action. The PSSD shall now be responsible to provide quarterly progress reports until compliance with the final effluent limitations for the nutrients are acheived.

Comment No. 2 : BCPSSD - Request to reduce sampling frequencies for Outlet 001 for the metal pollutants cadmium, copper, lead, cyanide and zinc

Based upon Reasonable Potential assessments for Outlet 001, it has been determined that Water Quality - Based Effluent Limitations (WQBELs) are needed for the metal pollutants cadmium, copper, lead, cyanide and zinc. Procedurally, the imposition of these limits as average monthly and maximum daily limitations require that the sampling frequency be set as once per month for these five metal pollutants. The other metal pollutants not exhibiting RP are already prescribed with less monitoring frequency. Therefore, no changes have been made per this request.

Comment No. 3 : BCPSSD - Request to impose concentration limits on the Ecolab (Outlet 103 and IU09) indirect discharge.

ALJ  
Legal  
ENG

The mass limitations that are imposed at Outlets 103 and IU09 were developed to be protective of the final annual mass limitations at Outlet 003. Theoretically, the effluent loading that exits from Outlet 103 should have similar nutrient characteristics consistent with the domestic portion of the sewage influent. As such, these load limitations should provide adequate assurance that the final permit limits at Outlet 003 would be achieved once appropriate treatment is constructed. It should be noted that the requirements of this permit does not preclude the BCPSSD from imposing any additional or more stringent requirements upon Ecolabs or any other industrial user.

Comment No. 4 : BCPSSD - Request to reevaluate terms and limits imposed on the ATF facility (Outlet IU15) because of changes to where this facility now discharges.

Based upon information provided by our enforcement section, this facility currently has discharges to both the Baker Heights and North End WWTPs. The reference in Section E.2.a.11 has been revised to reflect both

Comment No. 5 : BCPSSD - Request to reevaluate terms and conditions imposed on Vita Foods (Outlet IU16) based upon environmental enforcement compliance inspection.

Based upon information provided by our enforcement section, the discharge of this wastewater has variable pH levels and that discharges may be discharged in a slug manner. pH requirements have been imposed in the final permit as well as a requirement to prevent slug discharges.

Comment No. 6 : BCPSSD - Request to reevaluate terms and conditions imposed on IRS facility (Outlet IU10) based upon environmental enforcement compliance inspection.

The agency received little to no information on this facility based on the inspection. The agency suggests the permittee compile appropriate information and submit a specific permit modification request to implement appropriate revisions.

Comment No. 7 : BCPSSD - Request to add Fastloc, an industrial user, to the new North End system and the proper terms and conditions

The agency suggests the permittee compile appropriate information and submit a specific permit modification request to add this facility as an industrial user.

Comment No. 8 : BCPSSD - Request oil and grease monitoring requirements on Veriform (Outlet IU08)

The permit already has imposed oil and grease effluent limitations for this pollutant.

Comment No. 9 : BCPSSD - Request oil and grease monitoring requirements on Walmart (Outlet IU17)

The nondomestic wastewater approved from Wal-Mart is from a photo developing silver recovery unit. Grease traps should be handled through either the Health Department or the permittee's sewer use ordinance.

Comment No. 10 : BCPSSD - Request that all IUs be required to monitor for Nitrogen, Phosphorus, and Molybdenum because of sludge and Chesapeake Bay issues.

At the permittee's request, the agency has imposed monitoring for molybdenum, nitrogen, and phosphorous. However, the agency has only imposed this on the significant industrial users (Quad Graphics, LCS Services, Quebecor, and Ecolabs). The agency suggests that the permittee first determine if potential sources from smaller industrial users exists and then modify its permit to require any permanent monitoring that be necessary

CURTIS KELLER, GENERAL MGR.

Page 3

June 30, 2008

Comment No. 11 : BCPSSD - Request clarification on the sampling requirements for toxicity testing (24 hour composites or 8 hour composites)

The BCPSSD should be collecting 24 hour "batch" composite samples for the toxicity testing. We have amended Section C.21.a) of the final permit to reflect this correction.

