# CITY OF CLARKSBURG

## Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) and Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA)

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**CITY OF CLARKSBURG**
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**(WEST VIRGINIA SRF PROGRAM)**
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**(WEST VIRGINIA SRF PROGRAM/ARRA)**

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CITY OF CLARKSBURG

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF CLARKSBURG AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF CLARKSBURG OF NOT MORE THAN $3,000,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA SRF PROGRAM), AND NOT MORE THAN $3,000,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA SRF PROGRAM/ARRA); 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 AN ARRA ASSISTANCE 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 ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF CLARKSBURG:

## ARTICLE I

## STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 16, Article 13 and Chapter 22C, Article 2 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. The City of Clarksburg (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Harrison 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, betterments and improvements to the existing public sewerage system of the Issuer, consisting of the improvements in the sewer collection system including installation

of 10" sewer line, new manholes and repair and replacement of manholes, abandonment of two lift stations, stabilization of the West Fork River bank and sewer line at 404 Hart Street, and installation of storm pipe, together with all appurtenant facilities (collectively, the "Project"), which constitute properties for the collection, transportation, treatment, purification, or disposal of liquid or solid wastes, residential sewage or 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 a portion of 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"), which administers the West Virginia Water Pollution Control Revolving Fund Program (the "SRF Program"), all pursuant to the Act.

D. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds, in the total aggregate principal amount of not more than $6,000,000 in two or more series, initially planned to be (i) the Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), in the aggregate principal amount of not more than $3,000,000 (the "Series 2009 A Bonds"); and (ii) the Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA), in the aggregate principal amount of not more than $3,000,000 (the "Series 2009 B Bonds") (collectively, the "Series 2009 Bonds"), to permanently finance a portion of the costs of acquisition and construction of the Project. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor and eligible under the Act; interest, if any, upon the Series 2009 Bonds prior to and during acquisition or construction and for a period not exceeding 6 months after completion of acquisition and construction of the Project; amounts which may be deposited in the Reserve Accounts (as hereinafter defined) for the Series 2009 Bonds; 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, including the SRF Administrative Fee (as hereafter defined); 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 Bonds and such other expenses as may be necessary or incidental to the financing herein authorized; the design, 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 Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

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

F. It is in the best interests of the Issuer that its Series 2009 A Bonds be sold to the Authority pursuant to the terms and provisions of an ARRA Assistance Agreement by and among the Issuer, the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and its Series 2009 B Bonds be sold to the Authority pursuant to the terms and provisions of an ARRA assistance

agreement by and among the Issuer, the Authority and the DEP, all in form satisfactory to the respective parties, to be approved hereby if not previously approved by resolution of the Issuer.

G. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2009 Bonds as to liens, pledge, source of and security for payment, being the Sewer Revenue Bonds, Series 1996 (West Virginia SRF Program), dated October 24, 1996, issued in the original aggregate principal amount of $6,484,283 (the "Series 1996 Bonds" or the "Prior Bonds").

The Series 2009 Bonds shall be issued on a parity with the Prior Bonds with respect to liens, pledge and source of and security for payment and in all respects. Prior to the issuance of the Series 2009 Bonds, the Issuer will obtain (i) a certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met, and (ii) the written consent of certain of the Holders of the Prior Bonds to the issuance of the Series 2009 Bonds on a parity with the Prior 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. The Issuer is in compliance with the covenants of the Prior Bonds and the Prior Ordinances.

H. 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 operation and maintenance of the System, the principal of and interest on the Issuer's Prior Bonds, and the Series 2009 Bonds and to make payments into all funds and accounts and other payments provided for herein.

I. The Issuer has complied with all requirements of West Virginia law and ARRA Assistance Agreement (hereinafter defined) relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Series 2009 Bonds, or will have so complied prior to issuance of any thereof, including, among other things, the approval of the Project and the financing thereof by the West Virginia Infrastructure and Jobs Development Council and the obtaining of a Certificate of Public Convenience and Necessity from the Public Service Commission of West Virginia.

J. Pursuant to the Act, the Issuer has heretofore established a Sanitary Board and the Sanitary Board has petitioned the Governing Body to issue the Series 2009 Bonds for the purposes set forth herein.

K. 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 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 Series 2009 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 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

"ARRA" means the American Recovery and Reinvestment Act of 2009.

"ARRA Assistance Agreement" means the ARRA Assistance Agreement heretofore entered, or to be entered into, by and among the Issuer, the Authority and the DEP, providing for the purchase of the Series 2009 A Bonds from the Issuer by the Authority, and 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.

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

"Authorized Officer" means the Mayor of the Issuer, or any other officer of the Issuer specifically designated by resolution of the Governing Body.

"Board" means the Sanitary Board of the Issuer.

"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 in whose name such Bond is registered.

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

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

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

"City Clerk", or "Clerk" means the City Clerk of the Issuer.

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

"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.

"Completion Date" means the completion date of the Project, as defined in the SRF Regulations.

"Consulting Engineers" means Thrasher Engineering, Inc., Clarksburg, 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 political subdivisions.

"Costs" or "Costs of the Project" means those costs described in Section 1.02D hereof to be a part of the costs of design, acquisition and construction of the Project as described in Section 1.02B hereof.

"DEP" means the West Virginia Department of Environmental Protection, or any other agency, board or department of the state that succeeds to the functions of the DEP.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

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

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

"Governing Body" means the Council 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 all rates, rents, fees, charges or other income received by the Issuer, or accrued to the Issuer, or any department, board, agency or instrumentality thereof in control of the management and operation of the System, from the operation of the System and all parts thereof, all as calculated in accordance with sound accounting practices.

"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.

"Issuer" means the City of Clarksburg, a municipal corporation and political subdivision of the State of West Virginia, in Harrison County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2009 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2009 A Bonds Reserve Account or the Series 2009 B Bonds 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 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.

"Operating Expenses" means the current expenses, paid or accrued, of operation and maintenance of the System and its facilities, and includes, without limiting the generality of the foregoing, the SRF Administrative Fee (as hereinafter defined), insurance premiums, salaries, wages and administrative expenses of the Issuer relating and chargeable solely to the System, the accumulation of appropriate reserves for charges not annually recurrent but which are such as may reasonably be expected to be incurred, and such other reasonable operating costs as are normally and regularly included under recognized accounting practices.

"Outstanding" when used with reference to Bonds or Prior Bonds and as of any particular date, describes all Bonds or Prior Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond or Prior Bond cancelled by the Bond Registrar or Registrar for 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 deemed to have been paid as provided in Article X hereof; (iv) any Prior Bond deemed to have been paid; and (v) 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 Parity 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 by the Issuer in the Supplemental Resolution with the written consent of the Authority and the DEP.

"Prior Bonds" means the Series 1996 Bonds.

"Prior Ordinance" means the ordinance of the Issuer authorizing the issuance of the Prior Bonds.

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

"Qualified Investments" means and includes 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 or Federal Savings and Loan Insurance Corporation, 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 or similar banking arrangements, fully secured by investments of the types described in paragraphs (a) through (e) above or fully insured by the FDIC, with member banks of the Federal Reserve system or 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, including, without limitation, authorized pools of investments operated by such State Board of Investments; and

(i) Obligations of states or political subdivisions or agencies thereof, the interest on which is excluded from gross income for federal income tax purposes, and which are rated at least "A" by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

"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 Prior Ordinance and continued hereby.

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

"Reserve Requirement" means, collectively, the respective amounts required to be on deposit in any Reserve Account.

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

"Series 1996 Bonds" means the Issuer's Sewer Revenue Bonds, Series 1996 (West Virginia SRF Program), dated October 24, 1996, issued in the original aggregate principal amount of $6,484,283.

"Series 2009 Bonds" means, collectively, the Series 2009 A Bonds and the Series 2009 B Bonds.

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

"Series 2009 A Bonds" means the Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), of the Issuer, authorized by this Ordinance.

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

"Series 2009 A 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 A Bonds in the then current or any succeeding year.

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

"Series 2009 B Bonds" means the Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA), of the Issuer, authorized by this Ordinance.

"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.

"Sinking Funds" means, collectively, the respective sinking funds established for the Prior Bonds and the Series 2009 Bonds.

"SRF Administrative Fee" means any administrative fee required to be paid under the ARRA Assistance Agreement for the Series 2009 Bonds.

"SRF Program" means the State's Water Pollution Control Revolving Fund Program, under which the Authority purchases the water pollution control revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of a capitalization grant award from the United States Environmental Protection Agency and funds of the State.

"SRF Regulations" means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

"State" means the State of West Virginia.

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

"Surplus Revenues" means the Gross Revenues not required by the Bond Legislation or the Prior Ordinance to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including, without limitation, the Sinking Funds, the Reserve Accounts and the Renewal and Replacement Fund.

"System" means the complete existing public sewerage system of the Issuer, as presently existing in its entirety or any integral part thereof, and shall include the Project and any further extensions, additions, betterments and improvements thereto hereafter acquired or constructed for the System from any sources whatsoever.

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

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.

## 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 not to exceed $6,000,000, 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 Series 2009 A Bonds and the Series 2009 B Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has received bids or will receive and will enter into contracts for the acquisition and construction of the Project, compatible with the financing plan submitted to the DEP.

The cost of the Project is estimated not to exceed $6,000,000, of which up to $3,000,000 will be obtained from proceeds of the Series 2009 A Bonds and up to $3,000,000 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 ARRA ASSISTANCE AGREEMENT

Section 3.01. Authorization of Bonds. For the purposes of paying a portion of the Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 2009 Bonds 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 Bonds of the Issuer. The Series 2009 Bonds shall be issued in two series, each as a single bond, designated respectively as "Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program)", in the principal amount of not more than $3,000,000, and "Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA)," in the principal amount of not more than $3,000,000, and all shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2009 Bonds remaining after funding of the Reserve Accounts (if funded from Bond proceeds) and capitalization of interest, if any, shall be deposited in or credited to the Series 2009 Bonds Construction Trust Funds established by Section 5.01 hereof.

Section 3.02. Terms of Bonds. The Series 2009 Bonds shall be issued in such principal amounts; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum, 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 a Supplemental Resolution or as specifically provided in the ARRA Assistance Agreement. The Series 2009 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, if any, on the Series 2009 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 Bonds shall initially be issued in the form of a single bond for each series, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of each series, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2009 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 and in denominations as determined by a Supplemental Resolution. Such Bonds shall be dated and shall bear interest as specified in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2009 Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the City Clerk. In case any one or more of the officers who shall have signed or sealed the Series 2009 Bonds shall cease to be such officer of the Issuer before the Series 2009 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 Series 2009 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. Authentication and Registration. No Series 2009 Bonds 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 Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2009 Bonds 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 Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2009 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 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 Bonds remain outstanding, the Issuer, through the Bond Registrar or its agent, shall keep and maintain books for the registration and transfer of such Bonds.

The registered Series 2009 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 or transferring the registered Series 2009 Bonds are exercised, all Series 2009 Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2009 Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Series 2009 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 any Series 2009 Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2009 Bonds or, in the case of any proposed redemption of such 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 Bonds 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 Bonds shall not, in any event, be or constitute an 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 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2009 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 on the Series 2009 Bonds shall be secured by a first lien on the Net Revenues derived from the System, on a parity with each other and with the lien on the Net Revenues in favor of the Holders of the Prior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest, if any, on and other payments for the Bonds, and to make all other payments hereinafter set forth, 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 Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2009 Bonds to the original purchasers upon receipt of the documents set forth below:

A. If other than the Authority, a list of the names in which the Series 2009 Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;

B. 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 Bonds to the original purchasers;

C. An executed and certified copy of the Bond Legislation;

D. An executed copies of the ARRA Assistance Agreement; and

E. The unqualified approving opinions of bond counsel on the Series 2009 Bonds.

Section 3.10. Form of Bonds. The text of the Series 2009 Bonds shall be in substantially the following 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 A BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF CLARKSBURG
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)

No. AR-_____ $_____

KNOW ALL MEN BY THESE PRESENTS: That on the ___ day of _____, 2009, the CITY OF CLARKSBURG, a municipal corporation and political subdivision of the State of West Virginia in Harrison 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 of _____ 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, 20___, to and including _____ 1, 20___ as set forth on the "Debt Service Schedule" attached as Exhibit B hereto and incorporated herein by reference. The SRF Administrative Fee (as defined in the hereinafter described Bond Legislation) shall be payable quarterly on March 1, June 1, September 1, and December 1 of each year, commencing _____ 1, 20___, as set forth on Exhibit B attached hereto.

This Bond shall bear no interest. 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").

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 Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement (the "ARRA Assistance Agreement") by and among the Issuer, the Authority, and the DEP, dated _____, 2009.

This Bond is issued (i) to pay the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); (ii) funding the Series 2009 A 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 extensions, 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 13 and Chapter 22 C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on _____, 2009, and a Supplemental Resolution and Conformed Ordinance 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, TO THE ISSUER'S (I) SEWER REVENUE BONDS, SERIES 1996 (WEST VIRGINIA SRF PROGRAM), DATED OCTOBER 24, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $6,484,283 (THE "SERIES 1996 BONDS" OR THE "PRIOR BONDS"), AND (II) THE SEWER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA SRF PROGRAM/ARRA), DATED _____, 2009, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $_____, (THE "SERIES 2009 B BONDS"), ISSUED SIMULTANEOUSLY HEREWITH.

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 Series 1996 Bonds and the Series 2009 B Bonds, and from monies in the Reserve Account created under the Bond Legislation for the Series 2009 A Bonds (the "Series 2009 A Bonds Reserve Account"), and unexpended proceeds of the Series 2009 A Bonds. Such Net Revenues shall be sufficient to pay all operating expenses of the System and the principal of and interest on 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 an 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, except from said special fund provided from the Net Revenues, the monies in the Series 2009 A Bonds Reserve Account and unexpended proceeds of the Series 2009 A 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 Series 2009 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2009 A Bonds including the Series 2009 B Bonds and the Prior Bonds; provided however, that, so long as there exists in the Series 2009 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Series 2009 A 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 or junior and subordinate to the Bonds, including the Series 2009 B Bonds and the Prior 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 Registrar (as defined in the Bond Legislation) 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 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 in 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 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.

IN WITNESS WHEREOF, the CITY OF CLARKSBURG has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk, has caused this Bond to be dated the day and year first written above.

[SEAL]

_____
Mayor

ATTEST:

_____
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2009 A 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

| AMOUNT | DATE | AMOUNT | DATE |
|---|---|---|---|
| (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:

_____

(FORM OF SERIES 2009 B BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF CLARKSBURG
SEWER REVENUE BONDS, SERIES 2009 B
(WEST VIRGINIA SRF PROGRAM/ARRA)

No. BR-_____ $_____

KNOW ALL MEN BY THESE PRESENTS: The _____ day of _____ _____, 2009, that the CITY OF CLARKSBURG, a municipal corporation and political subdivision of the State of West Virginia in Harrison 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 of _____ 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__, to an including _____ 1, 20__ as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. This Bond shall not be subject to the SRF Administrative fee (as defined in the hereinafter describe Bond Legislation).

This Bond shall bear no interest. Principal installments of this Bond are 100% forgivable as set forth in the ARRA Assistance Agreement.

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 Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement (the "ARRA Assistance Agreement") by and among the Issuer, the Authority and the DEP, dated _____ _____, 2009.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements 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 extensions,

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 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on _____, 2009, and a Supplemental Resolution and Conformed Ordinance 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, TO THE ISSUER'S (I) SEWER REVENUE BONDS, SERIES 1996 (WEST VIRGINIA SRF PROGRAM), DATED OCTOBER 24, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $6,484,283 (THE "SERIES 1996 BONDS" OR THE "PRIOR BONDS"), AND (II) SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA SRF PROGRAM), DATED _____, 2009, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $_____, (THE "SERIES 2009 A BONDS"), ISSUED SIMULTANEOUSLY HEREWITH.

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 Series 1996 Bonds and the Series 2009 A Bonds, and from monies in the Reserve Account created under the Bond Legislation for the Series 2009 B Bonds (the "Series 2009 B Bonds Reserve Account"), and unexpended proceeds of the Series 2009 B Bonds. Such Net Revenues shall be sufficient to pay all operating expenses of the System and the principal of and interest on 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 an 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, 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 Series 2009 B 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 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 Series 2009 A Bonds and the Prior Bonds; provided however, that, so long as 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 Series 2009 B 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 or junior and subordinate to the Bonds, including the Series 2009 A Bonds and the Prior 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 Registrar (as defined in the Bond Legislation) 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 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 in 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 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.

IN WITNESS WHEREOF, the CITY OF CLARKSBURG has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk, has caused this Bond to be dated the day and year first written above.

[SEAL]

_____
Mayor

ATTEST:

_____
City Clerk

## 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

| AMOUNT | DATE | AMOUNT | DATE |
|---|---|---|---|
| (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 ARRA Assistance Agreement. The Series 2009 Bonds shall be sold to the Authority, pursuant to the terms and conditions of the ARRA Assistance Agreement. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the ARRA Assistance Agreement in the forms attached hereto as "EXHIBIT A" and made a part hereof, and the City Clerk is directed to affix the seal of the Issuer, attest the same and deliver them to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The ARRA Assistance Agreement, including all schedules and exhibits attached thereto, are hereby approved and incorporated in this Bond Legislation.

Section 3.12. Filing of Amended Schedule. Within 60 days following the Completion Date, the Issuer will file with the Authority and the DEP a schedule for the Series 2009 Bonds, the form of which will be provided by the DEP, 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 with (or continued if previously established by the Prior Ordinance) and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank or the Issuer and from each other:

(1) Revenue Fund (established by Prior Ordinance);

(2) Renewal and Replacement Fund (established by Prior Ordinance); and

(3) Series 2009 Bonds Construction Trust Fund.

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

(1) Series 1996 A Bonds Sinking Fund (established by Prior Ordinance);

(2) Series 1996 A Bonds Reserve Account (established by Prior Ordinance);

(3) Series 2009 A Bonds Sinking Fund;

(4) Series 2009 A Bonds Reserve Account;

(5) Series 2009 B Bonds Sinking Fund; and

(6) 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 and all parts thereof shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Prior Ordinance and 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 the Prior Ordinance and in this Bond Legislation. All monies in the Revenue Fund shall be disposed of only in the following manner and order of priority:

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

(2) 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 Series 1996 A Bonds Sinking Fund, the amount required by the Prior Ordinance for the payment of interest on the Series 1996 A Bonds.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Series 1996 A Bonds Sinking Fund, the amount required by the Prior Ordinance for payment of principal of the Series 1996 A Bonds; (ii) commencing 4 months prior to the first date of payment of principal of the Series 2009 A Bonds, for deposit in the Series 2009 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and come due on the Series 2009 A 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 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payment 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; and (iii) 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 come 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 payment 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.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Series 1996 A Bonds Reserve Account, the amount required by the Prior Ordinance; (ii) commencing 4 months prior to the first date of payment of principal of the Series 2009 A Bonds, if not fully funded upon issuance of the Series 2009 A Bonds, for deposit in the Series 2009 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2009 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2009 A 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 A Bonds Reserve Requirement; and (iii) commencing 3 months prior to the first date of payment of principal of the Series 2009 B Bonds, 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; 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.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank (as required in the Prior Ordinance and not in addition thereto), for deposit in the Renewal and Replacement Fund, a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Account. 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 Account (except to the extent such deficiency exists because the required payments into such accounts have not, as of the date of determination of a deficiency, funded such accounts to the maximum extent required hereof) shall be promptly eliminated with monies from the Renewal and Replacement Fund.

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

All investment earnings on monies in the Series 2009 A Bonds Sinking Fund, the Series 2009 A Bonds Reserve Account, the Series 2009 B Bonds Sinking Fund and the Series 2009 B Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Series 2009 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 Bonds, if any, respectively, and then to the next ensuing principal payment due thereon, all on a pro rata basis.

Any withdrawals from the Series 2009 A Bonds Reserve Account or the Series 2009 B Bonds Reserve Account which result in a reduction in the balance of such accounts to below the respective Reserve Requirements 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, all on a pro rata basis.

As and when additional Bonds ranking on a parity with the Series 2009 Bonds are issued, provision shall be made for additional payments into the respective sinking fund 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 account in an amount equal to the requirement thereof.

The Issuer shall not be required to make any further payments into the Series 2009 A Bonds Sinking Fund, the Series 2009 A Bonds Reserve Account, 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 respective aggregate principal amount of the Series 2009 Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue, if any, until the maturity thereof.

Principal, interest or reserve payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Series 1996 A Bonds, the Series 2009 A Bonds, and the Series 2009 B Bonds in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2009 A Bonds Sinking Fund, the Series 2009 A Bonds Reserve Account, 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 A Bonds Sinking Fund, the Series 2009 A Bonds Reserve Account, 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 A Bonds Sinking Fund, the Series 2009 A Bonds Reserve Account, 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 Bonds, respectively, 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 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. The Issuer shall also 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 SRF Administrative Fee, if any, as set forth in the ARRA Assistance Agreement for the Series 2009 Bonds.

D. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the ARRA Assistance 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 respective parties 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 on a parity and pro rata with respect to the Series 2009 Bonds and the Series 1996 A Bonds all in accordance with the respective principal amounts outstanding before being applied to any other payments hereunder.

H. All remittances made by the Issuer to the Commission and the Depository Bank shall clearly identify the fund or account into which each amount is to be deposited.

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

J. All Tap Fees shall be deposited in the Revenue Fund and may be used for any lawful purpose of the System.

## ARTICLE VI

## APPLICATION OF BOND PROCEEDS

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

A. From the proceeds of the Series 2009 A Bonds, there shall first be deposited with the Commission in the Series 2009 A Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest.

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

C. As the Issuer receives advances of the monies derived from the sale of the Series 2009 A Bonds, such monies shall be deposited with the Depository Bank in the Series 2009 Bonds Construction Trust Fund and applied solely to payment of the 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 A Bonds.

D. 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.

E. Next, 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.

F. As the Issuer receives advances of the monies derived from the sale of the Series 2009 B Bonds, such monies shall be deposited with the Depository Bank in the Series 2009 Bonds Construction Trust Fund and applied solely to payment of the 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.

G. 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 A Bonds and Series 2009 B Bonds shall be expended as approved by the DEP.

Section 6.02. Disbursements of Bond Proceeds.

On or before the Closing Date, the Issuer shall have delivered to the Authority and the DEP a report listing the specific purposes for which the proceeds of the Series 2009 Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly. Invoices for which repayment from the Series 2009 Bonds Construction Trust Fund will be sought must be first approved by the Issuer.

Except as provided in Section 6.01 hereof, disbursements from the Series 2009 Bonds Construction Trust Fund shall be made only after submission to, and approval from, the Authority and the DEP of the following:

(1) a completed and signed "Payment Requisition Form," a form of which is attached to the ARRA Assistance Agreement, in compliance with the construction schedule; and

(2) a certificate, signed by an Authorized Officer, stating that:

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

(B) 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;

(C) Each of such costs has been otherwise properly incurred; and

(D) Payment for each of the items proposed is then due and owing.

Pending such application, monies in the Series 2009 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 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 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 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 Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of the Series 2009 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2009 Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds. The payment of the debt service on the Series 2009 Bonds issued hereunder shall be secured equally and ratably by a first lien on the Net Revenues derived from the System, on a parity with each other and with the lien on the Net Revenues in favor of the Holders of the Series 1996 A Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds, and to make all other payments hereinafter set forth, are hereby irrevocably pledged to such payments as they become due.

Section 7.04. 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 ARRA Assistance 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 in the sewer rate ordinance of the Issuer enacted October 5, 2006, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2009 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 ARRA Assistance Agreement. In the event the schedule of rates and charges initially established for the System in connection with the Series 2009 Bonds shall prove to be insufficient to produce the amounts required by this Bond Legislation and the ARRA Assistance 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 and charges and take all such actions necessary to provide funds sufficient to produce the amounts required by this Bond Legislation and the ARRA Assistance 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 Ordinance and with the written consent of the Authority.

So long as the Series 2009 Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority and the DEP, 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 A Bonds Sinking Fund and the Series 2009 B Bonds Sinking Fund, respectively, pro rata with respect to the principal amount of each of the Bonds then Outstanding, 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, if any, on the Series 2009 A Bonds and the Series 2009 B Bonds in accordance with Article X hereof. Any balance remaining after the payment of the 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, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of $10,000, the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and 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, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of $10,000 but not in excess of $50,000, the Issuer shall first, determine, upon consultation with a professional engineer, that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds of any such sale shall be deposited in the Sinking Fund for repayment of the Bonds. The payment of such proceeds into the Renewal and Replacement Fund and Sinking Fund shall not reduce the amounts required to be paid into such account by other provisions of 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 same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of $50,000 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 the 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 Series 2009 Bonds. All obligations issued by the Issuer after the issuance of the Series 2009 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 Series 2009 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 Series 2009 Bonds, and the interest, if any, thereon, upon any of the income and revenues of the System pledged for payment of the Series 2009 Bonds and the interest, if any, thereon in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority and the DEP 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 Project, 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 Ordinance shall be applicable. In addition, no additional Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2009 Bonds pursuant to this Ordinance, without the prior written consent of the Authority and the DEP and without complying with the conditions and requirements herein provided (unless less restrictive than the provisions of the Prior Ordinance).

No such additional Parity Bonds shall be issued except for the purposes of financing the costs of the design, acquisition and construction of extensions, additions, betterments or improvements to the System, refunding all or a portion of one or more series of Bonds issued pursuant hereto, or to pay claims which may exist against the revenues or facilities of the System or all of such purposes.

So long as the Series 1996 A Bonds, and the Series 2009 Bonds are outstanding, no Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the City Clerk a written statement by Independent Certified Public Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustment 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 additional Parity Bonds, plus the estimated average increased annual Net Revenues 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 be not less than 115%, of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

(1) The Bonds then Outstanding;

(2) Any additional Parity Bonds theretofore issued pursuant to the provisions contained in the Prior Ordinance and this Bond Legislation then Outstanding; and

(3) The additional Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues 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 enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the date of 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 City Clerk 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, as stated in a certificate, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which has expired (without successful appeal) prior to the issuance of such Parity Bonds.

All covenants and other provisions of this Ordinance (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 theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, 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 of one series over any other Bond of the same series. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Ordinance required for and on account of such Parity Bonds, in addition to the payments required for the Bonds theretofore issued pursuant to this Ordinance.

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 Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the 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 the lien on and source of and security for payment from such revenues, with the Bonds.

No Parity Bonds shall be issued any time, however, unless all the payments into the respective funds and accounts provided for in this Ordinance and the Prior Ordinance with respect to the

Bonds then Outstanding, and any other payments provided for in this Ordinance and the Prior Ordinance, shall have been made in full as required to the date of issuance of such Parity Bonds, and the Issuer shall then be in full compliance with all the covenants, agreements and terms of this Ordinance and the Prior Ordinance.

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 designing, acquiring, constructing and installing the Project. The Issuer shall permit the Authority and the DEP, 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 DEP such documents and information as they may reasonably require in connection with the design, 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 DEP, 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 and the Act. 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 Issuer. The Issuer 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 Issuer shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Authority and the DEP, or any other original purchaser of the Series 2009 Bonds and shall mail in each year to any Holder or Holders of the Series 2009 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 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 thereof, and the Single Audit Act, or any successor thereof), and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2009 Bonds and shall submit the report to the Authority and the DEP or any other original purchaser of the Series 2009 Bonds. Such audit report submitted to the Authority and the DEP shall include a statement that the Issuer is in compliance with the terms and provisions of the Act and the ARRA Assistance 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 ARRA Assistance 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 DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in the ARRA Assistance Agreement for the Series 2009 Bonds or any Exhibit thereto or as promulgated from time to time.

The Issuer shall permit the Authority or the DEP, 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 DEP, 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 DEP with respect to the System pursuant to the Act.

Section 7.09. Rates. Prior to the issuance of the Series 2009 Bonds, rates or charges for the use of the services and facilities of the System will be fixed and established, all in the manner and form required by law, and a copy of such rates and charges so fixed and established shall at all times be kept on file in the office of the City Clerk of the Issuer, which copy will be open to inspection by all interested parties. The schedule or schedules 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 and accounts created hereunder. Such schedule or schedules of rates and charges shall be revised from time to time, 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 or schedules of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System, to meet the coverage requirements set forth in the Prior Ordinance so long as the Prior Bonds are outstanding and thereafter, (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, if any, on the Series 2009 Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with, or subordinate to, the Series 2009 Bonds including the Prior Bonds; provided that, in the event that, an amount equal to or in excess of the Reserve Requirement is on deposit in the Reserve Accounts and any reserve accounts for obligations on a parity with the Series 2009 Bonds are funded at least at the requirement therefor, such sum need only equal 110% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2009 Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with, or subordinate to, the Series 2009 Bonds.

The Issuer hereby covenants to commence enactment of such ordinance or ordinances as shall be required to increase the rates and charges for the services and facilities of the System within 30 days following a determination of the Independent Certified Public Accountant that less than the above-required coverage exists or in the event that the annual audit report shows less than the above-required coverage, such increase to provide rates and charges sufficient to produce such required coverage.

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 DEP 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 to the Authority and the DEP and to any Holder of any 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, within 30 days of adoption thereof 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 Authority, the DEP and any Holder of any Bonds or anyone acting for and on behalf of such Holder.

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 ARRA Assistance Agreement, and forward a copy of such report to the Authority and the DEP 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 ARRA Assistance 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 DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the DEP 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 DEP 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 DEP 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.

The Issuer shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a "Performance Certificate," a form of which is attached to the ARRA Assistance Agreement for the Series 2009 Bonds as Exhibit A, to the DEP within 60 days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to the DEP when the Project is 90% completed. The Issuer shall at all times provide operation and maintenance of the System in compliance with all state and federal standards.

The Issuer shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator to operate the System during the entire term of the ARRA Assistance Agreement. The Issuer shall notify the DEP in writing of the certified operator employed at the 50% completion stage.

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 30 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, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of either 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. If the water facilities are not owned by the Issuer, the Issuer shall enter into a termination agreement with the water provider of such water, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

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 of either 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 Series 2009 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. In the event of any damage to or destruction of any portion of the System, 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 ARRA Assistance 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 $1,000,000 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 amount of any 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 or the Governing Body 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 DEP. In the event the ARRA Assistance Agreement so requires, such insurance shall be made payable to the order

of the Authority, the DEP, the Issuer, the prime contractor and all subcontractors, as their interests may appear. The Issuer shall verify such insurance prior to commencement of construction.

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 and Operation 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 West Virginia Infrastructure and Jobs Development 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 Bonds required by State law, with all requisite appeal periods having expired without successful appeal, except as otherwise provided in Section 1.02(I).

Section 7.18. Compliance with the ARRA Assistance Agreement and the Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the ARRA Assistance Agreement and the Act. Notwithstanding anything herein to the contrary, the Issuer will provide the DEP 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 DEP 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. [RESERVED}.

Section 7.20. Securities Law 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. Contracts; Change Orders; Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2009 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 DEP for written approval. The Issuer shall obtain the written approval of the DEP before expending any proceeds of the Series 2009 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 DEP before expending any proceeds of the Series 2009 Bonds made available due to bid or construction or project underruns.

C. The Issuer shall list the funding provided by the DEP and the Authority 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.

Section 7.22. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2009 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 Bonds and shall be on a parity with the statutory mortgage lien in favor of the Holders of the Series 1996 A Bonds.

## 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 or Depository Bank, or such other bank or national banking association, as the case may be, 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 as 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 Series 2009 Bonds are Outstanding and as long thereafter as necessary to comply with the Code and to assure the exclusion of interest, if any, on the Series 2009 Bonds from gross income for federal income tax purposes.

Section 8.02. Certificate 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 Bonds as a condition to issuance of the Series 2009 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 Bonds as may be necessary in order to maintain the status of the Series 2009 Bonds as governmental 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 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 or the DEP, as the case may be, from which the proceeds of the Series 2009 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 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 Bond Legislation.

The Issuer shall annually furnish to the Authority information with respect to the Issuer's use of the proceeds of the Series 2009 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 Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on any Series 2009 Bonds; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions relating to the Series 2009 Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2009 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; or

(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 Ordinance.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner or Holder 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 or Bondholders 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 or Bondholders 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 Bonds shall be on a parity with those of the Holders of the Series 1996 A 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 herein above 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 said 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 Series 2009 A Bonds. If the Issuer shall pay, or there shall otherwise be paid, to the Registered Owners of the Series 2009 A Bonds, the principal of and interest, if any, 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 Owners of the Series 2009 A 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, if any, on the Series 2009 A Bonds from gross income for federal income tax purposes.

Section 10.02. Payment of Series 2009 B Bonds. If the Issuer shall pay, or there shall otherwise be paid, to the Registered Owners of all of the Series 2009 B Bonds, the principal of and interest, if any, 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 Owners 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, if any, on the Series 2009 B Bonds from gross income for federal income tax purposes.

## ARTICLE XI

## MISCELLANEOUS

Section 11.01. American Recovery and Reinvestment Act. If the Issuer is notified by DEP that one or more of its Bonds will be purchased by the Authority on behalf of DEP using funding from the ARRA, then the terms and conditions contained in the ARRA Assistance Agreement required by the ARRA will be incorporated herein and made a part of this Bond Legislation as if specifically set forth herein. The Issuer will follow the requirements set forth by DEP and will provide ongoing reporting and information as is required by DEP and the ARRA.

Section 11.02. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2009 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2009 Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2009 Bonds shall be made without the consent in writing of the Registered Owners of the Series 2009 Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of the Series 2009 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 Series 2009 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, if any, on the Series 2009 Bonds from gross income of the holders thereof.

Section 11.03. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the 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 11.04. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance 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 Ordinance, the Supplemental Resolution or the Series 2009 Bonds.

Section 11.05. 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 11.06. Conflicting Provisions Repealed; Prior Ordinance. All ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed, provided that, in the event of any conflict between this Ordinance

and the Prior Ordinance, the Prior Ordinance shall control (unless less restrictive), so long as the Prior Bonds are outstanding.

Section 11.07. 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 Ordinance 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 Mayor, the City Clerk and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.08. Effective Date. This Ordinance shall take effect immediately following public hearing hereon.

Section 11.09. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in the *Clarksburg Exponent/Telegram*, a newspaper of general circulation in the City of Clarksburg, no newspaper being published therein, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2009 Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

| | |
|---|---|
| Passed on First Reading: | April 2, 2009 |
| Passed on Second Reading: | April 16, 2009 |
| Passed on Final Reading Following Public Hearing: | May 7, 2009 |

Dan Thompson

Mayor

CERTIFICATION

Certified a true copy of an Conformed Ordinance duly enacted by the Governing Body of the CITY OF CLARKSBURG on the 7th day of May, 2009, as supplemented by Supplemental Resolution adopted June 18, 2009.

Dated: July 8, 2009.

[SEAL]

Annette M. Wright
City Clerk

EXHIBIT A

ARRA Assistance Agreement included in bond transcript as Documents 3

06.17.09
155510.00002

CITY OF CLARKSBURG

Sewer Revenue Bonds, Series 2009 A
(West Virginia SRF Program); and
Sewer Revenue Bonds, Series 2009 B
(West Virginia SRF Program/ARRA)

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 A (WEST VIRGINIA SRF PROGRAM) AND SEWER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA SRF PROGRAM/ARRA) OF THE CITY OF CLARKSBURG; APPROVING AND RATIFYING THE ARRA ASSISTANCE 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 City council (the "Governing Body") of the City of Clarksburg (the "Issuer" or "Governmental Agency") has duly and officially adopted and enacted a bond ordinance, effective May 7, 2009 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF CLARKSBURG AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF CLARKSBURG OF NOT MORE THAN $3,000,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA SRF PROGRAM), AND NOT MORE THAN $3,000,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA SRF PROGRAM/ARRA); 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 AN ARRA ASSISTANCE 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 Ordinance when used herein;

WHEREAS, the Bond Ordinance provides for the issuance of the Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) in an aggregate principal amount not to exceed $3,000,000 (the "Series 2009 A Bonds") and Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA) in an aggregate principal amount not to exceed $3,000,000 (the "Series 2009 B Bonds") (collectively, the "Series 2009 Bonds");

WHEREAS, the Bond Ordinance has authorized the execution and delivery of an ARRA Assistance Agreement relating to the Series 2009 Bonds, including all schedules and exhibits attached thereto, by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection (the "DEP"), (the "ARRA Assistance Agreement"), all in accordance with Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"); and in the Bond Ordinance it is provided that the form of the ARRA Assistance Agreement and the exact principal amounts, dates, maturity dates, redemption provisions, interest rates, interest and principal payment dates, sale prices and other terms of the Series 2009 Bonds should be established by a supplemental resolution pertaining to the Series 2009 Bonds; and that other matters relating to the Series 2009 Bonds be herein provided for;

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

WHEREAS, the Series 2009 A Bonds and the Series 2009 B Bonds are proposed to be purchased by the Authority pursuant to the ARRA Assistance Agreement; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the ARRA Assistance 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 and the sale prices of the Series 2009 Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Series 2009 Bonds be herein provided for;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF CLARKSBURG:

Section 1. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the following bonds of the Issuer:

A. Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), of the Issuer, originally represented by a single Bond, numbered AR-1, in the original aggregate principal amount of $1,000,000. The Series 2009 A Bonds shall be dated the date of delivery thereof, shall finally mature June 1, 2030, and shall bear no interest. The principal of the Series 2009 A Bonds shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2010, to and including June 1, 2030, and in the amounts as set forth in the "Schedule Y" attached to the ARRA Assistance Agreement and incorporated in and made a part of the Series 2009 A Bonds. The Series 2009 A Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the ARRA Assistance Agreement Agreement, so long as the Authority shall be the registered owner of the Series 2009 A Bonds. The Issuer does hereby approve and shall pay the SRF Administrative Fee equal to 1% of the principal amount of the Series 2009 A Bonds set forth in "Schedule Y" attached to the ARRA Assistance Agreement.

B. Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA), 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 and shall bear no interest. The principal of the Series 2009 B Bonds shall be 100% forgiven as set forth in ARRA Assistance Agreement. The Series 2009 B Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the redemption premium, if any, and otherwise in compliance with the ARRA Assistance Agreement, so long as the Authority shall be the registered owner of the Series 2009 B Bonds. The Series 2009 B Bonds are not subject to the SRF Administrative Fee.

Section 2. All other provisions relating to the Series 2009 Bonds and the text of each series of the Series 2009 Bonds shall be in substantially the forms provided in the Bond Ordinance.

Section 3. The Issuer does hereby authorize, approve, ratify and accept the ARRA Assistance Agreement, a copy of which is incorporated herein by reference, and the execution and delivery of the ARRA Assistance Agreement by the Mayor, 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 ARRA Assistance Agreement and in the applications to the DEP and the Authority. The price of the Series 2009 Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Series 2009 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 Series 2009 Bonds under

the Bond Ordinance and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Series 2009 Bonds, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Mayor, 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 Series 2009 Bonds under the Bond Ordinance.

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

Section 8. Series 2009 A Bonds proceeds in the amount of $50,000 shall be deposited in the Series 2009 A Bonds Reserve Account.

Section 10. Series 2009 B Bonds proceeds in the amount of $-0- shall be deposited in the Series 2009 B Bonds Reserve Account.

Section 11. The balance of the proceeds of the Series 2009 A Bonds and the Series 2009 B Bonds shall be deposited in or credited to the Series 2009 Bonds Construction Trust Funds for payment of the costs of the Project, including, without limitation, costs of issuance of the Series 2009 Bonds and related costs.

Section 12. The Mayor and the Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Series 2009 Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Series 2009 Bonds may be delivered on or about July 8, 2009, to the Authority pursuant to the ARRA Assistance Agreement.

Section 13. The acquisition and construction of the Project and the financing thereof in part with proceeds of the Series 2009 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 14. The Issuer does hereby ratify, approve and accept all contracts relating to the financing, acquisition and construction of the Project.

Section 15. The Issuer hereby determines to invest all monies in the funds and accounts established by the Bond Ordinance 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 monies to be invested in such repurchase agreements or time accounts until further directed in writing by the Issuer. Monies in the Sinking Funds and the Reserve Accounts for the Series 2009 Bonds, shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 16. The Issuer shall serve the additional customers at the location(s) as set forth in Certificate of Engineer. The Issuer shall not reduce the amount of additional customers served by the project without the prior written approval of the Board of the Water Development Authority (the "Authority"). Following completion of the Project the Issuer shall certify to the Authority the number of customers added to the System.

Section 17 The Issuer shall perform an annual maintenance audit which maintenance audit shall be submitted to the Authority and the Public Service Commission of West Virginia.

Section 18. The Issuer hereby approves and ratifies the first draw and authorizes the Treasurer of the Sanitary Board to review and approve all project draw down requests.

Section 19. The Issuer hereby approves the Specials Conditions of the ARRA Assistance Agreement attached hereto as Exhibit A.

Section 20. The Issuer hereby approves the Conformed Bond Ordinance attached hereto as Exhibit B.

Section 21. This Supplemental Resolution shall be effective immediately following adoption hereof.

[Remainder of Page Intentionally Blank]

Adopted this 18th day of June, 2009.

Dan Thompson

Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of the City of Clarksburg on the 18th day of June, 2009.

Dated: July 8, 2009.

[SEAL]

City Clerk

06.17.09
155510.00002

## EXHIBIT A

## SPECIAL CONDITIONS

A. PUBLIC RELEASE REQUIREMENT – The Local Government agrees to include, when issuing statements, press releases, requests for proposals, bid solicitations, groundbreaking or project dedication program documents and other documents describing projects or programs funded in whole or in part with Federal money, (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

B. AUDIT REQUIREMENT (Supplement to Article IV 4.1 (b) (xi)) – Effective October 1, 2003, the Local Government that receives $500,000 or more (in federal funds) in a fiscal year must obtain audits in accordance with the Single Audit Act and the applicable OMB Circular or any successor thereto. Financial statement audits are required once all funds have been received by the Local Government.

C. BUY AMERICAN CERTIFICATION – The Local Government shall cause the contractor(s) to comply with, and provide certification of, the Buy American provisions of the ARRA in accordance with final guidance from the EPA.

D. ASSET MANAGEMENT – The Local Government shall develop and implement an asset management plan in accordance with guidelines issued by DEP and is approved by DEP.

E. CONTRACTS – The Local Government shall enter into contracts or commence construction by February 17, 2010.

F. LOGO – The Local Government must display the ARRA logo in a manner that informs the public that the project is an ARRA investment.

G. LOBBYING - The Local Government shall comply with Title 40 CFR Part 34, New Restrictions on Lobbying and shall submit certification and disclosure forms as required by DEP.

H. PURCHASING REQUIREMENTS – The Local Government shall comply with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds $10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was $10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

I. SUSPENSION AND DEBARMENT – The Local Government shall comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding

Transactions (Doing Business with Other Persons). To the extent required by DEP, the Local Government shall provide certifications as to compliance.

J. REPORTING – The Local Government shall comply with all requests for data related to the use of the funds provided under this agreement, including the information required in section 1512 of ARRA when requested by DEP.

K. INSPECTOR GENERAL REVIEWS – The Local Government shall allow any appropriate representative of the Office of US Inspector General to (1) examine its records relating to the Project and this ARRA Assistance Agreement and (2) interview any officer or employee of the Local Government.

L. FALSE CLAIMS – The Local Government must promptly refer to EPA's Inspector General any credible evidence that a principal, employee, agent, sub-grantee contractor, subcontractor, loan recipient, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this ARRA Assistance Agreement.

M. LIMIT ON FUNDS – The Local Government shall not use funds for particular activities for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

N. WAGE RATES – The Local Government shall require that all laborers and mechanics employed by its contractors and subcontractors be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor (DOL) in accordance with subchapter IV of chapter 32 of title 40, United States Code. The Local Government must require that contractors and subcontractors obtain wage determinations from DOL and comply with DOL guidance and regulations implementing wage rate requirements applicable to ARRA funds.

O. OFFICE OF MANAGEMENT AND BUDGET (OMB) GUIDANCE – The Local Government acknowledges and agrees that this ARRA Assistance is subject to all applicable provisions of implementing guidance for the American Recovery and Reinvestment Act of 2009 issued by the United States Office of Management and Budget, including the Initial Implementing Guidance for the American Recovery and Reinvestment Act (M-09-10) issued on February 18, 2009 and available on www.recovery.gov, and any subsequent guidance documents issued by OMB.

P. DISADVANTAGED BUSINESS ENTERPRISE – Pursuant to 40 CFR, Section 33.301, the Local Government agrees to make good faith efforts whenever procuring construction, equipment, services and supplies, and to require that prime contractors also comply. The Local Government shall provide DEP with MBE/WBE participation reports semi-annually.

Q. CIVIL RIGHTS – The Local Government shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements. The Local Government shall also comply with Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in

employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.

R. BOND DESIGNATION – Each Local Bond funded by ARRA funds shall be designated "Series [2009] B" and shall contain "(WVCWSRF Program/ARRA)" in the bond name.

S. USER RATES – The Local Government shall covenant that it will not reduce its approved or enacted customer rates for at least eighteen months after completion of the Project or until such time as a cost of service study has been completed establishing the actual operation and maintenance expenses.

EXHIBIT B

CONFORMED BOND ORDINANCE

(See Tab 1 of Transcript)

SRF-ARRA
(04/02/09)

# ARRA ASSISTANCE AGREEMENT

THIS WATER POLLUTION CONTROL REVOLVING FUND ARRA ASSISTANCE AGREEMENT (the "ARRA Assistance Agreement"), made and entered into in several counterparts, by and among the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), the WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION (the "DEP"), and the local government designated below (the "Local Government").

CITY OF CLARKSBURG (C-544319)
(Local Government)

W I T N E S S E T H:

WHEREAS, the United States Congress under Title VI of the federal Clean Water Act, as amended (the "Clean Water Act"), has provided for capitalization grants to be awarded to states for the express purpose of establishing and maintaining state water pollution control revolving funds for the planning, design, construction, acquisition and/or improvement of wastewater treatment facilities;

WHEREAS, the United States Congress has provided additional capitalization grant funding under the Clean Water Act through the American Recovery and Reinvestment Act of 2009 (the "ARRA");

WHEREAS, pursuant to the provisions of Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (the "Act"), the State of West Virginia (the "State") has established a state water pollution control revolving fund program (the "Program") to direct the distribution of loans to particular local governments pursuant to the Clean Water Act and the ARRA;

WHEREAS, under the Act the DEP is designated the instrumentality to enter into capitalization agreements with the United States Environmental Protection Agency ("EPA") to accept capitalization grant awards (U.S. General Services Administration; Catalog of Federal Domestic Assistance, 32nd Edition § 66.458 (1998)) and DEP has been awarded capitalization grants to partially fund the Program;

WHEREAS, the ARRA provides that at least fifty percent (50%) of the funds provided through the capitalization grant be provided as negative interest loans or principal forgiveness (the "ARRA Assistance");

WHEREAS, under the Act and under the direction of DEP, the Authority has established a permanent perpetual fund known as the "West Virginia Water Pollution Control Revolving Fund" (hereinafter the "Fund");

WHEREAS, pursuant to the Act, the Authority and DEP are empowered to make loans from the Fund to local governments for the acquisition or construction of wastewater treatment projects by such local governments, all subject to such provisions and limitations as are contained in the Clean Water Act, the ARRA and the Act;

WHEREAS, the Local Government constitutes a local government as defined by the Act;

WHEREAS, the Local Government is included on the DEP State Project Priority List and the Intended Use Plan and has met DEP's pre-application requirements for the Program;

WHEREAS, the Local Government is authorized and empowered by the statutes of the State to acquire, construct, improve, operate and maintain a wastewater treatment project and to finance the cost of acquisition and construction of the same by borrowing money to be evidenced by revenue bonds issued by the Local Government;

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

WHEREAS, the Local Government has completed and filed with the Authority and DEP an Application for a Loan with attachments and exhibits and an Amended Application for a 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 the Fund having available sufficient funds therefor, the Authority and DEP are willing to lend the Local Government the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Local Government with

moneys held in the Fund, subject to the Local Government's satisfaction of certain legal and other requirements of the Program.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Local Government, DEP and the Authority hereby agree as follows:

## ARTICLE I

### Definitions

1.1 Except where the context clearly indicates otherwise, the terms "Authority," "cost," "fund," "local government," and "project" have the definitions and meanings ascribed to them in the Act, the ARRA. or in the SRF Regulations.

1.2 "Consulting Engineers" means the professional engineer, licensed by the State, designated in the Application and any successor thereto.

1.3 "Loan" means the loan to be made by the Authority and DEP to the Local Government through the purchase of Local Bonds, as hereinafter defined, pursuant to this ARRA Assistance Agreement.

1.4 "Local Act" means the official action of the Local Government required by Section 4.1 hereof, authorizing the Local Bonds.

1.5 "Local Bonds" means the revenue bonds to be issued by the Local Government pursuant to the provisions of the Local Statute, as hereinafter defined, to evidence the Loan and to be purchased by the Authority with money held in the Fund, all in accordance with the provisions of this ARRA Assistance Agreement.

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

1.7 "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, including ARRA Assistance.

1.8 "Program" means the wastewater treatment facility acquisition, construction and improvement program coordinated through the capitalization grants program established under the Clean Water Act and administered by DEP.

1.9 "Project" means the wastewater treatment facility project hereinabove referred to, to be constructed or being constructed by the Local Government in whole or in part with the net proceeds of the Local Bonds or being or having been constructed by the Local Government in whole or in part with the proceeds of bond anticipation notes or other interim financing, which is to be paid in whole or in part with the net proceeds of the Local Bonds.

1.10 "SRF Regulations" means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

1.11 "System" means the wastewater treatment facility owned by the Local Government, 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 ARRA Assistance 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 Local Government by the Consulting Engineers, the DEP and Authority having found, to the extent applicable, that the Project is consistent with the applicable provisions of the Program.

2.2 Subject to the terms, conditions and provisions of this ARRA Assistance Agreement and the Local Act, the Local Government 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 Local Government 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 Local Government, 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 is approved by DEP and the Authority.

2.4 The Local Government agrees that the Authority and DEP and their respective 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 Local Government further agrees that the Authority and DEP and their respective duly authorized agents 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 DEP with respect to the System pursuant to the pertinent provisions of the Act.

2.5 The Local Government 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 Local Government shall permit the Authority and DEP, acting by and through their Directors or 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 Local Government shall submit to the Authority and DEP such documents and information as it 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 Local Government agrees that it will permit the Authority and DEP and their respective agents to have access to the records of the Local Government 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 Local Government 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 Local Government 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 Authority and DEP and shall verify or have verified such insurance prior to commencement of construction. Until the Project facilities are completed and accepted by the Local Government, the Local Government or (at the option of the Local Government) 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 Local Government, 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 Local Government on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds are outstanding. Prior to commencing operation of the Project, the Local Government 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 Local Government shall provide and maintain competent and adequate engineering services satisfactory to the Authority and DEP 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, DEP and the Local Government 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. The Local Government shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Local Government shall notify DEP in writing of such receipt. The Local Government shall submit a Performance Certificate, the form of which is attached hereto as Exhibit A, and being incorporated herein by reference, to DEP within 60 days of the end of the first year after the Project is completed.

2.10 The Local Government shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to DEP when the Project is 90% completed. The Local Government shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Local Government shall employ qualified operating personnel properly certified by the State before the Project is 50% complete and shall retain such a certified operator(s) to operate the System during the entire term of this ARRA Assistance Agreement. The Local Government shall notify DEP in writing of the certified operator employed at the 50% completion stage.

2.11 The Local Government hereby covenants and agrees to comply with all applicable laws, rules and regulations issued by the Authority, DEP 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 Local Government, 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 B and incorporated herein by reference, and forward a copy by the 10th of each month to DEP and the Authority.

2.13 The Local Government, during construction of the Project, shall complete Payment Requisition Forms, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward such forms to DEP in compliance with the Local Government's construction schedule.

2.14 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.

2.15 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 DEP to make the Loan is subject to the Local Government's fulfillment, to the satisfaction of the Authority and DEP, 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 Local Government shall have delivered to the Authority and DEP a report listing the specific purposes for which the proceeds of the Loan will be expended and the procedures as to the disbursement of loan proceeds, including an estimated monthly draw schedule;

(b) The Local Government shall have performed and satisfied all of the terms and conditions to be performed and satisfied by it in this ARRA Assistance Agreement;

(c) The Local Government 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;

(d) The Local Government 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 Local Government 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 DEP shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit D;

(e) The Local Government 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 DEP shall have received a certificate of the Consulting Engineers to such effect;

(f) The Local Government shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") and the West Virginia Infrastructure and Jobs Development 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 DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

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

(h) The Local Government 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 DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

(i) 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 DEP shall have received a certificate of the accountant for the Local Government, or such other person or firm experienced in the finances of local governments and satisfactory to the Authority and DEP, to such effect; and

(j) 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 and DEP shall have received a certificate of the Consulting Engineers, or such other person or firm experienced in the financing of wastewater treatment projects and satisfactory to the Authority and DEP, to such effect, such certificate to be in form and substance satisfactory to the Authority and DEP, and evidence satisfactory to the Authority and DEP of such irrevocably committed grants.

3.2 Subject to the terms and provisions of this ARRA Assistance Agreement, the rules and regulations promulgated by the Authority and DEP, including the SRF Regulations, or any other appropriate State agency and any applicable rules, regulations and procedures promulgated from time to time by the federal government including rules, regulations and procedures promulgated under the Clean Water Act and/or the ARRA, it is hereby agreed that the Authority shall make the Loan to the Local Government and the Local Government shall accept the Loan from the Authority, and in furtherance thereof it is agreed that the Local Government 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 ARRA Assistance Agreement.

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Local Government 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, DEP and the Local Government. 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 ARRA Assistance Agreement by the Authority or such later date as is agreed to in writing by DEP.

3.5 The Local Government understands and acknowledges that it is one of several local governments which have applied to the Authority and DEP for loans from the Fund to finance wastewater treatment projects and that the obligation of the Authority to make any such loan is subject to the Local Government's fulfilling all of the terms and conditions of this ARRA Assistance Agreement on or prior to the Date of Loan Closing and to the requirements of the Program. The Local Government specifically recognizes that the Authority will not purchase the Local Bonds unless and until sufficient funds are available in the Fund to purchase all the Local Bonds and that, prior to such purchase, the Authority may purchase the bonds of other local governments set out in the State Project Priority List, as defined in the SRF Regulations. The Local Government further specifically recognizes that all loans will be originated in conjunction with the SRF Regulations and with the prior approval of DEP.

3.6 The Local Government shall provide DEP with the appropriate documentation to comply with the special conditions regarding the public release and audit requirements established by federal and State regulations as set forth in Exhibit E attached hereto at such times as are set forth therein.

## ARTICLE IV

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

4.1 The Local Government shall, as one of the conditions of the Authority and DEP to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Local Government in accordance with the Local Statute, which shall, as adopted or enacted, contain provisions and covenants in substantially the form as follows:

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

(i) to pay Operating Expenses of the System;

(ii) unless waived or modified by Schedule X and 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 "Reserve Account") was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof 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 "Reserve 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, if applicable); 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 Local Government 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 net or gross revenues of the System as provided in the Local Act;

(ii) Unless waived in Schedule X, 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 Local Government shall complete the Project and operate and maintain the System in good condition;

(iv) That, except as otherwise required by State law or the Regulations, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, provided that the net proceeds to be realized from such sale, mortgage, lease or other disposition shall be sufficient to fully pay all of the Local Bonds outstanding and further provided that portions of the System when no longer required for the ongoing operation of such System as evidenced by certificates from the Consulting Engineer, may be disposed of with such restrictions as are normally contained in such covenants;

(v) That the Local Government 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 DEP; 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 Local Government 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 Local Government 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 Local Government 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 of 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 and all rights as set forth in Section 5 of the Act;

(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 Local Government will not grant any franchise to provide any services which would compete with the System;

(xi) That the Local Government 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 DEP, 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 Local Government's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

(xii) That the Local Government 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 DEP 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, except for accrued interest and capitalized interest, if any, 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 Local Government 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 Local Government, the proceeds of which were used to finance the construction of the Project; provided that, with the prior written consent of the Authority and DEP, 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 Local Government may authorize redemption of the Local Bonds with 30 days written notice to the Authority;

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

(xvii) That the Local Government 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 Local Government shall complete the Monthly Payment Form, attached hereto as Exhibit F 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 Government 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 Local Government 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 Local Government shall have obtained the certificate of the Consulting Engineers 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 DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and DEP 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;

(xx) That the Local Government 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 Local Government, then the Local Government shall enter into a termination agreement with the water provider; and

(xxi) That the Local Government shall submit all proposed change orders to the DEP for written approval. The Local Government shall obtain the written approval of the DEP before expending any proceeds of the Local Bonds held in "contingency" as set forth in the final Schedule A attached to the certificate of the Consulting Engineer. The Local Government shall obtain the written approval of the DEP before expending any proceeds of the Local Bonds available due to bid/construction/project underruns.

The Local Government hereby represents and warrants that the Local Act has been or shall be duly adopted or enacted 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 nationally recognized bond counsel acceptable to the Authority in substantially the form of legal opinion attached hereto as Exhibit G.

4.2 The Loan shall be secured by the pledge and assignment by the Local Government, as effected by the Local Act, of the fees, charges and other revenues of the Local Government from the System.

4.3 At least five percent (5%) of the proceeds of the Local Bonds will be advanced on the Date of Loan Closing. The remaining proceeds of the Local Bonds shall be advanced by the DEP monthly as required by the Local Government to pay Costs of the Project, provided, however, if the proceeds of the Local Bonds will be used to repay an interim financing, the proceeds will be advanced on a schedule mutually agreeable to the Local Government, the DEP and the Authority. The Local Bonds shall not bear interest during the construction period but interest shall commence accruing on the completion date as defined in the SRF Regulations, provided that the annual repayment of principal and payment of interest shall begin not later than one (1) year after the completion date. The repayment of principal and interest on the Local Bonds shall be as set forth on Schedule Y 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.

4.4 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 Local Government. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series.

4.5 As provided by the SRF Regulations, the Local Government agrees to pay from time to time, if required by the Authority and DEP, the Local Government's allocable share of the reasonable administrative expenses of the Authority relating to the Program. Such administrative expenses shall be determined by the Authority and shall include, without limitation, Program expenses, legal fees paid by the Authority and fees

paid to the trustee and paying agents for any bonds or notes to be issued by the Authority for contribution to the Fund and the fees and expenses of any corporate trustee for the Fund.

4.6 The obligation of the Authority to make any loans shall be conditioned upon the availability of moneys in the Fund in such amount and on such terms and conditions as, in the sole judgment of the Authority, will enable it to make the Loan.

## ARTICLE V

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

5.1 The Local Government hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this ARRA Assistance Agreement and the Local Act. The Local Government 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 ARRA Assistance Agreement, the Local Government 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 ARRA Assistance Agreement.

5.3 In the event the Local Government defaults in any payment due to the Authority pursuant to this ARRA Assistance 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 Local Government hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Local Government, the Authority may exercise any or all of the rights and powers granted under Section 5 of the Act, including, without limitation, the right to impose, enforce and collect charges of the System.

## ARTICLE VI

### Other Agreements of the Local Government

6.1 The Local Government hereby acknowledges to the Authority and DEP its understanding of the provisions of the Act, vesting in the Authority and DEP certain powers, rights and privileges with respect to wastewater treatment projects in the event of default by the Local Government in the terms and covenants of this ARRA Assistance Agreement, and the Local Government hereby covenants and agrees that, if the Authority should hereafter have recourse to said rights and powers, the Local Government shall take no action of any nature whatsoever calculated to inhibit, nullify, void, delay or render nugatory such actions of the Authority in the due and prompt implementation of this ARRA Assistance Agreement.

6.2 The Local Government hereby warrants and represents that all information provided to the Authority and DEP in this ARRA Assistance 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 DEP shall have the right to cancel all or any of their obligations under this ARRA Assistance Agreement if (a) any representation made to the Authority and DEP by the Local Government in connection with the Loan shall be incorrect or incomplete in any material respect or (b) the Local Government 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, the SRF Regulations or this ARRA Assistance Agreement.

6.3 The Local Government hereby agrees to give the Authority and DEP 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.

## ARTICLE VII

## Miscellaneous

7.1 Schedules X and Y shall be attached to this ARRA Assistance 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 Local Government supplementing the Local Act, a certified copy of which official action shall be submitted to the Authority.

7.2 If any provision of this ARRA Assistance 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 ARRA Assistance Agreement, and this ARRA Assistance Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.3 This ARRA Assistance 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 ARRA Assistance Agreement.

7.4 No waiver by any party of any term or condition of this ARRA Assistance 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 ARRA Assistance Agreement.

7.5 This ARRA Assistance 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.

7.6 By execution and delivery of this ARRA Assistance Agreement, notwithstanding the date hereof, the Local Government 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.

7.7 This ARRA Assistance Agreement shall terminate upon the earlier of:

(i) written notice of termination to the Local Government from either the Authority or DEP;

(ii) 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 DEP if the Local Government has failed to deliver the Local Bonds to the Authority;

(iii) termination by the Authority and DEP pursuant to Section 6.2 hereof; or

(iv) unless waived or modified by Schedule X, payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Local Government to the Authority or DEP; provided that the amount of the Loan made under this ARRA Assistance Agreement in any succeeding fiscal year is contingent upon funds being appropriated by the State legislature or otherwise being available to make the Loan. In the event funds are not appropriated or otherwise available to make all of the Loan, the responsibility of the Authority and DEP to make all the Loan is terminated; provided further that the obligation of the Local Government to repay the outstanding amount of the Loan made by the Authority and DEP is not terminated due to such non-funding on any balance of the Loan. The DEP agrees to use its best efforts to have the amount contemplated under this ARRA Assistance Agreement included in its budget. Non-appropriation or non-funding of the Loan shall not be considered an event of default under this ARRA Assistance Agreement.

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

CITY OF CLARKSBURG

(SEAL)

By: _____
Its: Mayor
Date: July 8, 2009

Attest:

_____
Its: Recorder

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISION OF WATER AND WASTE MANAGEMENT

By: _____
Its: Acting Director
Date: July 8, 2009

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: _____
Its: Executive Director
Date: July 8, 2009

Attest:

Carol A. Cummings
Its: Secretary-Treasurer

{C1549610.1}

(iii) termination by the Authority and DEP pursuant to Section 6.2 hereof; or

(iv) unless waived or modified by Schedule X, payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Local Government to the Authority or DEP; provided that the amount of the Loan made under this ARRA Assistance Agreement in any succeeding fiscal year is contingent upon funds being appropriated by the State legislature or otherwise being available to make the Loan. In the event funds are not appropriated or otherwise available to make all of the Loan, the responsibility of the Authority and DEP to make all the Loan is terminated; provided further that the obligation of the Local Government to repay the outstanding amount of the Loan made by the Authority and DEP is not terminated due to such non-funding on any balance of the Loan. The DEP agrees to use its best efforts to have the amount contemplated under this ARRA Assistance Agreement included in its budget. Non-appropriation or non-funding of the Loan shall not be considered an event of default under this ARRA Assistance Agreement.

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

CITY OF CLARKSBURG

(SEAL)

By: _____
Its: Mayor
Date: July 8, 2009

Attest:

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WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISION OF WATER AND WASTE MANAGEMENT

By: _____
Its: Acting Director
Date: July 8, 2009

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: _____
Its: Executive Director
Date: July 8, 2009

Attest:

_____
Its: Secretary-Treasurer

{C1549610.1}

EXHIBIT A

FORM OF PERFORMANCE CERTIFICATE

[To Be Provided By DEP]

EXHIBIT B

MONTHLY FINANCIAL REPORT

**Name of Local Government**
**Name of Bond Issue(s)**_____
**Type of Project** _____ **Water** _____ **Wastewater**
**Fiscal Year** _____ **Report Month** _____

| Item | Current Month | Total Year To Date | Budget Year To Date | Budget Year To Date Minus Total Year To Date |
|---|---|---|---|---|
| 1. Gross Revenues | | | | |
| 2. Operating Expenses | | | | |
| 3. Bond Payments: | | | | |
| Type of Issue | | | | |
| 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 Local Government 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 Local Government 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 Local Government.

**The Local Government must complete the Monthly Financial Report and forward it to the Water Development Authority by the 10th 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 C

PAYMENT REQUISITION FORM

(All Copies to Be Provided by DEP for Each Project)

EXHIBIT D

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 meaning set forth in the bond _____ adopted or enacted by the Issuer on _____, and the ARRA Assistance Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection (the "DEP"), 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 the DEP and any change orders approved by the Issuer, the DEP 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 Schedule A attached hereto as Exhibit

A, and my firm[1] 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 DEP 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) the Issuer has received the Buy American Certificate from each contractor; (x) as of the effective date thereof[2], the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the ARRA Assistance Agreement; (xi) 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 DEP; and (xii) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

WITNESS my signature and seal on this ____ day of _____, ____.

By _____
West Virginia License No.

[SEAL]

---

[1]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 _____, Esq.] and delete "my firm has ascertained that".

[2]If the Rule 42 Exhibit and/or rate structure was prepared by an accountant, then insert the following: "In reliance upon the certificate of _____ of even date herewith," at the beginning of (x).

EXHIBIT E

SPECIAL CONDITIONS

A. PUBLIC RELEASE REQUIREMENT – The Local Government agrees to include, when issuing statements, press releases, requests for proposals, bid solicitations, groundbreaking or project dedication program documents and other documents describing projects or programs funded in whole or in part with Federal money, (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

B. AUDIT REQUIREMENT (Supplement to Article IV 4.1 (b) (xi)) – Effective October 1, 2003, the Local Government that receives $500,000 or more (in federal funds) in a fiscal year must obtain audits in accordance with the Single Audit Act and the applicable OMB Circular or any successor thereto. Financial statement audits are required once all funds have been received by the Local Government.

C. BUY AMERICAN CERTIFICATION – The Local Government shall cause the contractor(s) to comply with, and provide certification of, the Buy American provisions of the ARRA in accordance with final guidance from the EPA.

D. ASSET MANAGEMENT – The Local Government shall develop and implement an asset management plan in accordance with guidelines issued by DEP and is approved by DEP.

E. CONTRACTS – The Local Government shall enter into contracts or commence construction by February 17, 2010.

F. LOGO – The Local Government must display the ARRA logo in a manner that informs the public that the project is an ARRA investment.

G. LOBBYING - The Local Government shall comply with Title 40 CFR Part 34, New Restrictions on Lobbying and shall submit certification and disclosure forms as required by DEP.

H. PURCHASING REQUIREMENTS – The Local Government shall comply with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds $10,000 or where the quantity of such items

acquired in the course of the preceding fiscal year was $10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

I. SUSPENSION AND DEBARMENT – The Local Government shall comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons). To the extent required by DEP, the Local Government shall provide certifications as to compliance.

J. REPORTING – The Local Government shall comply with all requests for data related to the use of the funds provided under this agreement, including the information required in section 1512 of ARRA when requested by DEP.

K. INSPECTOR GENERAL REVIEWS – The Local Government shall allow any appropriate representative of the Office of US Inspector General to (1) examine its records relating to the Project and this ARRA Assistance Agreement and (2) interview any officer or employee of the Local Government.

L. FALSE CLAIMS – The Local Government must promptly refer to EPA's Inspector General any credible evidence that a principal, employee, agent, sub-grantee contractor, subcontractor, loan recipient, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this ARRA Assistance Agreement.

M. LIMIT ON FUNDS – The Local Government shall not use funds for particular activities for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

N. WAGE RATES – The Local Government shall require that all laborers and mechanics employed by its contractors and subcontractors be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor (DOL) in accordance with subchapter IV of chapter 32 of title 40, United States Code. The Local Government must require that contractors and subcontractors obtain wage determinations from DOL and comply with DOL guidance and regulations implementing wage rate requirements applicable to ARRA funds.

O. OFFICE OF MANAGEMENT AND BUDGET (OMB) GUIDANCE – The Local Government acknowledges and agrees that this ARRA

Assistance is subject to all applicable provisions of implementing guidance for the American Recovery and Reinvestment Act of 2009 issued by the United States Office of Management and Budget, including the Initial Implementing Guidance for the American Recovery and Reinvestment Act (M-09-10) issued on February 18, 2009 and available on www.recovery.gov, and any subsequent guidance documents issued by OMB.

P. DISADVANTAGED BUSINESS ENTERPRISE – Pursuant to 40 CFR, Section 33.301, the Local Government agrees to make good faith efforts whenever procuring construction, equipment, services and supplies, and to require that prime contractors also comply. The Local Government shall provide DEP with MBE/WBE participation reports semi-annually.

Q. CIVIL RIGHTS – The Local Government shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements. The Local Government shall also comply with Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.

R. BOND DESIGNATION – Each Local Bond funded by ARRA funds shall be designated "Series [2009] B" and shall contain "(WVCWSRF Program/ARRA)" in the bond name.

S. USER RATES – The Local Government shall covenant that it will not reduce its approved or enacted customer rates for at least eighteen months after completion of the Project or until such time as a cost of service study has been completed establishing the actual operation and maintenance expenses.

EXHIBIT F

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 Local Government] on [Date].

| | |
|---|---|
| Sinking Fund: | |
| Interest | $ |
| Principal | $ |
| Total: | $ |
| Reserve Account: | $ |

Witness my signature this ___ day of_____.

[Name of Local Government]

By: _____
Authorized Officer

Enclosure: copy of check(s)

EXHIBIT G

OPINION OF BOND COUNSEL FOR LOCAL GOVERNMENT

[To Be Dated as of Date of Loan Closing]

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

West Virginia Department of Environmental Protection
601 57th Street
Charleston, WV 25304

Ladies and Gentlemen:

We are bond counsel to _____ (the "Local Government"), a _____.

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a ARRA assistance agreement dated _____, ____, including all schedules and exhibits attached thereto (the "ARRA Assistance Agreement"), among the Local Government, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and (ii) the issue of a series of revenue bonds of the Local Government, dated _____, ____ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the ARRA Assistance 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 principal and interest payable quarterly on March 1, June 1, September 1, and December 1 of each year, beginning _____ 1, ____, and ending _____ 1, ____, all as set forth in the "Schedule Y" attached to the ARRA Assistance 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 Local Government on _____, as supplemented by the supplemental

resolution duly adopted by the Local Government on _____ (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the ARRA Assistance 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 ARRA Assistance 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 ARRA Assistance Agreement has been duly authorized by and executed on behalf of the Local Government and is a valid and binding special obligation of the Local Government, enforceable in accordance with the terms thereof.

2. The ARRA Assistance Agreement inures to the benefit of the Authority and the DEP and cannot be amended so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Local Government without the consent of the Authority and the DEP.

3. The Local Government 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 Local Government and constitute valid and binding obligations of the Local Government, enforceable against the Local Government 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 ARRA Assistance Agreement.

5. The Local Bonds have been duly authorized, issued, executed and delivered by the Local Government to the Authority and are valid, legally enforceable and binding special obligations of the Local Government, 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,

SCHEDULE X

DESCRIPTION OF LOCAL BONDS

A. Series A Bonds (CWSRF Base Program)

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

The Local Bonds shall bear no interest. Commencing September 1, 2010, principal of the Local Bonds is payable quarterly, with an administrative fee of 1%. 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 Local Government shall submit its payments monthly to the Commission with instructions that the Commission will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority. If the Reserve Account is not fully funded at closing, the Local Government shall commence the payment of the 1/120 of the maximum annual debt service on the first day of the month it makes its first monthly payment to the Commission. The Local Government shall instruct the Commission to notify the Authority of any monthly payments which are not received by the 20th day of the month in which the payment was due.

The Local Bonds are fully registered in the name of the Authority as to principal only and the Local Bonds shall grant the Authority a first lien on the net or gross revenues of the Local Government's system as provided in the Local Act.

The Local Government may prepay the Local Bonds in full at any time at the price of par upon 30 days' written notice to the Authority and DEP. The Local Government shall request approval from the Authority and DEP in writing of any proposed debt which will be issued by the Local Government on a parity with the Local Bonds which request must be filed at least 60 days prior to the intended date of issuance.

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

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 Local Government:

(i) City of Clarksburg Sewer Revenue Bonds, Series 1996 (West Virginia SRF Program), dated October 24, 1996, issued in the original aggregate principal amount of $6,484,283; and

(ii) City of Clarksburg Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA), dated June 18, 2009, issued in the original aggregate principal amount of $1,000,000.

B. Series B Bonds (ARRA)

| | |
|---|---|
| Principal Amount of Local Bonds | $1,000,000 |
| Purchase Price of Local Bonds | $1,000,000 |

The Local Bonds shall bear no interest. The Authority at the direction of the DEP shall forgive the principal amount of the Local Bonds. Principal forgiveness shall begin on September 1, 2010 and shall be made quarterly thereafter (March 1, June 1, September 1 and December 1 of each year) as set forth on Schedule Y attached hereto and incorporated herein by reference.

The Local Bonds are fully registered in the name of the Authority.

The Local Government shall make monthly payments into the Renewal and Replacement Fund as required by Section 4.1 of this Agreement for at least the term of the Local Bonds.

The Local Government shall notify the Authority and the Council of any proposed bond indebtedness secured by the revenues of the System.

**BOND DEBT SERVICE**
City of Clarksburg
$1,000,000 - 0% Interest Rate
20 Years

| | |
|---|---|
| Dated Date | 7/8/2009 |
| Delivery Date | 7/8/2009 |

| Period Ending | Principal | Interest | Debt Service |
|---|---|---|---|
| 7/8/2009 | | | |
| 9/1/2010 | 12,500 | | 12,500 |
| 12/1/2010 | 12,500 | | 12,500 |
| 3/1/2011 | 12,500 | | 12,500 |
| 6/1/2011 | 12,500 | | 12,500 |
| 9/1/2011 | 12,500 | | 12,500 |
| 12/1/2011 | 12,500 | | 12,500 |
| 3/1/2012 | 12,500 | | 12,500 |
| 6/1/2012 | 12,500 | | 12,500 |
| 9/1/2012 | 12,500 | | 12,500 |
| 12/1/2012 | 12,500 | | 12,500 |
| 3/1/2013 | 12,500 | | 12,500 |
| 6/1/2013 | 12,500 | | 12,500 |
| 9/1/2013 | 12,500 | | 12,500 |
| 12/1/2013 | 12,500 | | 12,500 |
| 3/1/2014 | 12,500 | | 12,500 |
| 6/1/2014 | 12,500 | | 12,500 |
| 9/1/2014 | 12,500 | | 12,500 |
| 12/1/2014 | 12,500 | | 12,500 |
| 3/1/2015 | 12,500 | | 12,500 |
| 6/1/2015 | 12,500 | | 12,500 |
| 9/1/2015 | 12,500 | | 12,500 |
| 12/1/2015 | 12,500 | | 12,500 |
| 3/1/2016 | 12,500 | | 12,500 |
| 6/1/2016 | 12,500 | | 12,500 |
| 9/1/2016 | 12,500 | | 12,500 |
| 12/1/2016 | 12,500 | | 12,500 |
| 3/1/2017 | 12,500 | | 12,500 |
| 6/1/2017 | 12,500 | | 12,500 |
| 9/1/2017 | 12,500 | | 12,500 |
| 12/1/2017 | 12,500 | | 12,500 |
| 3/1/2018 | 12,500 | | 12,500 |
| 6/1/2018 | 12,500 | | 12,500 |
| 9/1/2018 | 12,500 | | 12,500 |
| 12/1/2018 | 12,500 | | 12,500 |
| 3/1/2019 | 12,500 | | 12,500 |
| 6/1/2019 | 12,500 | | 12,500 |
| 9/1/2019 | 12,500 | | 12,500 |
| 12/1/2019 | 12,500 | | 12,500 |
| 3/1/2020 | 12,500 | | 12,500 |
| 6/1/2020 | 12,500 | | 12,500 |
| 9/1/2020 | 12,500 | | 12,500 |
| 12/1/2020 | 12,500 | | 12,500 |
| 3/1/2021 | 12,500 | | 12,500 |
| 6/1/2021 | 12,500 | | 12,500 |

**BOND DEBT SERVICE**
City of Clarksburg
$1,000,000 - 0% Interest Rate
20 Years

| Period Ending | Principal | Interest | Debt Service |
|---|---|---|---|
| 9/1/2021 | 12,500 | | 12,500 |
| 12/1/2021 | 12,500 | | 12,500 |
| 3/1/2022 | 12,500 | | 12,500 |
| 6/1/2022 | 12,500 | | 12,500 |
| 9/1/2022 | 12,500 | | 12,500 |
| 12/1/2022 | 12,500 | | 12,500 |
| 3/1/2023 | 12,500 | | 12,500 |
| 6/1/2023 | 12,500 | | 12,500 |
| 9/1/2023 | 12,500 | | 12,500 |
| 12/1/2023 | 12,500 | | 12,500 |
| 3/1/2024 | 12,500 | | 12,500 |
| 6/1/2024 | 12,500 | | 12,500 |
| 9/1/2024 | 12,500 | | 12,500 |
| 12/1/2024 | 12,500 | | 12,500 |
| 3/1/2025 | 12,500 | | 12,500 |
| 6/1/2025 | 12,500 | | 12,500 |
| 9/1/2025 | 12,500 | | 12,500 |
| 12/1/2025 | 12,500 | | 12,500 |
| 3/1/2026 | 12,500 | | 12,500 |
| 6/1/2026 | 12,500 | | 12,500 |
| 9/1/2026 | 12,500 | | 12,500 |
| 12/1/2026 | 12,500 | | 12,500 |
| 3/1/2027 | 12,500 | | 12,500 |
| 6/1/2027 | 12,500 | | 12,500 |
| 9/1/2027 | 12,500 | | 12,500 |
| 12/1/2027 | 12,500 | | 12,500 |
| 3/1/2028 | 12,500 | | 12,500 |
| 6/1/2028 | 12,500 | | 12,500 |
| 9/1/2028 | 12,500 | | 12,500 |
| 12/1/2028 | 12,500 | | 12,500 |
| 3/1/2029 | 12,500 | | 12,500 |
| 6/1/2029 | 12,500 | | 12,500 |
| 9/1/2029 | 12,500 | | 12,500 |
| 12/1/2029 | 12,500 | | 12,500 |
| 3/1/2030 | 12,500 | | 12,500 |
| 6/1/2030 | 12,500 | | 12,500 |
| | **1,000,000** | | **1,000,000** |

Plus $1,265.40 quarterly administrative fee
Total fee paid over life of the loan is $101,250.40

**BOND DEBT SERVICE**
City of Clarksburg
10 Years

| | |
|---|---|
| Dated Date | 7/8/2009 |
| Delivery Date | 7/8/2009 |

| Period Ending | Debt Service | Principal Forgiveness |
|---|---|---|
| 7/8/2009 | | |
| 9/1/2010 | -25,000 | -25,000 |
| 12/1/2010 | -25,000 | -25,000 |
| 3/1/2011 | -25,000 | -25,000 |
| 6/1/2011 | -25,000 | -25,000 |
| 9/1/2011 | -25,000 | -25,000 |
| 12/1/2011 | -25,000 | -25,000 |
| 3/1/2012 | -25,000 | -25,000 |
| 6/1/2012 | -25,000 | -25,000 |
| 9/1/2012 | -25,000 | -25,000 |
| 12/1/2012 | -25,000 | -25,000 |
| 3/1/2013 | -25,000 | -25,000 |
| 6/1/2013 | -25,000 | -25,000 |
| 9/1/2013 | -25,000 | -25,000 |
| 12/1/2013 | -25,000 | -25,000 |
| 3/1/2014 | -25,000 | -25,000 |
| 6/1/2014 | -25,000 | -25,000 |
| 9/1/2014 | -25,000 | -25,000 |
| 12/1/2014 | -25,000 | -25,000 |
| 3/1/2015 | -25,000 | -25,000 |
| 6/1/2015 | -25,000 | -25,000 |
| 9/1/2015 | -25,000 | -25,000 |
| 12/1/2015 | -25,000 | -25,000 |
| 3/1/2016 | -25,000 | -25,000 |
| 6/1/2016 | -25,000 | -25,000 |
| 9/1/2016 | -25,000 | -25,000 |
| 12/1/2016 | -25,000 | -25,000 |
| 3/1/2017 | -25,000 | -25,000 |
| 6/1/2017 | -25,000 | -25,000 |
| 9/1/2017 | -25,000 | -25,000 |
| 12/1/2017 | -25,000 | -25,000 |
| 3/1/2018 | -25,000 | -25,000 |
| 6/1/2018 | -25,000 | -25,000 |
| 9/1/2018 | -25,000 | -25,000 |
| 12/1/2018 | -25,000 | -25,000 |
| 3/1/2019 | -25,000 | -25,000 |
| 6/1/2019 | -25,000 | -25,000 |
| 9/1/2019 | -25,000 | -25,000 |
| 12/1/2019 | -25,000 | -25,000 |
| 3/1/2020 | -25,000 | -25,000 |
| 6/1/2020 | -25,000 | -25,000 |
| | **-1,000,000** | **-1,000,000** |

RESERVED

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

Case No.: 08-192-S-CN

CITY OF CLARKSBURG

Application for a certificate of convenience and necessity for the upgrade of existing sewer system, including pump stations, separation of storm and sanitary sewers, removal of several mains from flood impacted areas, and repair of mains and manholes in Clarksburg, Harrison County, and for approval of financing related thereto.

STATE OF WEST VIRIGNIA
COUNTY OF HARRISON, TO-WIT:

AFFIDAVIT

I, David A. Shriver, CPA, after making an oath of affirmation to tell the truth, say that, I have reviewed the Recommended Decision of the Public Service Commission of West Virginia in Case No. 08-1912-S-CN dated March 24, 2009 which approved the funding of a Clean Water State Revolving Fund loan in the amount of $2,000,000, at an annual interest rate of 2% plus an administrative fee of 1% for a term of 20 years, and based upon all the information that has been provided to me to date, I am of the opinion that the rates and charges of the City (i) are not affected by the revised funding which includes an Clean Water State Revolving Fund loan in the amount of $1,000,000, at an annual interest rate of 0% plus an administrative fee of 1% for a term of 20 years and a forgivable Clean Water State Revolving Fund loan in the amount of $1,000,000, for a total project cost of $2,000,000; and (ii) will be sufficient to provide revenues which, together with other revenues of the System, will allow me to provide the CPA certification required for the issuance of the loans.

This Affidavit is executed on the 30th day of June, 2009.

David A. Shriver CPA
David A. Shriver, CPA

Taken, subscribed and sworn to before me this 30 day of June, 2009.

My commission expires 8/1/2010.

[SEAL]

OFFICIAL SEAL
NOTARY PUBLIC, STATE OF WEST VIRGINIA
MARGARET D. YOST
P. O. BOX 36
GYPSY, WV 26361
MY COMMISSION EXPIRES AUG. 1, 2010

Margaret D. Yost
Notary Public

081912ALJ032409.wpd

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL
4/13/2009

Entered: March 24, 2009

CASE NO. 08-1912-S-CN

**CITY OF CLARKSBURG SANITARY BOARD,**
**a municipal utility,**
**Application for a certificate of convenience and necessity for the upgrade of existing sewer system, including pumping stations, separation of storm and sanitary sewers, removal of several mains from flood impacted areas, and repair of mains and manholes in Clarksburg, Harrison County, and for approval of financing related thereto.**

## RECOMMENDED DECISION

On November 6, 2008, the City of Clarksburg Sanitary Board (City/Applicant) filed a duly verified application with the West Virginia Public Service Commission (Commission) for a certificate of convenience and necessity to construct certain additions and improvements to its existing sewage collection system in Harrison County, West Virginia. The project will consist of the installation of approximately 2,300 linear feet of 8" and 4,000 linear feet of 10" sewer line; the addition of numerous new manholes and the repair/replacement of numerous manholes; abandonment of two (2) sewage lift stations; stabilization of West Fork River Bank and the sewer line at 404 Hart Street; cleaning and debris removal in approximately 3,400 linear feet of 18" RCP pipe; and the installation of approximately 500 linear feet of 24" and 1,500 linear feet of 30" storm water pipe.

The City estimated that construction would cost approximately $2,000,000. The project will be funded by a State Revolving Fund loan in the amount of $2,000,000. The City plans to charge its existing rates, as previously enacted by ordinance on October 5, 2006. There will be no project-related rate increase.

On November 7, 2008, the Commission entered a Notice of Filing Order, which required that the City give notice of the filing of its application, by publishing a copy of said Notice of Filing, once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in

MKM

Harrison County, West Virginia, making due return to the Public Service Commission of a proper certification of publication immediately after publication. The November 7, 2008 Order stated that anyone desiring to protest or intervene should file a written protest or notice of intervention within 30 days following the date of publication of the November 7, 2008 Order, unless otherwise modified by Commission order. The November 7, 2008 Notice of Filing also advised the public that failure to timely protest or intervene could affect their right to protest aspects of this certificate case, including any associated rate increases, or to participate in future proceedings. In conclusion, the Notice of Filing stated that, if no protests were received within the thirty (30) day period, the Commission could waive formal hearing and grant the application based on the Commission's review of evidence submitted with the application.

On December 3, 2008, Staff Attorney Chris Howard of the Commission's Legal Division filed the Initial Joint Staff Memorandum, along with the Initial Internal Memorandum, prepared by Utilities Analyst Karen L. Buckley and Utilities Analyst Sandra Mitchell of the Commission's Water and Wastewater Division and Jonathan Fowler, P.E., of the Commission's Engineering Division. Staff reported that it was not in a position to make a recommendation regarding the City's request for a waiver of the requirement to file a Rule 42 Exhibit because the City had not yet filed its Annual Report for the year ending June 30, 2008. Staff indicated that, once the Annual Report was filed, a recommendation would be filed regarding the Rule 42 Exhibit waiver request. Staff requested that the City submit its 2008 Annual Report as soon as possible and a copy of the funding commitment letter from the Clean Water State Revolving Fund. Staff indicated that, once these items were filed, Staff would be able to file its final recommendation regarding the City's certificate application. Legal Staff and Technical Staff recommended that the case be referred to the Division of Administrative Law Judges for resolution.

By Commission Referral Order issued on December 4, 2008, this matter was referred to the Division of Administrative Law Judges. The Commission ordered that the decision be rendered on or before March 30, 2009, if no public protests are filed with the Commission. If public protests are filed with the Commission, the decision would be required on or before June 11, 2009.

On December 10, 2008, the District's attorney, Gregory A. Morgan, filed correspondence with the Commission in which he responded to the requests for additional information contained within the Initial Joint Staff Memorandum filed on December 3, 2008. Mr. Morgan advised that the City's 2008 Annual Report had been filed on or about December 3, 2008, and provided a copy of the funding commitment letter from the State Revolving Fund.

On January 5, 2009, Staff Attorney Howard filed the Second Initial Joint Staff Memorandum, along with an Interim Memorandum, prepared by Utilities Analyst Buckley, Utilities Analyst Mitchell and Mr. Fowler of the Commission's Engineering Division, in which Staff described several insufficiencies in the City's 2008 Annual Report. Staff reported that, unless the insufficiencies are addressed by the City and additional information filed with the Commission, Staff would be unable to make a final substantive recommendation. Staff listed the specific information required and requested that the City file it with the Commission within ten (10) days.

On January 13, 2009, the City filed the additional information requested by Commission Staff in its January 5, 2009 Second Initial Joint Staff Memorandum and Interim Memorandum.