Comment No. 12 : BCPSSD - Electronic submission of DMRs options

The BCPSSD needs to contact Tonya Phillips at 304-926-0499 Ext. 1010 for information regarding electronic submittal of DMR. These issues need to be forwarded to the USEPA as well.

Please be aware that additional public comments were provided to this agency from LCS Services and Ecolab (2 of the PSSD's Industrial Users). There were some minor revisions made based upon their comments. We are providing the PSSD with a copy of our response to each of these commentors.

Please note that a Discharge Monitoring Report (DMR) is to be completed and submitted to this Division each month. It is suggested that several copies of the enclosed DMR forms be made for your future use, as this Division does not supply permittees with DMR forms.

Finally note that copies of all future correspondence regarding the permit including copies of DMRs must be forwarded to the Field Inspector and Field Supervisor at the following address:

Department of Environmental Protection  
Environmental Enforcement  
HC 63 Box 2545  
Romney, WV 26757

Also, please note the attachment to this permit which describes the annual permit fee requirement. Reissuance of your permit does not change the annual fee billing cycle.

Also, enclosed find Administrative Order No. 6497 for Permit No. WV0082759 requiring you to upgrade your treatment to meet the requirements of this Permit.

If you have any questions, please contact Bob Bates of this Division at (304) 926-0495.

Sincerely,



Lisa A. McClung  
Director

LAM:bb

Enclosures

*RESERVED*



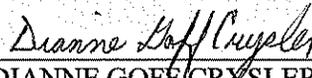
United States Department of Agriculture  
Rural Development  
West Virginia State Office

July 30, 2009

Berkeley County Public Service Sewer District  
Sewer Revenue Bonds, Series 2009 A (Bank Qualified); and  
Sewer Revenue Bonds, Series 2009 B  
(West Virginia Infrastructure Fund)

TO WHOM IT MAY CONCERN:

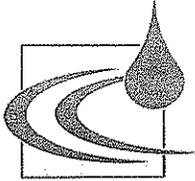
The undersigned duly authorized representative for the United States of America, acting through the United States Department of Agriculture, the present holder of the Issuer's Series 2007 B Bonds, Series 2007 C Bonds, Series 2007 D Bonds, Series 2007 E Bonds and Series 2007 F Bonds, hereinafter defined and described, hereby: (i) consents to the issuance of the Sewer Revenue Bonds, Series 2009 A and the Sewer Revenue Bonds, Series 2009 B (West Virginia Infrastructure Fund) (collectively, the "Series 2009 Bonds"), in the respective principal amounts of not to exceed \$2,695,000 and \$1,000,000, respectively, by Berkeley County Public Service Sewer District (the "Issuer"), under the terms of the resolutions authorizing the Series 2009 A Bonds and the Series 2009 B Bonds (collectively, the "Series 2009 Resolution") on a parity, with respect to liens, pledge and source of and security for payment, with the Issuer's: (1) Sewer Revenue Bonds, Series 2007 B (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$9,000,000 (the "Series 2007 B Bonds"); (2) Sewer Revenue Bonds, Series 2007 C (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$9,000,000 (the "Series 2007 C Bonds"); (3) Sewer Revenue Bonds, Series 2007 D (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$7,104,000 (the "Series 2007 D Bonds"); (4) Sewer Revenue Bonds, Series 2007 E (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$500,000 (the "Series 2007 E Bonds"); and (5) Sewer Revenue Bonds, Series 2007 F (United States Department of Agriculture), dated March 6, 2007, issued in the original aggregate principal amount of \$4,999,900 (the "Series 2007 F Bonds") (collectively, the "Prior Bonds"); (ii) waive any requirements imposed by the Prior Bonds or the resolutions authorizing the Prior Bonds (the "Prior Resolutions"), regarding the issuance of parity bonds which are not met by the Series 2009 Bonds or the Series 2009 Resolution; and (iii) consents to any amendments made to the Prior Resolutions by the Series 2009 Resolution.