On February 4, 2009, Staff Attorney Howard filed the Final Joint Staff Memorandum, along with the Final Staff Internal Memorandum, prepared by Utilities Analyst Buckley and Utilities Analyst Mitchell of the Commission's Water and Wastewater Division and Mr. Fowler of the Commission's Engineering Division. Staff reported that the project proposed by the City in its certificate application is necessary because it will replace deteriorating portions of the City's existing system and will bring the City into compliance with the regulations of the West Virginia Division of Environmental Protection and the Clean Water Act. Staff noted that the City is currently not in compliance with the Combined Sewer Overflow (CSO) control policy of the Clean Water Act and the City is currently operating under Administrative Order No. 5709, issued on May 5, 2005, by the West Virginia Division of Environmental Protection. The Administrative Order requires the City to comply with the Clean Water Act CSO policy. Staff opined that, should this project not be approved and constructed, water quality would continue to deteriorate and health hazards would develop. Legal Staff reported that the project has been approved by the West Virginia Infrastructure and Jobs Development Council (WVIJDC) and designated as Project No. 2007S-1005. Staff reported that, "the overall objective of the project is to reduce infiltration and inflow, reduce maintenance costs, and enhance operations." Engineering Staff reported that the City currently has fifty-one (51) permitted CSOs scattered throughout its sewage collection system and they are not presently in compliance with the Clean Water Act CSO policy. Staff opined that continuation of noncompliance subjects the City to administrative and possibly criminal penalties.

Staff reported that an evaluation of alternatives to the proposed project (beyond the customary choices made during design) was not necessary because the proposed project consists entirely of remedial and corrective work to the existing collection system. The present estimated project cost is $2,000,000 and the estimated construction cost is $1,060,000. The proposed project has not been bid. According to Staff, the engineering design and project inspection services for this project, approximately 9.75% of the project cost, are within the customary range for other recent comparable projects. Staff agrees with the City that the project, as proposed, will not produce an increase in the City's operation and maintenance expenses. Staff cautioned the City to carefully monitor its operating and maintenance budgets in order to control costs and to look out for any inaccuracies or unanticipated costs which might not have been set forth in the project budget. Since the West Virginia Division of Environmental Protection has conducted its customary detailed design review and approval of the project plans and construction documents, Commission Engineering Staff recommended approval of the project without specifically approving the project plans and specifications. Engineering Division Staff also concluded that the project was sufficiently mature, with respect to permits and approvals, to allow the Commission to act. Engineering Staff recommended that the certificate of convenience and necessity be issued by the Commission, contingent upon the City's receipt of all necessary federal, state and local permits and approvals for the proposed construction. Staff recommended that construction not begin until all permits and a certificate of convenience and necessity have been issued.

Financial Staff reported that the project will be financed by a Clean Water State Revolving Fund loan, at an annual interest rate of 2%, with an administrative fee of 1%, for a term of twenty (20) years. The total annual payment to the State Revolving Fund will be $132,449 and a 10% debt reserve of $12,141 will be required. The project does not require a rate increase. The City's current tariff contains a series of rate schedules that are in effect for specific time frames. The current rates are effective for service rendered from July 1, 2008, through June 30, 2009. The current minimum charge in effect (the equivalent of 4,703 cubic feet of usage with a 5/8" meter) is $19.02 per month, or $38.04 bimonthly. Staff concluded that the increased revenues for this fiscal year, along with Clarksburg's per books revenues of approximately $3,814,313, will be sufficient to cover the project-related expenses and provide for a pro forma surplus of approximately $653,215 and a debt service coverage ratio of 255.73%. Financial Staff concluded that the proposed project is financially feasible and should be approved.

## DISCUSSION

The record in this matter demonstrates that the Notice of Filing, issued by the Commission on November 7, 2008, was properly published as a Class I legal notice, as directed in the Commission's November 7, 2008 Order. The Notice of Filing required that public protests or requests for intervention regarding the certificate application be filed with the Public Service Commission within thirty (30) days of the date of publication of the Notice of Filing. The City filed an affidavit of publication demonstrating that publication of the Notice of Filing occurred on November 12, 2008, in the *Clarksburg Exponent-Telegram*, and the record reflects that no public protests and no requests to intervene were filed in this matter during the thirty (30) day public protest period or as of the date of this Recommended Decision. Therefore, it is reasonable to conclude that there is no objection from the public to the issuance of a certificate of convenience and necessity for the City to construct the sewer system upgrades and improvements described in its certificate application.

## FINDINGS OF FACT

1. The City of Clarksburg Sanitary Board filed an application with the Public Service Commission for a certificate of convenience and necessity to construct upgrades and improvements to its existing sewage system. The proposed project includes installation of approximately 2,300 linear feet of 8" and 4,000 linear feet of 10" sewer line; the addition of numerous new manholes and the repair/replacement of numerous manholes; abandonment of two (2) sewage lift stations; stabilization of West Fork River bank and the sewer line at 404 Hart Street; cleaning and debris removal in approximately 3,400 linear feet of 18" RPC pipe; and the installation of approximately 500 linear feet of 24" and 1,500 linear feet of 30" storm water pipe. (See, certificate application filed November 6, 2008).

2. The City of Clarksburg Sanitary Board published the Notice of Filing, issued by the Public Service Commission on November 7, 2008, as a Class I legal advertisement, in the *Clarksburg*

*Exponent-Telegram*, a newspaper of general circulation, published in the City of Clarksburg, Harrison County, West Virginia, on November 12, 2008. (See, affidavit of publication filed March 5, 2009).

3. The total estimated project cost is $2,000,000. The City of Clarksburg has a funding commitment letter from Clean Water State Revolving Fund for a loan in the amount of $2,000,000, at an annual interest rate of 2% and an annual administrative fee of 1%, for a term of twenty (20) years. (See, application filed November 6, 2008; funding letter filed December 11, 2008).

4. The City of Clarksburg Sanitary Board is currently not in compliance with the Combined Sewer Overflow (CSO) control policy of the Clean Water Act and the City of Clarksburg Sanitary Board is currently operating under Administrative Order No. 5709, issued on May 5, 2005, by the West Virginia Division of Environmental Protection. The City of Clarksburg Sanitary Board currently has fifty-one (51) permitted CSOs throughout its sewage collection system, which are not in compliance with the CSO policy. Continuation of noncompliance subjects the City of Clarksburg Sanitary Board to administrative and possibly criminal penalties. (See, Final Joint Staff Memorandum and attachments, filed February 4, 2009).

5. The proposed project will not result in an increase in the City's operation and maintenance expenses. (See, Final Joint Staff Memorandum and attachments, filed February 4, 2009).

6. The City of Clarksburg Sanitary Board's current sewer rates will generate a level of revenue sufficient to offset the project related expenses and debt service. (See, Final Joint Staff Memorandum and attachments, filed February 4, 2009).

7. The City of Clarksburg Sanitary Board's per books revenues for this fiscal year, along with the pro forma adjustments, will be approximately $3,925,649. The City's current rates will generate a pro forma surplus of approximately $653,215 and a debt service coverage ratio of 255.73%. (See, Final Joint Staff Memorandum, Final Staff Internal Memorandum, Attachment 3 - Cash Flow Analysis, filed February 4, 2009).

8. Staff concluded that the proposed project is technically and financially feasible and should be approved. (See, Final Joint Staff Memorandum and Final Staff Internal Memorandum, filed February 4, 2009).

9. No public protests or objections to the City's certificate application were received by the Public Service Commission during the thirty (30) day public protest period or as of the date of this Recommended Decision. (See, case file generally).

10. The City of Clarksburg Sanitary Board did not object to Staff's recommendations set forth in the Final Joint Staff Memorandum and Final Staff Internal Memorandum which were filed in this case on February 4, 2009. (See, case file generally).

## CONCLUSIONS OF LAW

1. The public convenience and necessity requires the upgrades and improvements to the City of Clarksburg Sanitary Board's existing sewage system, as described in its certificate application filed with the Public Service Commission on November 7, 2008.

2. It is reasonable to grant the City of Clarksburg Sanitary Board's application for a certificate of public convenience and necessity to construct the sewer system upgrades and improvements proposed by the City in its certificate application.

3. It is reasonable to approve the proposed financing for the project, consisting of a loan from the Clean Water State Revolving Fund, in the amount of $2,000,000, at an annual interest rate of 2%, and an administrative fee of 1%, for a term of twenty (20) years.

4. The City of Clarksburg Sanitary Board's current rates, which were adopted by the Clarksburg City Council on October 5, 2006, are sufficient to cover the project-related increases in expenses and debt service.

## ORDER

**IT IS, THEREFORE, ORDERED** that the certificate application filed herein on November 6, 2008, by the City of Clarksburg Sanitary Board, for a certificate of convenience and necessity to construct upgrades and improvements to its existing sewage system, be, and hereby is, granted, contingent upon receipt by the City of all necessary federal, state and local permits and approvals for the proposed construction.

**IT IS FURTHER ORDERED** that the financing for the project, a Clean Water State Revolving Fund loan in the amount of $2,000,000, at an annual interest rate of 2% and an administrative fee of 1%, for a term of twenty (20) years, be, and hereby is, approved.

**IT IS FURTHER ORDERED** that the City of Clarksburg Sanitary Board file with the Public Service Commission copies of all necessary permits, approvals and authorizations related to this project as soon as they are received by the City.

**IT IS FURTHER ORDERED** that the City of Clarksburg Sanitary Board submit a certificate of substantial completion from its professional engineer for each contract associated with this sewer system improvement and upgrade project, as soon as each becomes available.

**IT IS FURTHER ORDERED** that the City of Clarksburg Sanitary Board file a copy of the engineer's certified tabulation of bids for each construction contract or vendor bid contract awarded for this project, within ten (10) days of the bid opening date.

**IT IS FURTHER ORDERED** that, should there be any changes in the scope or plans of the project, or if a change in project cost or project financing affects the rates approved for the project, the City of Clarksburg Sanitary Board obtain Public Service Commission approval of such changes, prior to commencing construction.

**IT IS FURTHER ORDERED** that, if there is any change in project cost or financing that does not affect rates, the City of Clarksburg Public Service District is not required to obtain Public Service Commission approval of such change. However, in such case, the City of Clarksburg Sanitary Board shall file an affidavit with the Public Service Commission, duly executed by its Certified Public Accountant, verifying that rates are not affected.

**IT IS FURTHER ORDERED** that, if this project requires the use of Division of Highways' rights-of-way, the City of Clarksburg Sanitary Board comply with all rules and regulations of the Division of Highways regarding the use of those rights-of-way.

**IT IS FURTHER ORDERED** that the Commission's Executive Secretary serve a copy of this Recommended Decision upon the Commission by hand delivery and upon all other 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 Public Service Commission, within fifteen (15) days of the date this Recommended Decision 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 Recommended Decision 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 Recommended Decision by filing an appropriate petition, in writing, with the Commission's Executive Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make an Administrative Law Judge's Recommended Decision the order of the Commission sooner than five (5) days after approval of such waiver by the Public Service Commission.

Cecelia Gail Jarrell

**Cecelia Gail Jarrell**
**Administrative Law Judge**

CGJ:s:cdk
081912a.wpd

**NOTICE OF PUBLIC HEARING**

A Public hearing will be held prior to final vote on adoption of an Ordinance during the next regular meeting of Council of the City of Clarksburg, to be held on Thursday, October 5, 2006 at 7:30 P.M. at the Clarksburg Municipal Building, 222 West Main Street, Clarksburg. The Ordinance will impose a multi-year increase in sewer rates for **residents** of Clarksburg over a 4 year period. A summary of the current and proposed rates for each rate period are as follows: Billed monthly or bi-monthly:

The service charge for any person, firm or corporation situate within the municipal limits of the City of Clarksburg having any connection with the City's pubic sanitary sewerage and discharging sewage, industrial wastes, water or other liquids into such system shall be based upon the quantity of water used on or in said premises as the same is measured by the Clarksburg Water Board meter or meters there in use, and shall be charged bi-monthly or monthly at the following rates:

**CURRENT RATES**

| | |
|---|---|
| First 4,000 cubic feet of water used per month or 8,000 cubic feet used bi-monthly | 3.32 per 100 cubic feet |
| Next 16,000 cubic feet of water used per month or 32,000 cubic feet used bi-monthly | 2.44 per 100 cubic feet |
| All over 20,000 cubic feet of water used per month or 40,000 cubic feet used bi-monthly | 1.58 per 100 cubic feet |

Minimum charge: $14.96 per month or $29.92 bi-monthy

**PROPOSED RATES:**

**Phase I Rates Effective 45 days after passage of ordinance**

The first 4,000 cubic feet per month or 8,000 cubic feet used bi-monthly at $3.78 per 100 cubic feet.

The next 16,000 cubic feet used per month or 32,000 cubic feet used bi-monthly at $2.78 per 100 cubic feet.

All over 20,000 cubic feet used per month or 40,000 cubic feet used bi-monthly at $2.41 per 100 cubic feet.

The minimum charge to any customer will be $17.05 per month or $34.10 bi-monthly.

**Phase II Rates Effective July 1, 2007**

The first 4,000 cubic feet per month or 8,000 cubic feet used bi-monthly at $4.08 per 100 cubic feet.

The next 16,000 cubic feet used per month or 32,000 cubic feet used bi-monthly at $3.00 per 100 cubic feet.

All over 20,000 cubic feet used per month or 40,000 cubic feet used bi-monthly at $2.60 per 100 cubic feet.

The minimum charge to any customer will be $18.41 per month or $36.82 bi-monthly.

**Phase III Rates Effective July 1, 2008**

The first 4,000 cubic feet per month or 8,000 cubic feet used bi-monthly at $4.21 per 100 cubic feet.

The next 16,000 cubic feet used per month or 32,000 cubic feet used bi-monthly at $3.10 per 100 cubic feet.

All over 20,000 cubic feet used per month or 40,000 cubic feet used bi-monthly at $2.69 per 100 cubic feet.

The minimum charge to any customer will be $19.02 per month or $38.04 bi-monthly.

**Phase IV Rates Effective July 1, 2009**

The first 4,000 cubic feet per month or 8,000 cubic feet used bi-monthly at $4.38 per 100 cubic feet.

The next 16,000 cubic feet used per month or 32,000 cubic feet used bi-monthly at $3.22 per 100 cubic feet.

All over 20,000 cubic feet used per month or 40,000 cubic feet used bi-monthly at $2.80 per 100 cubic feet.

The minimum charge to any customer will be $19.78 per month or $39.56 bi-monthly.

All interested parties may appear at said meeting of City Council and be heard with respect to this proposed ordinance. Copies of this proposed ordinance are available for public inspection in the Office of the City Clerk and the Office of the Director of Finance at said Municipal Building during regular business hours. Citizens with text telephone may contact the City through the use of the State Relay service by calling 1-800-982-8771.

The title of the proposed ordinance is as follows:

**An Ordinance of the City of Clarksburg, West Virginia, amending and re-enacting Section 933.02 of Article 933 of Chapter 3 of the Code of the City of Clarksburg, relating to the imposition of rates for the use of the services rendered by the sewerage system, and establishing standards for the use of such system and the computation of such rates, for residents of the City of Clarksburg.**

Passed by the City Council of the City of Clarksburg on First Reading on the 21st day of September 2006.

Sam Lopez, Mayor

ATTEST:
Annette M. Wright, City Clerk

RECEIVED

2006 OCT 10 AM 8:59

W VA PUBLIC SERVICE COMMISSION SECRETARY'S OFFICE

# PUBLISHER'S CERTIFICATE

I, Sarah V. Shingleton, Classified Manager of THE EXPONENT TELEGRAM, a newspaper of general circulation published in the City of Clarksburg, County and state aforesaid, do hereby certify that the annexed:

PUBLIC HEARING-RESIDENTS

was published in THE EXPONENT-TELEGRAM 2 time(s) commencing on

the 25th day of September 2006 and ending on the 2nd day of October 2006 at the request of CITY OF CLARKSBURG.

Given under my hand this 3rd day of October 2006

The publisher's fee for said publication is: $293.02 for 1288 words at $0.2275 per word.

Sarah V. Shingleton
Classified Manager of The Exponent-Telegram

SEAL

Subscribed to and sworn to before me this 3rd day of October 2006.

Shelley F. Ripple
Notary Public in and for Harrison County, WV

My commission expires on:
The 21 day of July 2009

OFFICIAL SEAL
NOTARY PUBLIC
STATE of WEST VIRGINIA
SHELLEY F. RIPPLE
Clarksburg Publishing Co.
PO Box 2000, 324 Hewes Ave.
Clarksburg, WV 26302-2000
My Commission Expires July 21, 2009

NOTICE OF PUBLIC HEARING

A Public hearing will be held prior to final vote on adoption of an Ordinance during the next regular meeting of Council of the City of Clarksburg, to be held on Thursday, October 5, 2006 at 7:30 P.M. at the Clarksburg Municipal Building, 222 West Main Street, Clarksburg. The Ordinance will impose a multi-year increase in sewer rates for **non-residents** of Clarksburg over a 4 year period. A summary of the current and proposed rates for each rate period are as follows: Billed monthly or bi-monthly:

The service charge for any persons, firms or corporations and other legal entities situate without the municipal limits of the City of Clarksburg, not a municipal corporation nor a public service district, having any connection with the City's public sanitary sewerage and discharging sewage, industrial wastes, water or other liquids into such system shall be based upon the quantity of water used on or in said premises as the same is measured by the Clarksburg Water Board meter or meters there in use, or by such other meters there in use, or who are connected to the Clarksburg Sanitary Sewer System and receive water from a source other the Clarksburg Water Board and pay sewer service charges directly to the Clarksburg Sanitary Board, shall be charged monthly at the following rates:

**CURRENT RATES**

| | |
|---|---|
| First 4,000 cubic feet of water used per month or 8,000 cubic feet used bi-monthly | 3.32 per 100 cubic feet |
| Next 16,000 cubic feet of water used per month or 32,000 cubic feet used bi-monthly | 2.44 per 100 cubic feet |
| All over 20,000 cubic feet of water used per month or 40,000 cubic feet used bi-monthly | 1.58 per 100 cubic feet |

Minimum charge: $14.96 per month or $29.92 bi-monthy

**PROPOSED RATES:**

**Phase I Rates Effective 45 days from passage of ordinance**

The first 4,000 cubic feet per month or 8,000 cubic feet used bi-monthly at $3.78 per 100 cubic feet.

The next 16,000 cubic feet used per month or 32,000 cubic feet used bi-monthly at $2.78 per 100 cubic feet.

All over 20,000 cubic feet used per month or 40,000 cubic feet used bi-monthly at $2.41 per 100 cubic feet.

The minimum charge to any customer will be $17.05 per month or $34.10 bi-monthly.

**Phase II Rates Effective July 1, 2007**

The first 4,000 cubic feet per month or 8,000 cubic feet used bi-monthly at $4.08 per 100 cubic feet.

The next 16,000 cubic feet used per month or 32,000 cubic feet used bi-monthly at $3.00 per 100 cubic feet.

All over 20,000 cubic feet used per month or 40,000 cubic feet used bi-monthly a $2.60 per 100 cubic feet.

The minimum charge to any customer will be $18.41 per month or $36.82 bi-monthly.

**Phase III Rates Effective July 1, 2008**

The first 4,000 cubic feet per month or 8,000 cubic feet used bi-monthly at $4.21 per 100 cubic feet.

The next 16,000 cubic feet used per month or 32,000 cubic feet used bi-monthly at $3.10 per 100 cubic feet.

All over 20,000 cubic feet used per month or 40,000 cubic feet used bi-monthly at $2.69 per 100 cubic feet.

The minimum charge to any customer will be $19.02 per month or $38.04 bi-monthly.

**Phase IV Rates Effective July 1, 2009**

The first 4,000 cubic feet per month or 8,000 cubic feet used bi-monthly at $4.38 per 100 cubic feet.

The next 16,000 cubic feet used per month or 32,000 cubic feet used bi-monthly at $3.22 per 100 cubic feet.

All over 20,000 cubic feet used per month or 40,000 cubic feet used bi-monthly at $2.80 per 100 cubic feet.

The minimum charge to any customer will be $19.78 per month or $39.56 bi-monthly.

The service charge for the municipalities of Nutter Fort, Stonewood, Anmoore, all Public Service Districts, and legal entities which are non-residents, which receive water from the Clarksburg Water Board which have a connection with Clarksburg s sewerage system who are billed by a governmental agency other than the Clarksburg Water Board so long as their sewerage systems have a connection to the City's public sewerage system shall be based upon the quantity of water used on or in such municipalities, Public Service Districts, and by such non-residential legal entities as the same is measured by the Clarksburg Water Board meter or meters there in use, for water delivered to such municipalities, Public Service Districts, and non-residential legal entities shall be billed monthly at the following rates:

**CURRENT RATES:**

$1.74 per 100 cubic feet of water

**PROPOSED RATES:**

**Phase I Rates Effective 45 days from passage or ordinance**

$1.98 per 100 cubic feet

**Phase II Rates Effective July 1, 2007**

$2.14 per 100 cubic feet

**Phase III Rates Effective July 1, 2008**

$2.21 per 100 cubic feet

**Phase IV Rates Effective July 1, 2009**

$2.30 per 100 cubic feet

All interested parties ma appear at said meeting of City Council and be heard with respect to this proposed ordinance. Copies of this proposed ordinance are available for public inspection in the Office of the City Clerk and the Office of the Director of Finance at said Municipal Building during regular business hours. Citizens with text telephone may contact the City through the use of the State Relay service by calling 1-800-982-8771.

The title of the proposed ordinance is as follows:

**An Ordinance of the City of Clarksburg, West Virginia, amending and re-enacting Section 933.021 of Article 933 of Chapter 3 of the code of the City of Clarksburg, relating to the imposition of rates for the use of the services rendered by the sewerage system, and establishing standards for the use of such system and the computation of such rates, for non-residents of the City of Clarksburg.**

Passed by the City Council of the City of Clarksburg on First Reading on the 21st day of September 2006

Sam Lopez, Mayor

ATTEST:

Annette M. Wright, City Clerk

RECEIVED

2006 OCT 10 AM 8:59

W VA PUBLIC SERVICE COMMISSION SECRETARY'S OFFICE

# PUBLISHER'S CERTIFICATE

I, Sara V. Shingleton, Classified Manager of THE EXPONENT TELEGRAM, a newspaper of general circulation published in the City of Clarksburg, County and state aforesaid, do hereby certify that the annexed:

PUBLIC HEARING-NONRESIDENTS

was published in THE EXPONENT-TELEGRAM 2 time(s) commencing on

the 25th day of September 2006 and ending on the 2nd day of October 2006 at the request of CITY OF CLARKSBURG.

Given under my hand this 3rd day of October 2006

The publisher's fee for said publication is: $396.31 for 1742 words at $0.2275 per word.

Sara V. Shingleton

Classified Manager of The Exponent-Telegram

SEAL

Subscribed to and sworn to before me this 3rd day of October 2006.

Shelley G. Bell

Notary Public in and for Harrison County, WV

My commission expires on:

The 21 day of July 2009

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Shelley G. Bell
Clarksburg Publishing Co.
PO Box 2000, 334 Pennsylvania Ave.
Clarksburg, WV 26302-2000
My Commission Expires July 21, 2009

# PUBLISHER'S CERTIFICATE

I, Sara V. Shingleton, Classified Manager of THE EXPONENT TELEGRAM, a newspaper of general circulation published in the City of Clarksburg, County and state aforesaid, do hereby certify that the annexed:

PUBLIC NOTICE/RATE CHANGE

was published in THE EXPONENT-TELEGRAM 2 time(s) commencing on

the 10th day of October 2006 and ending on the 17th day of October 2006 at the request of CITY OF CLARKSBURG.

Given under my hand this 18th day of October 2006

The publisher's fee for said publication is: $368.55 for 1620 words at $.2275 per word.

Sara V. Shingleton
Classified Manager of The Exponent-Telegram

SEAL

Subscribed to and sworn to before me this 18th day of October 2006.

Shelley J. Riffle
Notary Public in and for Harrison County, WV

My commission expires on:
The 21 day of July 20 09

RECEIVED
2006 OCT 20 AM 9: 14
W VA PUBLIC SERVICE COMMISSION
SECRETARY'S OFFICE

Tariff Form 12
(Tariff Rule 44)
PUBLIC NOTICE OF CHANGE IN RATES

**Proposed Multi-Year Increase in Sewer Rates by Clarksburg Sanitary Board**

NOTICE is hereby given that the Clarksburg City Council, on behalf of the Clarksburg Sanitary Board, a public sewer utility, has adopted two ordinances on First Reading on Thursday, September 21, 2006 to increase sewer rates for furnishing sewer collection and treatment services to Clarksburg and non-resident customers of the Clarksburg Sanitary Board located in Harrison County, West Virginia. The Sanitary Board provides sewer collection and treatment service for approximately 7,250 customers.

The proposed increased rates will become effective on Monday, November 20, 2006 unless otherwise ordered by the Public Service Commission. The proposed rate increase is a multi-year increase in rates to take effect over a 4 year period and will generate approximately $387,183 in additional annual revenues for the Clarksburg Sanitary Board, in year one, $254,965 in year 2, $113,000 in year 3, and $137,567 in year 4. The amount of the rate increase will be 14% in year 1, 8% in year 2, 3.3% in year 3, and 4% in year 4.

The average monthly bill for the various customer classes will be increased over the period as follows:

**Phase I Rates Effective 45 Days After Passage of Ordinance**

| | Average Monthly Bill | Dollar Amount of Monthly Increase | % Increase |
|---|---|---|---|
| Clarksburg Residential Customers | $ 18.19 | $ 2.52 | 14% |
| Clarksburg Commercial Customers | $ 74.63 | $10.45 | 14% |
| Clarksburg Industrial Customers | $1,255.85 | $175.82 | 14% |
| Municipalities Served By Clarksburg Sanitary Board | $10,065.32 | $1,409.15 | 14% |
| Public Service Districts Served by Clarksburg Sanitary Board | $3,637.06 | $509.19 | 14% |
| Non-resident Legal Entities Served by Clarksburg Sanitary Board | $550.97 | $77.14 | 14% |

**Phase II Rates Effective July 1, 2007**

| | Average Monthly Bill | Dollar Amount of Monthly Increase | % Increase |
|---|---|---|---|
| Clarksburg Residential Customers | $ 20.71 | $ 1.65 | 8% |
| Clarksburg Commercial Customers | $ 85.08 | $6.81 | 8% |
| Clarksburg Industrial Customers | $1,431.67 | $114.84 | 8% |
| Municipalities Served By Clarksburg Sanitary Board | $11,474.47 | $917.98 | 8% |
| Public Service Districts Served by Clarksburg Sanitary Board | $4,146.25 | $331.70 | 8% |
| Non-resident Legal Entities Served by Clarksburg Sanitary Board | $628.11 | $50.25 | 8% |

**Phase III Rates Effective July 1, 2008**

| | Average Monthly Bill | Dollar Amount of Monthly Increase | % Increase |
|---|---|---|---|
| Clarksburg Residential Customers | $ 22.36 | $ 0.71 | 3.3% |
| Clarksburg Commercial Customers | $ 91.89 | $3.04 | 3.3% |
| Clarksburg Industrial Customers | $1,546.31 | $51.03 | 3.3% |
| Municipalities Served By Clarksburg Sanitary Board | $12,392.43 | $408.95 | 3.3% |
| Public Service Districts Served by Clarksburg Sanitary Board | $4,477.95 | $147.78 | 3.3% |
| Non-resident Legal Entities Served by Clarksburg Sanitary Board | $678.36 | $22.39 | 3.3% |

**Phase IV Rates Effective July 1, 2009**

| | Average Monthly Bill | Dollar Amount Monthly Increase | % Increase |
|---|---|---|---|
| Clarksburg Residential Customers | $23.07 | $ 0.93 | 4% |
| Clarksburg Commercial Customers | $ 94.93 | $ 3.80 | 4% |
| Clarksburg Industrial Customers | $1,597.34 | $63.90 | 4% |
| Municipalities Served By Clarksburg Sanitary Board | $12,801.38 | $512.06 | 4% |
| Public Service Districts Served by Clarksburg Sanitary Board | $4,625.73 | $185.03 | 4% |
| Non-resident Legal Entities Served by Clarksburg Sanitary Board | $700.75 | $28.03 | 4% |

The increases shown are based on average of all customers in the indicated class. Individual customers may receive increases that are greater than or less than average. Further, the requested rates and charges are only proposed and are subject to change (increase or decrease) by the Public Service Commission in its review of this filing. The Commission shall review and approve or modify the increased rates only upon the filing of a petition within thirty (30) days of the adoption of the ordinance changing said rates or charges, by:

Any customer aggrieved by the changed rates or charges who presents to the Commission a petition signed by not less than twenty-five percent of the customers served by the Clarksburg Sanitary Board; or

Any customer who is served by the Clarksburg Sanitary Board and who resides outside the corporate limits and who is affected by the change in said rates or charges and who presents to the Commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or

Any customer or group of customers who are affected by said change in rates who reside within the municipal boundaries and who present a petition to the Commission alleging discrimination between said customer or group of customers and other customers of the Clarksburg Sanitary Board. Said petition shall be accompanied by evidence of discrimination.

Petitions should be addressed to the Executive Secretary, Public Service Commission of West Virginia, 201 Brooks Street, P.O. Box 812, Charleston, West Virginia 25323.

A copy of the proposed rates is available at the office of the Director of Finance. The Director of Finance/Treasurer can provide any information regarding the Sanitary Board Budget and proposed rate increase to any customer or prospective customer upon request. The office of the Director of Finance is located 222 West Main Street, Clarksburg, West Virginia 26301.

# West Virginia Infrastructure & Jobs Development Council

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

20-874

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

Dan F.
Dave W

November 13, 2007

Martin Howe, Chairman
City of Clarksburg Sanitary Board
222 West Main Street
Clarksburg, West Virginia 26301

Re: City of Clarksburg Sanitary Board
Sewer Project 2007S-1005

Dear Mr. Howe:

The West Virginia Infrastructure and Jobs Development Council (the "Council") has reviewed the City of Clarksburg Sanitary Board's (the "City") preliminary application regarding its proposed project to install Davisson Run sanitary sewer line, abandon Hill-N-Dale lift station, improve the existing collection system, GIS work for City, Long Term Control Plan, and City wide mapping (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 City should carefully review the enclosed comments of the Sewer Technical Review Committee as the City may need to address certain issues raised in said comments as it proceeds with the Project.

Upon consideration of the preliminary application, the Infrastructure Council recommends that the City pursue a $2,000,000 Clean Water State Revolving Fund loan to fund this project. Please contact the West Virginia Department of Environmental Protection office at 926-0495for specific information on the steps the City needs to follow to apply for these funds. **Please note that this letter <u>does not</u> constitute funding approval from this agency.**

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)
Region VI Planning & Development Council
Dan Ferrell, P.E. or David Watson, Thrasher Engineering, Inc.

CITY OF CLARKSBURG

Sewer Revenue Bonds, Series 2009 A
(West Virginia SRF Program); and
Sewer Revenue Bonds, Series 2009 B
(West Virginia SRF Program/ARRA)

CROSS-RECEIPT FOR BOND AND BOND PROCEEDS

On the 8th 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 Mayor of the City of Clarksburg (the "Issuer"), for and on behalf of the Issuer, hereby certify as follows:

1. On the 8th day of July, 2009, the Authority received the Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), of the Issuer, in the principal amount of $1,000,000, numbered AR-1 (the "Series 2009 A Bonds") and the Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA), of the Issuer, in the principal amount of $1,000,000, numbered BR-1 (the "Series 2009 B Bonds"), each issued as a single, fully registered Bond, and each dated July 8, 2009.

2. At the time of such receipt, all the Series 2009 A Bonds and the Series 2009 B Bonds had been executed by the Mayor and the City Clerk of the Issuer, by their respective manual signatures, and the official seal of the Issuer had been affixed upon the Bonds.

3. The Issuer has received and hereby acknowledges receipt from the Authority, as the original purchaser of the Series 2009 A Bonds, of $673,459, being a portion of the principal amount of the Series 2009 A Bonds. The balance of the principal amount of the Series 2009 A Bonds will be advanced by the Authority and the West Virginia Department of Environmental Protection to the Issuer as acquisition and construction of the Project progresses.

4. The Issuer has received and hereby acknowledges receipt from the Authority, as the original purchaser of the Series 2009 B Bonds, of $10,702, being a portion of the principal amount of the Series 2009 B Bonds. The balance of the principal amount of the Series 2009 B Bonds will be advanced by the Authority and by the West Virginia Department of Environmental Protection to the Issuer as acquisition and construction of the Project progresses.

[Remainder of Page Intentionally Blank]

Dated as of the day and year first written above.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

By: _____
Its: Authorized Representative

CITY OF CLARKSBURG

By: _____
Its: Mayor

06.17.09
155510.00002

CITY OF CLARKSBURG

Sewer Revenue Bonds, Series 2009 A
(West Virginia SRF Program) and
Sewer Revenue Bonds, Series 2009 B
(West Virginia SRF Program/ARRA)

DIRECTION TO AUTHENTICATE AND DELIVER BONDS

The Huntington National Bank,
as Bond Registrar
Charleston, West Virginia

Ladies and Gentlemen:

There are delivered to you herewith on this 8th day of July, 2009.

(1) Bond No. AR-1, constituting the entire original issue of the City of Clarksburg Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), in the principal amount of $1,000,000 (the "Series 2009 A Bonds") and Bond No. BR-1, constituting the entire original issue of the City of Clarksburg Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA), in the principal amount of $1,000,000 (the "Series 2009 B Bonds"), both dated July 8, 2009 (collectively, the "Series 2009 Bonds"), executed by the Mayor and the City Clerk of the City of Clarksburg (the "Issuer") and bearing the official seal of the Issuer, authorized to be issued under and pursuant to a Bond Ordinance duly enacted by the Issuer on May 7, 2009, and a Supplemental Resolution and Conformed Ordinance duly adopted by the Issuer on June 18, 2009 (collectively, the "Bond Legislation");

(2) A copy of the Bond Legislation authorizing the above-described Bond issue, duly certified by the City Clerk of the Issuer;

(3) Executed counterparts of a ARRA Assistance Agreement for the Series 2009 A Bonds, dated July 8, 2009, by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP") and an ARRA Assistance Agreement for the Series 2009 B Bonds, dated July 8, 2009 (collectively, the "ARRA Assistance Agreement"), by and among the Issuer, the Authority and the DEP; and

(4) Executed opinions of nationally recognized bond counsel regarding the validity of the ARRA Assistance Agreement and the Series 2009 Bonds.

You are hereby requested and authorized to deliver the Series 2009 A Bonds to the Authority upon payment to the Issuer of the sum of $673,459, representing a portion of the principal amount of the Series 2009 A Bonds. You are further hereby requested and authorized to deliver the

Series 2009 B Bonds to the Authority upon payment to the Issuer of the sum of $10,702, representing a portion of the principal amount of the Series 2009 B Bonds. Prior to such delivery of the Series 2009 Bonds, you will please cause the Series 2009 Bonds to be authenticated and registered by an authorized officer, as Bond Registrar, in accordance with the forms of Certificate of Authentication and Registration thereon.

[Remainder of Page Intentionally Blank]

Dated as of the day and year first written above.

CITY OF CLARKSBURG

By: _____
Its: Mayor

06.17.09
155510.00002

SPECIMEN

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF CLARKSBURG
SEWER REVENUE BONDS, SERIES 2009 A
(WEST VIRGINIA SRF PROGRAM)

No. AR-1 $1,000,000

KNOW ALL MEN BY THESE PRESENTS: That on the 8th day of July, 2009, the CITY OF CLARKSBURG, a municipal corporation and political subdivision of the State of West Virginia in Harrison 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 of 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 September 1, 2010 to and including June 1, 2030 as set forth on the "Debt Service Schedule" attached as Exhibit B hereto and incorporated herein by reference. The SRF Administrative Fee (as defined in the hereinafter described Bond Legislation) shall be payable quarterly on March 1, June 1, September 1, and December 1 of each year, commencing September 1, 2010 as set forth on Exhibit B attached hereto.

This Bond shall bear no interest. 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").

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 Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement (the "ARRA Assistance Agreement") by and among the Issuer, the Authority, and the DEP, dated July 8, 2009.

This Bond is issued (i) to pay the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); (ii) funding the Series 2009 A 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 extensions, 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 13 and Chapter 22 C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond

Ordinance duly enacted by the Issuer on May 7, 2009, and a Supplemental Resolution and Conformed Ordinance duly adopted by the Issuer on June 18, 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, TO THE ISSUER'S (I) SEWER REVENUE BONDS, SERIES 1996 (WEST VIRGINIA SRF PROGRAM), DATED OCTOBER 24, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $6,484,283 (THE "SERIES 1996 BONDS" OR THE "PRIOR BONDS"), AND (II) THE SEWER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA SRF PROGRAM/ARRA), DATED JULY 8, 2009, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $1,000,000, (THE "SERIES 2009 B BONDS"), ISSUED SIMULTANEOUSLY HEREWITH.

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 Series 1996 Bonds and the Series 2009 B Bonds, and from monies in the Reserve Account created under the Bond Legislation for the Series 2009 A Bonds (the "Series 2009 A Bonds Reserve Account"), and unexpended proceeds of the Series 2009 A Bonds. Such Net Revenues shall be sufficient to pay all operating expenses of the System and the principal of and interest on 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 an 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, except from said special fund provided from the Net Revenues, the monies in the Series 2009 A Bonds Reserve Account and unexpended proceeds of the Series 2009 A 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 Series 2009 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2009 A Bonds including the Series 2009 B Bonds and the Prior Bonds; provided however, that, so long as there exists in the Series 2009 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Series 2009 A 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 or junior and subordinate to the Bonds, including the Series 2009 B Bonds and the Prior 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 Registrar (as defined in the Bond Legislation) 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 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 in 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 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, the CITY OF CLARKSBURG has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk, has caused this Bond to be dated the day and year first written above.

[SEAL]

SPECIMEN

Mayor

ATTEST:

SPECIMEN

City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2009 A 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 8, 2009.

THE HUNTINGTON NATIONAL BANK
as Registrar

SPECIMEN

Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

| AMOUNT | DATE | AMOUNT | DATE |
|---|---|---|---|
| (1) $673,459 | July 8, 2009 | (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**
City of Clarksburg
$1,000,000 - 0% Interest Rate
20 Years

| | |
|---|---|
| Dated Date | 7/8/2009 |
| Delivery Date | 7/8/2009 |

| Period Ending | Principal | Interest | Debt Service |
|---|---|---|---|
| 7/8/2009 | | | |
| 9/1/2010 | 12,500 | | 12,500 |
| 12/1/2010 | 12,500 | | 12,500 |
| 3/1/2011 | 12,500 | | 12,500 |
| 6/1/2011 | 12,500 | | 12,500 |
| 9/1/2011 | 12,500 | | 12,500 |
| 12/1/2011 | 12,500 | | 12,500 |
| 3/1/2012 | 12,500 | | 12,500 |
| 6/1/2012 | 12,500 | | 12,500 |
| 9/1/2012 | 12,500 | | 12,500 |
| 12/1/2012 | 12,500 | | 12,500 |
| 3/1/2013 | 12,500 | | 12,500 |
| 6/1/2013 | 12,500 | | 12,500 |
| 9/1/2013 | 12,500 | | 12,500 |
| 12/1/2013 | 12,500 | | 12,500 |
| 3/1/2014 | 12,500 | | 12,500 |
| 6/1/2014 | 12,500 | | 12,500 |
| 9/1/2014 | 12,500 | | 12,500 |
| 12/1/2014 | 12,500 | | 12,500 |
| 3/1/2015 | 12,500 | | 12,500 |
| 6/1/2015 | 12,500 | | 12,500 |
| 9/1/2015 | 12,500 | | 12,500 |
| 12/1/2015 | 12,500 | | 12,500 |
| 3/1/2016 | 12,500 | | 12,500 |
| 6/1/2016 | 12,500 | | 12,500 |
| 9/1/2016 | 12,500 | | 12,500 |
| 12/1/2016 | 12,500 | | 12,500 |
| 3/1/2017 | 12,500 | | 12,500 |
| 6/1/2017 | 12,500 | | 12,500 |
| 9/1/2017 | 12,500 | | 12,500 |
| 12/1/2017 | 12,500 | | 12,500 |
| 3/1/2018 | 12,500 | | 12,500 |
| 6/1/2018 | 12,500 | | 12,500 |
| 9/1/2018 | 12,500 | | 12,500 |
| 12/1/2018 | 12,500 | | 12,500 |
| 3/1/2019 | 12,500 | | 12,500 |
| 6/1/2019 | 12,500 | | 12,500 |
| 9/1/2019 | 12,500 | | 12,500 |
| 12/1/2019 | 12,500 | | 12,500 |
| 3/1/2020 | 12,500 | | 12,500 |
| 6/1/2020 | 12,500 | | 12,500 |
| 9/1/2020 | 12,500 | | 12,500 |
| 12/1/2020 | 12,500 | | 12,500 |
| 3/1/2021 | 12,500 | | 12,500 |
| 6/1/2021 | 12,500 | | 12,500 |

**BOND DEBT SERVICE**
City of Clarksburg
$1,000,000 - 0% Interest Rate
20 Years

| Period Ending | Principal | Interest | Debt Service |
|---|---|---|---|
| 9/1/2021 | 12,500 | | 12,500 |
| 12/1/2021 | 12,500 | | 12,500 |
| 3/1/2022 | 12,500 | | 12,500 |
| 6/1/2022 | 12,500 | | 12,500 |
| 9/1/2022 | 12,500 | | 12,500 |
| 12/1/2022 | 12,500 | | 12,500 |
| 3/1/2023 | 12,500 | | 12,500 |
| 6/1/2023 | 12,500 | | 12,500 |
| 9/1/2023 | 12,500 | | 12,500 |
| 12/1/2023 | 12,500 | | 12,500 |
| 3/1/2024 | 12,500 | | 12,500 |
| 6/1/2024 | 12,500 | | 12,500 |
| 9/1/2024 | 12,500 | | 12,500 |
| 12/1/2024 | 12,500 | | 12,500 |
| 3/1/2025 | 12,500 | | 12,500 |
| 6/1/2025 | 12,500 | | 12,500 |
| 9/1/2025 | 12,500 | | 12,500 |
| 12/1/2025 | 12,500 | | 12,500 |
| 3/1/2026 | 12,500 | | 12,500 |
| 6/1/2026 | 12,500 | | 12,500 |
| 9/1/2026 | 12,500 | | 12,500 |
| 12/1/2026 | 12,500 | | 12,500 |
| 3/1/2027 | 12,500 | | 12,500 |
| 6/1/2027 | 12,500 | | 12,500 |
| 9/1/2027 | 12,500 | | 12,500 |
| 12/1/2027 | 12,500 | | 12,500 |
| 3/1/2028 | 12,500 | | 12,500 |
| 6/1/2028 | 12,500 | | 12,500 |
| 9/1/2028 | 12,500 | | 12,500 |
| 12/1/2028 | 12,500 | | 12,500 |
| 3/1/2029 | 12,500 | | 12,500 |
| 6/1/2029 | 12,500 | | 12,500 |
| 9/1/2029 | 12,500 | | 12,500 |
| 12/1/2029 | 12,500 | | 12,500 |
| 3/1/2030 | 12,500 | | 12,500 |
| 6/1/2030 | 12,500 | | 12,500 |
| | **1,000,000** | | **1,000,000** |

Plus $1,265.40 quarterly administrative fee
Total fee paid over life of the loan is $101,250.40

(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: _____, 20____.

_____

In the presence of:

_____

SPECIMEN

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF CLARKSBURG
SEWER REVENUE BONDS, SERIES 2009 B
(WEST VIRGINIA SRF PROGRAM/ARRA)

No. BR-1 $1,000,000

KNOW ALL MEN BY THESE PRESENTS: The 8th day of July, 2009, that the CITY OF CLARKSBURG, a municipal corporation and political subdivision of the State of West Virginia in Harrison 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 of 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 September 1, 2010, to an including June 1, 2020 as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. This Bond shall not be subject to the SRF Administrative fee (as defined in the hereinafter describe Bond Legislation).

This Bond shall bear no interest. Principal installments of this Bond are 100% forgivable as set forth in the ARRA Assistance Agreement.

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 Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the ARRA Assistance Agreement (the "ARRA Assistance Agreement") by and among the Issuer, the Authority and the DEP, dated July 8, 2009.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements 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 extensions, 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 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on May 7, 2009,

and a Supplemental Resolution and Conformed Ordinance duly adopted by the Issuer on June 18, 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, TO THE ISSUER'S (I) SEWER REVENUE BONDS, SERIES 1996 (WEST VIRGINIA SRF PROGRAM), DATED OCTOBER 24, 1996, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $6,484,283 (THE "SERIES 1996 BONDS" OR THE "PRIOR BONDS"), AND (II) SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA SRF PROGRAM), DATED July 8, 2009, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $1,000,000 (THE "SERIES 2009 A BONDS"), ISSUED SIMULTANEOUSLY HEREWITH.

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 Series 1996 Bonds and the Series 2009 A Bonds, and from monies in the Reserve Account created under the Bond Legislation for the Series 2009 B Bonds (the "Series 2009 B Bonds Reserve Account"), and unexpended proceeds of the Series 2009 B Bonds. Such Net Revenues shall be sufficient to pay all operating expenses of the System and the principal of and interest on 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 an 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, 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 Series 2009 B 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 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 Series 2009 A Bonds and the Prior Bonds; provided however, that, so long as 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 Series 2009 B 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 or junior and subordinate to the Bonds, including the Series 2009 A Bonds and the Prior 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 Registrar (as defined in the Bond

Legislation) 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 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 in 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 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, the CITY OF CLARKSBURG has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk, has caused this Bond to be dated the day and year first written above.

[SEAL]

SPECIMEN

Mayor

ATTEST:

SPECIMEN

City Clerk

(Form of)

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 8, 2009.

THE HUNTINGTON NATIONAL BANK
as Registrar

SPECIMEN

Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

| AMOUNT | DATE | AMOUNT | DATE |
|---|---|---|---|
| (1) $10,702 | July 8, 2009 | (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**
City of Clarksburg
10 Years

| | |
|---|---|
| Dated Date | 7/8/2009 |
| Delivery Date | 7/8/2009 |

| Period Ending | Debt Service | Principal Forgiveness |
|---|---|---|
| 7/8/2009 | | |
| 9/1/2010 | -25,000 | -25,000 |
| 12/1/2010 | -25,000 | -25,000 |
| 3/1/2011 | -25,000 | -25,000 |
| 6/1/2011 | -25,000 | -25,000 |
| 9/1/2011 | -25,000 | -25,000 |
| 12/1/2011 | -25,000 | -25,000 |
| 3/1/2012 | -25,000 | -25,000 |
| 6/1/2012 | -25,000 | -25,000 |
| 9/1/2012 | -25,000 | -25,000 |
| 12/1/2012 | -25,000 | -25,000 |
| 3/1/2013 | -25,000 | -25,000 |
| 6/1/2013 | -25,000 | -25,000 |
| 9/1/2013 | -25,000 | -25,000 |
| 12/1/2013 | -25,000 | -25,000 |
| 3/1/2014 | -25,000 | -25,000 |
| 6/1/2014 | -25,000 | -25,000 |
| 9/1/2014 | -25,000 | -25,000 |
| 12/1/2014 | -25,000 | -25,000 |
| 3/1/2015 | -25,000 | -25,000 |
| 6/1/2015 | -25,000 | -25,000 |
| 9/1/2015 | -25,000 | -25,000 |
| 12/1/2015 | -25,000 | -25,000 |
| 3/1/2016 | -25,000 | -25,000 |
| 6/1/2016 | -25,000 | -25,000 |
| 9/1/2016 | -25,000 | -25,000 |
| 12/1/2016 | -25,000 | -25,000 |
| 3/1/2017 | -25,000 | -25,000 |
| 6/1/2017 | -25,000 | -25,000 |
| 9/1/2017 | -25,000 | -25,000 |
| 12/1/2017 | -25,000 | -25,000 |
| 3/1/2018 | -25,000 | -25,000 |
| 6/1/2018 | -25,000 | -25,000 |
| 9/1/2018 | -25,000 | -25,000 |
| 12/1/2018 | -25,000 | -25,000 |
| 3/1/2019 | -25,000 | -25,000 |
| 6/1/2019 | -25,000 | -25,000 |
| 9/1/2019 | -25,000 | -25,000 |
| 12/1/2019 | -25,000 | -25,000 |
| 3/1/2020 | -25,000 | -25,000 |
| 6/1/2020 | -25,000 | -25,000 |
| | **-1,000,000** | **-1,000,000** |

(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: _____, 20____.

_____

In the presence of:

_____

STEPTOE & JOHNSON PLLC
ATTORNEYS AT LAW

Chase Tower, Eighth Floor
P.O. Box 1588
Charleston, WV 25326-1588
(304) 353-8000 (304) 353-8180 Fax
www.steptoe-johnson.com

Writer's Contact Information

July 8, 2009

City of Clarksburg
Sewer Revenue Bonds, Series 2009 A
(West Virginia SRF Program)

City of Clarksburg
Clarksburg, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Department of Environmental Protection
Charleston, West Virginia

Ladies and Gentlemen:

We have served as bond counsel to the City of Clarksburg (the "Issuer"), a municipal corporation and political subdivision of the State of West Virginia in connection with its $1,000,000 Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), dated the date hereof (the "Bonds").

We have examined the law and a certified copy of proceedings and other papers relating to the authorization of (i) an ARRA Assistance Agreement dated July 8, 2009, including all schedules and exhibits attached thereto (the "ARRA Assistance Agreement"), among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and (ii) the Bonds to be purchased by the Authority in accordance with the provisions of the ARRA Assistance Agreement. The Bonds are issued in the principal amount of $1,000,000, in the form of one bond, bearing no interest, registered as to principal only to the Authority, with principal payable quarterly on March 1, June 1, September 1, and December 1 of each year, beginning September 1, 2010 to and including June 1, 2030 all as set forth in "Schedule Y" attached to the ARRA Assistance Agreement and incorporated in and made a part of the Bonds. The Series 2009 A Bonds are subject to the SRF Administrative Fee equal to 1% of the principal amount of the Series 2009 A Bonds as set forth in the Schedule Y attached to the ARRA Assistance Agreement.

The Bonds are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); (ii) funding the Series 2009 A Bonds Reserve Account; and (iii) paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of Chapter 16, Article 13 and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and the bond ordinance duly enacted by the Issuer on May 7, 2009, as supplemented by the Supplemental Resolution and Conformed Ordinance duly adopted by the Issuer on June 18, 2009 (collectively, the "Bond Legislation"), pursuant to and under which Act and Bond Legislation the Bonds are authorized and



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Huntington, WV • Columbus, OH

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issued, and the ARRA Assistance Agreement has been undertaken. 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 ARRA Assistance Agreement. All capitalized terms used herein and not defined herein shall have the same meanings set forth in the Bond Legislation.

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 ARRA Assistance Agreement has been duly authorized by and executed on behalf of the Issuer and is a valid and binding special obligation of the Issuer enforceable in accordance with the terms thereof.

2. The ARRA Assistance Agreement inures to the benefit of the Authority and DEP and cannot be amended so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Issuer without the written consent of the Authority and the DEP.

3. The Issuer is a duly organized and presently existing municipal 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 or enact the Bond Legislation and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

4. The Bond Legislation and all other necessary ordinances and resolutions have been legally and effectively adopted or enacted by the Issuer and constitute valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their terms. The Bond Legislation contains the provisions and covenants set forth in Section 4.1 of the ARRA Assistance Agreement.

5. 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 and secured by a first lien on and pledge of the Net Revenues of the System, on a parity with the Issuer's Sewer Revenue Bonds, Series 1996 (West Virginia SRF Program), dated October 24, 1996, issued in the original aggregate principal amount of $6,484,283 (the "Series 1996 Bonds") and Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA), dated July 8, 2009, issued in the original aggregate principal amount of $1,000,000, (the "Series 2009 B Bonds") issued contemporaneously herewith, all in accordance with the terms of the Bond Legislation.

6. The Bonds are, under the Act, exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

7. The Bonds have not been issued on the basis that the interest thereon, if any, is or will be excluded from the gross income of the owners thereof for federal income tax purposes. We express no opinion regarding the excludability of such interest from the gross income of the owners thereof for federal income tax purposes or other federal tax consequences arising with respect to the Bonds.

No opinion is given herein as to the effect upon enforceability of the 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 Bond numbered AR-1, and in our opinion the form of said Bond and its execution and authentication are regular and proper.

Very truly yours,

STEPTOE & JOHNSON PLLC

06.17.09
155510.00002

STEPTOE & JOHNSON PLLC
ATTORNEYS AT LAW

Chase Tower, Eighth Floor
P.O. Box 1588
Charleston, WV 25326-1588
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www.steptoe-johnson.com

Writer's Contact Information

July 8, 2009

City of Clarksburg
Sewer Revenue Bonds, Series 2009 B
(West Virginia SRF Program/ARRA)

City of Clarksburg
Clarksburg, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Department of Environmental Protection
Charleston, West Virginia

Ladies and Gentlemen:

We have served as bond counsel to the City of Clarksburg (the "Issuer"), a municipal corporation and political subdivision of the State of West Virginia in connection with its $1,000,000 Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA), dated the date hereof (the "Bonds").

We have examined the law and a certified copy of proceedings and other papers relating to the authorization of (i) an ARRA assistance agreement dated July 8, 2009, including all schedules and exhibits attached thereto (the "ARRA Assistance Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection (the "DEP"), and (ii) the Bonds to be purchased by the Authority in accordance with the provisions of the ARRA Assistance Agreement. The Bonds are issued in the principal amount of $1,000,000, in the form of one bond, bearing no interest, registered as to principal only to the Authority, with 100% of the principal being forgiven as set forth in the ARRA Assistance Agreement. The Series 2009 B Bonds are not subject to the SRF Administrative Fee.

The Bonds are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project") and (ii) paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of Chapter 16, Article 13 and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and the bond ordinance duly enacted by the Issuer on May 7, 2009, as supplemented by the Supplemental Resolution and Conformed Ordinance duly adopted by the Issuer on June 18, 2009 (collectively, the "Bond Legislation"), pursuant to and under which Act and Bond Legislation the Bonds are authorized and issued, and the ARRA Assistance Agreement has been undertaken. The Bonds are subject to redemption



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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 ARRA Assistance Agreement. All capitalized terms used herein and not defined herein shall have the same meanings set forth in the Bond Legislation.

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 ARRA Assistance Agreement has been duly authorized by and executed on behalf of the Issuer and is a valid and binding special obligation of the Issuer enforceable in accordance with the terms thereof.

2. The ARRA Assistance Agreement inures to the benefit of the Authority and DEP and cannot be amended so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Issuer without the consent of the Authority and the DEP.

3. The Issuer is a duly organized and presently existing municipal 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 or enact the Bond Legislation and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

4. The Bond Legislation and all other necessary ordinances and resolutions have been legally and effectively adopted or enacted by the Issuer and constitute valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their terms. The Bond Legislation contains the provisions and covenants set forth in Section 4.1 of the ARRA Assistance Agreement.

5. 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 and secured by a first lien on and pledge of the Net Revenues of the System, on a parity with the Issuer's Sewer Revenue Bonds, Series 1996 (West Virginia SRF Program), dated October 24, 1996, issued in the original aggregate principal amount of $6,484,283 (the "Series 1996 Bonds") and Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), dated July 8, 2009, issued in the original aggregate principal amount of $1,000,000, (the "Series 2009 A Bonds") issued contemporaneously herewith, all in accordance with the terms of the Bond Legislation.

6. The Bonds are, under the Act, exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

7. The Bonds have not been issued on the basis that the interest thereon, if any, is or will be excluded from the gross income of the owners thereof for federal income tax purposes. We express no opinion regarding the excludability of such interest from the gross income of the owners thereof for federal income tax purposes or other federal tax consequences arising with respect to the Bonds.

No opinion is given herein as to the effect upon enforceability of the 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 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,

STEPTOE & JOHNSON PLLC

06.17.09
155510.00002

LAW OFFICES OF

**YOUNG MORGAN & CANN, PLLC**

363 LEE AVENUE

CLARKSBURG, WEST VIRGINIA 26301

ROGER J. MORGAN (Of Counsel)
CARMINE J. CANN
JAMES V. CANN
GREGORY A. MORGAN

(304) 624-5687
FAX (304) 624-4006

JAMES CANN (1970)
LLOYD H. YOUNG (1978)

July 8, 2009

City of Clarksburg
Sewer Revenue Bonds, Series 2009 A
(West Virginia SRF Program); and
Sewer Revenue Bonds, Series 2009 B
(West Virginia SRF Program/ARRA)

City of Clarksburg
Clarksburg, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Department of Environmental Protection
Charleston, West Virginia

Ladies and Gentlemen:

We are counsel to the City of Clarksburg in Harrison County, West Virginia (the "Issuer"). As such counsel, we have examined copies of the approving opinion of Steptoe & Johnson PLLC, as bond counsel, a ARRA Assistance Agreement for the Series 2009 A Bonds and the Series 2009 B Bonds, dated July 8, 2009, including all schedules and exhibits attached thereto, by and among the Issuer and the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), (the "ARRA Assistance Agreement"), a Bond Ordinance duly enacted by the Issuer on May 7, 2009, as supplemented by a Supplemental Resolution and Conformed Ordinance duly adopted by the Issuer on June 18, 2009 (collectively, the "Bond Legislation"), and other documents relating to the above-captioned Bonds of the Issuer (the "Bonds"). All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Legislation and the ARRA Assistance Agreement when used herein.

We are of the opinion that:

1. The Issuer has been duly created and is validly existing as a municipal corporation and political subdivision of the State of West Virginia, and the Mayor, City Clerk and

members of the council of the Issuer have been duly and properly elected or appointed, as applicable, have taken the requisite oaths, and are authorized to act on behalf of the Issuer in their respective capacities.

2. The ARRA Assistance Agreement have been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the other parties thereto, constitute valid and binding agreements of the Issuer enforceable in accordance with its terms.

3. The Bond Legislation has been duly adopted and enacted by the Issuer and is in full force and effect.

4. The execution and delivery of the Bonds, the ARRA Assistance Agreement and the consummation of the transactions contemplated by the Bonds, the ARRA Assistance 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 ordinance, order, resolution, 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.

5. The Issuer has received all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges for use of the System, including, without limitation, the receipt of all requisite orders and approvals from the West Virginia Department of Environmental Protection and the Public Service Commission of West Virginia, and has taken any other action required for the imposition of such rates and charges, including, without limitation, the enactment of an ordinance prescribing such rates and charges.

6. The Issuer has received all orders and approvals from the Public Service Commission of West Virginia, including the Recommended Decision dated March 24, 2009, which became Final Order on April 13, 2009, in Case No.08-1912-S-CN, a CPA affidavit dated June 30, 2009, among other things, granting to the Issuer a certificate of convenience and necessity for the Project and approving the financing for the Project. The time for appeal of such Final Order has expired prior to the date hereof without any appeal. Such Order is not subject to any appeal, further hearing, reopening or rehearing by any customer, protestant, intervenor or other person not a party to such Order. The order remains in full force and effect.

7. To the best of our knowledge, there is no litigation, 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 ARRA Assistance Agreement, 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.

8. Prior to the execution of construction contracts by the Issuer, we will verify that all successful bidders have made the required provisions for all insurance and payment and performance

bonds and we will verify such insurance policies and bonds for accuracy. Prior to the execution of construction contracts by the Issuer, we will review the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, and verify that such surety bonds and policies: (1) are in compliance with the contracts; (2) are adequate in form, substance and amount to protect the various interests of the Issuer; (3) have been executed by duly authorized representatives of the proper parties; (4) meet the requirements of the Act, the Bond Legislation and the ARRA Assistance Agreement; and (5) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Very truly yours,

YOUNG MORGAN & CANN, PLLC

Gregory A. Morgan

GAM/pjs

06.17.09
155510.00002

00-4048
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ROGER J. MORGAN (Of Counsel)
CARMINE J. CANN
JAMES V. CANN
GREGORY A. MORGAN

JAMES CANN (1970)
LLOYD H. YOUNG (1978)

June 30, 2009

West Virginia Department of Environmental Protection
601 57th Street SE
Charleston, West Virginia 25304

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

RE: Case No. 08- 1 9 12-S-CN
City of Clarksburg Sanitary Board
Application for a certificate of convenience and necessity for the upgrade of its existing sewer system including pumping stations, separation of storm and sanitary sewers, removal of several mains from flood impacted areas, and repair of mains and manholes in Clarksburg, Harrison County, and for approval of financing related thereto.

Ladies & Gentlemen:

This firm represents the Sanitary Board of the City of Clarksburg (the "City") with regard to a proposed project to construct upgrade of its existing sewer system including pumping stations, separation of storm and sanitary sewers, removal of several mains from flood impacted areas, and repair of mains and manholes in Clarksburg, Harrison County (the "Project"), and provides this final title opinion on behalf of the City to satisfy the requirements of the West Virginia Department of Environmental Protection (the "DEP") with regard to the Clean Water State Revolving Fund financing proposed for the Project. Please be advised of the following:

1. That I am of the opinion that the City is a duly created and existing Municipal Corporation possessed with all the powers and authority granted to Municipal Corporations under the laws of the State of West Virginia and through its Sanitary Board has the full power and authority to construct, operate and maintain the Project as approved by the Division of Environmental Protection.

2. That the City 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 Thrasher Engineering 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 Harrison County, West Virginia, the county in which the Project is to be located, and, in my opinion, the City 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.

The following listed properties are being acquired by easement or eminent domain and the necessary filings have been made prior to closing in the Office of the Clerk of the Circuit Court of Harrison County, West Virginia to permit the City a right-of-entry for the purpose of construction, operation and maintenance of the subject facilities on the subject properties. The City title thereto is defeasible in the event the City does not satisfy any resulting judgment and/or award in the proceedings for acquisition of said properties, and our certification is subject to the pending litigation:

| Tax Map | Parcel | Name | Deed / Will Book | Page # |
|---|---|---|---|---|
| 326 | 5 | NETWORKS USA XXVIII INC. | 1266 | 57 |
| 326 | 2.2 | MARK & PAULA CRITCHFIELD | 1363 | 1299 |
| 8 | 100 | CHARLES STOUT and MARY DIANE STOUT, | 1302 | 919 |

5. That all easement agreements which have been acquired to date by the City have been duly recorded in the aforesaid Clerk's Office(s) in order to protect the legal title to and interest of the City.

Very Truly Yours,

YOUNG MORGAN & CANN, PLLC

Gregory A. Morgan

GAM/pjs
00-4048.80
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CITY OF CLARKSBURG

Sewer Revenue Bonds, Series 2009 A
(West Virginia SRF Program); and
Sewer Revenue Bonds, Series 2009 B
(West Virginia SRF Program/ARRA)

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. ARRA ASSISTANCE AGREEMENT
11. RATES
12. SIGNATURES AND DELIVERY
13. BOND PROCEEDS
14. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE
15. PUBLIC SERVICE COMMISSION ORDER
16. SPECIMEN BONDS
17. CONFLICT OF INTEREST
18. CLEAN WATER ACT
19. PROCUREMENT OF ENGINEERING SERVICES
20. EXECUTION OF COUNTERPARTS

We, the undersigned MAYOR and CITY CLERK of the City of Clarksburg in Harrison County, West Virginia (the "Issuer"), and the undersigned COUNSEL TO THE ISSUER hereby certifies on this 8th day of July, 2009 in connection with the Issuer's Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) and Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA), both dated the date hereof (collectively, the "Series 2009 Bonds" or individually, the "Series 2009 A Bonds" and the "Series 2009 B Bonds," respectively), 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 Ordinance of the Issuer duly enacted May 7, 2009, and the Supplemental Resolution duly adopted June 18, 2009 (collectively, the "Bond Legislation").

2. NO LITIGATION: 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 Series 2009 Bonds, the acquisition and construction of the Project, the operation of the System, the receipt of the Gross Revenues or any grants, or in any way contesting or affecting the validity of the Series 2009 Bonds, or any proceedings of the Issuer taken with respect to the issuance or sale of the Series 2009 Bonds, the pledge or application of the Gross Revenues or any other moneys or security provided for the payment of the Series 2009 Bonds or the existence or the powers of the Issuer insofar as they relate to the authorization, sale and issuance of the Series 2009 Bonds, the acquisition and construction of the Project, the operation of the System, the pledge or application of moneys and security or the collection of the Net Revenues or the pledge of Net Revenues as security for the Series 2009 Bonds.

3. GOVERNMENTAL APPROVALS AND BIDDING: All applicable approvals, permits, exemptions, consents, authorizations, registrations and certificates required by law for the acquisition and construction of the Project, the operation of the System and the issuance of the Series 2009 Bonds have been obtained and remain in full force and effect, and competitive bids for the acquisition and construction of the Project have been solicited in accordance with Chapter 5, Article 22, Section 1 of the West Virginia Code of 1931, as amended, which bids remain in full force and effect.

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 ARRA Assistance Agreement and the Issuer has met all conditions prescribed in the ARRA Assistance 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 on a parity with the Series 2009 Bonds as to liens, pledge, source of and security for payment, being the Issuer's Sewer Revenue Bonds, Series 1996 (West Virginia SRF Program), dated October 24, 1996, issued in the original aggregate principal amount of $6,484,283 (the "Series 1996 Bonds" or the "Prior Bonds"). The Issuer is current on all Prior Bonds' payments and is in compliance with all covenants and requirements of the Prior Ordinance.

The Series 2009 Bonds shall be issued on a parity with the Prior Bonds, with respect to liens, pledge, source of and security for payment and in all other respects. The Issuer has obtained (i) a certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met, and (ii) the written consent of the registered owners of the Prior Bonds to the issuance of the Series 2009 Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no other bonds, notes or other 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 or changed in any way unless modification appears from later documents also listed below:

Bond Ordinance

Supplemental Resolution

ARRA Assistance Agreement for Series 2009 Bonds

Public Service Commission Orders

Infrastructure Council Approval

City Charter

Ordinance creating Sanitary Board

Petition of Sanitary Board

Oaths of Office of Officers and Councilmembers

Resolution on Open Governmental Proceedings Rules

Sewer Rate Ordinance

Minutes on Enactment of Sewer Rate Ordinance and Notice of Public Hearing

Affidavit of Publication of Sewer Rate Ordinance and Notice of Public Hearing

Minutes on Enactment of Bond Ordinance and Adoption of Supplemental Resolution and Rules of Procedure

Affidavit of Publication of Abstract of Bond Ordinance and Notice of Public Hearing

Prior Bond Ordinance and Supplemental Resolution

Consent of WDA to Issuance of Parity Bonds

Evidence of Insurance

6. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is "City of Clarksburg". The Issuer is a municipal corporation in Harrison County and is presently existing under the laws of, and is a political subdivision of, the State of West Virginia. The governing body of the Issuer is its Council, consisting of a Mayor, City Clerk and six (6) councilmembers, all duly elected or appointed, as applicable, qualified and acting, and whose names and dates of commencement and termination of current terms of office are as follows:

| Name | Date of Commencement of Office | Date of Termination of Office |
|---|---|---|
| Margaret Bailey, Mayor | 7/1/2009 | 6/30/2011 |
| Mary Mayer | 7/1/2009 | 6/30/2013 |
| Dan Thompson | 7/1/2007 | 6/30/2011 |
| James C. Hunt | 7/1/2009 | 6/30/2013 |
| Sam Lopez | 7/1/2009 | 6/30/2013 |
| Martin Shaffer | 7/1/2007 | 6/30/2011 |
| Patsy Trecost | 7/1/2009 | 6/30/2013 |

The names of the duly appointed, qualified and acting members of the Sanitary Board of the Issuer are as follows:

| | | |
|---|---|---|
| Chairman | - | Martin Howe |
| Member | - | Joseph Spatafore. |
| Member | - | Mark Linville, P.E. |

The duly appointed and acting City Manager and City Clerk of the Issuer are Martin Howe and Annette M. Wright respectively. The duly appointed and acting Counsel to the Issuer is Young, Morgan & Cann, PLLC, Clarksburg, 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 will be acquired 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 Series 2009 Bonds.

8. MEETINGS, ETC.: All actions, ordinances, 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 Series 2009 Bonds and the acquisition, construction, operation and financing of the Project or 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, particularly and 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 have been 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. Prior to the execution of construction contracts by the Issuer, all insurance for the System required by the Bond Legislation will be in full force and effect.

10. ARRA ASSISTANCE AGREEMENT: As of the date hereof, (i) the representations of the Issuer contained in the ARRA Assistance Agreement are true and correct in all material respects as if made on the date hereof; (ii) the ARRA Assistance 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 ARRA Assistance 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 ARRA Assistance Agreement not misleading; and (iv) the Issuer is in compliance with the ARRA Assistance Agreement.

The Series 2009 B Bonds shall bear no interest. The Authority at the direction of the DEP shall forgive the principal amount of the Series 2009 B Bonds. Principal forgiveness shall begin on September 1, 2010 and shall be made quarterly thereafter (March 1, June 1, September 1 and December 1 of each year) as set forth on Schedule Y attached to the ARRA Assistance Agreement and incorporated herein by reference.

The Series 2009 B Bonds are fully registered in the name of the Authority.

The Issuer shall make monthly payments into the Renewal and Replacement Fund as required by Section 4.1 of the ARRA Assistance Agreement for at least the term of the Series 2009 B Bonds.

The Issuer shall notify the Authority and the Council of any proposed bond indebtedness secured by the revenues of the System.

The Special Conditions outlined in the ARRA Assistance Agreement are attached as Exhibit A and incorporated hereto.

11. RATES: The Issuer has duly enacted a sewer rate ordinance on October 5, 2006, setting rates and charges of the System. The time for appeal of such Order has expired prior to the date hereof without any appeal and such rates are currently in full force and effect.

12. SIGNATURES AND DELIVERY: On the date hereof, the undersigned Mayor did officially sign all of the Series 2009 Bonds of the aforesaid issue, consisting upon original issuance of a single Bond of each series, dated the date hereof, by his or her manual signature, and the undersigned City Clerk did officially cause the official seal of the Issuer to be affixed upon said Series 2009 Bonds and to be attested by his or her manual signature, and the Registrar did officially authenticate and deliver the Series 2009 Bonds to a representative of the Authority as the original purchaser of the Series 2009 Bonds under the ARRA Assistance Agreement. Said official seal of the Issuer is also impressed above the signatures appearing on this certificate.

13. BOND PROCEEDS; GRANTS: On the date hereof, the Issuer received $673,459 from the Authority and the DEP, being a portion of the principal amount of the Series 2009 A Bonds and $10,702 from the Authority and the DEP, being a portion of the principal amount of the Series 2009 B Bonds. The balance of the principal amount of the Series 2009 A Bonds and the Series 2009 B Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

14. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE: Upon adoption of the Bond Ordinance, an abstract thereof, determined by the Governing Body to contain sufficient information as to give notice of the contents thereof, was published once each week for 2 successive weeks, with not less than 6 full days between each publication, the first such publication occurring not less than 10 days before the date stated below for the public hearing, in the *Clarksburg Exponent/Telegram*, a qualified newspaper of general circulation in the City of Clarksburg, no newspaper being published therein, together with a notice to all persons concerned, stating that the Bond Ordinance had been adopted and that the Issuer contemplated the issuance of the Series 2009 Bonds described in such Bond Ordinance, stating that any person interested may appear before the Council at the public hearing held at a public meeting of Council on the 7th day of May, 2009, at 7:00 p.m., at City Hall and present protests, and stating that a certified copy of the Bond Ordinance was on file at the office of the City Clerk of the Issuer for review by interested parties during the office hours of the Issuer. At such hearing all objections and suggestions were heard by the Governing Body and the Bond Ordinance became finally adopted, enacted and effective as of the date of such public hearing, and remains in full force and effect.

15. PUBLIC SERVICE COMMISSION ORDER: The Issuer has received the Recommended Decision of the Public Service Commission of West Virginia entered on March 24, 2009, which became Final Order on April 13, 2009 in Case No. 08-1912-S-CN, and a CPA Affidavit dated June 30, 2009, 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 Final Order has expired prior to the date hereof without any appeal. Such Order is not subject to any appeal, further hearing, reopening or rehearing by any customer, protestant, intervenor or other person not a party to such Order. Such order remains in full force and effect.

16. SPECIMEN BONDS: Delivered concurrently herewith are true and accurate specimens of the Series 2009 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 Series 2009 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. CLEAN WATER ACT: The Project described in the Bond Ordinance complies with the Clean Water Act.

19. PROCUREMENT OF ENGINEERING SERVICES: The Issuer has complied in all respects with the requirements of Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended, in the procurement of engineering services to be paid from proceeds of the Bonds.

20. 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 the CITY OF CLARKSBURG on this the day and year first above written.

[CORPORATE SEAL]

| SIGNATURE | OFFICIAL TITLE |
| --- | --- |
| Margaret A. Bailey | Mayor |
| Annette M. Wright | City Clerk |
| _____ | Counsel to Issuer |

06.17.09
155510.00002

WITNESS our signatures and the official seal of the CITY OF CLARKSBURG on this the day and year first above written.

[CORPORATE SEAL]

| SIGNATURE | OFFICIAL TITLE |
| --- | --- |
| _____ | Mayor |
| _____ | City Clerk |
| _____ | Counsel to Issuer |

06.17.09
155510.00002

EXHIBIT A

ARRA Special Conditions

A. PUBLIC RELEASE REQUIREMENT – The Local Government agrees to include, when issuing statements, press releases, requests for proposals, bid solicitations, groundbreaking or project dedication program documents and other documents describing projects or programs funded in whole or in part with Federal money, (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

B. AUDIT REQUIREMENT (Supplement to Article IV 4.1 (b) (xi)) – Effective October 1, 2003, the Local Government that receives $500,000 or more (in federal funds) in a fiscal year must obtain audits in accordance with the Single Audit Act and the applicable OMB Circular or any successor thereto. Financial statement audits are required once all funds have been received by the Local Government.

C. BUY AMERICAN CERTIFICATION – The Local Government shall cause the contractor(s) to comply with, and provide certification of, the Buy American provisions of the ARRA in accordance with final guidance from the EPA.

D. ASSET MANAGEMENT – The Local Government shall develop and implement an asset management plan in accordance with guidelines issued by DEP and is approved by DEP.

E. CONTRACTS – The Local Government shall enter into contracts or commence construction by February 17, 2010.

F. LOGO – The Local Government must display the ARRA logo in a manner that informs the public that the project is an ARRA investment.

G. LOBBYING - The Local Government shall comply with Title 40 CFR Part 34, New Restrictions on Lobbying and shall submit certification and disclosure forms as required by DEP.

H. PURCHASING REQUIREMENTS – The Local Government shall comply with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds $10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was $10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

I. SUSPENSION AND DEBARMENT – The Local Government shall comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding

Transactions (Doing Business with Other Persons). To the extent required by DEP, the Local Government shall provide certifications as to compliance.

J. REPORTING – The Local Government shall comply with all requests for data related to the use of the funds provided under this agreement, including the information required in section 1512 of ARRA when requested by DEP.

K. INSPECTOR GENERAL REVIEWS – The Local Government shall allow any appropriate representative of the Office of US Inspector General to (1) examine its records relating to the Project and this ARRA Assistance Agreement and (2) interview any officer or employee of the Local Government.

L. FALSE CLAIMS – The Local Government must promptly refer to EPA's Inspector General any credible evidence that a principal, employee, agent, sub-grantee contractor, subcontractor, loan recipient, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this ARRA Assistance Agreement.

M. LIMIT ON FUNDS – The Local Government shall not use funds for particular activities for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

N. WAGE RATES – The Local Government shall require that all laborers and mechanics employed by its contractors and subcontractors be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor (DOL) in accordance with subchapter IV of chapter 32 of title 40, United States Code. The Local Government must require that contractors and subcontractors obtain wage determinations from DOL and comply with DOL guidance and regulations implementing wage rate requirements applicable to ARRA funds.

O. OFFICE OF MANAGEMENT AND BUDGET (OMB) GUIDANCE – The Local Government acknowledges and agrees that this ARRA Assistance is subject to all applicable provisions of implementing guidance for the American Recovery and Reinvestment Act of 2009 issued by the United States Office of Management and Budget, including the Initial Implementing Guidance for the American Recovery and Reinvestment Act (M-09-10) issued on February 18, 2009 and available on www.recovery.gov, and any subsequent guidance documents issued by OMB.

P. DISADVANTAGED BUSINESS ENTERPRISE – Pursuant to 40 CFR, Section 33.301, the Local Government agrees to make good faith efforts whenever procuring construction, equipment, services and supplies, and to require that prime contractors also comply. The Local Government shall provide DEP with MBE/WBE participation reports semi-annually.

Q. CIVIL RIGHTS – The Local Government shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements. The Local Government shall also comply with Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in

employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.

R. BOND DESIGNATION – Each Local Bond funded by ARRA funds shall be designated "Series [2009] B" and shall contain "(West Virginia SRF Program/ARRA)" in the bond name.

S. USER RATES – The Local Government shall covenant that it will not reduce its approved or enacted customer rates for at least eighteen months after completion of the Project or until such time as a cost of service study has been completed establishing the actual operation and maintenance expenses.

CITY OF CLARKSBURG

Sewer Revenue Bonds, Series 2009 A
(West Virginia SRF Program) and
Sewer Revenue Bonds, Series 2009 B
(West Virginia SRF Program/ARRA)

CERTIFICATE AS TO USE OF PROCEEDS

The undersigned Mayor of the City of Clarksburg in Harrison County, West Virginia (the "Issuer"), being the official of the Issuer duly charged with the responsibility for the issuance of $1,000,000 Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), and $1,000,000 Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA), of the Issuer, dated July 8, 2009 (the "Bonds" or the "Series 2009 Bonds"), hereby certifies on the 8th day of July, 2009, as follows:

1. I am the officer 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 Ordinance duly enacted by the Issuer on May 7, 2009, as supplemented by Supplemental Resolution duly adopted by the Issuer on June 18, 2009 (the "Bond Ordinance"), 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 8, 2009, the date on which the Bonds are being physically delivered in exchange for an initial advance of $673,459, being a portion of the principal amount of the Series 2009 A Bonds and $10,702, being a portion 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 Ordinance 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"), 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 A Bonds were sold on July 8, 2009, to the Authority, pursuant to an ARRA Assistance Agreement dated July 8, 2009, by and among the Issuer, the Authority and the West Virginia Department of Environmental Protection (the "DEP"), for an aggregate purchase price of $1,000,000 (100% of par), at which time, the Issuer received $673,459 from the Authority and the DEP,

being the first advance of the principal amount of the Series 2009 A Bonds. No accrued interest has been or will be paid on the Series 2009 A Bonds. The balance of the principal amount of the Series 2009 A Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

6. The Series 2009 B Bonds were sold on July 8, 2009, to the Authority, pursuant to a ARRA assistance agreement dated July 8, 2009, by and among the Issuer, the Authority and the DEP, for an aggregate purchase price of $1,000,000 (100% of par), at which time, the Issuer received $10,702 from the Authority and the DEP, being the first advance of the principal amount of the Series 2009 B Bonds. No accrued interest has been or will be paid on the Series 2009 B Bonds. The balance of the principal amount of the Series 2009 B Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

7. A. The Series 2009 A 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 certain additions, betterments and improvements to the existing sewerage system of the Issuer (the "Project"); (ii) funding the Series 2009 A Bonds Reserve Account; and (iii) paying certain costs of issuance of the Bonds and related costs.

B. 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 certain additions, betterments and improvements to the existing sewerage system of the Issuer (the "Project"); and (ii) paying certain costs of issuance of the Bonds and related costs.

8. 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 acquisition and construction of the Project and 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, and with the exception of proceeds deposited in the Series 2009 A Bonds Reserve Account or the Series 2009 B Bonds Reserve Account, if any, 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, 2010. The acquisition and construction of the Project is expected to be completed by March 1, 2010

9. The total cost of the Project is estimated at $2,000,000. Sources and uses of funds for the Project are as follows:

| | |
|---|---|
| SOURCES | |
| Proceeds of the Series 2009 A Bonds | $1,000,000 |
| Proceeds of the Series 2009 B Bonds | $1,000,000 |
| Total Sources | $2,000,000 |
| USES | |
| Costs of Acquisition and Construction of the Project | $1,924,000 |

| | |
|---|---|
| Costs of Issuance | $26,000 |
| Funding Series 2009 A Bonds Reserve Account | $50,000 |
| Total Uses | $2,000,000 |

10. Pursuant to Article V of the Bond Ordinance, the following special funds or accounts have been created or continued relative to the Series 2009 Bonds:

(1) Revenue Fund;

(2) Series 2009 Bonds Construction Trust Fund;

(3) Series 2009 A Bonds Sinking Fund;

(4) Series 2009 A Bonds Reserve Account;

(5) Series 2009 B Bonds Sinking Fund; and

(6) Series 2009 B Bonds Reserve Account.

11. Pursuant to Article VI of the Bond Ordinance, the proceeds of the Bonds will be deposited as follows:

(1) Proceeds of the Series 2009 A Bonds in the amount of $50,000 will be deposited with the Commission in the Series 2009 A Bonds Reserve Account.

(2) Proceeds of the Series 2009 B Bonds in the amount of $-0- will be deposited with the Commission in the Series 2009 B Bonds Reserve Account.

(3) As the Issuer receives advances of the remaining monies derived from the sale of the Series 2009 A Bonds, such monies shall be deposited with the Depository Bank in the Series 2009 Bonds Construction Trust Fund and applied solely to payment of the costs of the Project and, until so expended, are hereby pledged as additional security for the Series 2009 A Bonds.

(4) 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 Bonds Construction Trust Fund and applied solely to payment of the costs of the Project and, until so expended, are hereby pledged as additional security for the Series 2009 B Bonds.

12. Monies held in the Series 2009 A Bonds Sinking Fund will be used solely to pay principal of and interest on the Series 2009 A Bonds and will not be available to meet costs of acquisition and construction of the Project. All investment earnings on monies in the Series 2009 A Bonds Sinking Fund and Series 2009 A Bonds Reserve Account, if any, will be withdrawn therefrom and deposited into the Series 2009 Bonds Construction Trust Fund during construction of the Project, and following completion of the Project, will be deposited, not less than once each year, in the Revenue Fund, and such amounts will be applied as set forth in the Bond Ordinance.

13. Monies held in the Series 2009 B Bonds Sinking Fund will be used solely to pay principal of and interest on the Series 2009 B Bonds and will not be available to meet costs of acquisition and construction 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 into the Series 2009 Bonds Construction Trust Fund during construction of the Project, and following completion of the Project, will be deposited, not less than once each year, in the Revenue Fund, and such amounts will be applied as set forth in the Bond Ordinance.

14. Work with respect to the acquisition and construction of the Project will proceed with due diligence to completion. The acquisition and construction of the Project is expected to be completed within 7 months of the date hereof.

15. The Issuer will take such steps as requested by the Authority to ensure that the Authority's bonds meet the requirements of the Code.

16. With the exception of the amount deposited in the Series 2009 A Bonds Reserve Account, if any, or the Series 2009 B Bonds Reserve Account, if any, all of the proceeds of the Bonds will be expended on the Project within 13 months from the date of issuance thereof.

17. 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.

18. 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.

19. All property financed with the proceeds of the Bonds will be owned and held by (or on behalf of) a qualified governmental unit.

20. 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.

21. The original proceeds of the Bonds will not exceed the amount necessary for the purposes of the issue.

22. 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.

23. The Bonds are not federally guaranteed.

24. The Issuer has retained the right to amend the Bond Ordinance authorizing the issuance of the Bonds if such amendment is necessary to assure that the Bonds remain public purpose or governmental bonds.

25. The Issuer has either (a) funded the Series 2009 A Bonds Reserve Account at the maximum amount of principal and interest which will mature and become due on the Series 2009 A Bonds in the then current or any succeeding year with the proceeds of the Series 2009 A Bonds, or (b) created the Series 2009 A Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until such Series 2009 A Bonds Reserve Account holds an amount equal to the maximum amount of principal and interest which will mature and become due on the Series 2009 A Bonds in the then current or any succeeding year. Monies in the Series 2009 A Bonds Reserve Account and the Series 2009 A Bonds Sinking Fund will be used solely to pay principal of and interest on the Bonds and will not be available to pay costs of the Project.

26. 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 Series 2009 B Bonds in the then current or any succeeding year with the proceeds of the Series 2009 B 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 holds an amount equal to the maximum amount of principal and interest which will mature and become due on the Series 2009 B 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 the Bonds and will not be available to pay costs of the Project.

27. There are no other obligations of the Issuer which (a) are to be issued at substantially the same time as the Bonds, (b) are to be sold pursuant to a common plan of financing together with the Bonds and (c) will be paid out of substantially the same sources of funds or will have substantially the same claim to be paid out of substantially the same sources of funds as the Bonds.

28. 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.

29. 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.

30. To the best of my knowledge, information and belief, the foregoing expectations are reasonable.

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WITNESS my signature on this the day and year first above written.

CITY OF CLARKSBURG

By: _____
Its: Mayor

06.17.09
155510.00002

CITY OF CLARKSBURG

Sewer Revenue Bonds, Series 2009 A
(West Virginia SRF Program); and
Sewer Revenue Bonds, Series 2009 B
(West Virginia SRF Program/ARRA)

CERTIFICATE OF ENGINEER

I, Daniel E. Ferrell, Registered Professional Engineer, West Virginia License No. 013462, of Thrasher Engineering, Inc., Clarksburg, West Virginia, hereby certify this 8th day of July, 2009 as follows:

1. My firm is engineer for the acquisition and construction of certain extensions, additions, betterments and improvements (the "Project") to the sewerage system (the "System") of the City of Clarksburg (the "Issuer"), to be constructed in Harrison County, West Virginia, which acquisition and construction are being permanently financed in part 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 Ordinance enacted by the Issuer on May 7, 2009, as supplemented by the Supplemental Resolution of the Issuer adopted June 18, 2009 (collectively, the "Bond Legislation"), the ARRA Assistance Agreement for the Series 2009 A Bonds and Series 2009 B Bonds by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), dated July 8, 2009 (the "ARRA Assistance Agreement").

2. The Bonds are being issued (i) to pay a portion of the costs of acquisition and construction of the Project; (ii) funding the Series 2009 A Bonds Reserve Account; and (iii) to pay certain costs of issuance and related costs.

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 the DEP and the Authority and any change orders approved by the Issuer, the Authority, the DEP and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least 22 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 attached hereto as Exhibit A and Young, Morgan & Cann, PLLC, counsel to the Issuer, will ascertain that all successful bidders have made required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds will be 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 and the bid forms provided to the bidders contain the 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) in reliance upon the certificate of the Issuer's certified public accountant, Tetrick and Bartlett, of even date herewith, as of the effective date thereof, the rates and charges for the System as enacted by the Issuer will be sufficient to comply with the provisions of the respective ARRA Assistance Agreement; (x) the net proceeds of the Bonds, together with all other monies 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 DEP; 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.

4. I have received the Buy American Certification from each contractor.

5. The Project will not serve any new customers.

[Remainder of Page Intentionally Blank]

WITNESS my signature and seal on the day and year first written above.

THRASHER ENGINEERING, INC.