  
\_\_\_\_\_  
DIANNE GOFF CRYSLER  
Acting State Director

Federal Building • 75 High Street • Suite 320 • Morgantown, WV 26505-7500  
Phone: (304) 284-4860 OR 1-800-295-8228 • Fax: (304) 284-4893 • TDD: (304) 284-4836  
Web: <http://www.rurdev.usda.gov/wv>

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"USDA is an equal opportunity provider, employer and lender."  
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W.,  
Washington, DC 20250-9410 or call (800)795-3272 (voice) or (202) 720-6382 (TDD).



WEST VIRGINIA  
**Water Development Authority**  
Celebrating 34 Years of Service 1974 - 2008

July 31, 2009

Berkeley County Public Service Sewer District  
Sewer Revenue Bonds, Series 2009 A  
(Crews & Associates, Inc.);  
and  
Sewer Revenue Bonds, Series 2009 B,  
(West Virginia Infrastructure Fund)

TO WHOM IT MAY CONCERN:

In reliance upon the certificate of Yount, Hyde & Barbour, P.C., the certified public accountant of the Issuer and Steptoe & Johnson PLLC, as bond counsel of the Issuer, stating that the coverage and parity requirements have been met, the undersigned duly authorized representative of the West Virginia Water Development Authority, the registered owner of the First Lien Bonds and the Second Lien Bonds, hereinafter defined and described, hereby consents to the issuance of the Sewer Revenue Bonds, Series 2009 A, issued in the original aggregate principal amount of \$2,695,000 and the Sewer Revenue Bonds, Series 2009 B (West Virginia Infrastructure Fund), issued in the original aggregate principal amount of \$1,000,000, (collectively, the "Bonds"), by Berkeley County Public Service Sewer District (the "Issuer"), under the terms of the resolution authorizing the Bonds, on a parity, with respect to liens, pledge and source of and security for payment, with the Issuer's Sewer Revenue Bonds, Series 1986 B, Sewer Revenue Bonds, Series 1990 A, Sewer Revenue Bonds, Series 1994 A (West Virginia Water Development Authority), Sewer Revenue Bonds, Series 1994 C (West Virginia SRF Program), Sewer Revenue Bonds, Series 1995 A (West Virginia SRF Program), Sewer Revenue Bonds, Series 1995 B (West Virginia SRF Program), Sewer Revenue Bonds, Series 1996 A (West Virginia SRF Program), Sewer Revenue Bonds, Series 1996 B (West Virginia SRF Program), Sewer Revenue Bonds, Series 1996 C (West Virginia SRF Program), Sewer Revenue Bonds, Series 1997 A (West Virginia SRF Program), Sewer Revenue Bonds, Series 1997 B (West Virginia SRF Program), Sewer Revenue Bonds, Series 1999 A (West Virginia SRF Program), Sewer Revenue Bonds, Series 2000 A (West Virginia SRF Program), Sewer Revenue Bonds, Series 2001 A (West Virginia Infrastructure Fund), Sewer Revenue Bonds, Series 2001 B (West Virginia SRF Program), Sewer Revenue Bonds, Series 2002 A (West Virginia SRF Program), Sewer Revenue Bonds, Series 2002 B (West Virginia SRF Program), Sewer Revenue Bonds, Series 2002 C (West Virginia SRF Program), Sewer Revenue Bonds, Series 2002 D (West Virginia Water Development Authority), Sewer Revenue Bonds, Series 2002 E (West Virginia Water Development Authority), Sewer Revenue Bonds, Series 2003 A (West Virginia SRF Program), Sewer Revenue Bonds, Series 2003 B (West Virginia SRF Program), and Sewer Revenue Bonds, Series 2004 A (West Virginia Infrastructure Fund) (collectively, the "First Lien Bonds"), and senior and prior, with respect to liens, pledge and source of and security for payment, to the Issuer's Sewer Revenue Bonds, Series 1990 B (the "Second Lien Bonds").