(SEAL)

DANIEL E. FERRELL
REGISTERED
13462
STATE OF WEST VIRGINIA
PROFESSIONAL ENGINEER

6/23/09

Daniel E. Ferrell, P.E.
West Virginia License No. 013462

06.17.09
155510.00002

SCHEDULE B -Clarksburg, City of post-bid costs
50% principal forgiveness

| | TOTAL | SRF Base (0%, 20 yrs 1% admin) | SRF ARRA (forgivable) |
|---|---|---|---|
| A. COST OF PROJECT: | | | |
| 1 CONSTRUCTION | | | |
| Contract #1 | 925,330 | 0 | 925,330 |
| Equipment | 85,749 | 85,749 | 0 |
| Repairs | 63,968 | | 63,968 |
| 2 TECHNICAL SERVICES | | | |
| Basic | 135,200 | 135,200 | 0 |
| Design | 442,500 | 442,500 | 0 |
| Const. Basic | 30,000 | 30,000 | 0 |
| Special Services | 25,000 | 25,000 | 0 |
| Inspection | 60,000 | 60,000 | 0 |
| 3 LEGAL & FISCAL | | | |
| Legal | 40,000 | 40,000 | 0 |
| Accountant | 0 | 0 | 0 |
| 4 ADMINISTRATIVE | | | |
| Administrative | 308 | 308 | 0 |
| Loan Repayment | 0 | 0 | 0 |
| Interest paid on loan | 69,445 | 69,445 | 0 |
| 5 Sites & Other Lands | 0 | 0 | 0 |
| 6 CONTINGENCY (5%) | 46,500 | 46,500 | 0 |
| 7 TOTAL | 1,924,000 | 934,702 | 989,298 |
| B. COST OF FINANCING | | | |
| 8 Funded Reserve | 50,000 | 50,000 | 0 |
| 9 Registrar fees | 1,000 | 1,000 | 0 |
| 10 Bond Counsel | 25,000 | 14,298 | 10,702 |
| 11 Capitalized Interest | 0 | 0 | 0 |
| 12 Cost of Financing | 76,000 | 65,298 | 10,702 |
| 13 TOTAL Cost of Project | 2,000,000 | 1,000,000 | 1,000,000 |
| C SOURCES OF FUNDS | | | |
| 14 State Grants | 0 | 0 | 0 |
| 15 Other sources (local) | 0 | 0 | 0 |
| 16 Total Grants | 0 | 0 | 0 |
| 17 net proceeds from Bond Issuance | 2,000,000 | 1,000,000 | 1,000,000 |

City of Clarksburg — July 8, 2009

Thrasher Engineering — July 8, 2009

**Tetrick & Bartlett,** PLLC
*Certified Public Accountants*
*Consultants*

122 N. Oak St. • PO Box 1916 • Clarksburg, WV 26302-1916 • (304) 624-5564 • Fax: (304) 624-5582 • www.tetrickbartlett.com

July 8, 2009

CITY OF CLARKSBURG
Sewer Revenue Bonds, Series 2009 A
(West Virginia SRF Program); and
Sewer Revenue Bonds, Series 2009 B
(West Virginia SRF Program/ARRA)

City of Clarksburg
Clarksburg, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

West Virginia Department of Environmental Protection
Charleston, West Virginia

Ladies and Gentlemen:

Based upon the rates and charges as set forth in the sewer rate ordinance of the City of Clarksburg (the "Issuer") enacted October 5, 2006 and the projected operating and maintenance expenses and anticipated customer usage as furnished to us by Thrasher Engineering, Inc., the Consulting Engineer to the Issuer, it is our opinion that such rates and charges will be sufficient to provide revenues which, together with other revenues of the sewerage system (the "System") of the Issuer, will pay all repair, operation and maintenance 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 (West Virginia SRF Program) and Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA) (collectively, the "Bonds"), and all other obligations secured by a lien on or payable from the revenues, including the Issuer's Sewer Revenue Bonds, Series 1996 (West Virginia SRF Program), dated October 24, 1996, issued in the original aggregate principal amount of $6,484,243 (the "Series 1996 Bonds" or the "Prior Bonds").

It is further our 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 Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by the 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 Bonds and the Prior Bonds.

Very truly yours,

Tetrick & Bartlett, PLLC

Tetrick & Bartlett

# CHARTER

# OF THE CITY OF

# CLARKSBURG, WEST VIRGINIA

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# CHARTER

# OF THE CITY OF

# CLARKSBURG, WEST VIRGINIA

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SECTION 1. INCORPORATION.

The inhabitants of the City of Clarksburg, Harrison County, West Virginia, within the corporate limits thereof as now established or as may hereafter be established in the manner provided by law, shall be and continue in perpetuity to be a municipal body politic and corporate, under the name of the "City of Clarksburg," with all the powers of self-government granted by the constitution and laws of the state.

SECTION 2. SUCCESSION.

The City of Clarksburg, as successor in interest of the present municipal corporation of the same name, shall succeed to, own, possess and enjoy all the property and all the rights, titles and interest of every kind and nature vested in or belonging to such municipal corporation at the time this charter becomes effective, shall be subject to all existing liabilities, shall be bound by and through the appropriate agency shall pay all existing debts, and shall faithfully perform all present duties and discharge all present obligations of such corporation.

SECTION 3. FORM OF GOVERNMENT.

There is established by this Charter the council-manager form of municipal government, as prescribed in sections five and five-a, article three, chapter eight-a of the official code of West Virginia, as amended. Except as otherwise provided in this charter, the council shall be the governing authority of the city, and shall appoint the city manager who shall execute the laws and administer the government of the city, except as otherwise provided herein.

SECTION 4. POWERS OF CITY.

The city shall have all the powers specifically provided for in this charter, and shall also have all the powers now or hereafter granted to municipal corporations and to cities of its class by the constitution and general laws of the state, together with all the implied powers necessary and proper to carry into execution the powers so granted. The enumeration herein of particular powers shall not be deemed exclusive, but the city shall have and may exercise all the powers which under the constitution and laws of the state might properly be specifically enumerated in this charter.

SECTION 5. THE COUNCIL; QUALIFICATIONS, TERM OF OFFICE, AND SALARY OF MEMBERS; SELECTION OF MAYOR; VACANCIES.

The Council shall consist of seven members to be elected at large by the qualified .ers of the city for terms of four years beginning on the first day of July following their ction, except that of the seven councilmen elected at the first election held under the ›visions of this charter the three receiving the smallest numbers of votes shall be :cted for terms of two years. At each regular election thereafter either three or four ıncilmen, as the case may be, shall be elected to succeed the incumbent members ose terms of office expire on the thirtieth day of June following the election. The terms office of all councilmen in office on the date this charter is adopted shall continue until close of business on the thirtieth day of June following the first regular election held :eunder.

Councilmen shall be qualified voters of the city, shall have been residents of the y for at least one year prior to their nomination for the office, shall hold no other ›lic office except that of notary public or member of the National Guard or naval or litary reserve, and shall not be employed by the city in any capacity. If a councilman ıll cease to be qualified or shall be convicted of any crime involving moral turpitude, office shall immediately become vacant.

A special meeting of the council shall be held at 7:30 P.M. on the first day of July owing each regular city election. Following the selection of a temporary chairman, newly elected councilmen shall be inducted into office. The council shall then elect of its members to serve as mayor for a term of two years. The mayor shall preside neetings of the council and shall be recognized as the head of the city government for ceremonial and military purposes, but shall have no regular administrative duties.

The salary of the Mayor and Council shall be fixed by ordinance.

If any vacancy occurs in the office of councilman, the council shall within thirty days the affirmative vote of at least four members appoint a qualified person to fill the :ancy for the unexpired term. If the vacancy is not so filled within thirty days after it :urs, then of the unsuccessful candidates for the office of councilman at the last election, o are still qualified and willing to serve, the one who received more votes than any of ı others shall be entitled to the office. If the vacancy is not filled by either of these :thods, it shall be filled at a special election to be held on a date not more than four ›nths after the vacancy occurs. In the resolution calling the special election, the council ıll specify procedures for the conduct of the election, and dates for the circulation and .ng of nominating petitions and for the holding of the election, which shall conform as ırly as may be practicable to the procedures and schedule established by this charter · regular city elections. (Amended 6-1-93)

SECTION 6. MEETINGS OF THE COUNCIL; RULES OF PROCEDURE; JOURNAL.

Regular meetings of the council shall be held at 7:30 P.M. on the first and third Mondays of each month, or on such other stated days as the council may by ordinance prescribe. Special meetings may be held at any time upon call of the mayor or any three councilmen and upon such notice as the council may by rule prescribe. All meetings of the council shall be open to the public.

Four members of the council shall constitute a quorum. The mayor shall be entitled to vote on all matters before the council. The council shall by resolution adopt by-laws prescribing its own rules, procedure, and order of business, and shall keep a journal of all of its proceedings, which shall be available for public inspection.

SECTION 7. POWERS OF THE COUNCIL; APPOINTMENT AND TENURE OF CITY MANAGER.

Subject to any limitations imposed by the constitution and general laws of the state, all powers of the city shall be vested in and exercised by the council, except such powers as are by this charter specifically vested in the water board and such powers as are by general law vested in the other boards or commissions provided for in this charter or hereafter created by council pursuant to general law. No franchise granted by the council may be transferred in whole or in part without the written consent of council.

The council shall appoint a city manager to serve for an indefinite term, and may at any time remove him from office by the affirmative vote of not less than four of its members. At least thirty days before such removal shall become effective, the council shall adopt a preliminary resolution stating the reasons for his removal, and specifying the date on which his removal shall become final. At any time within ten days after the adoption of such resolution, upon the written request of the manager, he shall be afforded an opportunity to be heard at a public meeting of the council, which shall be held no earlier than ten nor later than twenty days after the request was made, and at a time and place to be fixed by council. After such public hearing if one is requested, after full consideration, the council by the affirmative vote of four of its members may adopt a final resolution of removal. By the preliminary resolution the council may suspend the manager with pay for a period not to exceed thirty days, and may designate some other person to perform the duties of the manager during the period of his suspension.

The city manager shall be a person of proved executive and administrative ability, preferably with experience and training in the field of city management. At the time of his appointment he need not be a resident of the city or state, but during his tenure of office shall reside within the city. No councilman, during his term and for a year thereafter, shall be eligible for appointment as city manager.

Neither the council nor any of its members shall direct or in any manner interfere with or obstruct the appointment or removal of any city officer or employee by the city manager or by any of his subordinates. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the city manager and neither the council nor any member thereof shall give orders to any subordinates of the city manager, either publicly or privately. If any councilman shall violate the provisions of this section, he shall be subject to removal from office in the

anner provided for the removal of municipal officers in section seven, article six, ıapter six of the official code of West Virginia, as amended.

Except as otherwise provided by this charter, and within the limitations imposed by the ›nstitution and general laws of the state, the council may determine the powers and duties ' city officers, and subject to the requirements of general law may regulate the number, ethod of selection, qualifications, tenure, and compensation of city officers and employees, cluding the establishment of civil service for such employees.

SECTION 8. POWERS AND DUTIES OF CITY MANAGER.

Except as otherwise provided in the charter, the city manager shall be the head of the ıministrative branch of the city government. He shall be responsible to the council for e proper and efficient adminstration of all affairs of the city under his authority, and to at end, except as otherwise provided in this charter, he shall have the power and shall be ›quired to:

(1) Appoint and, when he deems it necessary or advisable, remove all officers and employees of the city except as otherwise provided by this charter or by general law, and except as he may authorize the head of a department or office to appoint and remove subordinates in such department or office.
(2) Prepare the annual budget, submit it to the council for adoption, and be responsible for its administration after adoption.
(3) Prepare and submit to the council as of the end of each fiscal year a complete report on the finances and administrative activities of the city for the preceding year.
(4) Advise the council with respect to future plans and physical needs, and keep it informed concerning the current financial condition of the city.
(5) Require the chief of police and the chief of the fire department to establish for their respective departments a course of training designed to promote the more efficient and safe operation of their departments.
(6) Execute on behalf of the city all legal and other written documents requiring execution by the chief executive officer of the city, acknowledge the same if necessary, and perform all other acts and duties required of the chief executive officer of the city.
(7) Perform such other duties as may be required of him by this charter, by general law, or by order of the council not inconsistent with this charter or with general law.

The manager may by letter filed with the city clerk designate some qualified ıministrative officer of the city to perform the duties of the manager during his temporary ›sence or disability. If the manager fails to make such designation, the council may by esolution appoint an officer of the city to act for the manager during his absence or isability.

SECTION 9. CITY CLERK.

The Council shall appoint a resident of the city to serve as city clerk at the will and pleasure of the council. Except as otherwise provided in this charter and subject to the supervision of the city manager, the clerk shall have the power and it shall be his duty to:

(1) Give notice of and attend all meetings of the council, keep the journal of its proceedings, authenticate by his signature and record in full in a book kept for the purpose all ordinances and resolutions of the council, prepare and keep up to date an index of all such ordinances and resolutions, and keep all such records available for public inspection when not in use.

(2) Make and certify copies of any ordinance, resolution or order of the council whenever required to do so, and affix the corporate seal of the city to any paper required to be sealed and to any certified copy of any paper, order or proceeding which he may make.

(3) Prepare and cause to be served all notices required to be given to any person, firm or corporation, and after the proper service and return of any notice he shall file and preserve the same.

(4) Have custody of and keep available for public inspection the permanent records of the city and file and properly index all records of such city officers and departments as the city manager may direct.

(5) Perform such other duties as may be required of him by this charter, by general law, or by city ordinance or order of the city manager not inconsistent with this charter or with general law.

SECTION 10. POLICE COURT AND JUDGE; JURISDICTION; PRACTICE AND PROCEDURE.

The police court now existing shall be continued and shall have criminal jurisdiction over violations of city ordinances and the criminal jurisdiction of a justice of the peace with respect to offenses committed within any territory within or beyond the city limits over which the city has police jurisdiction under provisions of general law. The sessions of the court shall be held at such times and places as the council by ordinance or resolution may direct.

The judge of the police court shall be a resident of Harrison County and a member in good standing of the Harrison County Bar. He shall be appointed by the city manager to serve for an indefinite term. In the event of the temporary absence or disability of the regular judge, the city manager shall appoint some other qualified person to serve as judge of the police court. During the period of such temporary service the salary of the regular judge shall be transferred and paid to the temporary judge, except that both shall be paid during the customary vacation period granted to the regular judge.

The judge shall issue warrants upon complaint under oath of any person or officer for the arrest of anyone charged with any offense within the jurisdiction of the police court. He shall try and determine all cases over which the court has jurisdiction, and within the limits prescribed by ordinance or by law shall punish by fine or imprisonment, or both, any person convicted of any offense. He shall have power to summon witnesses for the trial of any case before him, to compel the attendance of police officers of the city, to require of the chief of police the enforcement of all judgements or orders entered by him in the exercise of his powers as police judge, and to issue executions for all fines,

penalties and costs imposed by him. The proceedings for the recovery of fines of for the enforcement of penalties fixed by any ordinance or law shall conform to the regulations, so far as they are applicable, prescribed by general law for civil proceedings before justices of the peace. The police judge, however, for good cause shown by affidavit, may order by an indorsement upon the summons that any defendent be arrested and brought before the court to be dealt with according to law.

All processes and orders of the police court shall be signed by the police judge and shall be directed to the chief of police, to be executed by him or by one of his subordinates. The police officer executing any such process or order shall have the same powers, be governed by the same rules of law and be subject to the same liabilities as sheriffs in the performance of like services. There may be charged for the services of such officer the same fees as the sheriff is entitled to charge for like services, but no such charge shall be made against the city. All such fees as well as all fines and penalties imposed by the court shall be collected by the chief of police, and accounted for and paid by him into the treasury of the city.

In the discharge of his duties and in the trial of cases the judge of the police court shall follow the rules prescribed by law for criminal proceedings before a justice of the peace, except that all cases shall be tried by the judge without a jury. The judge shall keep a record of all warrants issued by him, of all persons arrested and brought before him, and of all trials, fines or sentences imposed, or judgments entered by him, in a permanent book to be known as the police court docket. A record of all entries made in the docket each day shall be signed by the judge at the close of the day.

In cases where the evidence discloses such a violation of the laws of the state that in the opinion of the police judge the person accused should be committed to await action by the grand jury, the judge shall have the same jurisdiction and power as a justice of the peace in regard to the apprehension, commitment and admission to bail of the person so accused.

A person convicted in the police court shall have the same right to an appeal and a trial de novo as is provided by law for appeals from justice of the peace courts.

SECTION 11. CITY ATTORNEY.

The city attorney shall be a resident of Harrison County and a member in good standing of the Harrison County Bar. He shall be appointed by the city manager to serve for an indefinite term. He shall perform all duties and exercise all powers which shall be conferred upon him by any ordinance or resolution of the council and, except as otherwise provided in this charter, he shall have the power and it shall be his duty to:

(1) Act as legal adviser and counsel for the city council and for all administrative boards and officers thereof with respect to their official duties. Upon request, he shall furnish to the city council or to such officers a written opinion upon any question concerning their respective powers and duties.

(2) Prosecute and defend all suits for or against the city, and prepare all ordinances and all contracts, bonds or other writings in which the city is concerned, and endorse on each his approval of the form and correctness thereof.

(3) Prosecute all cases brought before or appealed from the police court, and perform the same duties so far as they are applicable thereto as are required by law of prosecuting attorneys.

Whenever the exigencies of the business of the city require such action, the city manager shall have the right to employ special counsel to assist the city attorney.

SECTION 12. ADMINISTRATIVE OFFICES AND DEPARTMENTS.

There shall be in the city government a police department, a fire department, a department of public works, a department of finance, and such other administrative departments as now exist or may by ordinance be created by the council. The city manager shall appoint as the head of each department a chief, supervisor or director, who shall be responsible for the efficient administration of the department, subject to the supervision and control of the manager. Except as otherwise provided by this charter or by general law, the head of a department need not be a resident of the city or state at the time of his appointment, but during his tenure of office shall reside in Harrison County.

The council may by ordinance create, combine, change or abolish offices, departments or agencies, other than those established by this charter. Except as otherwise provided in this charter, the council may assign additional functions or duties to any office, department or agency created by it or by this charter, but may not discontinue or transfer any function or duty assigned by this charter to any particular office, department or agency.

SECTION 13. CHIEF OF POLICE.

The chief of police shall be appointed by the city manager to serve for an indefinite term. The chief of police shall be a resident of the state and shall be a person of proved executive and administrative ability, with experience or training in law enforcement. Subject to the direction and control of the city manager, the chief of police shall be responsible for the supervision and administration of the police department, and shall require of all police officers the proper discharge of their duties. He shall see to the protection of property and the preservation of peace, order and public safety throughout the city, and to that end he shall cause all violators of city ordinances and of general law to be apprehended and brought to trial before the police court or other proper tribunal. Under the direction of the city manager, he shall also perform such other duties as may be required of him by this charter, by general law or by city ordinance or order of the city manager not inconsistent with this charter or with general law.

SECTION 14. CHIEF OF FIRE DEPARTMENT.

The chief of the fire department shall be appointed by the city manager to serve for an indefinite term. The chief of the fire department shall be a person of proved executive and administrative ability, with experience or training in the suppression and prevention of fires. Subject to the direction and control of the city manager, the chief of the fire department shall be responsible for the supervision and administration of the fire department, and shall require of all firemen the proper discharge of their duties. He shall make such inspections of buildings and property throughout the city as may be necessary to discover fire hazards, shall take all proper measures to eliminate such hazards, and shall keep an accurate record of all fires, inspections and fire hazards within the city. Under the direction of the city manager, he shall also perform such other duties as may be required of him by this charter, by general law, or by city ordinance or order of the city manager not inconsistent with this charter or with general law.

SECTION 15. DIRECTOR OF PUBLIC WORKS.

The city manager shall appoint a director of public works, who shall be a registered civil engineer, to serve for an indefinite term. Subject to the direction and control of the city manager, the director of public works shall be responsible for the supervision and administration of the department of public works.

In addition, except as otherwise provided in this charter and subject to the supervision of the city manager, he shall have the power and it shall be his duty to:

(1) Inspect the construction or repair of all buildings, the installation of all electrical wiring or equipment, and the installation of all plumbing, to the extent that such activities are controlled or regulated by the city, for the purpose of seeing that all city regulations are obeyed.
(2) Issue permits for the construction or repair of homes and other buildings upon the payment of such fee as may be fixed by council, but he shall issue no such permit unless the proposed construction or repair is in conformity with city zoning laws and regulations.
(3) Supervise all work done by any contractor for the city while the work is being performed.
(4) Make surveys, fix grades, and prepare plats, plans and specifications for all improvements which may be undertaken by the city, when required to do so by the city manager.
(5) Furnish on the demand of any resident the grade of any street or sewer upon the payment of such fee as may be fixed by council.
(6) Make complete maps of all streets, alleys, lanes, parks and public property owned by the city, keep such maps on file in his office and available for public inspection, and furnish a copy thereof to the city manager.
(7) Require that all pavements, sidewalks, curbs, gutters and sewers in the city are kept clean and repaired.
(8) Perform such other duties as may be required of him by this charter, by general law, or by city ordinance or order of the city manager not inconsistent with this charter or with general law.

SECTION 16. DIRECTOR OF FINANCE.

The city manager shall appoint a director of finance, who shall be a person experienced in accounting and budgeting, to serve for an indefinite term.

Under the direction and control of the city manager and subject to the provisions of this charter, the director of finance shall be responsible for the proper adminstration of the financial affairs of the city, and except as otherwise provided by this charter or by general law shall have the power and shall be required to:

(1) Collect all taxes, special assessments, license fees and other revenues of the city, and receive all other moneys payable to the city.
(2) Have custody of all funds of the city or of any office, department or agency thereof, and deposit such funds in the bank or banks designated by the council.
(3) Supervise the purchase, storage and distribution of all equipment and supplies used by any office, department or agency of the city.
(4) Supervise the receipt and disbursement of all moneys and control all expenditures to ensure that budget appropriations are not exceeded. No proposed

expenditure shall be made unless the director of finance shall certify that there is available for the purpose an unencumbered balance in the proper item of appropriation.

(5) Maintain a general accounting system for the city and each of its offices, departments and agencies, and keep a separate account for each item of appropriation in the budget, showing the total appropriation, the amounts paid therefrom, the unpaid obligations charged thereto, and the unencumbered balance.

(6) Prepare for submission to the council by the city manager a cumulative monthly statement of all receipts and disbursements in sufficient detail to show the exact financial condition of the city and each of its offices, departments and agencies.

(7) Prepare for submission to the council by the city manager a complete financial statement and report as of the end of each fiscal year.

(8) Compile for use by the city manager in the preparation of the budget an estimate of anticipated revenues during the coming year and an estimate of probable expenditures for current expenses and capital improvements.

(9) Perform such other duties as may be required of him by this charter, by general law, or by city ordinance or order of the city manager not inconsistent with this charter or with general law.

SECTION 17. BUDGET AND BUDGET MESSAGE; PUBLIC HEARING; ADOPTION AND REVISION.

The fiscal and budget year of the City shall begin on the 1st day of July and shall end on the 30th day of June of each calendar year. The budget for each succeeding fiscal year submitted and amended as provided in this section, shall be adopted by the council not later than the 28th day of March of the then current fiscal year.

Not later than the 1st day of March of each year, the City Manager shall submit to the Council a budget for the next fiscal year, together with a budget message which shall contain an outline of the proposed financial operation of the City for the coming year, shall describe the important features of the budget plan, and shall set forth the reasons for the salient changes from the previous year in cost and revenue items. The budget prepared by the City Manager shall not cover the financial operations of the Water Department. In respect to proposed appropriations for capital improvements, there shall be included in the budget message, or attached thereto, a program and schedule of capital projects recommended by the City Planning Commission for the next five fiscal years. A copy of the budget and budget message, and all supporting documents, shall at the same time the budget is submitted to the Council be filed with the City Clerk as a public record, and shall be available for inspection by any interested person.

The budget shall provide a complete financial plan for the budget year, including any estimate of any anticipated surplus at the beginning of the year, an estimate of anticipated revenues from all sources during the year, and a detailed estimate of proposed appropriations for expenditure during the year by each office, department, and agency of the City. The total of appropriations of the budget as submitted by the Manager or as adopted by the Council shall not exceed the sum of estimated revenues and surplus.

At a regular or special meeting of Council between the 7th and 28th days of March of each year, there shall be a public hearing on the proposed budget, at which time all interested persons shall be given an opportunity to be heard for or against any estimate of revenue or any item of appropriation contained therein. At said meeting, Council shall ascertain the fiscal condition of the corporation, and make an itemized statement setting forth:

(1) The amount due and the amount that will become due and collectible from every source during the current fiscal year except from the levy of taxes to be made for the year;

(2) The interest, sinking fund and amortization requirements for the fiscal year of bonded indebtedness, legally incurred upon a vote of the people as provided by law, prior to the adoption of the tax limitation amendment;

(3) Other contractual indebtedness, not bonded, legally incurred prior to the adoption of the tax limitation amendment, owing by the Municipality;

(4) All other expenditures to be paid out of the receipts of the Municipality for the current fiscal year with proper allowance for delinquent taxes, exonerations, and contingencies;

(5) The toal amount necessary to be raised by the levy of taxes for the current fiscal year;

(6) The proposed rate of levy in cents on each one hundred dollars assessed valuation of each class of property; and

(7) The separate and aggregate assessed valuations of real, personal and public utility property in each class in the Municipality.

The Recording Officer of the Municipality shall forward immediately a certified copy of the statement to the Tax Commissioner, and shall publish the statement forthwith. The session shall then stand adjourned until the 3rd Tuesday in April, at which time it shall reconvene.

The Council shall, when it reconvenes upon the 3rd Tuesday in April, hear and con-
ider any objections made orally or in writing by the City Attorney, by the Tax
Commissioner or his representative, or by any taxpayer of the City, for the estimate
and proposed levy, or to any item thereof. Council shall enter of record any objections
o made and the reasons and grounds therefor. The Council, after hearing objections,
hall reconsider the proposed original estimate and proposed rates of levy, and if
he objections are well taken, shall correct the estimate and levy. No such estimate
and levy, however, shall be entered until the same shall have first been approved, in
writing, by the Tax Commissioner. When the same shall have been approved by the
Tax Commissioner, the Clerk shall then enter the estimate and levy, together with
the order of the Council approving them and the written approval of the Tax Com-
missioner thereof, in the proper record book.

In addition to the provisions set forth herein, Council shall be subject to the
equirements contained in Chapter 11, Article 8, Section 1, et seq. of the West
Virginia Code, as amended, as the same may apply to municipal corporations.

After the beginning of the fiscal year, the Council shall make only such changes
n the budget as may be required because of action taken by the State Tax Commissioner
n respect to the proposed tax levy of the City or as may be permitted or required
y general law. Thereafter, the Council shall make no other changes in the budget
nless permitted or required to do so by general law. After the final adoption of the
udget, the several amounts stated therein as proposed appropriation shall be
appropriated to the specified objects and purposes. Except as otherwise provided
y general law, the City Manager may at any time transfer any unencumbered
appropriation balance of an appropriated line item from that line item to another
ine item with the same account category established by the State Tax Commissioner,
subject to the approval of City Council. No transfers from one account category to
another may be made without revision of the budget and approval by the Tax
Commissioner pursuant to Chapter 11, Article 8, Section 1, et seq.

For the purposes of accounting for the budget, the modified accrual basis of
accounting will be used, or any other basis of accounting required by the State
Tax Commissioner. The ending unencumbered balance at the end of the fiscal
year shall be the starting unencumbered balance for the new fiscal year.

In addition to the foregoing, Council and the City Manager shall comply with
all applicable federal and state laws which in any way relate to the governing
of the financial affairs of a municipal corporation.
(Amended 6-1-93)

SECTION 18. BONDS OF OFFICERS AND EMPLOYEES; AUDITS AND ACCOUNTS.

The chief of police and every member of the police department, and every officer and
employee of the city into whose custody or control shall come any of the moneys or funds of
the city shall before entering upon the discharge of his duties give a bond with corporate
surety conditioned upon the faithful discharge of his duties and the faithful accounting for all
moneys or funds coming into his hands by reason of his office or employment. The amount
of the bond shall be fixed by resolution of the council or, in the case of officers and employ-
ees of the water department, by resolution of the water board. As required by law, all

bonds shall be payable to the state of West Virginia and shall as to form and substance be subject to the approval of the city attorney, evidenced by his signed endorsement on each bond. All bonds when executed and approved shall be recorded in a book kept for that purpose by the city clerk, who is hereby made custodian of all such bonds. At the annual audit made by the state tax commissioner, the auditor shall report to the city council and to the water board respectively whether the required bonds are in any respect insufficient, and may require of any official or employee a new or additional bond. Any new or additional bond so required shall be given within thirty days after notice of such requirement, and a failure to give such bond shall at the expiration of thirty days work a forfeiture of the office or employment of the official or employee failing to give the same. The premium on all bonds given as provided in the section shall be paid from the appropriate fund of the city.

The council by resolution shall provide for such system of collecting, disbursing, budgeting, auditing, accounting and record-keeping, not inconsistent with other provisions of this charter, as may in its opinion be necessary or desirable.

In addition to the regular annual audit made by the state tax commissioner, the council may at any time it is deemed necessary employ qualified public accountants to make a special independent audit of the finances of the city or of the accounts of any city officer, department or agency, other than the accounts of the water board.

SECTION 19. BOARD OF PARK COMMISSIONERS; SUPERINTENDENT OF PARKS AND RECREATION.

The board of park commissioners heretofore created and now existing shall be continued. As authorized under the provisions of chapter ninety-one, acts of the legislature, regular session, one thousand nine hundred thirty-nine, as amended, the city council shall by ordinance provide that the board shall consist of five members, and shall also provide that the members shall be appointed by the council. Of the four members first appointed after the membership has been increased from three to five, two shall be appointed for terms of two years and two for terms of six years. Thereafter all appointments shall be for terms of six years. The members of the board in office on the date this charter becomes effective shall, unless sooner removed, continue to serve until their respective terms expire and their successors have been appointed.

The board shall have the powers and shall perform the duties conferred and required by general law. More particularly, the board shall be charged with the responsibility of providing public parks, playgrounds, athletic fields, swimming pools and other recreational facilities, and of providing an adequate recreational program for the inhabitants of the city. The board shall appoint a superintendent of parks and recreation, who shall be a person of proved executive and administrative ability, with experience or professional training in physical education and community recreation. At the time of his appointment he need not be a resident of the city or state, but during his tenure of office shall reside in Harrison County.

The council shall provide and allocate in the annual city budget sufficient funds for the operation and maintenance of an adequate system of city parks and recreational facilities and of an adequate recreational program.

As provided by law, the board may in its own name accept and disburse any funds it may receive by gift, bequest or devise for park or recreational purposes.

SECTION 20. BOARD OF DIRECTORS OF PUBLIC LIBRARY.

The Board of Directors of the public library heretofore created and now existing shall be continued. The members of the Board in office on the date this Charter as amended becom effective, shall unless sooner removed, continue to serve until their respective terms expire and their successors are appointed. The five members of the Board shall be appointed, in

accordance with the provisions of Chapter 10, Article I of the Official Code of West Virginia as amended. Future appointments to the Board of Directors of the Public Library shall be made as follows: The Harrison County Commission shall appoint a person to a five-year term beginning July 1, 1983, and such person so appointed shall reside outside the city limits of the City of Clarksburg; the Clarksburg City Council shall appoint a person to a five-year term beginning July 1, 1984, and said person shall reside within the City of Clarksburg; the Harrison County Board of Education shall appoint a person to a five-year term beginning July 1, 1985, and said person shall reside outside the corporate limits of the City of Clarksburg. The Clarksburg City Council shall appoint a person to a five-year term beginning on July 1, 1986 and July 1, 1987, and such person shall reside within the corporate limits of the City of Clarksburg, West Virginia.

The Board of Directors shall have the powers and shall perform all the duties conferred and required by general law.

The Clarksburg City Council, the Harrison County Commission and the Harrison County Board of Education shall jointly provide sufficient funds in their respective budgets for the adequate operation, maintenance and repair of the Clarksburg-Harrison County Public Library, and transfer such funds to the Board of Directors.

The Board shall be known as the Clarksburg-Harrison County Public Library.

This charter amendment will not become effective until formal action is taken by the Harrison County Commission and the Harrison County Board of Education agreeing to join with the City of Clarksburg in creating the new Clarksburg-Harrison County Public Library Board. (Ord. 83-17. Passed 7-21-83.)

SECTION 21. CITY PLANNING COMMISSION; ZONING COMMISSION AND BOARD OF ADJUSTMENT.

The council shall provide for the establishment and the financial support of a city planning commission as provided in article five, chapter eight of the official code of West Virginia, as amended. The commission shall be composed of eleven members, who shall be nominated by the city manager and confirmed by the council. The members of the commission shall be freeholders of the city. The commission shall have the powers and shall perform the duties prescribed by general law. It shall be the responsibility of the commission to prepare comprehensive plans for the future development of the city, including recommendations concerning needed streets, bridges, parks, parkways, playgrounds, public buildings, and other public improvements. Such plans and recommendations shall be submitted to the city manager and to the council and other appropriate agencies of the city for such action as the council or other agencies may deem proper. In addition, the commission shall submit annually to the city manager, not less than ninety days prior to the beginning of the budget year, a list of recommended capital improvements which in the opinion of the commission are necessary or desirable to be constructed during the forthcoming five-year period. Such list shall be arranged in order of preference, with recommendations as to which projects shall be constructed in which year.

The planning commission shall also act as the zoning commission and as such shall have the authority and shall perform the duties prescribed by general law, including the authority and duty to prepare and recommend to council for enactment any revisions or amendments of the city zoning ordinance it may deem advisable. The council shall in the manner prescribed by law provide for a board of adjustment which shall hear all appeals arising in connection with the enforcement of the city zoning ordinance.

SECTION 22. PUBLIC HEALTH UNIT.

The city council either by itself or in conjunction with one or more other political subdivisions shall in the manner provided by law establish and maintain a public health unit. [illegible] established shall have the powers and shall perform the duties

SECTION 23. SANITARY BOARD.

The council shall provide for the establishment of a sanitary board which shall have the powers and shall perform the duties prescribed by general law with respect to the construction, operation and maintenance of sewage disposal facilities. The sanitary board shall be composed of the city manager, who shall be the chairman of the board, and two other persons appointed by the council, one of whom shall be a registered professional engineer.

SECTION 24. PARKING AUTHORITY.

The parking authority heretofore created and now existing shall be continued. The parking authority shall have the power and the responsibility to establish, operate and finance automobile parking facilities for the city, as provided in article four-a, chapter eight of the official code of West Virginia, as amended.

SECTION 25. THE WATER BOARD; CONTINUANCE; QUALIFICATIONS, TERM OF OFFICE, AND SALARY OF MEMBERS; SELECTION OF PRESIDENT; VACANCIES.

The water board of the city in existence on the date this charter is adopted shall be continued. The water board shall consist of three members to be elected at large by the qualified voters of the city for terms of four years beginning on the first day of July following their election. The terms of office of all members of the water board in office on the date this charter is adopted shall continue unitl the close of business on the thirtieth day of June following the date on which their terms of office would otherwise expire. At the first election held under the provisions of this charter one member of the water board shall be elected. At each regular election thereafter either one or two members of the board, as the case may be, shall be elected to succeed the incumbent member or members whose term of office expires on the thirtieth day of June following the election.

Members of the water board shall be qualified voters of the city, shall have been residents of the city for at least one year prior to their nomination for the office, shall hold no other public office except that of notary public or member of the National Guard or naval or military reserve, and shall not be employed by the city in any capacity. If a member of the board shall cease to be qualified or shall be convicted of any crime involving moral turpitude, his office shall immediately become vacant.

A special meeting of the water board shall be held at 7:30 P.M. on the first day of July following each regular city election. Following the selection of a temporary chairman, the newly elected member or members of the water board shall first be inducted into office. The board shall then elect one of its members to serve as president for a term of two years.

The salary of each member of the water board shall be twenty dollars for each meeting of the board attended by him, not to exceed five hundred dollars in any fiscal year. Until the maximum limit is reached, the salary of each member shall be paid monthly as earned.

If any vacancy occurs on the water board, the board shall within thirty days appoint a qualified person to fill the vacancy for the unexpired term. If the vacancy is not so filled within thirty days after it occurs, then of the unsuccessful candidates for the office of member of the water board at the last election, who are still qualified and willing to serve, the one who received more votes than any of the others shall be entitled to the office. If the vacancy is not filled by either of these methods, it shall be filled at a special election to be

held on a date not more than four months after the vacancy occurs. In the resolution calling the special election, the council shall specify procedures for the conduct of the election, and dates for the circulation and filing of nominating petitions and for the holding of the election, which shall conform as nearly as may be practicable to the procedures and schedule established by this charter for regular city elections.

SECTION 26. MEETINGS OF THE WATER BOARD; RULES OF PROCEDURE; JOURNAL.

Regular meetings of the water board shall be held at least twice each month, on such days and at such times as the board may by published resolution prescribe. Special meetings may be held at any time upon call by the president or any two members and upon such notice as the board may by rule prescribe. All meetings of the board shall be open to be public.

Two members of the board shall constitute a quorum. The president shall be entitled to vote on all matters before the board.

The board shall by resolution adopt by-laws prescribing its own rules, procedure, and order of business, and shall keep a journal of all of its proceedings, which shall be available for public inspection.

SECTION 27. GENERAL POWERS OF THE WATER BOARD.

All of the powers now or hereafter conferred upon municipalities by the laws of the state for the operation of a water system, and all powers and duties of the city pertaining to the construction, acquisition, establishment, improvement, operation, management, maintenance, and repair of the municipal water system, and the determination of all matters of policy with respect thereto, are vested in and shall be exercised by the water board. The water board shall have full and exclusive jurisdiction of the exercise and discharge of such municipal powers so conferred upon it, independent of control by the council and the city manager. The city council shall upon request of the water board enact such ordinances, enter such orders, and adopt such resolutions as may be required by law in connection with the issuance of any water works revenue bonds, the acquisition by purchase or condemnation of any property needed for the proper operation of the water department, or the transaction of any other business of the water board.

In addition to the general powers mentioned in the preceding paragraph, and without any limitation upon such powers, the water board subject to provisions of general law shall have the following authority and shall perform the following duties:

(1) Fix, regulate and change rates and charges for water supplied to all consumers; adopt and prescribe reasonable rules and regulations which shall be observed by all consumers in reference to the use and consumption of water taken from the city mains, the terms and conditions upon which connections to the mains shall be permitted, and the place and manner of making the same; fix penalties by way of additional charges for failure to pay water bills promptly, and to this end the board may discontinue the supply of water to any consumer who fails to pay for the same as required; require all users of water for temporary purposes to pay for the privilege in advance; refuse to furnish water to any building or habitation unless the owner thereof shall assume liability for the payment of the charges for the water so furnished, and charge to and collect from the owner the cost of water furnished to any tenant or occupant of such building or habitation not paid for by the tenant or occupant; charge the cost of installing water service lines from the

payment in advance for installing and connecting such line with the water main. The powers of the water board to fix and charge rates for water and water service and to make rules and regulations governing the supply of such water and water service shall be subject to the supervision, regulation and control of the Public Service Commission of the state to the extent and in the manner now or hereafter prescribed by general law.

(2) Whenever the city council shall determine to pave or repave any street in the city, the water board is authorized to make a proper connection and lay a water service line from the main to the curb for each and every lot or for any part of a lot under separate ownership, although no water service may, at any time be necessary or required for any such lot or part of lot, and to charge the cost of making such connection and laying such water service line against the owner of the property. The cost of laying such water service lines and making such connections shall in every instance be a lien upon the lot or part of lot to be benefited thereby, and the water board shall have the right, in the name of the city, to institute and prosecute any proper suit in the circuit court of Harrison County for the collection of such charges by a sale of the property on which the same constitutes a lien. Whenever the council decides to pave or repave any street, it shall be the duty of the water board to lay necessary water mains and service lines as soon as may be practicable in order not to delay the paving program. In order to coordinate the making of such improvements it shall be the duty of both the council and the water board to cooperate with each other in making plans for such improvements or repairs, and to keep each other informed concerning future needs and plans.

(3) The board shall have power from time to time to repair, extend and amplify the water works plant and system, and to make such additions to the pumping station, filtration plant and water mains and lines as may at any time be deemed necessary for the proper operation of the system.

(4) The water board shall require the general manager to examine the sources of water supply for the city and to report to the board from time to time whether the waters are being polluted. The water board may, in the name of the city, institute and prosecute in any court having jurisdiction any legal action, civil or criminal, necessary to enjoin any person, firm or corporation from continuing any nuisance caused by such pollution or to prohibit the violation of any city ordinance or of any provision of general law concerning pollution or concerning the protection of the city water supply.

(5) Whenever the city shall in the manner prescribed by law provide for the imposition of a sewage service charge based on the consumption of water upon the customers of the water department, it shall be the duty of the water board to add the charge to the water bills and collect the same. All sewage charges collected by the water board shall be accounted for monthly and paid into the operating fund of the sanitary board. The sanitary board shall pay any additional cost incurred by the water board in the collection of sewage charges.

SECTION 28. APPOINTMENT AND TENURE OF GENERAL MANAGER OF THE WATER DEPARTMENT.

The water board shall appoint a general manager of the water department to serve for in indefinite term, and may at any time remove him from office by the affirmative vote of not less than two of its members. At least thirty days before such removal shall become effective, the board shall adopt a preliminary resolution stating the reasons for his removal and specifying the date on which his removal shall become final. At any time within ten days after the adoption of such resolution, upon the written request of the manager, he shall be afforded an opportunity to be heard at a public meeting of the board, which shall be held no earlier than ten nor later than twenty days after the request was made, and at a time and place to be fixed by the water board. After such public hearing if one is requested, and after full consideration, the board by affirmative vote of two if its members may adopt a final resolution of removal. By the preliminary resolution the board may suspend the manager with pay for a period not to exceed thirty days, and may designate some other person to perform the duties of the manager during the period of his suspension.

The general manager shall be a person of proved executive and administrative ability, preferably with experience and training in the management of a water or other utility system. At the time of his appointment he need not be a resident of the city or state, but during his tenure of office shall reside in Harrison County. No member of the water board, during his term and for a year thereafter, shall be eligible for appointment as general manager of the water department.

Neither the water board nor any of its members shall direct or in any manner interfere with or obstruct the appointment or removal of any employee by the general manager or by any of his subordinates. Except for the purpose of inquiry, the board and its members shall deal with the employees of the water department solely through the general manager and shall give no orders to such employees, either publicly or privately. If any member of the board shall violate the provisions of this section, he shall be subject to removal from office in the manner provided for the removal of municipal officers in section seven, article six, chapter six of the official code of West Virginia, as amended.

SECTION 29. POWERS AND DUTIES OF GENERAL MANAGER OF THE WATER DEPARTMENT.

The general manager of the water department shall be the administrative authority of the city insofar as the water department is concerned. He shall be ex officio the secretary and treasurer of the water board, and shall devote all of his time to his official duties. He shall be responsible to the board for the proper and efficient administration of the water department, and to that end he shall have power and shall be required to:

(1) Appoint and, when he deems it necessary or advisable, remove all employees of the water department, except as he may authorize such appointment and removal by his subordinates.

(2) Prepare the annual budget of the water department, submit it to the board for adoption, and be responsible for its administration after adoption.

(3) Prepare and submit to the board as of the end of each fiscal year a complete report on the finances and the administration of the department for the preceding year.

(4) Advise the board with respect to future plans and physical needs of the water department, and keep it informed concerning the current financial condition of the department.

(5) Enforce, or cause the enforcement of, all city ordinances and all laws of the state applicable to the water system, and of all rules and regulations of the water board.

(6) Prepare and cause to be served all notices required to be given to any person, firm or corporation in connection with any activity or business of the water board, and after the proper service and return of any notice he shall file and preserve the same.

(7) Collect all revenues of the water department, deposit them in the bank or banks designated by the water board, and disburse them upon such requisition or order as the board may prescribe.

(8) Supervise the purchase, storage and distribution of all equipment and supplies for the water department.

(9) Make and keep up to date, and place on file for public information at the office of the water board, complete maps, plans and details showing the dams, pumping stations, reservoirs, tanks, pipes, valves, connections, water lines, fire hydrants, and all other data necessary to show all the physical properties of the water department.

(10) Attend all meetings of the water board, give notice of its meetings, keep the journal of its proceedings, and keep or cause to be kept full and accurate record books and books of account covering all the business and transaction of the water department, all of which shall be available for public inspection.