Authorized Representative

Martinsburg: Third Amendment to Alternate Main Line Extension Agreement

THIS THIRD AMENDMENT TO ALTERNATE MAIN LINE EXTENSION AGREEMENT is entered into by and between the BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT (the "District"), and ECOLAB INC., a Delaware Corporation ("Ecolab"):

WHEREAS, the District and Ecolab previously entered into an Alternate Main Line Extension Agreement ("AMLEA") and Amendment ("First Amendment"), both of which are dated March 27, 2001. WHEREAS, the District and Ecolab subsequently entered into a Second Amendment on August 22, 2006, which superseded and replaced the First Amendment in its entirety. WHEREAS, the District and Ecolab now agree to supersede and replace the Second Amendment in its entirety with this Third Amendment to AMLEA.

The AMLEA is hereby amended as follows:

1. Section 2.01 – DELETE the sentence "The Development will include one wastewater pre-treatment unit of 50,000 gallons per day capacity, one pump station, one flow meter, and approximately 1,000 linear feet of force main with one road bore to serve the Ecolab facility." SUBSTITUTE the sentence "The Development will include two wastewater pre-treatment units of 50,000 gallons per day capacity, each, for a total of 100,000 gallons per day capacity, one flow meter, one 200,000 gallon equalization tank, one solids removal process unit, and approximately 1,000 linear feet of gravity sewer with one road crossing to convey effluent to the Development."
2. INSERT the following: "Section 2.08 – Ecolab agrees to pump all wastewater discharged from the Ecolab facility to the Development, except for wastewater hauled away due to capacity limitations of the Development. The head and flow rate required shall be mutually agreed upon and determined by discussions between the District's and Ecolab's engineers. Ecolab, based upon the cost sharing agreement attached hereto as Exhibit 1, which is incorporated into this Third Amendment, shall modify the Development by installing a second sequence batch reactor and second digester tank, modifying the solids handling system, and constructing an equalization tank. The full extent of the modification undertaken and authorized herein (hereinafter referred to as the "ITP Upgrade"), is specified in Exhibit 1, as may be amended by mutual agreement of the parties. Upon completion of this ITP Upgrade and verification of treatment capacity by a professional engineer, Ecolab may discharge amounts up to 100,000 gallons/day in accordance with permitted limits and the District will accept wastewater volumes up to 100,000 gallons/day. Ecolab shall be responsible for all aspects of designing and constructing the ITP Upgrade."
3. INSERT the following: "Section 2.09 – To enhance the Development's capacity, Ecolab agrees to engage and has engaged, at its sole expense, a professional engineering firm to design the ITP Upgrade. Ecolab further agrees to pay all other engineering fees to be incurred for the ITP Upgrade, including, but not limited to, bidding and construction monitoring."

RECEIVED  
MAY 6 2008  
MARTINSBURG  
COMMISSION

4. INSERT the following: "Section 2.10 – Ecolab shall cooperate in securing WV DEP and WV PSC approval of the ITP Upgrade to the Development and in securing assistance from the WV Development Office with financing the ITP Upgrade. At Ecolab's option, Ecolab may elect to finance 100% of the construction cost of the ITP Upgrade. Ecolab shall be responsible for soliciting bids and overseeing construction of the ITP Upgrade. The District shall be responsible for providing land within the Development for the ITP Upgrade consistent with Section 4.05."
5. Section 4.04, DELETE the sentence "In order that the District may provide sewer service to all adjoining properties of Ecolab's project, the District shall require and Ecolab shall agree to provide all necessary easements on Ecolab's property that are mutually agreed upon to run from the Development to all adjoining properties." And, SUBSTITUTE the following "As a condition to obtaining a main extension, Ecolab shall grant the District the necessary easements to allow the District to make future extensions into unserved areas. The granting of the necessary easements shall be made without the District being required to pay additional consideration for the additional easements to Ecolab. If Ecolab is unwilling to grant the additional easements, the District shall not be required to extend its main to serve Ecolab."
6. Section 5.01 – DELETE "The District shall commence construction within a reasonable time after the approval of this Agreement. The District shall complete construction so that the Development will be ready for use by May 1, 2000." SUBSTITUTE the sentence "It is anticipated that the ITP Upgrade will be operational by the end of 2008. The District shall complete construction of the Baker Heights POTW upgrade by March 2008."
7. INSERT the following: "Section 7.09 – "The District shall provide an itemization of costs in the monthly service bill, identifying costs for labor, maintenance, chemical supplies, sludge disposal, testing, and other major cost categories."
8. INSERT the following:

"ARTICLE XII – CHARACTERISTICS OF DISCHARGE

Section 12.01 Ecolab agrees to discharge (from Outlet Number IU09) no more than 100,000 gallons per day of wastewater containing, at all times, a maximum daily loading of the following constituents:

| Constituent                                   | Daily Mass Loading | Equivalent Max. Concentration (mg/l) at flow rate of 86,000 gpd | Equivalent Max. Concentration (mg/l) at flow rate of 100,000 gpd |
|---|--------------------|---|--|
| Flow  | 100,000 gpd        | 86,000 gpd  | 100,000 gpd  |
| Biochemical Oxygen Demand (BOD <sub>5</sub> ) | 1,252 (lbs/day)    | 1,745   | 1,501  |
| Chemical Oxygen Demand                        | 4,300 (lbs/day)    | 6,000   | 5,160  |

|                  |                 |     |     |
|------------------|-----------------|-----|-----|
| Suspended Solids | 250 (lbs/day)   | 300 | 300 |
| pH               | 6.5 to 8.5 (su) |     |     |
| Copper           | 0.56 (lbs/day)  |     |     |
| Lead             | 0.126 (lbs/day) |     |     |
| Zinc             | 3.75 (lbs/day)  |     |     |

Once the ITP Upgrade is fully operational, Ecolab and the District will test the system at higher concentrations to determine the maximum treatment capacity of the ITP Upgrade.

Section 12.02 Ecolab agrees not to discharge wastewater having any characteristic that negatively affects the operation of the Development or the Baker Heights Wastewater Treatment Plant. In the event that the DISTRICT determines that Ecolab has negatively affected either facility, the District shall notify Ecolab in writing, which shall immediately make all reasonable alterations to its process to eliminate the negative effect.

Section 12.03 Ecolab agrees, in the event the waste sludge produced at the Baker Heights facility becomes unsuitable for land application caused by metals in Ecolab's wastewater discharge, Ecolab shall reimburse the DISTRICT for the increased disposal costs. The amount reimbursed each month will be the difference between the current costs for land application versus landfill disposal, multiplied by the gross tonnage of waste sludge disposed in that month. The District shall provide written notice of any such unsuitability and itemization of associated costs shall be included in Ecolab's monthly billing.

Section 12.04 Ecolab agrees to implement a process wastewater-monitoring program and to provide the results of the following monitoring program to the District:

- ◆ The analysis method for each parameter will be mutually agreed upon between the District and Ecolab (the methods may be, but do not have to be U.S. EPA approved test methods provided that alternate methods are shown to provide results consistent with U.S. EPA methods).
- ◆ The monitoring point will be Ecolab's 15,000-gallon wastewater equalization tank.
- ◆ A batch consists of the total volume of wastewater in the equalization tank that is monitored and then discharged prior to the introduction of additional wastewater to the tank.
- ◆ The process wastewater in the equalization tank will be recirculated.
- ◆ The following schedule will be utilized during normal operations:

#### ECOLAB FACILITY NORMAL OPERATION

| Parameter     | Type                  | Frequency     |
|---------------|-----------------------|---------------|
| Flow          | Flow Meter (BCPSSD)   | Daily         |
| pH            | Grab from Equal. Tank | One per Batch |
| Free Chlorine | Grab from Equal. Tank | One per Batch |
| COD           | Grab from Equal. Tank | One per Batch |

TSS  
Foam

Grab from Equal. Tank  
Grab from Equal. Tank

One per Batch  
One per Batch

In the event that any batch exceeds one or more of the loadings listed in Section 12.01, Ecolab agrees not to discharge the wastewater from that batch to the District, until conformance is achieved.