(11) Execute on behalf of the water board all legal and other written documents requiring execution by the chief executive officer of the board, acknowledge the same if necessary, and perform all other acts and duties required of the chief executive officer of the board.

(12) Perform such other duties as may be required of him by this charter, by general law, or by order of the board not inconsistent with this charter or with general law.

The general manager may by letter filed with the president of the board designate one of his subordinates to perform the duties of the general manager during his temporary absence or disability. If the manager fails to make such designation, the board may by resolution appoint an employee of the water department to act for the manager during his absence or disability.

SECTION 30. EMPLOYMENT OF COUNSEL BY WATER BOARD; AUDITS AND ACCOUNTS.

The water board may employ legal counsel to assist and advise it in the discharge of its duties, and to represent it and the city in all litigation conducted by the water board in connection with the exercise of its powers and the transaction of its business. The cost of all such litigation, including any judgment or decree against the water board in the name of the city, as well as all fees and compensation for counsel employed by it, shall be paid out of the revenues of the water board.

The water board by resolution shall provide for such system of collecting, disbursing, budgeting, auditing, accounting and record-keeping, not inconsistent with other provisions of this charter, as may in its opinion be necessary or desirable.

In addition to the regular annual audit made by the state tax commissioner, the board may at any time it is deemed necessary employ qualified public accountants to make a special independent audit of the finances of the water board or of the accounts of the general manager or any other employee of the water department.

SECTION 31. APPLICATION OF FUNDS OF WATER BOARD.

All revenues derived from the operation of the water department, from the sale of water works bonds, or from the sale by the water board of any of its property, shall be applied by the water board solely for the payment of expenses incurred in the exercise of authority or in the discharge of duties imposed on the board by this charter or by general law, for the payment of the cost of operating, improving, and managing the water system, and for the payment of principal, interest and sinking fund requirements necessary for the discharge of any water works bonds heretofore or hereafter issued.

SECTION 32. CONTRACTS AND PURCHASES.

All contracts and purchases by any City officer, department or agency shall be void unless made in conformity with all applicable provisions of general law, this Charter, and with all rules and regulations fixed by ordinance, from time to time, concerning a dollar amount for which competitive bids shall be required for contracts for improvements or purchases of materials, supplies and equipment.

In the case of contracts for the construction of any improvements in which competitive bids shall be required, sealed competitive bids shall be obtained by notice published at least once each week for two successive weeks in two newspapers of opposite politics published in the City. The notice shall refer to necessary specifications and plans, shall invite the submission of bids, and shall specify the date on which the bids will be opened. In the case of contracts or purchases of supplies, materials and equipment or personal services, sealed competitive bids shall be obtained either (a) by published notice inviting bids as in the case of contracts for the construction of improvements, or (b) by mailed notice stating the necessary specifications, inviting the submission of bids, and stating the date on which the bids will be opened. The first of these methods shall be used unless the Council or Water Board, as the case may be, shall enter an order of record authorizing the use of the second method and stating the reasons why such method was authorized. Whether or not it is so stated in the published mailed notice, all bids may be rejected. No City officer, department or agency shall subdivide any contract or purchase for the purpose of evading the requirements of this section with respect to competitive bidding.

The Water Board with respect to any improvements, extensions or additions to the water system, and the Council with respect to City improvements under its jurisdiction, shall cause to be prepared accurate and complete maps, plans and specifications therefor and shall have the authority to cause such work to be done either by the employment of labor and the furnishings of material, or by entering into a contract for the performance of the labor and for the material. If a contract is let for any improvement, the Water Board or the Council, as the case may be, shall require the contractor to give a sufficient bond with corporate surety to guarantee the faithful performance of the contract and the payment for all labor performed and all materials furnished in the performance of the contract, as provided in section thirty-nine, article two, chapter thirty eight of the official code of West Virginia, as amended. Any change or alteration in the contract after it is entered into shall be made only upon resolution passed by the Water Board, or the Council, as the case may be, and shall not be effective until the price to be paid for the work and material, or both, under the altered or modified contract, shall have been agreed upon in writing and such agreement signed by the contractor and the general manager with the approval of the Water Board, or the City Manager with the approval of the Council, as the case may be.

The Water Board with respect to contracts and purchases of the Water Department, and the City Council, with respect to contracts and purchases of other City offices, departments and agencies, may by resolution prescribe additional rules and regulations governing the making of contracts and purchases, not inconsistent with general law or with the provisions of this Charter.

In the case of an emergency the City Council or Water Board, as the case may be, may by special resolution setting forth the facts constituting the emergency dispense with the requirement of competitive bidding and with the requirements of its rules and regulations governing contracts and purchases.

Any officer or employee of the City who shall be directly or indirectly interested in any contract with the City, or in the profits to be derived thereform, shall forthwith forfeit his office or employment, and in addition thereto any such contract shall be void and uneforceable against the City. The acceptance by any officer or employee of any interest in such contract or of any gift or gratutity from any person, firm or corporation dealing with the City which might influence the officer or employee and in the discharge of his duties shall forever disqualify such officer or employee from holding any office or employment in the City government, and in addition he shall be subject to criminal prosecution as provided by general law or by City ordinance. (Amended February 18, 1982)

SECTION 33. STATUS OF EXISTING OFFICERS AND EMPLOYEES.

Every person holding an appointive office or employment in the city government on the effective date of this charter shall retain the same or the similar office or employment hereunder, pending action by the competent authority of the city having the power appointment and removal with respect to such office or position. At any time within four months after the effective date of this charter, the city manager and the general manager of the water department in office on that date shall be subject to replacement by the council and by the water board, respectively, without regard to the removal provisions of sections seven and twenty-eight of this charter.

SECTION 34. DISCRIMINATORY PRACTICES PROHIBITED.

No person holding any appointive office or employment in the service of the city, or seeking appointment thereto, shall be appointed, promoted, demoted or removed, or in any way favored or discriminated against because of political opinions or affiliations, or because of race, color or religious beliefs.

SECTION 35. SOCIAL SECURITY.

The city council, the water board, and every other board or commission provided for this charter, or hereafter created by council pursuant to general law, shall in the ınner prescribed by law provide social security coverage for all eligible city officers and ıployees.

SECTION 36. OATH OF OFFICE.

Before taking office every officer of the city and the head of each administrative de-rtment shall take the oath of affirmation required by section five, article four of the nstitution of the state.

SECTION 37. ELECTIONS.

Regular city elections shall be held on the first Tuesday in June, one thousand nine ndred fifty-seven, and on the first Tuesday in June of every second year thereafter. ecial elections shall be held at such times as may be fixed by the council in accordance th the provisions of this charter and of general law.

The ballot to be used in city elections shall be prepared by the council and shall have t forth thereon in one division the names of all properly nominated candidates for election membership on the council, and in another division the names of all properly nominated ndidates for election to membership on the water board. In the printing of the ballots, e position of the names of the candidates shall be in like manner as is provided general law for the printing of official primary ballots. The ballots shall state that the ection is non-partisan and shall clearly indicate the number of candidates for each office r whom the voter is entitled to vote. At least ten days before the election a sample ballot owing the names of all properly nominated candidates shall be published once in two wspapers published in the city in the same manner as is provided by law for the publication the list of nominations in a general election.

Except as otherwise provided in this charter, city elections shall be conducted and the ısult determined and certified in accordance with the provisions of general law with ıspect to primary, general and special elections, so far as they are applicable, except at the duties devolving upon the county court and the clerk thereof under the general laws r conducting elections shall be performed by the city council and the city clerk. The ıuncil shall appoint three commissioners and two clerks to serve as election officials in ch precinct in the city. At least three days before the date of the election the city clerk ıall procure from the clerk of the county court the necessary registration records and her election supplies and shall deliver them together with the ballots to the election ficials. The election officials shall as soon as possible after the closing of the polls on ection day return to the city clerk the ballots, tally sheets, certificates of the result of e election, registration records, ballot boxes and other election supplies. On the first onday following the election the council shall canvass the returns of the election and de-are the result. In the case of a contest the council shall be the judge of the election and ıalifications of all city officials.

The cost incurred in holding and conducting regular city elections, after deducting all ›mination fees received in connection therewith, shall be paid one-half out of the general ty revenues and one-half out of the revenues of the water board. The costs of conducting ›ecial elections shall be paid out of general city revenues, except that the cost of any

## SECTION 38. CANDIDATES FOR CLARKSBURG CITY COUNCIL OR CLARKSBURG WATER BOARD; FILING FEE; FILING DATE.

A filing fee to be set by ordinance and candidate's signed certificate of announcement stating that he/she is a qualified voter of the City and he/she has resided therein for at least ~~one year~~ 30 days and that he/she declares himself/herself a candidate for election to such office of Councilman/Councilwoman of the Clarksburg City Council or Member of the Water Board and will serve if elected, shall be filed in person with the City Clerk in the office of the City Clerk, Municipal Building, Clarksburg, West Virginia, not earlier than the first day of March, nor later than 4:30 p.m. on the fifteenth day of March preceding the election. The Clerk shall make a record of the exact time each statement and fee was filed and the name and address of the person by whom it was filed. The filing dates provided herein shall be changed or amended by regular ordinance thereafter.

In case there shall not be a number of candidates for any office equal to the number of persons to be elected to such office at any election, then the Council for the office of Councilman/Councilwoman and the Water Board for the office of a member of the Water Board, shall on or before the 20th day of March preceding the election make by appropriate resolution such additional nominations of candidates to be elected to such office. The nomination of any person by such a resolution shall, however, not be complete unless the person so nominated shall within three days after his nomination pay to the City Clerk the prescribed filing fee and file with the Clerk a signed statement that he/she is a qualified voter of the City and has resided therein for at least ~~one year~~ 30 days before his/her nomination, and that he/she accepts the nomination and will serve, if elected.

The word announce or announcement as used herein or as used in the Clarksburg City Charter shall for the purposes of the Clarksburg City Charter be synonymous with and shall mean the same as nominate or nomination. The word nominate or nomination as used herein or as used in the Clarksburg City Charter shall for the purposes of the Clarksburg City Charter be synonymous with and shall mean the same as announce or announcement.

(Amended 6-1-93)

SECTION 39. FORM OF CERTIFICATE OF ANNOUNCEMENT; BLANK FORMS TO BE FURNISHED BY CITY CLERK.

The City Clerk shall prepare and furnish printed forms for certificates of inouncement substantially in the form set forth and authorized by ordinance of the ity Council.
\mended 6-1-93)

SECTION 40. EFFECT OF CHARTER ON EXISTING ORDINANCES AND ADMINISTRATIVE RULES AND REGULATIONS.

All existing ordinances and all existing administrative rules, regulations and ractices, if not inconsistent or in conflict with this charter, shall continue in full force nd effect until repealed or modified by the council or other competent authority of the city. .ll ordinances, rules, regulations and practices that are inconsistent or in conflict with ıis charter shall, unless sooner repealed or modified, continue in full force and effect for period of sixty days only, and at the end of that period shall to the extent of such ıconsistency or conflict be of no further force or effect.

SECTION 41. REFERENCE TO GENERAL LAW.

A reference contained in this charter to a provision of general law shall be construed › mean the provision as it now exists or as it may hereafter be amended. Where addition- l sections are added to the subject matter of a provision of general law referred to in this harter, the reference shall include such additional sections.

SECTION 42. MEETINGS AND OTHER ACTS ON LEGAL HOLIDAYS.

Whenever under the provisions of this charter it is required that a meeting be held or ıat an act be done on a date which is a legal holiday, the meeting shall be held or the act hall be done on the next day not a legal holiday.

SECTION 43. SEPARABILITY.

The provisions of this charter shall be construed as severable, and should any provi- ion be held unconstitutional, or for any other reason invalid, such holding shall in no way ffect any other provision thereof.

SECTION 44. EFFECTIVE DATE OF CHARTER.

For the purpose of extending the terms of office of present elective officers and for the urpose of nominating candidates and conducting the first election held hereunder, this harter shall be in effect from and after the date of its adoption by the voters of the city. 'or all other purposes it shall be in effect on and after the first day of July next following ıe first election held under its provisions.

# CHARTER

# OF THE CITY OF

# CLARKSBURG, WEST VIRGINIA

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# CHARTER

# OF THE CITY OF

# CLARKSBURG, WEST VIRGINIA

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SECTION 1. INCORPORATION.

The inhabitants of the City of Clarksburg, Harrison County, West Virginia, within the corporate limits thereof as now established or as may hereafter be established in the manner provided by law, shall be and continue in perpetuity to be a municipal body politic and corporate, under the name of the "City of Clarksburg," with all the powers of self-government granted by the constitution and laws of the state.

SECTION 2. SUCCESSION.

The City of Clarksburg, as successor in interest of the present municipal corporation of the same name, shall succeed to, own, possess and enjoy all the property and all the rights, titles and interest of every kind and nature vested in or belonging to such municipal corporation at the time this charter becomes effective, shall be subject to all existing liabilities, shall be bound by and through the appropriate agency shall pay all existing debts, and shall faithfully perform all present duties and discharge all present obligations of such corporation.

SECTION 3. FORM OF GOVERNMENT.

There is established by this Charter the council-manager form of municipal government, as prescribed in sections five and five-a, article three, chapter eight-a of the official code of West Virginia, as amended. Except as otherwise provided in this charter, the council shall be the governing authority of the city, and shall appoint the city manager who shall execute the laws and administer the government of the city, except as otherwise provided herein.

SECTION 4. POWERS OF CITY.

The city shall have all the powers specifically provided for in this charter, and shall also have all the powers now or hereafter granted to municipal corporations and to cities of its class by the constitution and general laws of the state, together with all the implied powers necessary and proper to carry into execution the powers so granted. The enumeration herein of particular powers shall not be deemed exclusive, but the city shall have and may exercise all the powers which under the constitution and laws of the state might properly be specifically enumerated in this charter.

SECTION 5. THE COUNCIL; QUALIFICATIONS, TERM OF OFFICE, AND SALARY OF MEMBERS; SELECTION OF MAYOR; VACANCIES.

The Council shall consist of seven members to be elected at large by the qualified .ers of the city for terms of four years beginning on the first day of July following their ction, except that of the seven councilmen elected at the first election held under the ›visions of this charter the three receiving the smallest numbers of votes shall be :cted for terms of two years. At each regular election thereafter either three or four ıncilmen, as the case may be, shall be elected to succeed the incumbent members ose terms of office expire on the thirtieth day of June following the election. The terms office of all councilmen in office on the date this charter is adopted shall continue until close of business on the thirtieth day of June following the first regular election held :eunder.

Councilmen shall be qualified voters of the city, shall have been residents of the y for at least one year prior to their nomination for the office, shall hold no other ›lic office except that of notary public or member of the National Guard or naval or litary reserve, and shall not be employed by the city in any capacity. If a councilman ıll cease to be qualified or shall be convicted of any crime involving moral turpitude, office shall immediately become vacant.

A special meeting of the council shall be held at 7:30 P.M. on the first day of July owing each regular city election. Following the selection of a temporary chairman, newly elected councilmen shall be inducted into office. The council shall then elect of its members to serve as mayor for a term of two years. The mayor shall preside neetings of the council and shall be recognized as the head of the city government for ceremonial and military purposes, but shall have no regular administrative duties.

The salary of the Mayor and Council shall be fixed by ordinance.

If any vacancy occurs in the office of councilman, the council shall within thirty days the affirmative vote of at least four members appoint a qualified person to fill the :ancy for the unexpired term. If the vacancy is not so filled within thirty days after it :urs, then of the unsuccessful candidates for the office of councilman at the last election, o are still qualified and willing to serve, the one who received more votes than any of : others shall be entitled to the office. If the vacancy is not filled by either of these :thods, it shall be filled at a special election to be held on a date not more than four ›nths after the vacancy occurs. In the resolution calling the special election, the council ıll specify procedures for the conduct of the election, and dates for the circulation and .ng of nominating petitions and for the holding of the election, which shall conform as arly as may be practicable to the procedures and schedule established by this charter · regular city elections. (Amended 6-1-93)

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SECTION 6. MEETINGS OF THE COUNCIL; RULES OF PROCEDURE; JOURNAL.

Regular meetings of the council shall be held at 7:30 P.M. on the first and third Mondays of each month, or on such other stated days as the council may by ordinance prescribe. Special meetings may be held at any time upon call of the mayor or any three councilmen and upon such notice as the council may by rule prescribe. All meetings of the council shall be open to the public.

Four members of the council shall constitute a quorum. The mayor shall be entitled to vote on all matters before the council. The council shall by resolution adopt by-laws prescribing its own rules, procedure, and order of business, and shall keep a journal of all of its proceedings, which shall be available for public inspection.

SECTION 7. POWERS OF THE COUNCIL; APPOINTMENT AND TENURE OF CITY MANAGER.

Subject to any limitations imposed by the constitution and general laws of the state, all powers of the city shall be vested in and exercised by the council, except such powers as are by this charter specifically vested in the water board and such powers as are by general law vested in the other boards or commissions provided for in this charter or hereafter created by council pursuant to general law. No franchise granted by the council may be transferred in whole or in part without the written consent of council.

The council shall appoint a city manager to serve for an indefinite term, and may at any time remove him from office by the affirmative vote of not less than four of its members. At least thirty days before such removal shall become effective, the council shall adopt a preliminary resolution stating the reasons for his removal, and specifying the date on which his removal shall become final. At any time within ten days after the adoption of such resolution, upon the written request of the manager, he shall be afforded an opportunity to be heard at a public meeting of the council, which shall be held no earlier than ten nor later than twenty days after the request was made, and at a time and place to be fixed by council. After such public hearing if one is requested, after full consideration, the council by the affirmative vote of four of its members may adopt a final resolution of removal. By the preliminary resolution the council may suspend the manager with pay for a period not to exceed thirty days, and may designate some other person to perform the duties of the manager during the period of his suspension.

The city manager shall be a person of proved executive and administrative ability, preferably with experience and training in the field of city management. At the time of his appointment he need not be a resident of the city or state, but during his tenure of office shall reside within the city. No councilman, during his term and for a year thereafter, shall be eligible for appointment as city manager.

Neither the council nor any of its members shall direct or in any manner interfere with or obstruct the appointment or removal of any city officer or employee by the city manager or by any of his subordinates. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the city manager and neither the council nor any member thereof shall give orders to any subordinates of the city manager, either publicly or privately. If any councilman shall violate the provisions of this section, he shall be subject to removal from office in the

anner provided for the removal of municipal officers in section seven, article six, ıapter six of the official code of West Virginia, as amended.

Except as otherwise provided by this charter, and within the limitations imposed by the ›nstitution and general laws of the state, the council may determine the powers and duties ' city officers, and subject to the requirements of general law may regulate the number, ethod of selection, qualifications, tenure, and compensation of city officers and employees, cluding the establishment of civil service for such employees.

SECTION 8. POWERS AND DUTIES OF CITY MANAGER.

Except as otherwise provided in the charter, the city manager shall be the head of the lministrative branch of the city government. He shall be responsible to the council for e proper and efficient adminstration of all affairs of the city under his authority, and to at end, except as otherwise provided in this charter, he shall have the power and shall be ›quired to:

(1) Appoint and, when he deems it necessary or advisable, remove all officers and employees of the city except as otherwise provided by this charter or by general law, and except as he may authorize the head of a department or office to appoint and remove subordinates in such department or office.
(2) Prepare the annual budget, submit it to the council for adoption, and be responsible for its administration after adoption.
(3) Prepare and submit to the council as of the end of each fiscal year a complete report on the finances and administrative activities of the city for the preceding year.
(4) Advise the council with respect to future plans and physical needs, and keep it informed concerning the current financial condition of the city.
(5) Require the chief of police and the chief of the fire department to establish for their respective departments a course of training designed to promote the more efficient and safe operation of their departments.
(6) Execute on behalf of the city all legal and other written documents requiring execution by the chief executive officer of the city, acknowledge the same if necessary, and perform all other acts and duties required of the chief executive officer of the city.
(7) Perform such other duties as may be required of him by this charter, by general law, or by order of the council not inconsistent with this charter or with general law.

The manager may by letter filed with the city clerk designate some qualified iministrative officer of the city to perform the duties of the manager during his temporary ›sence or disability. If the manager fails to make such designation, the council may by esolution appoint an officer of the city to act for the manager during his absence or lsability.

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(3) Prepare and submit to the council as of the end of each fiscal year a complete report on the finances and administrative activities of the city for the preceding year.
(4) Advise the council with respect to future plans and physical needs, and keep it informed concerning the current financial condition of the city.
(5) Require the chief of police and the chief of the fire department to establish for their respective departments a course of training designed to promote the more efficient and safe operation of their departments.
(6) Execute on behalf of the city all legal and other written documents requiring execution by the chief executive officer of the city, acknowledge the same if necessary, and perform all other acts and duties required of the chief executive officer of the city.
(7) Perform such other duties as may be required of him by this charter, by general law, or by order of the council not inconsistent with this charter or with general law.

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SECTION 9. CITY CLERK.

The Council shall appoint a resident of the city to serve as city clerk at the will and pleasure of the council. Except as otherwise provided in this charter and subject to the supervision of the city manager, the clerk shall have the power and it shall be his duty to:

(1) Give notice of and attend all meetings of the council, keep the journal of its proceedings, authenticate by his signature and record in full in a book kept for the purpose all ordinances and resolutions of the council, prepare and keep up to date an index of all such ordinances and resolutions, and keep all such records available for public inspection when not in use.

(2) Make and certify copies of any ordinance, resolution or order of the council whenever required to do so, and affix the corporate seal of the city to any paper required to be sealed and to any certified copy of any paper, order or proceeding which he may make.

(3) Prepare and cause to be served all notices required to be given to any person, firm or corporation, and after the proper service and return of any notice he shall file and preserve the same.

(4) Have custody of and keep available for public inspection the permanent records of the city and file and properly index all records of such city officers and departments as the city manager may direct.

(5) Perform such other duties as may be required of him by this charter, by general law, or by city ordinance or order of the city manager not inconsistent with this charter or with general law.

SECTION 10. POLICE COURT AND JUDGE; JURISDICTION; PRACTICE AND PROCEDURE.

The police court now existing shall be continued and shall have criminal jurisdiction over violations of city ordinances and the criminal jurisdiction of a justice of the peace with respect to offenses committed within any territory within or beyond the city limits over which the city has police jurisdiction under provisions of general law. The sessions of the court shall be held at such times and places as the council by ordinance or resolution may direct.

The judge of the police court shall be a resident of Harrison County and a member in good standing of the Harrison County Bar. He shall be appointed by the city manager to serve for an indefinite term. In the event of the temporary absence or disability of the regular judge, the city manager shall appoint some other qualified person to serve as judge of the police court. During the period of such temporary service the salary of the regular judge shall be transferred and paid to the temporary judge, except that both shall be paid during the customary vacation period granted to the regular judge.

The judge shall issue warrants upon complaint under oath of any person or officer for the arrest of anyone charged with any offense within the jurisdiction of the police court. He shall try and determine all cases over which the court has jurisdiction, and within the limits prescribed by ordinance or by law shall punish by fine or imprisonment, or both, any person convicted of any offense. He shall have power to summon witnesses for the trial of any case before him, to compel the attendance of police officers of the city, to require of the chief of police the enforcement of all judgements or orders entered by him in the exercise of his powers as police judge, and to issue executions for all fines,

penalties and costs imposed by him. The proceedings for the recovery of fines of for the enforcement of penalties fixed by any ordinance or law shall conform to the regulations, so far as they are applicable, prescribed by general law for civil proceedings before justices of the peace. The police judge, however, for good cause shown by affidavit, may order by an indorsement upon the summons that any defendent be arrested and brought before the court to be dealt with according to law.

All processes and orders of the police court shall be signed by the police judge and shall be directed to the chief of police, to be executed by him or by one of his subordinates. The police officer executing any such process or order shall have the same powers, be governed by the same rules of law and be subject to the same liabilities as sheriffs in the performance of like services. There may be charged for the services of such officer the same fees as the sheriff is entitled to charge for like services, but no such charge shall be made against the city. All such fees as well as all fines and penalties imposed by the court shall be collected by the chief of police, and accounted for and paid by him into the treasury of the city.

In the discharge of his duties and in the trial of cases the judge of the police court shall follow the rules prescribed by law for criminal proceedings before a justice of the peace, except that all cases shall be tried by the judge without a jury. The judge shall keep a record of all warrants issued by him, of all persons arrested and brought before him, and of all trials, fines or sentences imposed, or judgments entered by him, in a permanent book to be known as the police court docket. A record of all entries made in the docket each day shall be signed by the judge at the close of the day.

In cases where the evidence discloses such a violation of the laws of the state that in the opinion of the police judge the person accused should be committed to await action by the grand jury, the judge shall have the same jurisdiction and power as a justice of the peace in regard to the apprehension, commitment and admission to bail of the person so accused.

A person convicted in the police court shall have the same right to an appeal and a trial de novo as is provided by law for appeals from justice of the peace courts.

SECTION 11. CITY ATTORNEY.

The city attorney shall be a resident of Harrison County and a member in good standing of the Harrison County Bar. He shall be appointed by the city manager to serve for an indefinite term. He shall perform all duties and exercise all powers which shall be conferred upon him by any ordinance or resolution of the council and, except as otherwise provided in this charter, he shall have the power and it shall be his duty to:

(1) Act as legal adviser and counsel for the city council and for all administrative boards and officers thereof with respect to their official duties. Upon request, he shall furnish to the city council or to such officers a written opinion upon any question concerning their respective powers and duties.

(2) Prosecute and defend all suits for or against the city, and prepare all ordinances and all contracts, bonds or other writings in which the city is concerned, and endorse on each his approval of the form and correctness thereof.

(3) Prosecute all cases brought before or appealed from the police court, and perform the same duties so far as they are applicable thereto as are required by law of prosecuting attorneys.

penalties and costs imposed by him. The proceedings for the recovery of fines of for the enforcement of penalties fixed by any ordinance or law shall conform to the regulations, so far as they are applicable, prescribed by general law for civil proceedings before justices of the peace. The police judge, however, for good cause shown by affidavit, may order by an indorsement upon the summons that any defendent be arrested and brought before the court to be dealt with according to law.

All processes and orders of the police court shall be signed by the police judge and shall be directed to the chief of police, to be executed by him or by one of his subordinates. The police officer executing any such process or order shall have the same powers, be governed by the same rules of law and be subject to the same liabilities as sheriffs in the performance of like services. There may be charged for the services of such officer the same fees as the sheriff is entitled to charge for like services, but no such charge shall be made against the city. All such fees as well as all fines and penalties imposed by the court shall be collected by the chief of police, and accounted for and paid by him into the treasury of the city.

In the discharge of his duties and in the trial of cases the judge of the police court shall follow the rules prescribed by law for criminal proceedings before a justice of the peace, except that all cases shall be tried by the judge without a jury. The judge shall keep a record of all warrants issued by him, of all persons arrested and brought before him, and of all trials, fines or sentences imposed, or judgments entered by him, in a permanent book to be known as the police court docket. A record of all entries made in the docket each day shall be signed by the judge at the close of the day.

In cases where the evidence discloses such a violation of the laws of the state that in the opinion of the police judge the person accused should be committed to await action by the grand jury, the judge shall have the same jurisdiction and power as a justice of the peace in regard to the apprehension, commitment and admission to bail of the person so accused.

A person convicted in the police court shall have the same right to an appeal and a trial de novo as is provided by law for appeals from justice of the peace courts.

SECTION 11. CITY ATTORNEY.

The city attorney shall be a resident of Harrison County and a member in good standing of the Harrison County Bar. He shall be appointed by the city manager to serve for an indefinite term. He shall perform all duties and exercise all powers which shall be conferred upon him by any ordinance or resolution of the council and, except as otherwise provided in this charter, he shall have the power and it shall be his duty to:

(1) Act as legal adviser and counsel for the city council and for all administrative boards and officers thereof with respect to their official duties. Upon request, he shall furnish to the city council or to such officers a written opinion upon any question concerning their respective powers and duties.

(2) Prosecute and defend all suits for or against the city, and prepare all ordinances and all contracts, bonds or other writings in which the city is concerned, and endorse on each his approval of the form and correctness thereof.

(3) Prosecute all cases brought before or appealed from the police court, and perform the same duties so far as they are applicable thereto as are required by law of prosecuting attorneys.

Whenever the exigencies of the business of the city require such action, the city manager shall have the right to employ special counsel to assist the city attorney.

SECTION 12. ADMINISTRATIVE OFFICES AND DEPARTMENTS.

There shall be in the city government a police department, a fire department, a department of public works, a department of finance, and such other administrative departments as now exist or may by ordinance be created by the council. The city manager shall appoint as the head of each department a chief, supervisor or director, who shall be responsible for the efficient administration of the department, subject to the supervision and control of the manager. Except as otherwise provided by this charter or by general law, the head of a department need not be a resident of the city or state at the time of his appointment, but during his tenure of office shall reside in Harrison County.

The council may by ordinance create, combine, change or abolish offices, departments or agencies, other than those established by this charter. Except as otherwise provided in this charter, the council may assign additional functions or duties to any office, department or agency created by it or by this charter, but may not discontinue or transfer any function or duty assigned by this charter to any particular office, department or agency.

SECTION 13. CHIEF OF POLICE.

The chief of police shall be appointed by the city manager to serve for an indefinite term. The chief of police shall be a resident of the state and shall be a person of proved executive and administrative ability, with experience or training in law enforcement. Subject to the direction and control of the city manager, the chief of police shall be responsible for the supervision and administration of the police department, and shall require of all police officers the proper discharge of their duties. He shall see to the protection of property and the preservation of peace, order and public safety throughout the city, and to that end he shall cause all violators of city ordinances and of general law to be apprehended and brought to trial before the police court or other proper tribunal. Under the direction of the city manager, he shall also perform such other duties as may be required of him by this charter, by general law or by city ordinance or order of the city manager not inconsistent with this charter or with general law.

SECTION 14. CHIEF OF FIRE DEPARTMENT.

The chief of the fire department shall be appointed by the city manager to serve for an indefinite term. The chief of the fire department shall be a person of proved executive and administrative ability, with experience or training in the suppression and prevention of fires. Subject to the direction and control of the city manager, the chief of the fire department shall be responsible for the supervision and administration of the fire department, and shall require of all firemen the proper discharge of their duties. He shall make such inspections of buildings and property throughout the city as may be necessary to discover fire hazards, shall take all proper measures to eliminate such hazards, and shall keep an accurate record of all fires, inspections and fire hazards within the city. Under the direction of the city manager, he shall also perform such other duties as may be required of him by this charter, by general law, or by city ordinance or order of the city manager not inconsistent with this charter or with general law.

SECTION 15. DIRECTOR OF PUBLIC WORKS.

The city manager shall appoint a director of public works, who shall be a registered civil engineer, to serve for an indefinite term. Subject to the direction and control of the city manager, the director of public works shall be responsible for the supervision and administration of the department of public works.

In addition, except as otherwise provided in this charter and subject to the supervision of the city manager, he shall have the power and it shall be his duty to:

(1) Inspect the construction or repair of all buildings, the installation of all electrical wiring or equipment, and the installation of all plumbing, to the extent that such activities are controlled or regulated by the city, for the purpose of seeing that all city regulations are obeyed.

(2) Issue permits for the construction or repair of homes and other buildings upon the payment of such fee as may be fixed by council, but he shall issue no such permit unless the proposed construction or repair is in conformity with city zoning laws and regulations.

(3) Supervise all work done by any contractor for the city while the work is being performed.

(4) Make surveys, fix grades, and prepare plats, plans and specifications for all improvements which may be undertaken by the city, when required to do so by the city manager.

(5) Furnish on the demand of any resident the grade of any street or sewer upon the payment of such fee as may be fixed by council.

(6) Make complete maps of all streets, alleys, lanes, parks and public property owned by the city, keep such maps on file in his office and available for public inspection, and furnish a copy thereof to the city manager.

(7) Require that all pavements, sidewalks, curbs, gutters and sewers in the city are kept clean and repaired.

(8) Perform such other duties as may be required of him by this charter, by general law, or by city ordinance or order of the city manager not inconsistent with this charter or with general law.

SECTION 16. DIRECTOR OF FINANCE.

The city manager shall appoint a director of finance, who shall be a person experienced in accounting and budgeting, to serve for an indefinite term.

Under the direction and control of the city manager and subject to the provisions of this charter, the director of finance shall be responsible for the proper adminstration of the financial affairs of the city, and except as otherwise provided by this charter or by general law shall have the power and shall be required to:

(1) Collect all taxes, special assessments, license fees and other revenues of the city, and receive all other moneys payable to the city.

(2) Have custody of all funds of the city or of any office, department or agency thereof, and deposit such funds in the bank or banks designated by the council.

(3) Supervise the purchase, storage and distribution of all equipment and supplies used by any office, department or agency of the city.

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expenditure shall be made unless the director of finance shall certify that there is available for the purpose an unencumbered balance in the proper item of appropriation.

(5) Maintain a general accounting system for the city and each of its offices, departments and agencies, and keep a separate account for each item of appropriation in the budget, showing the total appropriation, the amounts paid therefrom, the unpaid obligations charged thereto, and the unencumbered balance.

(6) Prepare for submission to the council by the city manager a cumulative monthly statement of all receipts and disbursements in sufficient detail to show the exact financial condition of the city and each of its offices, departments and agencies.

(7) Prepare for submission to the council by the city manager a complete financial statement and report as of the end of each fiscal year.

(8) Compile for use by the city manager in the preparation of the budget an estimate of anticipated revenues during the coming year and an estimate of probable expenditures for current expenses and capital improvements.

(9) Perform such other duties as may be required of him by this charter, by general law, or by city ordinance or order of the city manager not inconsistent with this charter or with general law.

SECTION 17. BUDGET AND BUDGET MESSAGE; PUBLIC HEARING; ADOPTION AND REVISION.

The fiscal and budget year of the City shall begin on the 1st day of July and shall end on the 30th day of June of each calendar year. The budget for each succeeding fiscal year submitted and amended as provided in this section, shall be adopted by the council not later than the 28th day of March of the then current fiscal year.

Not later than the 1st day of March of each year, the City Manager shall submit to the Council a budget for the next fiscal year, together with a budget message which shall contain an outline of the proposed financial operation of the City for the coming year, shall describe the important features of the budget plan, and shall set forth the reasons for the salient changes from the previous year in cost and revenue items. The budget prepared by the City Manager shall not cover the financial operations of the Water Department. In respect to proposed appropriations for capital improvements, there shall be included in the budget message, or attached thereto, a program and schedule of capital projects recommended by the City Planning Commission for the next five fiscal years. A copy of the budget and budget message, and all supporting documents, shall at the same time the budget is submitted to the Council be filed with the City Clerk as a public record, and shall be available for inspection by any interested person.

The budget shall provide a complete financial plan for the budget year, including any estimate of any anticipated surplus at the beginning of the year, an estimate of anticipated revenues from all sources during the year, and a detailed estimate of proposed appropriations for expenditure during the year by each office, department, and agency of the City. The total of appropriations of the budget as submitted by the Manager or as adopted by the Council shall not exceed the sum of estimated revenues and surplus.

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At a regular or special meeting of Council between the 7th and 28th days of March of each year, there shall be a public hearing on the proposed budget, at which time all interested persons shall be given an opportunity to be heard for or against any estimate of revenue or any item of appropriation contained therein. At said meeting, Council shall ascertain the fiscal condition of the corporation, and make an itemized statement setting forth:

(1) The amount due and the amount that will become due and collectible from every source during the current fiscal year except from the levy of taxes to be made for the year;

(2) The interest, sinking fund and amortization requirements for the fiscal year of bonded indebtedness, legally incurred upon a vote of the people as provided by law, prior to the adoption of the tax limitation amendment;

(3) Other contractual indebtedness, not bonded, legally incurred prior to the adoption of the tax limitation amendment, owing by the Municipality;

(4) All other expenditures to be paid out of the receipts of the Municipality for the current fiscal year with proper allowance for delinquent taxes, exonerations, and contingencies;

(5) The toal amount necessary to be raised by the levy of taxes for the current fiscal year;

(6) The proposed rate of levy in cents on each one hundred dollars assessed valuation of each class of property; and

(7) The separate and aggregate assessed valuations of real, personal and public utility property in each class in the Municipality.

The Recording Officer of the Municipality shall forward immediately a certified copy of the statement to the Tax Commissioner, and shall publish the statement forthwith. The session shall then stand adjourned until the 3rd Tuesday in April, at which time it shall reconvene.

The Council shall, when it reconvenes upon the 3rd Tuesday in April, hear and con-
ider any objections made orally or in writing by the City Attorney, by the Tax
Commissioner or his representative, or by any taxpayer of the City, for the estimate
and proposed levy, or to any item thereof. Council shall enter of record any objections
so made and the reasons and grounds therefor. The Council, after hearing objections,
shall reconsider the proposed original estimate and proposed rates of levy, and if
the objections are well taken, shall correct the estimate and levy. No such estimate
and levy, however, shall be entered until the same shall have first been approved, in
writing, by the Tax Commissioner. When the same shall have been approved by the
Tax Commissioner, the Clerk shall then enter the estimate and levy, together with
the order of the Council approving them and the written approval of the Tax Com-
missioner thereof, in the proper record book.

In addition to the provisions set forth herein, Council shall be subject to the
requirements contained in Chapter 11, Article 8, Section 1, et seq. of the West
Virginia Code, as amended, as the same may apply to municipal corporations.

After the beginning of the fiscal year, the Council shall make only such changes
in the budget as may be required because of action taken by the State Tax Commissioner
in respect to the proposed tax levy of the City or as may be permitted or required
by general law. Thereafter, the Council shall make no other changes in the budget
unless permitted or required to do so by general law. After the final adoption of the
budget, the several amounts stated therein as proposed appropriation shall be
appropriated to the specified objects and purposes. Except as otherwise provided
by general law, the City Manager may at any time transfer any unencumbered
appropriation balance of an appropriated line item from that line item to another
line item with the same account category established by the State Tax Commissioner,
subject to the approval of City Council. No transfers from one account category to
another may be made without revision of the budget and approval by the Tax
Commissioner pursuant to Chapter 11, Article 8, Section 1, et seq.

For the purposes of accounting for the budget, the modified accrual basis of
accounting will be used, or any other basis of accounting required by the State
Tax Commissioner. The ending unencumbered balance at the end of the fiscal
year shall be the starting unencumbered balance for the new fiscal year.

In addition to the foregoing, Council and the City Manager shall comply with
all applicable federal and state laws which in any way relate to the governing
of the financial affairs of a municipal corporation.
(Amended 6-1-93)

SECTION 18. BONDS OF OFFICERS AND EMPLOYEES; AUDITS AND ACCOUNTS.

The chief of police and every member of the police department, and every officer and
employee of the city into whose custody or control shall come any of the moneys or funds of
the city shall before entering upon the discharge of his duties give a bond with corporate
surety conditioned upon the faithful discharge of his duties and the faithful accounting for all
moneys or funds coming into his hands by reason of his office or employment. The amount
of the bond shall be fixed by resolution of the council or, in the case of officers and employ-
ees of the water department, by resolution of the water board. As required by law, all

The Council shall, when it reconvenes upon the 3rd Tuesday in April, hear and consider any objections made orally or in writing by the City Attorney, by the Tax Commissioner or his representative, or by any taxpayer of the City, for the estimate and proposed levy, or to any item thereof. Council shall enter of record any objections so made and the reasons and grounds therefor. The Council, after hearing objections, shall reconsider the proposed original estimate and proposed rates of levy, and if the objections are well taken, shall correct the estimate and levy. No such estimate and levy, however, shall be entered until the same shall have first been approved, in writing, by the Tax Commissioner. When the same shall have been approved by the Tax Commissioner, the Clerk shall then enter the estimate and levy, together with the order of the Council approving them and the written approval of the Tax Commissioner thereof, in the proper record book.

In addition to the provisions set forth herein, Council shall be subject to the requirements contained in Chapter 11, Article 8, Section 1, et seq. of the West Virginia Code, as amended, as the same may apply to municipal corporations.

After the beginning of the fiscal year, the Council shall make only such changes in the budget as may be required because of action taken by the State Tax Commissioner in respect to the proposed tax levy of the City or as may be permitted or required by general law. Thereafter, the Council shall make no other changes in the budget unless permitted or required to do so by general law. After the final adoption of the budget, the several amounts stated therein as proposed appropriation shall be appropriated to the specified objects and purposes. Except as otherwise provided by general law, the City Manager may at any time transfer any unencumbered appropriation balance of an appropriated line item from that line item to another line item with the same account category established by the State Tax Commissioner, subject to the approval of City Council. No transfers from one account category to another may be made without revision of the budget and approval by the Tax Commissioner pursuant to Chapter 11, Article 8, Section 1, et seq.

For the purposes of accounting for the budget, the modified accrual basis of accounting will be used, or any other basis of accounting required by the State Tax Commissioner. The ending unencumbered balance at the end of the fiscal year shall be the starting unencumbered balance for the new fiscal year.

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The chief of police and every member of the police department, and every officer and employee of the city into whose custody or control shall come any of the moneys or funds of the city shall before entering upon the discharge of his duties give a bond with corporate surety conditioned upon the faithful discharge of his duties and the faithful accounting for all moneys or funds coming into his hands by reason of his office or employment. The amount of the bond shall be fixed by resolution of the council or, in the case of officers and employees of the water department, by resolution of the water board. As required by law, all

bonds shall be payable to the state of West Virginia and shall as to form and substance be subject to the approval of the city attorney, evidenced by his signed endorsement on each bond. All bonds when executed and approved shall be recorded in a book kept for that purpose by the city clerk, who is hereby made custodian of all such bonds. At the annual audit made by the state tax commissioner, the auditor shall report to the city council and to the water board respectively whether the required bonds are in any respect insufficient, and may require of any official or employee a new or additional bond. Any new or additional bond so required shall be given within thirty days after notice of such requirement, and a failure to give such bond shall at the expiration of thirty days work a forfeiture of the office or employment of the official or employee failing to give the same. The premium on all bonds given as provided in the section shall be paid from the appropriate fund of the city.

The council by resolution shall provide for such system of collecting, disbursing, budgeting, auditing, accounting and record-keeping, not inconsistent with other provisions of this charter, as may in its opinion be necessary or desirable.

In addition to the regular annual audit made by the state tax commissioner, the council may at any time it is deemed necessary employ qualified public accountants to make a special independent audit of the finances of the city or of the accounts of any city officer, department or agency, other than the accounts of the water board.

SECTION 19. BOARD OF PARK COMMISSIONERS; SUPERINTENDENT OF PARKS AND RECREATION.

The board of park commissioners heretofore created and now existing shall be continued. As authorized under the provisions of chapter ninety-one, acts of the legislature, regular session, one thousand nine hundred thirty-nine, as amended, the city council shall by ordinance provide that the board shall consist of five members, and shall also provide that the members shall be appointed by the council. Of the four members first appointed after the membership has been increased from three to five, two shall be appointed for terms of two years and two for terms of six years. Thereafter all appointments shall be for terms of six years. The members of the board in office on the date this charter becomes effective shall, unless sooner removed, continue to serve until their respective terms expire and their successors have been appointed.

The board shall have the powers and shall perform the duties conferred and required by general law. More particularly, the board shall be charged with the responsibility of providing public parks, playgrounds, athletic fields, swimming pools and other recreational facilities, and of providing an adequate recreational program for the inhabitants of the city. The board shall appoint a superintendent of parks and recreation, who shall be a person of proved executive and administrative ability, with experience or professional training in physical education and community recreation. At the time of his appointment he need not be a resident of the city or state, but during his tenure of office shall reside in Harrison County.

The council shall provide and allocate in the annual city budget sufficient funds for the operation and maintenance of an adequate system of city parks and recreational facilities and of an adequate recreational program.

As provided by law, the board may in its own name accept and disburse any funds it may receive by gift, bequest or devise for park or recreational purposes.

SECTION 20. BOARD OF DIRECTORS OF PUBLIC LIBRARY.

The Board of Directors of the public library heretofore created and now existing shall be continued. The members of the Board in office on the date this Charter as amended becom effective, shall unless sooner removed, continue to serve until their respective terms expire and their successors are appointed. The five members of the Board shall be appointed, in

accordance with the provisions of Chapter 10, Article I of the Official Code of West Virginia as amended. Future appointments to the Board of Directors of the Public Library shall be made as follows: The Harrison County Commission shall appoint a person to a five-year term beginning July 1, 1983, and such person so appointed shall reside outside the city limits of the City of Clarksburg; the Clarksburg City Council shall appoint a person to a five-year term beginning July 1, 1984, and said person shall reside within the City of Clarksburg; the Harrison County Board of Education shall appoint a person to a five-year term beginning July 1, 1985, and said person shall reside outside the corporate limits of the City of Clarksburg. The Clarksburg City Council shall appoint a person to a five-year term beginning on July 1, 1986 and July 1, 1987, and such person shall reside within the corporate limits of the City of Clarksburg, West Virginia.

The Board of Directors shall have the powers and shall perform all the duties conferred and required by general law.

The Clarksburg City Council, the Harrison County Commission and the Harrison County Board of Education shall jointly provide sufficient funds in their respective budgets for the adequate operation, maintenance and repair of the Clarksburg-Harrison County Public Library, and transfer such funds to the Board of Directors.

The Board shall be known as the Clarksburg-Harrison County Public Library.

This charter amendment will not become effective until formal action is taken by the Harrison County Commission and the Harrison County Board of Education agreeing to join with the City of Clarksburg in creating the new Clarksburg-Harrison County Public Library Board. (Ord. 83-17. Passed 7-21-83.)

SECTION 21. CITY PLANNING COMMISSION; ZONING COMMISSION AND BOARD OF ADJUSTMENT.

The council shall provide for the establishment and the financial support of a city planning commission as provided in article five, chapter eight of the official code of West Virginia, as amended. The commission shall be composed of eleven members, who shall be nominated by the city manager and confirmed by the council. The members of the commission shall be freeholders of the city. The commission shall have the powers and shall perform the duties prescribed by general law. It shall be the responsibility of the commission to prepare comprehensive plans for the future development of the city, including recommendations concerning needed streets, bridges, parks, parkways, playgrounds, public buildings, and other public improvements. Such plans and recommendations shall be submitted to the city manager and to the council and other appropriate agencies of the city for such action as the council or other agencies may deem proper. In addition, the commission shall submit annually to the city manager, not less than ninety days prior to the beginning of the budget year, a list of recommended capital improvements which in the opinion of the commission are necessary or desirable to be constructed during the forthcoming five-year period. Such list shall be arranged in order of preference, with recommendations as to which projects shall be constructed in which year.

The planning commission shall also act as the zoning commission and as such shall have the authority and shall perform the duties prescribed by general law, including the authority and duty to prepare and recommend to council for enactment any revisions or amendments of the city zoning ordinance it may deem advisable. The council shall in the manner prescribed by law provide for a board of adjustment which shall hear all appeals arising in connection with the enforcement of the city zoning ordinance.

SECTION 22. PUBLIC HEALTH UNIT.

The city council either by itself or in conjunction with one or more other political subdivisions shall in the manner provided by law establish and maintain a public health unit. The public health unit so established shall have the powers and shall perform the duties

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The city council either by itself or in conjunction with one or more other political subdivisions shall in the manner provided by law establish and maintain a public health unit. The public health unit so established shall have the powers and shall perform the duties

SECTION 23. SANITARY BOARD.

The council shall provide for the establishment of a sanitary board which shall have the powers and shall perform the duties prescribed by general law with respect to the construction, operation and maintenance of sewage disposal facilities. The sanitary board shall be composed of the city manager, who shall be the chairman of the board, and two other persons appointed by the council, one of whom shall be a registered professional engineer.

SECTION 24. PARKING AUTHORITY.

The parking authority heretofore created and now existing shall be continued. The parking authority shall have the power and the responsibility to establish, operate and finance automobile parking facilities for the city, as provided in article four-a, chapter eight of the official code of West Virginia, as amended.

SECTION 25. THE WATER BOARD; CONTINUANCE; QUALIFICATIONS, TERM OF OFFICE, AND SALARY OF MEMBERS; SELECTION OF PRESIDENT; VACANCIES.

The water board of the city in existence on the date this charter is adopted shall be continued. The water board shall consist of three members to be elected at large by the qualified voters of the city for terms of four years beginning on the first day of July following their election. The terms of office of all members of the water board in office on the date this charter is adopted shall continue until the close of business on the thirtieth day of June following the date on which their terms of office would otherwise expire. At the first election held under the provisions of this charter one member of the water board shall be elected. At each regular election thereafter either one or two members of the board, as the case may be, shall be elected to succeed the incumbent member or members whose term of office expires on the thirtieth day of June following the election.

Members of the water board shall be qualified voters of the city, shall have been residents of the city for at least one year prior to their nomination for the office, shall hold no other public office except that of notary public or member of the National Guard or naval or military reserve, and shall not be employed by the city in any capacity. If a member of the board shall cease to be qualified or shall be convicted of any crime involving moral turpitude, his office shall immediately become vacant.

A special meeting of the water board shall be held at 7:30 P.M. on the first day of July following each regular city election. Following the selection of a temporary chairman, the newly elected member or members of the water board shall first be inducted into office. The board shall then elect one of its members to serve as president for a term of two years.

The salary of each member of the water board shall be twenty dollars for each meeting of the board attended by him, not to exceed five hundred dollars in any fiscal year. Until the maximum limit is reached, the salary of each member shall be paid monthly as earned.

If any vacancy occurs on the water board, the board shall within thirty days appoint a qualified person to fill the vacancy for the unexpired term. If the vacancy is not so filled within thirty days after it occurs, then of the unsuccessful candidates for the office of member of the water board at the last election, who are still qualified and willing to serve, the one who received more votes than any of the others shall be entitled to the office. If the vacancy is not filled by either of these methods, it shall be filled at a special election to be

held on a date not more than four months after the vacancy occurs. In the resolution calling the special election, the council shall specify procedures for the conduct of the election, and dates for the circulation and filing of nominating petitions and for the holding of the election, which shall conform as nearly as may be practicable to the procedures and schedule established by this charter for regular city elections.

SECTION 26. MEETINGS OF THE WATER BOARD; RULES OF PROCEDURE; JOURNAL.

Regular meetings of the water board shall be held at least twice each month, on such days and at such times as the board may by published resolution prescribe. Special meetings may be held at any time upon call by the president or any two members and upon such notice as the board may by rule prescribe. All meetings of the board shall be open to be public.

Two members of the board shall constitute a quorum. The president shall be entitled to vote on all matters before the board.

The board shall by resolution adopt by-laws prescribing its own rules, procedure, and order of business, and shall keep a journal of all of its proceedings, which shall be available for public inspection.

SECTION 27. GENERAL POWERS OF THE WATER BOARD.

All of the powers now or hereafter conferred upon municipalities by the laws of the state for the operation of a water system, and all powers and duties of the city pertaining to the construction, acquisition, establishment, improvement, operation, management, maintenance, and repair of the municipal water system, and the determination of all matters of policy with respect thereto, are vested in and shall be exercised by the water board. The water board shall have full and exclusive jurisdiction of the exercise and discharge of such municipal powers so conferred upon it, independent of control by the council and the city manager. The city council shall upon request of the water board enact such ordinances, enter such or-orders, and adopt such resolutions as may be required by law in connection with the issuance of any water works revenue bonds, the acquisition by purchase or condemnation of any property needed for the proper operation of the water department, or the transaction of any other business of the water board.

In addition to the general powers mentioned in the preceding paragraph, and without any limitation upon such powers, the water board subject to provisions of general law shall have the following authority and shall perform the following duties:

(1) Fix, regulate and change rates and charges for water supplied to all consumers; adopt and prescribe reasonable rules and regulations which shall be observed by all consumers in reference to the use and consumption of water taken from the city mains, the terms and conditions upon which connections to the mains shall be permitted, and the place and manner of making the same; fix penalties by way of additional charges for failure to pay water bills promptly, and to this end the board may discontinue the supply of water to any consumer who fails to pay for the same as required; require all users of water for temporary purposes to pay for the privilege in advance; refuse to furnish water to any building or habitation unless the owner thereof shall assume liability for the payment of the charges for the water so furnished, and charge to and collect from the owner the cost of water furnished to any tenant or occupant of such building or habitation not paid for by the tenant or occupant; charge the cost of installing water service lines from the

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payment in advance for installing and connecting such line with the water main. The powers of the water board to fix and charge rates for water and water service and to make rules and regulations governing the supply of such water and water service shall be subject to the supervision, regulation and control of the Public Service Commission of the state to the extent and in the manner now or hereafter prescribed by general law.

(2) Whenever the city council shall determine to pave or repave any street in the city, the water board is authorized to make a proper connection and lay a water service line from the main to the curb for each and every lot or for any part of a lot under separate ownership, although no water service may, at any time be necessary or required for any such lot or part of lot, and to charge the cost of making such connection and laying such water service line against the owner of the property. The cost of laying such water service lines and making such connections shall in every instance be a lien upon the lot or part of lot to be benefited thereby, and the water board shall have the right, in the name of the city, to institute and prosecute any proper suit in the circuit court of Harrison County for the collection of such charges by a sale of the property on which the same constitutes a lien. Whenever the council decides to pave or repave any street, it shall be the duty of the water board to lay necessary water mains and service lines as soon as may be practicable in order not to delay the paving program. In order to coordinate the making of such improvements it shall be the duty of both the council and the water board to cooperate with each other in making plans for such improvements or repairs, and to keep each other informed concerning future needs and plans.

(3) The board shall have power from time to time to repair, extend and amplify the water works plant and system, and to make such additions to the pumping station, filtration plant and water mains and lines as may at any time be deemed necessary for the proper operation of the system.

(4) The water board shall require the general manager to examine the sources of water supply for the city and to report to the board from time to time whether the waters are being polluted. The water board may, in the name of the city, institute and prosecute in any court having jurisdiction any legal action, civil or criminal, necessary to enjoin any person, firm or corporation from continuing any nuisance caused by such pollution or to prohibit the violation of any city ordinance or of any provision of general law concerning pollution or concerning the protection of the city water supply.

(5) Whenever the city shall in the manner prescribed by law provide for the imposition of a sewage service charge based on the consumption of water upon the customers of the water department, it shall be the duty of the water board to add the charge to the water bills and collect the same. All sewage charges collected by the water board shall be accounted for monthly and paid into the operating fund of the sanitary board. The sanitary board shall pay any additional cost incurred by the water board in the collection of sewage charges.

SECTION 28. APPOINTMENT AND TENURE OF GENERAL MANAGER OF THE WATER DEPARTMENT.

The water board shall appoint a general manager of the water department to serve for an indefinite term, and may at any time remove him from office by the affirmative vote of not less than two of its members. At least thirty days before such removal shall become effective, the board shall adopt a preliminary resolution stating the reasons for his removal and specifying the date on which his removal shall become final. At any time within ten days after the adoption of such resolution, upon the written request of the manager, he shall be afforded an opportunity to be heard at a public meeting of the board, which shall be held no earlier than ten nor later than twenty days after the request was made, and at a time and place to be fixed by the water board. After such public hearing if one is requested, and after full consideration, the board by affirmative vote of two if its members may adopt a final resolution of removal. By the preliminary resolution the board may suspend the manager with pay for a period not to exceed thirty days, and may designate some other person to perform the duties of the manager during the period of his suspension.

The general manager shall be a person of proved executive and administrative ability, preferably with experience and training in the management of a water or other utility system. At the time of his appointment he need not be a resident of the city or state, but during his tenure of office shall reside in Harrison County. No member of the water board, during his term and for a year thereafter, shall be eligible for appointment as general manager of the water department.

Neither the water board nor any of its members shall direct or in any manner interfere with or obstruct the appointment or removal of any employee by the general manager or by any of his subordinates. Except for the purpose of inquiry, the board and its members shall deal with the employees of the water department solely through the general manager and shall give no orders to such employees, either publicly or privately. If any member of the board shall violate the provisions of this section, he shall be subject to removal from office in the manner provided for the removal of municipal officers in section seven, article six, chapter six of the official code of West Virginia, as amended.

SECTION 29. POWERS AND DUTIES OF GENERAL MANAGER OF THE WATER DEPARTMENT.

The general manager of the water department shall be the administrative authority of the city insofar as the water department is concerned. He shall be ex officio the secretary and treasurer of the water board, and shall devote all of his time to his official duties. He shall be responsible to the board for the proper and efficient administration of the water department, and to that end he shall have power and shall be required to:

(1) Appoint and, when he deems it necessary or advisable, remove all employees of the water department, except as he may authorize such appointment and removal by his subordinates.

(2) Prepare the annual budget of the water department, submit it to the board for adoption, and be responsible for its administration after adoption.

(3) Prepare and submit to the board as of the end of each fiscal year a complete report on the finances and the administration of the department for the preceding year.

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(1) Appoint and, when he deems it necessary or advisable, remove all employees of the water department, except as he may authorize such appointment and removal by his subordinates.

(2) Prepare the annual budget of the water department, submit it to the board for adoption, and be responsible for its administration after adoption.

(3) Prepare and submit to the board as of the end of each fiscal year a complete report on the finances and the administration of the department for the preceding year.

(4) Advise the board with respect to future plans and physical needs of the water department, and keep it informed concerning the current financial condition of the department.

(5) Enforce, or cause the enforcement of, all city ordinances and all laws of the state applicable to the water system, and of all rules and regulations of the water board.

(6) Prepare and cause to be served all notices required to be given to any person, firm or corporation in connection with any activity or business of the water board, and after the proper service and return of any notice he shall file and preserve the same.

(7) Collect all revenues of the water department, deposit them in the bank or banks designated by the water board, and disburse them upon such requisition or order as the board may prescribe.

(8) Supervise the purchase, storage and distribution of all equipment and supplies for the water department.

(9) Make and keep up to date, and place on file for public information at the office of the water board, complete maps, plans and details showing the dams, pumping stations, reservoirs, tanks, pipes, valves, connections, water lines, fire hydrants, and all other data necessary to show all the physical properties of the water department.

(10) Attend all meetings of the water board, give notice of its meetings, keep the journal of its proceedings, and keep or cause to be kept full and accurate record books and books of account covering all the business and transaction of the water department, all of which shall be available for public inspection.

(11) Execute on behalf of the water board all legal and other written documents requiring execution by the chief executive officer of the board, acknowledge the same if necessary, and perform all other acts and duties required of the chief executive officer of the board.

(12) Perform such other duties as may be required of him by this charter, by general law, or by order of the board not inconsistent with this charter or with general law.

The general manager may by letter filed with the president of the board designate one of his subordinates to perform the duties of the general manager during his temporary absence or disability. If the manager fails to make such designation, the board may by resolution appoint an employee of the water department to act for the manager during his absence or disability.

SECTION 30. EMPLOYMENT OF COUNSEL BY WATER BOARD; AUDITS AND ACCOUNTS.

The water board may employ legal counsel to assist and advise it in the discharge of its duties, and to represent it and the city in all litigation conducted by the water board in connection with the exercise of its powers and the transaction of its business. The cost of all such litigation, including any judgment or decree against the water board in the name of the city, as well as all fees and compensation for counsel employed by it, shall be paid out of the revenues of the water board.

The water board by resolution shall provide for such system of collecting, disbursing, budgeting, auditing, accounting and record-keeping, not inconsistent with other provisions of this charter, as may in its opinion be necessary or desirable.

In addition to the regular annual audit made by the state tax commissioner, the board may at any time it is deemed necessary employ qualified public accountants to make a special independent audit of the finances of the water board or of the accounts of the general manager or any other employee of the water department.

SECTION 31. APPLICATION OF FUNDS OF WATER BOARD.

All revenues derived from the operation of the water department, from the sale of water works bonds, or from the sale by the water board of any of its property, shall be applied by the water board solely for the payment of expenses incurred in the exercise of authority or in the discharge of duties imposed on the board by this charter or by general law, for the payment of the cost of operating, improving, and managing the water system, and for the payment of principal, interest and sinking fund requirements necessary for the discharge of any water works bonds heretofore or hereafter issued.

SECTION 32. CONTRACTS AND PURCHASES.

All contracts and purchases by any City officer, department or agency shall be void unless made in conformity with all applicable provisions of general law, this Charter, and with all rules and regulations fixed by ordinance, from time to time, concerning a dollar amount for which competitive bids shall be required for contracts for improvements or purchases of materials, supplies and equipment.

In the case of contracts for the construction of any improvements in which competitive bids shall be required, sealed competitive bids shall be obtained by notice published at least once each week for two successive weeks in two newspapers of opposite politics published in the City. The notice shall refer to necessary specifications and plans, shall invite the submission of bids, and shall specify the date on which the bids will be opened. In the case of contracts or purchases of supplies, materials and equipment or personal services, sealed competitive bids shall be obtained either (a) by published notice inviting bids as in the case of contracts for the construction of improvements, or (b) by mailed notice stating the necessary specifications, inviting the submission of bids, and stating the date on which the bids will be opened. The first of these methods shall be used unless the Council or Water Board, as the case may be, shall enter an order of record authorizing the use of the second method and stating the reasons why such method was authorized. Whether or not it is so stated in the published mailed notice, all bids may be rejected. No City officer, department or agency shall subdivide any contract or purchase for the purpose of evading the requirements of this section with respect to competitive bidding.

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The Water Board with respect to any improvements, extensions or additions to the water system, and the Council with respect to City improvements under its jurisdiction, shall cause to be prepared accurate and complete maps, plans and specifications therefor and shall have the authority to cause such work to be done either by the employment of labor and the furnishings of material, or by entering into a contract for the performance of the labor and for the material. If a contract is let for any improvement, the Water Board or the Council, as the case may be, shall require the contractor to give a sufficient bond with corporate surety to guarantee the faithful performance of the contract and the payment for all labor performed and all materials furnished in the performance of the contract, as provided in section thirty-nine, article two, chapter thirty eight of the official code of West Virginia, as amended. Any change or alteration in the contract after it is entered into shall be made only upon resolution passed by the Water Board, or the Council, as the case may be, and shall not be effective until the price to be paid for the work and material, or both, under the altered or modified contract, shall have been agreed upon in writing and such agreement signed by the contractor and the general manager with the approval of the Water Board, or the City Manager with the approval of the Council, as the case may be.

The Water Board with respect to contracts and purchases of the Water Department, and the City Council, with respect to contracts and purchases of other City offices, departments and agencies, may by resolution prescribe additional rules and regulations governing the making of contracts and purchases, not inconsistent with general law or with the provisions of this Charter.

In the case of an emergency the City Council or Water Board, as the case may be, may by special resolution setting forth the facts constituting the emergency dispense with the requirement of competitive bidding and with the requirements of its rules and regulations governing contracts and purchases.

Any officer or employee of the City who shall be directly or indirectly interested in any contract with the City, or in the profits to be derived thereform, shall forthwith forfeit his office or employment, and in addition thereto any such contract shall be void and uneforceable against the City. The acceptance by any officer or employee of any interest in such contract or of any gift or gratutity from any person, firm or corporation dealing with the City which might influence the officer or employee and in the discharge of his duties shall forever disqualify such officer or employee from holding any office or employment in the City government, and in addition he shall be subject to criminal prosecution as provided by general law or by City ordinance. (Amended February 18, 1982)

SECTION 33. STATUS OF EXISTING OFFICERS AND EMPLOYEES.

Every person holding an appointive office or employment in the city government on the effective date of this charter shall retain the same or the similar office or employment hereunder, pending action by the competent authority of the city having the power appointment and removal with respect to such office or position. At any time within four months after the effective date of this charter, the city manager and the general manager of the water department in office on that date shall be subject to replacement by the council and by the water board, respectively, without regard to the removal provisions of sections seven and twenty-eight of this charter.

SECTION 34. DISCRIMINATORY PRACTICES PROHIBITED.

No person holding any appointive office or employment in the service of the city, or seeking appointment thereto, shall be appointed, promoted, demoted or removed, or in any way favored or discriminated against because of political opinions or affiliations, or because of race, color or religious beliefs.

SECTION 35. SOCIAL SECURITY.

The city council, the water board, and every other board or commission provided for this charter, or hereafter created by council pursuant to general law, shall in the ınner prescribed by law provide social security coverage for all eligible city officers and ıployees.

SECTION 36. OATH OF OFFICE.

Before taking office every officer of the city and the head of each administrative de-rtment shall take the oath of affirmation required by section five, article four of the nstitution of the state.

SECTION 37. ELECTIONS.

Regular city elections shall be held on the first Tuesday in June, one thousand nine ndred fifty-seven, and on the first Tuesday in June of every second year thereafter. ecial elections shall be held at such times as may be fixed by the council in accordance th the provisions of this charter and of general law.

The ballot to be used in city elections shall be prepared by the council and shall have t forth thereon in one division the names of all properly nominated candidates for election membership on the council, and in another division the names of all properly nominated ndidates for election to membership on the water board. In the printing of the ballots, e position of the names of the candidates shall be in like manner as is provided general law for the printing of official primary ballots. The ballots shall state that the ection is non-partisan and shall clearly indicate the number of candidates for each office r whom the voter is entitled to vote. At least ten days before the election a sample ballot owing the names of all properly nominated candidates shall be published once in two wspapers published in the city in the same manner as is provided by law for the publication the list of nominations in a general election.

Except as otherwise provided in this charter, city elections shall be conducted and the sult determined and certified in accordance with the provisions of general law with spect to primary, general and special elections, so far as they are applicable, except at the duties devolving upon the county court and the clerk thereof under the general laws r conducting elections shall be performed by the city council and the city clerk. The uncil shall appoint three commissioners and two clerks to serve as election officials in ch precinct in the city. At least three days before the date of the election the city clerk all procure from the clerk of the county court the necessary registration records and her election supplies and shall deliver them together with the ballots to the election ficials. The election officials shall as soon as possible after the closing of the polls on ection day return to the city clerk the ballots, tally sheets, certificates of the result of e election, registration records, ballot boxes and other election supplies. On the first onday following the election the council shall canvass the returns of the election and de-are the result. In the case of a contest the council shall be the judge of the election and alifications of all city officials.

The cost incurred in holding and conducting regular city elections, after deducting all mination fees received in connection therewith, shall be paid one-half out of the general ty revenues and one-half out of the revenues of the water board. The costs of conducting ecial elections shall be paid out of general city revenues, except that the cost of any

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Except as otherwise provided in this charter, city elections shall be conducted and the sult determined and certified in accordance with the provisions of general law with spect to primary, general and special elections, so far as they are applicable, except at the duties devolving upon the county court and the clerk thereof under the general laws r conducting elections shall be performed by the city council and the city clerk. The uncil shall appoint three commissioners and two clerks to serve as election officials in ch precinct in the city. At least three days before the date of the election the city clerk all procure from the clerk of the county court the necessary registration records and her election supplies and shall deliver them together with the ballots to the election ficials. The election officials shall as soon as possible after the closing of the polls on ection day return to the city clerk the ballots, tally sheets, certificates of the result of e election, registration records, ballot boxes and other election supplies. On the first onday following the election the council shall canvass the returns of the election and de-are the result. In the case of a contest the council shall be the judge of the election and alifications of all city officials.

The cost incurred in holding and conducting regular city elections, after deducting all mination fees received in connection therewith, shall be paid one-half out of the general ty revenues and one-half out of the revenues of the water board. The costs of conducting ecial elections shall be paid out of general city revenues, except that the cost of any

## SECTION 38. CANDIDATES FOR CLARKSBURG CITY COUNCIL OR CLARKSBURG WATER BOARD; FILING FEE; FILING DATE.

A filing fee to be set by ordinance and candidate's signed certificate of announcement stating that he/she is a qualified voter of the City and he/she has resided therein for at least 30 days and that he/she declares himself/herself a candidate for election to such office of Councilman/Councilwoman of the Clarksburg City Council or Member of the Water Board and will serve if elected, shall be filed in person with the City Clerk in the office of the City Clerk, Municipal Building, Clarksburg, West Virginia, not earlier than the first day of March, nor later than 4:30 p.m. on the fifteenth day of March preceding the election. The Clerk shall make a record of the exact time each statement and fee was filed and the name and address of the person by whom it was filed. The filing dates provided herein shall be changed or amended by regular ordinance thereafter.

In case there shall not be a number of candidates for any office equal to the number of persons to be elected to such office at any election, then the Council for the office of Councilman/Councilwoman and the Water Board for the office of a member of the Water Board, shall on or before the 20th day of March preceding the election make by appropriate resolution such additional nominations of candidates to be elected to such office. The nomination of any person by such a resolution shall, however, not be complete unless the person so nominated shall within three days after his nomination pay to the City Clerk the prescribed filing fee and file with the Clerk a signed statement that he/she is a qualified voter of the City and has resided therein for at least 30 days before his/her nomination, and that he/she accepts the nomination and will serve, if elected.

The word announce or announcement as used herein or as used in the Clarksburg City Charter shall for the purposes of the Clarksburg City Charter be synonymous with and shall mean the same as nominate or nomination. The word nominate or nomination as used herein or as used in the Clarksburg City Charter shall for the purposes of the Clarksburg City Charter be synonymous with and shall mean the same as announce or announcement.

(Amended 6-1-93)

SECTION 39. FORM OF CERTIFICATE OF ANNOUNCEMENT; BLANK FORMS TO BE FURNISHED BY CITY CLERK.

The City Clerk shall prepare and furnish printed forms for certificates of nouncement substantially in the form set forth and authorized by ordinance of the ity Council.
Amended 6-1-93)

SECTION 40. EFFECT OF CHARTER ON EXISTING ORDINANCES AND ADMINISTRATIVE RULES AND REGULATIONS.

All existing ordinances and all existing administrative rules, regulations and ractices, if not inconsistent or in conflict with this charter, shall continue in full force nd effect until repealed or modified by the council or other competent authority of the city. ll ordinances, rules, regulations and practices that are inconsistent or in conflict with is charter shall, unless sooner repealed or modified, continue in full force and effect for period of sixty days only, and at the end of that period shall to the extent of such nconsistency or conflict be of no further force or effect.

SECTION 41. REFERENCE TO GENERAL LAW.

A reference contained in this charter to a provision of general law shall be construed mean the provision as it now exists or as it may hereafter be amended. Where additionl sections are added to the subject matter of a provision of general law referred to in this harter, the reference shall include such additional sections.

SECTION 42. MEETINGS AND OTHER ACTS ON LEGAL HOLIDAYS.

Whenever under the provisions of this charter it is required that a meeting be held or at an act be done on a date which is a legal holiday, the meeting shall be held or the act hall be done on the next day not a legal holiday.

SECTION 43. SEPARABILITY.

The provisions of this charter shall be construed as severable, and should any provision be held unconstitutional, or for any other reason invalid, such holding shall in no way ffect any other provision thereof.

SECTION 44. EFFECTIVE DATE OF CHARTER.

For the purpose of extending the terms of office of present elective officers and for the urpose of nominating candidates and conducting the first election held hereunder, this harter shall be in effect from and after the date of its adoption by the voters of the city. or all other purposes it shall be in effect on and after the first day of July next following e first election held under its provisions.

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# CLARKSBURG CITY COUNCIL

| | | |
|---|---|---|
| Mayor: | | |
| Margaret A. Bailey | (Mayor position - two year term) | 6-30-2011 |
| Dan Thompson | | 6-30-2011 |
| Martin Shaffer | | 6-30-2011 |
| James Hunt | | 6-30-2013 |
| Sam Lopez | | 6-30-2013 |
| Patsy Trecost II | | 6-30-2013 |
| Mary Mayer | | 6-30-2013 |

Council appointments are for four-year terms with elections held every two years (on the odd years).

# State of West Virginia:

**COUNTY OF HARRISON, CITY OF CLARKSBURG, TO WIT:**

*I, Annette M. Wright, Clerk of said City of Clarksburg, certify that MARGARET ANN BAILEY this day in said City personally appeared before me, and being by me duly sworn, deposes and says: that she was on the 5th day of June, 2007 elected as a Councilmember of the City of Clarksburg, in said County of Harrison, for the term of four years, commencing on the 1st day of July, 2007 and that she will support the Constitution of the United States, the Constitution of the State of West Virginia and the Charter of the City of Clarksburg, and that she will faithfully discharge the duties of her office of Councilmember of the City of Clarksburg, to the best of her skill and judgment, so help her God.*

Margaret Ann Bailey

*Margaret Ann Bailey*

*Taken, subscribed and sworn to before me, in said City and County on this 1st day of July, 2007.*

Annette M. Wright

*Clerk*

# State of West Virginia:

**COUNTY OF HARRISON, CITY OF CLARKSBURG, TO WIT:**

*I, Annette M. Wright, Clerk of said City of Clarksburg, certify that PAUL DANIEL "DAN" THOMPSON this day in said City personally appeared before me, and being by me duly sworn, deposes and says: that he was on the 5th day of June, 2007 elected as a Councilmember of the City of Clarksburg, in said County of Harrison, for the term of four years, commencing on the 1st day of July, 2007 and that he will support the Constitution of the United States, the Constitution of the State of West Virginia and the Charter of the City of Clarksburg, and that he will faithfully discharge the duties of his office of Councilmember of the City of Clarksburg, to the best of his skill and judgment, so help him God.*

*Paul Daniel Thompson*

*Taken, subscribed and sworn to before me, in said City and County on this 1st day of July, 2007.*

*Clerk*

# State of West Virginia:

**COUNTY OF HARRISON, CITY OF CLARKSBURG, TO WIT:**

*I, Annette M. Wright, Clerk of said City of Clarksburg, certify that MARTIN SHAFFER this day in said City personally appeared before me, and being by me duly sworn, deposes and says: that he was on the 5th day of June, 2007 elected as a Councilmember of the City of Clarksburg, in said County of Harrison, for the term of four years, commencing on the 1st day of July, 2007 and that he will support the Constitution of the United States, the Constitution of the State of West Virginia and the Charter of the City of Clarksburg, and that he will faithfully discharge the duties of his office of Councilmember of the City of Clarksburg, to the best of his skill and judgment, so help him God.*

Martin Shaffer

*Martin Shaffer*

*Taken, subscribed and sworn to before me, in said City and County on this 1st day of July, 2007.*

Annette M. Wright

*Clerk*

# State of West Virginia:

COUNTY OF HARRISON, CITY OF CLARKSBURG, TO WIT:

*I, Annette M. Wright, Clerk of said City of Clarksburg, certify that MARY A. MAYER this day in said City personally appeared before me, and being by me duly sworn, deposes and says: that she was on the 2nd day of June, 2009 elected as a Councilmember of the City of Clarksburg, in said County of Harrison, for the term of four years, commencing on the 1st day of July, 2009 and that she will support the Constitution of the United States, the Constitution of the State of West Virginia and the Charter of the City of Clarksburg, and that she will faithfully discharge the duties of her office of Councilmember of the City of Clarksburg, to the best of her skill and judgment, so help her God.*

Mary A. Mayer

*Mary A. Mayer*

*Taken, subscribed and sworn to before me, in said City and County on this 1st day of July, 2009.*

Annette M. Wright

*Annette M. Wright, City Clerk*

# State of West Virginia:

COUNTY OF HARRISON, CITY OF CLARKSBURG, TO WIT:

*I, Annette M. Wright, Clerk of said City of Clarksburg, certify that PATSY S. TRECOST II this day in said City personally appeared before me, and being by me duly sworn, deposes and says: that he was on the 2nd day of June, 2009 elected as a Councilmember of the City of Clarksburg, in said County of Harrison, for the term of four years, commencing on the 1st day of July, 2009 and that he will support the Constitution of the United States, the Constitution of the State of West Virginia and the Charter of the City of Clarksburg, and that he will faithfully discharge the duties of his office of Councilmember of the City of Clarksburg, to the best of his skill and judgment, so help him God.*

Patsy S. Trecost II

*Patsy S. Trecost II*

*Taken, subscribed and sworn to before me, in said City and County on this 1st day of July, 2009.*

Annette M. Wright

*Annette M. Wright, City Clerk*

# State of West Virginia:

COUNTY OF HARRISON, CITY OF CLARKSBURG, TO WIT:

*I, Annette M. Wright, Clerk of said City of Clarksburg, certify that SAM "ZEKE" LOPEZ this day in said City personally appeared before me, and being by me duly sworn, deposes and says: that he was on the 2nd day of June, 2009 elected as a Councilmember of the City of Clarksburg, in said County of Harrison, for the term of four years, commencing on the 1st day of July, 2009 and that he will support the Constitution of the United States, the Constitution of the State of West Virginia and the Charter of the City of Clarksburg, and that he will faithfully discharge the duties of his office of Councilmember of the City of Clarksburg, to the best of his skill and judgment, so help him God.*

Sam Lopez

*Sam Lopez*

*Taken, subscribed and sworn to before me, in said City and County on this 1st day of July, 2009.*

Annette M. Wright

*Annette M. Wright, City Clerk*

# State of West Virginia:

**COUNTY OF HARRISON, CITY OF CLARKSBURG, TO WIT:**

*I, Annette M. Wright, Clerk of said City of Clarksburg, certify that JAMES C. HUNT this day in said City personally appeared before me, and being by me duly sworn, deposes and says: that he was on the 2nd day of June, 2009 elected as a Councilmember of the City of Clarksburg, in said County of Harrison, for the term of four years, commencing on the 1st day of July, 2009 and that he will support the Constitution of the United States, the Constitution of the State of West Virginia and the Charter of the City of Clarksburg, and that he will faithfully discharge the duties of his office of Councilmember of the City of Clarksburg, to the best of his skill and judgment, so help him God.*

James C. Hunt

*James C. Hunt*

*Taken, subscribed and sworn to before me, in said City and County on this 1st day of July, 2009.*

Annette M. Wright

*Annette M. Wright, City Clerk*

**PHASE I Rates Effective 45 days from passage of ordinance**

The first 4,000 cubic feet per month or 8,000 cubic feet used bi-monthly at $3.78 per 100 cubic feet.

The next 16,000 cubic feet used per month or 32,000 cubic feet used bi-monthly at $2.78 per 100 cubic feet.

All over 20,000 cubic feet used per month or 40,000 cubic feet used bi-monthly at $2.41 per 100 cubic feet.

The minimum charge to any customer will be $17.05 per month or $34.10 bi-monthly.

Delayed Payment Penalty. The above schedule is net. On all accounts where payment is not received in full at the office of the Clarksburg Water Board, which is the collection agency for the Sanitary Board, by 4:30 p.m., of the due date, which is twenty (20) days after the date of the bill, a penalty of ten percent (10%) will be added to the amount shown on the bill. This delayed payment penalty is not interest and is collected only once for each bill where appropriate.

**PHASE II Rates Effective July 1, 2007**

The first 4,000 cubic feet per month or 8,000 cubic feet used bi-monthly at $4.08 per 100 cubic feet.

The next 16,000 cubic feet used per month or 32,000 cubic feet used bi-monthly at $3.00 per 100 cubic feet.

All over 20,000 cubic feet used per month or 40,000 cubic feet used bi-monthly at $2.60 per 100 cubic feet.

The minimum charge to any customer will be $18.41 per month or $36.82 bi-monthly.

Delayed Payment Penalty. The above schedule is net. On all accounts where payment is not received in full at the office of the Clarksburg Water Board, which is the collection agency for the Sanitary Board, by 4:30 p.m., of the due date, which is twenty (20) days after the date of the bill, a penalty of ten percent (10%) will be added to the amount shown on the bill. This delayed payment penalty is not interest and is collected only once for each bill where appropriate.

**PHASE III Rates Effective July 1, 2008**

The first 4,000 cubic feet per month or 8,000 cubic feet used bi-monthly at $4.21 per 100 cubic feet.

The next 16,000 cubic feet used per month or 32,000 cubic feet used bi-monthly at $3.10 per 100 cubic feet.

All over 20,000 cubic feet used per month or 40,000 cubic feet used bi-monthly at $2.69 per 100 cubic feet.

The minimum charge to any customer will be $19.02 per month or $38.04 bi-monthly.

Delayed Payment Penalty. The above schedule is net. On all accounts where payment is not received in full at the office of the Clarksburg Water Board, which is the collection agency for the Sanitary Board, by 4:30 p.m., of the due date, which is twenty (20) days after the date of the bill, a penalty of ten percent (10%) will be added to the amount shown on the bill. This delayed payment penalty is not interest and is collected only once for each bill where appropriate.

**PHASE IV Rates Effective July 1, 2009**

The first 4,000 cubic feet per month or 8,000 cubic feet used bi-monthly at $4.38 per 100 cubic feet.

The next 16,000 cubic feet used per month or 32,000 cubic feet used bi-monthly at $3.22 per 100 cubic feet.

All over 20,000 cubic feet used per month or 40,000 cubic feet used bi-monthly at $2.80 per 100 cubic feet.

The minimum charge to any customer will be $19.78 per month or $39.56 bi-monthly.

Delayed Payment Penalty. The above schedule is net. On all accounts where payment is not received in full at the office of the Clarksburg Water Board, which is the collection agency for the Sanitary Board, by 4:30 p.m., of the due date, which is twenty (20) days after the date of the bill, a penalty of ten percent (10%) will be added to the amount shown on the bill. This delayed payment penalty is not interest and is collected only once for each bill where appropriate.

Effective Date of this Ordinance. This Ordinance shall take effect forty-five (45) days after final enactment hereof, after public hearing as provided by law, or at the time prescribed by the Public Service Commission of West Virginia if that body acquires jurisdiction over the matter as provided by law.

Notice to Customers. The City Clerk is hereby directed to provide notice of the change in rates contemplated by this Ordinance by causing to be published, within five (5) days after the second reading of this ordinance and adoption thereof in The Clarksburg Exponent and The Clarksburg Telegram, a press release that announces the adoption of the proposed rate change

and contains the substance and form of Municipal Rate Change Form Number 1 or Cooperative Rate Change Form No. 1 as promulgated by the Public Service Commission of West Virginia, and by publishing a Class II legal advertisement to conform with said Municipal Rate Change Form Number 1 or Cooperative Rate Change Form No. 1. The first said publication must occur within five (5) days after the second reading and adoption of said rate change ordinance. The City Clerk is also directed to post a notice of said proposed rate change in a conspicuous place at the Sanitary Board offices in City Hall beginning at least five (5) days prior to the second reading and adoption of said Ordinance and to remain posted through the thirty (30) day appeal period provided by West Virginia Code Section 24-2-4 (b). Said posted notice must also conform with Municipal Rate Change form Number 1 or Cooperative Rate Change Form No. 1 aforesaid.

PASSED by the Council of the City of Clarksburg on FIRST READING this the 21 day of September, 2006.

PASSED by the Council of the City of Clarksburg on SECOND AND FINAL READING this the 5 day of October, 2006.

SAM LOPEZ, MAYOR

ATTEST:

ANNETTE M. WRIGHT, CITY CLERK

APPROVED AS TO FORM:

GREG MORGAN, CITY ATTORNEY

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ORDINANCE OF THE CITY OF CLARKSBURG, WEST VIRGINIA, AMENDING AND RE-ENACTING SECTION 933.02 OF ARTICLE 933 OF CHAPTER 3 OF THE CODE OF THE CITY OF CLARKSBURG, RELATING TO THE IMPOSITION OF RATES FOR THE USE OF THE SERVICES RENDERED BY THE SEWERAGE SYSTEM, AND ESTABLISHING STANDARDS FOR THE USE OF SUCH SYSTEM AND THE COMPUTATION OF SUCH RATES, FOR RESIDENTS OF THE CITY OF CLARKSBURG.

NOW, THEREFORE, BE IT HEREBY ENACTED BY THE CITY COUNCIL OF CLARKSBURG, WEST VIRGINIA, AS FOLLOWS:

In order to provide, establish and maintain just and equitable rates or charges for the use of and the service rendered by the Clarksburg sewerage system by residents of the City of Clarksburg, and to provide for the necessary rates and charges to finance the required capital additions thereto and expenses of operation, repair, replacement and maintenance of such system, and for other required and necessary charges, Section 933.02, Article 933 of Chapter 3 of the Code of the City of Clarksburg relating to the imposition of rates for the use of the services rendered by the sewerage system, and establishing standards for the use of such system and the computation of such rates is hereby amended and re-enacted to read as follows:

Sec. 933.02 – Schedule of Rates – Residents:

The service charge for any person, firm or corporation situate within the municipal limits of the City of Clarksburg having any connection with the City's public sanitary sewerage and discharging sewage, industrial wastes, water or other liquids into such system shall be based upon the quantity of water used on or in said premises as the same is measured by the Clarksburg Water Board meter or meters there in use, and shall be charged bi-monthly or monthly at the following rates:

# CITY OF CLARKSBURG

222 WEST MAIN STREET • CLARKSBURG, WV 26301 • PH. (304) 624-1673 • FAX (304) 624-6135

OFFICE OF CITY CLERK


STATE OF WEST VIRGINIA,
COUNTY OF HARRISON,
MUNICIPALITY OF CLARKSBURG, TO-WIT:

I, Annette M. Wright, Clerk of the City of Clarksburg, West Virginia, do hereby declare the attached to be a true and accurate copy of the Minutes of the Council of the City of Clarksburg for the regular session held on September 21, 2006. Said Minutes were approved October 5, 2006 and are of record in my office in Minute Book No. 23, at page 201.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the Official Seal of said City on this the 5th day of June, 2009.

Annette M. Wright

ANNETTE M. WRIGHT, CMC
CITY CLERK
CITY OF CLARKSBURG, WEST VIRGINIA

[SEAL]

**SEPTEMBER 21, 2006**

The Clarksburg City Council met in REGULAR SESSION on Thursday, September 21, 2006 at 7:30 P.M. at the Clarksburg Municipal Building – Council Chambers, 222 West Main Street, Clarksburg, West Virginia, with the Honorable Mayor Lopez presiding.

**COUNCIL MEMBERS PRESENT:**

Dan Thompson
Patsy Trecost II
B.K. Vanhorn
Vice Mayor Margaret Bailey
Mayor Sam Lopez

**ALSO PRESENT:**

Martin Howe, City Manager
Greg Morgan, City Attorney
Annette Wright, City Clerk

**COUNCIL MEMBER(S) ABSENT:**

James Hunt
Jo Anne McNemar

The opening prayer was offered by Councilman Vanhorn with Vice Mayor Bailey leading in the Pledge of Allegiance.

Council deviated from the agenda for the following presentations:

Vice Mayor Bailey, on behalf of Council, presented the members and legal counsel of the Clarksburg Urban Renewal Authority with "Certificates of Appreciation" for their administration and contribution to the success of the façade improvement program that earned the City the 2005-2006 "All-Star Community Award" by the WV Municipal League. Vice Mayor Bailey then presented Mayor Lopez with the City's "All-Star Community Award" plaque.

Vice Mayor Bailey, along with Mayor Lopez, on behalf of Council, recognized City Clerk Annette Wright for being named the "Clerk/Recorder of the Year for 2005-2006" by the West Virginia Clerks and Recorders Association. Vice Mayor Bailey presented City Clerk Wright with a vase of roses to congratulate her on her award and commended her dedication and commitment to the citizens of Clarksburg, Council, the Administration and her family.

Mayor Lopez called for petitions, communications and public hearings with the following individuals appearing therefor:

**Maurice Davis**, 160 Washington Avenue – requested that the City Clerk read the following letter for him into the record.