Section 12.05 Ecolab agrees to sample and analyze the co-mingled process and sanitary wastewater discharge in accordance with the requirements of the WVDEP NPDES permit revisions that will be issued to the District. The District shall install and maintain a continuous flow measurement device and totalizer, and an automatic flow, proportional-sampling unit at the influent point of the pretreatment system. The District shall share influent testing results with Ecolab, and Ecolab may elect to review and comment on Discharge Monitoring Reports (DMR) for influent to the pretreatment facility. The equipment and testing data shall be used by Ecolab to facilitate its monitoring programs.

Section 12.06 Ecolab agrees to maintain records of testing required in Section 12.04 at the facility and to make these records available to the District upon request within normal business hours. Ecolab agrees to submit to the District the analytical test results required by Section 12.05 within two weeks of receipt of the final laboratory analytical reports.

Section 12.07 If the aforementioned monitoring results identify loadings of wastewater parameters consistently below the limits identified in Section 12.01, Ecolab may request, or the District may, at its own discretion, reduce the sampling and analysis requirements described in Section 12.04. The District may, based on monitoring results consistently above the limits identified in Section 12.01 and following written notification to Ecolab, apply the additional monitoring requirements.

WITNESS the following signatures and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2007

ATTEST:

BERKELEY COUNTY PUBLIC  
SERVICE SEWER DISTRICT

By:

\_\_\_\_\_  
John C. Kunkle, Chairman

(CORPORATE SEAL)

ATTEST:

Witness

By:

\_\_\_\_\_  
John E. Myers, Secretary

STATE OF WEST VIRGINIA,  
COUNTY OF BERKELEY, to-wit:

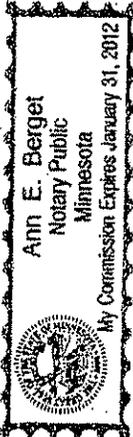
I, \_\_\_\_\_, a notary public in and for said state do, hereby certify that John C. Kunkle, Chairman of the Berkeley County Public Service Sewer District, and John E.

Myers, Secretary of the Berkeley County Public Service Sewer District, whose names are signed to the writing above, have this day acknowledged the same before me.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2007

Notary Public: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



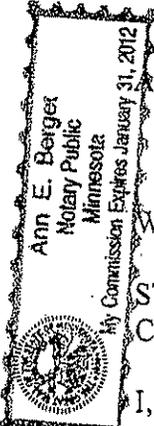
ATTEST:

ECOLAB INC.

By:

[Signature]  
Robert K. Gifford  
Senior Vice President -  
Global Supply Chain

(CORPORATE SEAL)



ATTEST:

By:

[Signature]  
Lawrence T. Bell  
General Counsel, Sr. VP and Sec'y

Witness

STATE OF MINNESOTA  
COUNTY OF RAMSEY, to-wit:

I, ANN E. BERGET, a notary public in and for said state do, hereby certify that ROBERT K. GIFFORD  
and LAWRENCE T. BELL of Ecolab whose names <sup>ARE</sup> signed to the writing above, have this  
day acknowledged the same before me.

Given under my hand this 10th day of JANUARY, 2007 2008

Notary Public: [Signature]

My Commission Expires: January 31, 2012



**PRIOR BONDS INCLUDED SEPARATELY (VIA CD-ROM)**



## MEMORANDUM

To: Financing Team

From: John C. Stump, Esquire

Date: July 31, 2009

Re: Berkeley County Public Service Sewer District  
Sewer Revenue Bonds, Series 2009 B (West Virginia Infrastructure Fund)

### DISBURSEMENTS TO DISTRICT:

Payor: West Virginia Infrastructure and Jobs Development Council  
Amount: \$933,326  
Form: Wire Transfer  
Bank: Susquehanna Bank  
301 W. Burke Street  
Martinsburg, WV 25401  
ABA No.: 031309123  
Acct. No.: 12284918  
Contact: Kimberly McGarrah, 304.264.5000  
Account: Series 2009 B Bonds Construction Trust Fund

### DISBURSEMENTS TO MUNICIPAL BOND COMMISSION

Payor: West Virginia Infrastructure and Jobs Development Council  
Source: Series 2009 B Bonds Proceeds  
Amount: \$66,674  
Form: Wire Transfer  
Payee: Berkeley County Public Service Sewer District  
Bank: Municipal Bond Commission  
Routing #: 051503394  
Account #: 5270517317  
Contact: Sara Boardman, 558.3971  
Account: Series 2009 B Bonds Reserve Account

State of West Virginia  
**WATER DEVELOPMENT AUTHORITY**  
 180 Association Drive, Charleston, WV 25311-1217  
 (304) 558-3612 - (304) 558-0299 (Fax)  
 Internet: www.wvwda.org - Email: contact@wvwda.org

**PRECLOSING ATTENDANCE LIST**

Date 7-30-2009 Time 3:00 LGA Berkeley County PSSD Program ISDC

| NAME         | COMPANY, AGENCY, OR ORGANIZATION | TELEPHONE | FAX      | E-MAIL                          |
|--------------|----------------------------------|-----------|----------|---------------------------------|
| Katy Mallery | Stephe & Johnson                 | 353-8161  | 353-8181 | Kelly.Mallery@stephejohnson.com |
| Ryan White   | Jackson Kelly                    | 340-1883  | 340-1872 | srwhite@jacksonkelly.com        |
| Samue Lee    | Jackson Kelly                    | 340.1318  | 340.1272 | syee@jacksonkelly.com           |
| John Stump   | Stephe & Johnson PLLC            | 353.8196  | 353.8181 | john.stump@stephejohnson.com    |
|              |                                  |           |          |                                 |
|              |                                  |           |          |                                 |
|              |                                  |           |          |                                 |
|              |                                  |           |          |                                 |

The Authority requests that the following information concerning the individual who will be responsible for sending Debt Service Payments to the Municipal Bond Commission be provided. (If that individual is in attendance, he/she should also sign above.) Please Print:

Name Curtis Keller Telephone 304-263-8566 E-Mail cbkeller@bcpsd.com  
 Address P.O. Box 944, Martinsburg, WV 25402

REMINDER: As a participant in this program, the Local Governmental Agency (LGA) agrees and is required to submit annually to the WDA a copy of its audited financial statements and a copy of its adopted budget. Also, pursuant to the Loan Agreement and the NonArbitrage Certificate (both of which are contained in the bond transcript) you are to provide annually to the WDA a rebate calculation certificate or an exception opinion showing whether a rebate amount is due to the US Government under arbitrage requirements in Section 148(f) of the US Internal Revenue Code, 1986, as amended.

**BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT**

**RESOLUTION OF THE  
BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT  
APPROVING INVOICES RELATING TO CONSTRUCTION AND OTHER SERVICES  
FOR THE PROPOSED ECOLAB WASTEWATER AND  
AUTHORIZING PAYMENT THEREOF,**

**WHEREAS**, the Berkeley County PSSD has reviewed the invoices attached hereto and incorporated herein by reference relation to the construction of the Ecolab Wastewater Project funded by the Infrastructure Fund Loan (IJDC) and a Public Issue and find as follows:

- a) That none of the items for which payment is proposed to be made has formed the basis for any disbursement theretofore made.
- b) That each item for which the payment is proposed to be paid is or was necessary in connection with the Project and constitutes a Cost of the project.
- c) That each of such costs has been otherwise properly incurred.
- d) That the payment for each of the items proposed is due and owing.

**NOW, THEREFOR, BE IT RESOLVED** The Berkeley County Public Service Sewer District by as follows: There is hereby authorized and directed the payment of the attached invoices as follows:

| Vendor   | Total            | IJDC             | Crews            |
|--|------------------|------------------|------------------|
| Huntington Banks (Registrar)                     | 500.00 ✓         | 500.00           | 0                |
| Step toe & Johnson (Bond Counsel)                | 60,000.00 ✓      | 60,000.00        | 0                |
| Municipal Bond Commission (Reserve Fund – IJDC)  | 66,552.00        | 66,552.00        | 0                |
| Municipal Bond Commission (Reserve Fund – Crews) | 211,150.00 ✓     | 0                | 211,150.00       |
| Jackson Kelly (Underwriter Counsel)              | 40,000.00 ✓      | 40,000.00        | 0                |
| Construction                                     | 2,623,992.00 ✓   | 809,473.00       | 1,814,519.00     |
| Underwriter Discount                             | 67,375.00        | 23,475.00        | 43,900.00        |
| Equipment  | 63,300.00 ✓      | 0                | 63,300.00        |
| Equipment  | 107,323.00       | 0                | 107,323.00       |
| Engineering                                      | 385,503.00 ✓     | 0                | 385,503.00       |
| Interest   | 17,765.00 ✓      | 0                | 17,765.00        |
| Permits  | 12,300.00 ✓      | 0                | 12,300.00        |
| Other  | 12,950.00 ✓      | 0                | 12,950.00        |
| Lab Equipment                                    | 16,290.00 ✓      | 0                | 16,290.00        |
| Printing / Registrar                             | 10,000.00        | 0                | 10,000.00        |
| <b>Total</b>                                     | <b>3,695,000</b> | <b>1,000,000</b> | <b>2,695,000</b> |

**ADOPTED BY the Berkeley County Public Service Sewer District, at the meeting held on the 14th day of July, 2009.**

By: 

Its: Chairman

## SWEEP RESOLUTION

### Berkeley County Public Service Sewer District

**WHEREAS**, Berkeley County Public Service Sewer District (the "Issuer") is a governmental body and political subdivision of West Virginia;

**WHEREAS**, the Issuer has issued bonds, as more specifically set forth on Exhibit A, attached hereto and incorporated herein by reference (the "Bonds");

**WHEREAS**, the Issuer makes or will make monthly debt service payments on and transfers reserve funds for the Bonds by check to the West Virginia Municipal Bond Commission (the "MBC") which in turn pays the owners of the Bonds and deposits funds in the reserve accounts;

**WHEREAS**, the MBC may accept such monthly payments by electronic funds transfer, thereby eliminating delay in payments and lost checks;

**WHEREAS**, the Issuer finds and determines that it is in the best interest of the Issuer, its citizens and the owners of the Bonds that the monthly debt service and reserve fund payments be made by electronic funds transfer with the State Treasurer sweeping the Issuer's account.

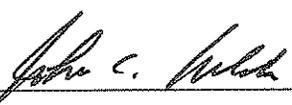
### **NOW THEREFORE BE IT RESOLVED AS FOLLOWS:**

1) The monthly debt service payments on and reserve funds for the Bonds, as set forth in Exhibit A, shall be made to the MBC by an electronic transfer by the State Treasurer from the accounts set forth in Exhibit A in such form and at such directions as are provided by the MBC.

2) The Chairman, Secretary and Treasurer are hereby authorized to sign and execute all such documents as are necessary to facilitate the electronic transfer of the Bond debt service and reserve fund payments.

3) This resolution shall be effective immediately upon adoption.

Adopted this 14th day of July, 2009.

  
\_\_\_\_\_  
Chairman