*September 6, 2006*

*I, Maurice Davis, P.O. Box 165, Clarksburg/160 Washington Ave., Clarksburg went to a local garage in Adamston to pay for work done to my Dodge about 3:30 p.m., Sept. 6th. The garage was closed so instead of getting on Rt. 50 East, I pulled into a local convenience store and gas station in Adamston to get a little gas and play the lottery. No gas would come out so I thought you needed to pay first. It took a few minutes to pick my lottery ticket as there was a long line. As I started to leave, the male clerk asked me to pay for my gas. I said I didn't get any gas. I had purchased two lottery tickets and left. When I got back in my car, another male clerk came to my car and said I needed to pay for my gas. I told him I didn't get any gas. I went back inside and asked for the manager. I was told by a female clerk that she was off and wouldn't be back until Thursday, Sept. 7th. I was on my way out of town and asked for her phone number. They wouldn't give it to me and the assistant manager asked me to leave. I said I wasn't going anywhere until this was straightened out. He said he would call the police. The police asked for my ID and I asked what the consequences would be for the store if I had been framed. I was told that my driver's license could be suspended. The police left and I went to my car and found that the same type of incident had happened to another black friend in Stealey.*

*I want the "GOOD CITIZENS OF CLARKSBURG TO BE AWARE."*
*Drop me a line if this type of thing has happened to you:*
*Maurice Davis*
*P.O. Box 165*
*Clarksburg, WV 26302*
*cc: Sam Chico, Mgmt.*
*Atty. Gen., Charleston*
*P.S. The Black Community is under attack statewide. Although a few folks are trying to do the right thing.*

Mr. Davis stated that he was informed by an officer that a warrant was issued for his arrest regarding the above-stated incident and remarked that he wanted to make this situation known should something happen to him or his family.

**Ugo Annibale**, 1601 Adams Avenue – appeared before Council to discuss various matters and provided Council with his written remarks. Mr. Annibale advised that he was asked to speak this evening on behalf of a large group comprised of home owners, law obedient citizens, tax payers, voters and concerned citizens, all of who are concerned with the degradation of the Adamston area noting poor sidewalks, increasing number of dilapidated houses, abandoned houses with rodents, the presence of a child molester, drug dealers, groups of aggressive teenagers skateboarding and congregating on the street corners and ATVs. Mr. Annibale requested a community meeting with Council to be held at Adamston Elementary School. Mr. Annibale commended Sergeant Audia for her assistance in working to address these concerns. Mr. Annibale was informed that once Council members' schedules were checked, he would be contacted to schedule the requested meeting.

**MOTION** by Councilman Thompson, **SECONDED** by Councilman Vanhorn for approval of the minutes of the Special Session of Council held on August 31, 2006, Regular Session of Council held on September 7, 2006 and the Conference (Work) Session held on September 12, 2006. **MOTION APPROVED UNANIMOUSLY.**

**AGENDA ITEM NO. 5:** **CONSIDERATION OF FIRST READING OF AN ORDINANCE OF THE CITY OF CLARKSBURG, WEST VIRGINIA, AMENDING AND RE-ENACTING SECTION 933.02 OF ARTICLE 933 OF CHAPTER 3 OF THE CODE OF THE CITY OF CLARKSBURG, RELATING TO THE IMPOSITION OF RATES FOR THE USE OF THE SERVICES RENDERED BY THE SEWERAGE SYSTEM, AND ESTABLISHING STANDARDS FOR THE USE OF SUCH SYSTEM AND THE COMPUTATION OF SUCH RATES, FOR RESIDENTS OF THE CITY OF CLARKSBURG**

**MOTION** by Councilman Trecost, **SECONDED** by Vice Mayor Bailey for approval of the above-captioned ordinance on first reading. **MOTION CARRIED 4-1 with Councilman Thompson casting the dissenting vote.**

**AGENDA ITEM NO. 6:** **CONSIDERATION OF FIRST READING OF AN ORDINANCE OF THE CITY OF CLARKSBURG, WEST VIRGINIA, AMENDING AND RE-ENACTING SECTION 933.021 OF ARTICLE 933 OF CHAPTER 3 OF THE CODE OF THE CITY OF CLARKSBURG, RELATING TO THE IMPOSITION OF RATES FOR THE USE OF THE SERVICES RENDERED BY THE SEWERAGE SYSTEM, AND ESTABLISHING STANDARDS FOR THE USE OF SUCH SYSTEM AND THE COMPUTATION OF SUCH RATES, FOR NON-RESIDENTS OF THE CITY OF CLARKSBURG**

**MOTION** by Councilman Vanhorn, **SECONDED** by Vice Mayor Bailey for approval of the above-captioned ordinance on first reading. **MOTION CARRIED 4-1 with Councilman Thompson casting the dissenting vote.**

**AGENDA ITEM NO. 7: CITY MANAGER'S REPORT/UPDATE**

City Manager Martin Howe presented the following written report:

**Follow-up/General Updates**

1. Digital Mapping Project – Thrasher Engineering is working through some differences between the tax map overlay and the existing zoning map overlay.
2. An agreement has been made with the Spatafore's regarding the demolition of Jack's Friendly. Stonewall Construction will begin preparing the structure for demolition September 30, 2006. They will start by removing the canopy in the front and the air conditioning unit in Trader's Alley.
3. The Harrison County Hazard Mitigation Plan for the City of Clarksburg that was adopted February 16, 2006 has been approved by FEMA. The City is eligible to apply for Federal Disaster Assistance for the next five years.
4. The 2006 Fall Clean-up will be from Monday, October 16 and conclude on Friday, November 3, 2006.
5. The Sanitary Board Satellite customers have been invited to a meeting on Thursday, September 28, 2006 at 1:00 p.m. to discuss the rate increase.
6. The Clarksburg "Welcome" sign at Eastpointe is in the process of being installed.
7. The guidelines for the "Open Container" are being formulated. As previously stated by council and myself, no events with open containers will be granted until these guidelines are developed.
8. I had the opportunity to attend the ICMA Conference and attend some great educational sessions and ICMA University classes including the following: Small Rural and Wireless, Watch Dog vs. Barking Dog (Media Relations), Sustainable Economic Development Happens at Home, and Know Your Leadership Strengths – Discover Your Power. All council members were given a memo stating what each class entailed.

**Construction/Projects**

1. Hogan's Lane – Core drilling will begin Friday, September 22, 2006 as requested at the September 12 work session. American Geotech will be doing the drilling. After this is complete we will have a more defined direction as to which remedy to use to fix the slip.
2. North View Fire Station – The clear span metal building should arrive this month. The estimated completion date is approximately late October to early November.
3. Clark Street Bridge – Marvin Murphy has responded to the letter sent to the DOH regarding the relocation of the water lines on the bridge to be included in the funding. The DOH has agreed to pay for the relocation on a 50/50 basis in the interim with the Water Board. They are also asking that the City and Water Board apply for funds from the Infrastructure Council to accomplish the relocation.
4. Hartland Avenue Retaining Wall Stabilization – McCloy Construction Company will begin the project early next week or the week of October 2nd. This project is estimated to be completed within three to four days starting.

**Brownfields/Grants**

1. WV Mack Property on Ohio Avenue – Lyons Excavating has completed the over excavation of soil and verification sampling. The contractor is waiting for analysis results on the excavated soil to determine disposition as a special waste or as a hazardous waste. Once this is completed, we will then be in a position to begin the voluntary remediation portion of the project. A Certificate of Completion from the WVDEP will most likely take until the Spring of 2007.

2. The Streetscape Project Phase IV, 3rd and 4th St. from Trader's to Pike abutting the parking facility has been approved for $400,000. This project will begin in the Spring of 2007.
3. The Recreational Trail Grant that was applied for in February in the amount of $65,000 has been approved for $52,000 to pave a 6' x 1.5 mile path adjacent to the "Mayor's Fitness Trail." The Park Board's match will be $13,000 which totals $65,000.
4. The $200,000 Highway Safety Grant that has been awarded in the amount of $204,500 to continue Region 5 Highway Safety Communities Program -- This grant begins October 1, 2006.

**Events**

1. Starbucks Coffee will be having a grand opening Friday, September 22, 2006 at 11:00 a.m.
2. CiCi's Pizza will be having a grand opening Friday, September 22, 2006 at 11:30 a.m.
3. The downtown Trick-or-Treating will be Thursday, October 26th from 5:00 p.m.-6:00 p.m.

**UNFINISHED BUSINESS:**

Councilman Thompson inquired as to why the entire street of Adams Avenue was not paved as well as the entire street of N. Avenue when it was paved a year ago with Mr. Howe advising that he would look into these matters.

Vice Mayor Bailey stated that the Eastpointe sign is in place and is a very positive and beautiful addition to the City. Vice Mayor Bailey informed that the Administration is still working on the traffic signals at Sam's and Kroger's intersection.

**NEW BUSINESS:**

**A. CONSIDERATION OF APPOINTMENT TO THE BOCA BOARD**

**MOTION** by Vice Mayor Bailey, **SECONDED** by Councilman Thompson to appoint Jim Satterfield to the BOCA Board. **MOTION APPROVED UNANIMOUSLY.**

**B. CONSIDERATION OF APPROVAL OF THE ANNUAL FINANCIAL STATEMENTS FOR THE POLICEMEN'S PENSION & RELIEF FUND AND THE FIREMEN'S PENSION & RELIEF FUND FOR THE FISCAL YEAR ENDING JUNE 30, 2006**

**MOTION** by Vice Mayor Bailey, **SECONDED** by Councilman Thompson for approval of the annual financial statements for the Policemen's Pension & Relief Fund and the Firemen's Pension & Relief Fund for the fiscal year ending June 30, 2006. **MOTION APPROVED UNANIMOUSLY.**

**C. CONSIDERATION OF AWARD OF BID FOR CONSTRUCTION OF THE WEST PIKE STREET PARKING FACILITY**

**MOTION** by Vice Mayor Bailey, **SECONDED** by Councilman Vanhorn to award the bid for the construction of the West Pike Street parking facility to Concrete Preservation Systems, Inc. of Pittsburgh, PA in the amount of $2,135,000. **MOTION APPROVED UNANIMOUSLY.**

In other New Business, Councilman Thompson requested that the City Manager obtain a cost to pave Junkins Avenue from 28th Street to 24th Street. Councilman Thompson inquired if fill dirt could be put in the hole located beside the structure torn down on Buena Vista with Mr. Howe responding that he would contact the engineering company to assess the situation and have said company notify the contractor that performed the demolition.

Councilman Vanhorn announced that the City will again be hosting visitors from the program "Initiatives of Change," wherein a group of foreign exchange adults will be coming through Clarksburg to learn about our City. The group will be in Clarksburg October 14 – 20 and will be

working with service clubs, touring various City departments and be exposed to our type of government. Councilman Vanhorn stated that he would be assisting Councilman Hunt, who is one of the primary coordinators of this Program's visit to Clarksburg.

Vice Mayor Bailey expressed appreciation to Mr. Bellotte for his work in getting the Welcome sign at Eastpointe and the traffic signals. Vice Mayor Bailey expressed appreciation to everyone in attendance and for bringing their concerns to Council.

Mayor Lopez also expressed his appreciation to those in attendance commenting that this Council wants to help our citizens, protect our children and elderly, provide a safe and comfortable environment in which to live and move the City forward in a positive direction. Mayor Lopez referenced the West Pike Street parking facility project and expressed his appreciation to all those involved for their hard work and efforts in bringing the project to fruition.

There being no further business to come before Council, **MOTION** by Councilman Trecost, **SECONDED** by Councilman Thompson and **APPROVED UNANIMOUSLY** for adjournment.

Sam Lopez
Mayor Sam Lopez

October 5, 2006
Approved

Annette M. Wright
Annette M. Wright, City Clerk

CITY OF CLARKSBURG
222 WEST MAIN STREET • CLARKSBURG, WV 26301 • PH. (304) 624-1673 • FAX (304) 624-6135
OFFICE OF CITY CLERK

STATE OF WEST VIRGINIA,
COUNTY OF HARRISON,
MUNICIPALITY OF CLARKSBURG, TO-WIT:

I, Annette M. Wright, Clerk of the City of Clarksburg, West Virginia, do hereby declare the attached to be a true and accurate copy of the Minutes of the Council of the City of Clarksburg for the regular session held on October 5, 2006. Said Minutes were approved October 19, 2006 and are of record in my office in Minute Book No. 23, at page 206.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the Official Seal of said City on this the 5th day of June, 2009.

Annette M. Wright
ANNETTE M. WRIGHT, CMC
CITY CLERK
CITY OF CLARKSBURG, WEST VIRGINIA

[SEAL]

## OCTOBER 5, 2006

The Clarksburg City Council met in REGULAR SESSION on Thursday, October 5, 2006 at 7:30 P.M. at the Clarksburg Municipal Building – Council Chambers, 222 West Main Street, Clarksburg, West Virginia, with the Honorable Mayor Lopez presiding.

**COUNCIL MEMBERS PRESENT:**

Jo Anne McNemar
Dan Thompson
Patsy Trecost II
B.K. Vanhorn
Vice Mayor Margaret Bailey
Mayor Sam Lopez

**ALSO PRESENT:**

Martin Howe, City Manager
Greg Morgan, City Attorney
Annette Wright, City Clerk

**COUNCIL MEMBER(S) ABSENT:**

James Hunt

The opening prayer was offered by Councilman Trecost with Councilwoman McNemar leading in the Pledge of Allegiance.

Council deviated from the agenda for the following presentations:

Vice Mayor Bailey and Councilwoman McNemar, on behalf of Council, read a proclamation proclaiming October 18th as "Disability Mentoring Day" in the City of Clarksburg.

Vice Mayor Bailey presented Mayor Lopez, on behalf of the City of Clarksburg, with a Highway Safety Award for the City's support of the Highway Safety Program. Vice Mayor Bailey advised that the City has received a $204,000 grant for the program which is coordinated by Georgia Hatfield. Vice Mayor Bailey further advised that if seat belt usage continues to increase, the City may be eligible for a substantial amount of money which can be used by the Police Department.

Vice Mayor Bailey and Councilwoman McNemar presented Kathy Helmick, Phyllis Brown and Melissa McGill with a proclamation proclaiming October as "Breast Cancer Awareness Month" in the City of Clarksburg. Ms. Helmick advised of the upcoming health fair and cancer walk. Vice Mayor Bailey pointed out the pink ribbon banners on the four corners at the intersection of Main and Third Streets with Councilman Vanhorn commenting that the banners serve as a reminder to him to encourage the necessary screening and precautions to be followed by wives/loved ones to fight against breast cancer.

Mayor Lopez called for petitions, communications and public hearings with no one appearing therefore.

**MOTION** by Councilman Thompson, **SECONDED** by Councilman Vanhorn for approval of the minutes of the Regular Session of Council held on September 21, 2006. **MOTION APPROVED UNANIMOUSLY.**

**AGENDA ITEM NO. 5:** **CONSIDERATION OF SECOND AND FINAL READING AND PUBLIC HEARING OF AN ORDINANCE OF THE CITY OF CLARKSBURG, WEST VIRGINIA, AMENDING AND RE-ENACTING SECTION 933.02 OF ARTICLE 933 OF CHAPTER 3 OF THE CODE OF THE CITY OF CLARKSBURG, RELATING TO THE IMPOSITION OF RATES FOR THE USE OF THE SERVICES RENDERED BY THE SEWERAGE SYSTEM, AND ESTABLISHING STANDARDS FOR THE USE OF SUCH SYSTEM AND THE COMPUTATION OF SUCH RATES, FOR RESIDENTS OF THE CITY OF CLARKSBURG**

The City Clerk informed that notices of the public hearing regarding Agenda Item No. 5 appeared in the *Clarksburg Exponent/Telegram* on September 25, 2006 and October 2, 2006 and that the publisher's certificate would be filed with the permanent record.

Mayor Lopez declared the public hearing open. There being no one wishing to speak on this matter, Mayor Lopez closed the public hearing.

**MOTION** by Vice Mayor Bailey, **SECONDED** by Councilwoman McNemar for approval of the above-captioned ordinance on second and final reading. Under discussion, Councilman Thompson stated that the reason he is voting against this ordinance is because he believes that this matter should have been taken care of several years ago to avoid the burden of a large increase to the taxpayers. **MOTION CARRIED 5-1 with Councilman Thompson casting the dissenting vote.**

**AGENDA ITEM NO. 6:** **CONSIDERATION OF SECOND AND FINAL READING AND PUBLIC HEARING OF AN ORDINANCE OF THE CITY OF CLARKSBURG, WEST VIRGINIA, AMENDING AND RE-ENACTING SECTION 933.021 OF ARTICLE 933 OF CHAPTER 3 OF THE CODE OF THE CITY OF CLARKSBURG, RELATING TO THE IMPOSITION OF RATES FOR THE USE OF THE SERVICES RENDERED BY THE SEWERAGE SYSTEM, AND ESTABLISHING STANDARDS FOR THE USE OF SUCH SYSTEM AND THE COMPUTATION OF SUCH RATES, FOR NON-RESIDENTS OF THE CITY OF CLARKSBURG**

The City Clerk informed that notices of the public hearing regarding Agenda Item No. 6 appeared in the *Clarksburg Exponent/Telegram* on September 25, 2006 and October 2, 2006 and that the publisher's certificate would be filed with the permanent record.

Mayor Lopez declared the public hearing open. There being no one wishing to speak on this matter, Mayor Lopez closed the public hearing.

**MOTION** by Vice Mayor Bailey, **SECONDED** by Councilman Vanhorn for approval of the above-captioned ordinance on second and final reading. Under discussion, Councilman Thompson stated that he talked to people outside the City, some being on a fixed income, who informed that their sewer portion is higher than the water portion and that the increase would be a hardship. **MOTION CARRIED 5-1 with Councilman Thompson casting the dissenting vote.**

**AGENDA ITEM NO. 7:** **CITY MANAGER'S REPORT/UPDATE**

City Manager Martin Howe presented the following written report:

**Follow-up/General Updates**

1. The administration has met with Vince Collins regarding a proposed TIF District for downtown.
2. The next round of demolition to be performed will include approximately ten (10) properties. Advertising will begin October 11th through 18th. Pre-bid will be Tuesday, October 24. Bid opening – Thursday, November 2nd. Demolition to begin in December.
3. The 2006 Fall Clean-up will be from Monday, October 16 and conclude on Friday, November 3, 2006.
4. The trash receptacles funded by Waste Management have been placed downtown last week. We have also ordered a smaller 4' x 6' version of the Clarksburg entrance sign to be installed at the lower end of NewPointe, in which will be financed by the remaining Waste Management donation.
5. The Blue Bird Store has celebrated being in business for 10 years in downtown.

**Construction/Projects**

1. W. Pike Street Parking Facility – Notice to proceed has been sent to CPS, Inc. and construction to begin the week of October 9, 2006. We have tentatively scheduled a ground breaking ceremony with the Governor's Office for Monday, October 23, 2006 at 4:00 p.m.
2. Hogan's Lane – Core drilling was completed by American Geotech Monday, September 24, 2006. Once the samples are analyzed, MSES will give their facts and findings to make a recommendation on stabilizing the alley.

**Brownfields/Grants**

1. Received the Assistance Agreement from the EPA for the Adamston Brownfields Clean-up in the amount of $150,000. This agreement has been signed and returned. We are expecting to receive the Quality Foundry Agreement late this week.
2. We have received three (3) proposals from the RFPs that were advertised for the Brownfields project engineers. We will begin interviewing the firms who have met the criteria specified.

**Events**

1. Town Hall meeting scheduled for Monday, October 9 at 6:00 p.m. to be held at Adamston Elementary School to listen to concerned citizens regarding Adamston.
2. The downtown Trick-or-Treating will be Thursday, October 26th from 6:00 p.m.-7:00 p.m.
3. City-wide Trick-or-Treating will be on Tuesday, October 31st from 6:00 p.m. – 7:00 p.m.

CITY CLERK'S INFORMATION:

A. "NOTICE OF APPLICATION TO OPERATE: A PRIVATE CLUB, PRIVATE WINE RESTAURANT OR TAVERN" FILED BY FONTANYE'S, LLC, 221 MONTICELLO AVENUE – RETURNED TO APPLICANT ON 10/02/06

**UNFINISHED BUSINESS:** NONE.

**NEW BUSINESS:**

Councilman Trecost inquired as to the plans for the properties where structures have been demolished noting that the City is cutting the grass now on some of these lots. Councilman Trecost inquired if there were plans to sell the properties with Mr. Howe advising that the City does not own the properties and that once the structure is down, we have to go through the court system to acquire the property. Mr. Howe explained that in some cases, property owners have to be tracked down. Councilman Trecost inquired if any of the properties had been acquired due to non-payment with Mr. Howe advising that three properties have been sold. Mr. Morgan stated that each situation is different noting that some situations result in lawsuits, some in bankruptcy, some properties are given to the City, etc. Mr. Morgan added that some of the properties are utilized by the Housing Authority with Mr. Howe noting that when the property is transferred to the Housing Authority, the City receives a check therefore. Mr. Morgan remarked that the demolition of some structures leaves many of the lots too small to rebuild upon. Councilman Trecost inquired if a letter could be drafted to property owners who have no interest in the property to give the City 20% of the cost of demolition to be relieved of this liability/debt. Mr. Morgan inquired as to how the property owner's financial status would be known as to whether or not they had the means to pay for the demolition. Discussion was held concerning the disposition of these properties with Mayor Lopez stating that this is a matter that needs some work and suggested that it placed on the November work session. Councilman Vanhorn stated that the committee in which he chairs is looking into some of these concerns and remarked that Clarksburg is not the only city that has these types of problems. Councilman Vanhorn advised that some cities have come up with some innovative ideas to address the disposition of such properties.

Mr. Howe confirmed to Councilman Trecost that 2105 Williams Avenue is one of the next ten structures on the demolition list with the demolitions to begin in early December.

Councilman Trecost referenced the letter regarding a complaint on Tuna Street with Mr. Howe informing that the complaint has been addressed.

Mr. Annibale requested permission to speak with Mayor Lopez granting such permission. Mr. Annibale suggested that something for older people, such as park benches, be placed on the vacant lots that cannot be built upon.

Councilman Thompson advised of a burned out streetlight at 132 Winding Way and inquired if the house on Point Street was on the demolition list with Mr. Howe advising that he would check on this.

Vice Mayor Bailey thanked everyone for coming.

There being no further business to come before Council, **MOTION** by Councilman Trecost, **SECONDED** by Councilwoman McNemar and **APPROVED UNANIMOUSLY** for adjournment.

Sam Lopez
Mayor Sam Lopez

October 19, 2006
Approved

Annette M. Wright
Annette M. Wright, City Clerk

NOTICE OF PUBLIC HEARING

A Public hearing will be held prior to final vote on adoption of an Ordinance during the next regular meeting of Council of the City of Clarksburg, to be held on Thursday, October 5, 2006 at 7:30 P.M. at the Clarksburg Municipal Building, 222 West Main Street, Clarksburg. The Ordinance will impose a multi-year increase in sewer rates for **non-residents** of Clarksburg over a 4 year period. A summary of the current and proposed rates for each rate period are as follows: Billed monthly or bi-monthly:

The service charge for any persons, firms or corporations and other legal entities situate without the municipal limits of the City of Clarksburg, not a municipal corporation nor a public service district, having any connection with the City's public sanitary sewerage and discharging sewage, industrial wastes, water or other liquids into such system shall be based upon the quantity of water used on or in said premises as the same is measured by the Clarksburg Water Board meter or meters there in use, or by such other meters there in use, or who are connected to the Clarksburg Sanitary Sewer System and receive water from a source other the Clarksburg Water Board and pay sewer service charges directly to the Clarksburg Sanitary Board, shall be charged monthly at the following rates:

**CURRENT RATES**

| | |
|---|---|
| First 4,000 cubic feet of water used per month or 8,000 cubic feet used bi-monthly | 3.32 per 100 cubic feet |
| Next 16,000 cubic feet of water used per month or 32,000 cubic feet used bi-monthly | 2.44 per 100 cubic feet |
| All over 20,000 cubic feet of water used per month or 40,000 cubic feet used bi-monthly | 1.58 per 100 cubic feet |

Minimum charge: $14.96 per month or $29.92 bi-monthy

**PROPOSED RATES:**

**Phase I Rates Effective 45 days from passage of ordinance**

The first 4,000 cubic feet per month or 8,000 cubic feet used bi-monthly at $3.78 per 100 cubic feet.

The next 16,000 cubic feet used per month or 32,000 cubic feet used bi-monthly at $2.78 per 100 cubic feet.

All over 20,000 cubic feet used per month or 40,000 cubic feet used bi-monthly at $2.41 per 100 cubic feet.

The minimum charge to any customer will be $17.05 per month or $34.10 bi-monthly.

**Phase II Rates Effective July 1, 2007**

The first 4,000 cubic feet per month or 8,000 cubic feet used bi-monthly at $4.08 per 100 cubic feet.

The next 16,000 cubic feet used per month or 32,000 cubic feet used bi-monthly at $3.00 per 100 cubic feet.

All over 20,000 cubic feet used per month or 40,000 cubic feet used bi-monthly a $2.60 per 100 cubic feet.

The minimum charge to any customer will be $18.41 per month or $36.82 bi-monthly.

**Phase III Rates Effective July 1, 2008**

The first 4,000 cubic feet per month or 8,000 cubic feet used bi-monthly at $4.21 per 100 cubic feet.

The next 16,000 cubic feet used per month or 32,000 cubic feet used bi-monthly at $3.10 per 100 cubic feet.

All over 20,000 cubic feet used per month or 40,000 cubic feet used bi-monthly at $2.69 per 100 cubic feet.

The minimum charge to any customer will be $19.02 per month or $38.04 bi-monthly.

**Phase IV Rates Effective July 1, 2009**

The first 4,000 cubic feet per month or 8,000 cubic feet used bi-monthly at $4.38 per 100 cubic feet.

The next 16,000 cubic feet used per month or 32,000 cubic feet used bi-monthly at $3.22 per 100 cubic feet.

All over 20,000 cubic feet used per month or 40,000 cubic feet used bi-monthly at $2.80 per 100 cubic feet.

The minimum charge to any customer will be $19.78 per month or $39.56 bi-monthly.

The service charge for the municipalities of Nutter Fort, Stonewood, Anmoore, all Public Service Districts, and legal entities which are non-residents, which receive water from the Clarksburg Water Board which have a connection with Clarksburg s sewerage system who are billed by a governmental agency other than the Clarksburg Water Board so long as their sewerage systems have a connection to the City's public sewerage system shall be based upon the quantity of water used on or in such municipalities, Public Service Districts, and by such non-residential legal entities as the same is measured by the Clarksburg Water Board meter or meters there in use, for water delivered to such municipalities, Public Service Districts, and non-residential legal entities shall be billed monthly at the following rates:

**CURRENT RATES:**

$1.74 per 100 cubic feet of water

**PROPOSED RATES:**

**Phase I Rates Effective 45 days from passage or ordinance**
$1.98 per 100 cubic feet
**Phase II Rates Effective July 1, 2007**
$2.14 per 100 cubic feet
**Phase III Rates Effective July 1, 2008**
$2.21 per 100 cubic feet
**Phase IV Rates Effective July 1, 2009**
$2.30 per 100 cubic feet

All interested parties ma appear at said meeting of City Council and be heard with respect to this proposed ordinance. Copies of this proposed ordinance are available for public inspection in the Office of the City Clerk and the Office of the Director of Finance at said Municipal Building during regular business hours. Citizens with text telephone may contact the City through the use of the State Relay service by calling 1-800-982-8771.

The title of the proposed ordinance is as follows:

**An Ordinance of the City of Clarksburg, West Virginia, amending and re-enacting Section 933.021 of Article 933 of Chapter 3 of the code of the City of Clarksburg, relating to the imposition of rates for the use of the services rendered by the sewerage system, and establishing standards for the use of such system and the computation of such rates, for non-residents of the City of Clarksburg.**

Passed by the City Council of the City of Clarksburg on First Reading on the 21st day of September 2006

Sam Lopez, Mayor

ATTEST:
Annette M. Wright, City Clerk

RECEIVED

2006 OCT 10 AM 8:59

W VA PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE

# PUBLISHER'S CERTIFICATE

I, Sara V. Shingleton, Classified Manager of THE EXPONENT TELEGRAM, a newspaper of general circulation published in the City of Clarksburg, County and state aforesaid, do hereby certify that the annexed:

PUBLIC HEARING-NONRESIDENTS

was published in THE EXPONENT-TELEGRAM 2 time(s) commencing on

the 25th day of September 2006 and ending on the 2nd day of October 2006 at the request of CITY OF CLARKSBURG.

Given under my hand this 3rd day of October 2006

The publisher's fee for said publication is: $396.31 for 1742 words at $0.2275 per word.

Sara V. Shingleton
Classified Manager of The Exponent-Telegram

SEAL

Subscribed to and sworn to before me this 3rd day of October 2006.

Shelley V. Bell
Notary Public in and for Harrison County, WV

My commission expires on:
The 21 day of July 2009

OFFICIAL SEAL
STATE OF WEST VIRGINIA
Clarksburg Publishing Co.
PO Box 2000, 124 Water Ave.
Clarksburg, WV 26302-2000
Expires July 21, 2009

# PUBLISHER'S CERTIFICATE

I, Sara V. Shingleton, Classified Manager of THE EXPONENT TELEGRAM, a newspaper of general circulation published in the City of Clarksburg, County and state aforesaid, do hereby certify that the annexed:

PUBLIC NOTICE/RATE CHANGE

was published in THE EXPONENT-TELEGRAM 2 time(s) commencing on

the 10th day of October 2006 and ending on

the 17th day of October 2006 at the request of

CITY OF CLARKSBURG.

Given under my hand this 18th day of October 2006

The publisher's fee for said publication is: $368.55
for 1620 words at $.2275 per word.

Sara V. Shingleton
Classified Manager of The Exponent-Telegram

SEAL

Subscribed to and sworn to before me this 18th day of October 2006.

Shelley J. Riffle
Notary Public in and for Harrison County, WV

My commission expires on:
The 21 day of July 2009

RECEIVED
2006 OCT 20 AM 9:14
W. VA. PUBLIC SERVICE COMMISSION
SECRETARY'S OFFICE

Tariff Form 12
(Tariff Rule 44)
PUBLIC NOTICE OF CHANGE IN RATES
**Proposed Multi-Year Increase in Sewer Rates by Clarksburg Sanitary Board**

NOTICE is hereby given that the Clarksburg City Council, on behalf of the Clarksburg Sanitary Board, a public sewer utility, has adopted two ordinances on First Reading on Thursday, September 21, 2006 to increase sewer rates for furnishing sewer collection and treatment services to Clarksburg and non-resident customers of the Clarksburg Sanitary Board located in Harrison County, West Virginia. The Sanitary Board provides sewer collection and treatment service for approximately 7,250 customers.

The proposed increased rates will become effective on Monday, November 20, 2006 unless otherwise ordered by the Public Service Commission. The proposed rate increase is a multi-year increase in rates to take effect over a 4 year period and will generate approximately $387,183 in additional annual revenues for the Clarksburg Sanitary Board, in year one, $254,965 in year 2, $113,000 in year 3, and $137,567 in year 4. The amount of the rate increase will be 14% in year 1, 8% in year 2, 3.3% in year 3, and 4% in year 4.

The average monthly bill for the various customer classes will be increased over the period as follows:

**Phase I Rates Effective 45 Days After Passage of Ordinance**

| | Average Monthly Bill | Dollar Amount of Monthly Increase | % Increase |
|---|---|---|---|
| Clarksburg Residential Customers | $ 18.19 | $ 2.52 | 14% |
| Clarksburg Commercial Customers | $ 74.63 | $10.45 | 14% |
| Clarksburg Industrial Customers | $1,255.65 | $175.92 | 14% |
| Municipalities Served By | | | |
| Clarksburg Sanitary Board | $10,065.32 | $1,409.15 | 14% |
| Public Service Districts | | | |
| Served by Clarksburg Sanitary Board | $3,637.06 | $509.19 | 14% |
| Non-resident Legal Entities | | | |
| Served by Clarksburg Sanitary Board | $550.97 | $77.14 | 14% |

**Phase II Rates Effective July 1, 2007**

| | Average Monthly Bill | Dollar Amount of Monthly Increase | % Increase |
|---|---|---|---|
| Clarksburg Residential Customers | $ 20.71 | $ 1.65 | 8% |
| Clarksburg Commercial Customers | $ 85.08 | $6.81 | 8% |
| Clarksburg Industrial Customers | $1,431.67 | $114.84 | 8% |
| Municipalities Served By | | | |
| Clarksburg Sanitary Board | $11,474.47 | $917.96 | 8% |
| Public Service Districts | | | |
| Served by Clarksburg Sanitary Board | $4,146.25 | $331.70 | 8% |
| Non-resident Legal Entities | | | |
| Served by Clarksburg Sanitary Board | $628.11 | $50.25 | 8% |

**Phase III Rates Effective July 1, 2008**

| | Average Monthly Bill | Dollar Amount of Monthly Increase | % Increase |
|---|---|---|---|
| Clarksburg Residential Customers | $ 22.36 | $ 0.71 | 3.3% |
| Clarksburg Commercial Customers | $ 91.89 | $3.04 | 3.3% |
| Clarksburg Industrial Customers | $1,546.31 | $51.03 | 3.3% |
| Municipalities Served By | | | |
| Clarksburg Sanitary Board | $12,392.43 | $408.95 | 3.3% |
| Public Service Districts | | | |
| Served by Clarksburg Sanitary Board | $4,477.95 | $147.78 | 3.3% |
| Non-resident Legal Entities | | | |
| Served by Clarksburg Sanitary Board | $678.36 | $22.39 | 3.3% |

**Phase IV Rates Effective July 1, 2009**

| | Average Monthly Bill | Dollar Amount Monthly Increase | % Increase |
|---|---|---|---|
| Clarksburg Residential Customers | $23.07 | $ 0.93 | 4% |
| Clarksburg Commercial Customers | $ 94.93 | $ 3.80 | 4% |
| Clarksburg Industrial Customers | $1,597.34 | $63.90 | 4% |
| Municipalities Served By | | | |
| Clarksburg Sanitary Board | $12,801.38 | $512.06 | 4% |
| Public Service Districts | | | |
| Served by Clarksburg Sanitary Board | $4,625.73 | $185.03 | 4% |
| Non-resident Legal Entities | | | |
| Served by Clarksburg Sanitary Board | $700.75 | $28.03 | 4% |

The increases shown are based on average of all customers in the indicated class. Individual customers may receive increases that are greater than or less than average. Furthermore, the requested rates and charges are only proposed and are subject to change (increase or decrease) by the Public Service Commission in its review of this filing. The Commission shall review and approve or modify the increased rates only upon the filing of a petition within thirty (30) days of the adoption of the ordinance changing said rates or charges, by:

Any customer aggrieved by the changed rates or charges who presents to the Commission a petition signed by not less than twenty-five percent of the customers served by the Clarksburg Sanitary Board; or

Any customer who is served by the Clarksburg Sanitary Board and who resides outside corporate limits and who is affected by the change in said rates or charges and who presents to the Commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or

Any customer or group of customers who are affected by said change in rates who reside within the municipal boundaries and who present a petition to the Commission alleging discrimination between said customer or group of customers and other customers of the Clarksburg Sanitary Board. Said petition shall be accompanied by evidence of discrimination.

Petitions should be addressed to the Executive Secretary, Public Service Commission of West Virginia, 201 Brooks Street, P.O. Box 812, Charleston, West Virginia 25323.

A copy of the proposed rates is available at the office of the Director of Finance. The Director of Finance/Treasurer can provide any information regarding the Sanitary Board Budget and proposed rate increase to any customer or prospective customer upon request. The office of the Director of Finance is located 222 West Main Street, Clarksburg, West Virginia 26301.

CITY OF CLARKSBURG

RESOLUTION ON OPEN GOVERNMENTAL PROCEEDINGS RULES

Pursuant to Chapter 6, Article 9A, Section 3 of the West Virginia Code, the Council of the City of CLARKSBURG does hereby adopt the following rules to make available, in advance, the date, time, place and agenda of all regularly scheduled meetings of the Council, and the date, time, place and purpose of all special meetings of the Council to the public and news media (except in the case of an emergency requiring immediate action) as follows:

1. Regular Meetings. A notice shall be posted and maintained by the City Clerk at the front door or bulletin board of the Clarksburg City Hall of the date, time and place fixed and entered of record by Council 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 location by the City Clerk not less than 3 days 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 location as soon as feasible after such cancellation or postponement has been determined.

2. Special Meetings. A notice shall be posted by the City Clerk at the front door or bulletin board of the Clarksburg City Hall not less than 3 days 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 location as soon as feasible after such cancellation has been determined.

These rules regarding notice of meetings shall replace any and all previous rules heretofore adopted by Council.

Adopted this May 2, 2002.

Mayor

City Manager

ATTEST:

City Clerk

17/5/5

"AN ORDINANCE TO AMEND AND RE-ENACT AN ORDINANCE CREATING A SANITARY BOARD FOR THE CITY OF CLARKSBURG IN HARRISON COUNTY, WEST VIRGINIA, PRESCRIBING THE QUALIFICATIONS AND FIXING THE COMPENSATION OF ITS MEMBERS, DEFINING ITS POWERS AND DUTIES."

BE IT ORDAINED BY THE CITY OF CLARKSBURG:

Section 1. That there be and is hereby created a Sanitary Board for the City of Clarksburg, in Harrison County, West Virginia.

Section 2. That the Sanitary Board of the City of Clarksburg shall be appointed by the City Council, and the members of said Board, upon their appointment, shall qualify by taking the oath of office required of other public officials of the City.

Section 3. That the Sanitary Board, as herein created, shall be composed of the City Manager of the City of Clarksburg, and two persons appointed by City Council, one of which must be a registered professional engineer. The engineer member of said Board need not be a resident of said City. No officer or employee shall be eligible to appointment on said Sanitary Board until at least one year after the expiration of the term of his public office.

Section 4. That the appointment of the original board shall be for the term of two and three years respectively, and upon the expiration of each term, and each succeeding term thereafter the appointment of a successor shall be made in like manner for a term

three years. Vacancies shall be filled for the unexpired term in the same manner as the original appointment. The City Manager's term shall coincide with his tenure of office.

Section 5. That the Sanitary Board shall have the control over and supervision of the construction, acquisition, improvement, equipment, custody, operation and maintenance of a sewage collection system and sewage treatment plant or plants; intercepting sewers; outfall sewers; force mains; pumping stations; ejector stations, the collection and treatment, purification and disposal, in a sanitary manner of liquid and solid waste, night soil and industrial waste of the City of Clarksburg; and in addition thereto, said Board shall be vested with and shall exercise all of the rights and perform all of the duties conferred upon it by Article 11 and 13 of Chapter 16 of the Code of West Virginia, and all acts amendatory and supplemental thereto.

Section 6. That the City Manager of said City shall act as Chairman of the Sanitary Board, which shall select from its members a vice-chairman and shall designate a Secretary and Treasurer (but the Secretary and Treasurer may be one and the same), who need not be a member or members of the Sanitary Board. The Vice-Chairman, secretary and treasurer shall hold office at the will of the Sanitary Board. The appointive members of the Sanitary Board shall

each receive as compensation for their services a sum of twenty-five ($25.00) dollars for each meeting of the Board, provided, however, that members of the Board shall not be paid for meetings in excess of six meetings per month.

Section 7. This ordinance shall be effective from passage.

Section 8. The provisions of this ordinance are several, and if any section, provision, sentence, clause or word of this ordinance be declared invalid, such decision shall not affect or impair any of the remaining provisions of this ordinance. It is hereby declared to be the intent of the Council of said City that this ordinance would have been adopted had the invalid portion not been included therein.

Passed by the Council of the City of Clarksburg, the 5th day of December, 1955.

(s) Glen R. Peterson
City Manager

ATTEST:

(s) Angela Marshall
City Clerk

# CLARKSBURG SANITARY BOARD

| | Term Expiration |
|---|---|
| Martin Howe (City Manager) – Chairman | Indefinite |
| Joseph Spatafore | 2-28-2009 |
| Mark Linville | 2-28-2010 |

Members are appointed to three year terms.

FILE COPY

CITY OF CLARKSBURG

222 WEST MAIN STREET • CLARKSBURG, WV 26301 • PH. (304) 624-1673 • FAX (304) 624-6135

OFFICE OF CITY CLERK

December 20, 2005

Mr. Joseph Spatafore
1502 Franklin Avenue
Clarksburg, WV 26301

Re: Re-Appointment to Sanitary Board

Dear Mr. Spatafore:

At a regular meeting of Clarksburg City Council on Thursday, December 15, 2005 Council voted unanimously in favor of your re-appointment to the Sanitary Board. The appointment is a three-year term which will expire on February 28, 2009.

On behalf of Council and the City administration, I extend our gratitude for your willingness to continue to serve the City as a member of the Sanitary Board and congratulate you on your re-appointment thereto.

Sincerely,

Annette Wright

Annette M. Wright, CMC
CITY CLERK

AMW/s
cc: Martin Howe, City Manager

FILE COPY

# CITY OF CLARKSBURG

222 WEST MAIN STREET • CLARKSBURG, WV 26301

April 9, 2007

Mr. Mark Linville
P.O. Box 101
Lumberport, WV 26386

Re: Reappointment to Sanitary Board

Dear Mr. Linville:

At a regular meeting of Clarksburg City Council on Thursday, April 5, 2007, Council reappointed you to the Sanitary Board. As you know, the appointment is a three-year term which will expire on February 28, 2010.

On behalf of Council and the City administration, I extend our gratitude for your willingness to continue to serve the City as a member of the Sanitary Board and congratulate you on your reappointment thereto.

Sincerely,

Annette Wright

Annette M. Wright, CMC
City Clerk

AMW/s
cc: Martin Howe, City Manager

CITY OF CLARKSBURG

Sewer Revenue Bonds, Series 2009 A
(West Virginia SRF Program)

PETITION OF CLARKSBURG SANITARY BOARD

The Sanitary Board of the City of Clarksburg hereby petitions the City Council to enact an ordinance directing that sewer revenue bonds be issued by the City pursuant to the provisions of Chapter 16, Article 13 of the West Virginia Code of 1931, as amended, such bonds to be in an amount not to exceed $2,500,000 for the purpose of financing a portion of the cost of acquisition and construction of certain additions, betterments and improvements to the existing sewerage system of the City, together with all necessary appurtenances, and the costs of issuance and related costs.

Approved this 10th day of March, 2009

SANITARY BOARD OF THE CITY OF CLARKSBURG

BY: _____
Martin Howe
Its Chairman

_____
ATTEST: Joseph Spatafore, Secretary

# JUNE 18, 2009

The Clarksburg City Council met in REGULAR SESSION on Thursday, June 18, 2009 at 7:00 P.M. at the Clarksburg Municipal Building – Council Chambers, 222 West Main Street, Clarksburg, West Virginia, with Mayor Thompson presiding.

**COUNCIL MEMBERS PRESENT:**

Margaret Bailey
James Hunt
Sam Lopez *(via telephone)*
Martin Shaffer
Patsy Trecost II
Vice Mayor B.K. Vanhorn
Mayor Dan Thompson

**ALSO PRESENT:**

Martin Howe, City Manager
Gregory Morgan, City Attorney
Annette Wright, City Clerk

The opening prayer was offered by Vice Mayor Vanhorn with Councilwoman Bailey leading in the Pledge of Allegiance.

Council deviated from the Agenda for the following presentations:

Councilman Hunt presented Liberty High School senior Megan Smith, daughter of Firefighter Todd Smith, with the 2009 Rex B. Hunt Memorial Scholarship in the amount of $500. Councilman Hunt established said scholarship several years ago in honor of his father who was a long-time employee of the City's Public Works Department. This scholarship program is open to seniors that will be attending college in the fall and whose parent(s) are City employees.

The Clarksburg-Harrison Regional Housing Authority was recognized for its recent accomplishment in earning NAHRO's national award of merit for resident and client services for its "Learning Oasis" program implemented at the Laurel Lanes Housing Complex. H.I.S. Bridgebuilders was also recognized for their involvement and efforts in making said program a success. Councilwoman Bailey, on behalf of Council, presented Certificates to both organizations for their achievements.

Sergeant Jason Webber advised Council of the $10,000 grant received by the Police Department for the Target Red Light Program. Said monies are funded through the Governor's Highway Safety and will be utilized to target four (4) problem red-light areas. Sergeant Webber advised that a pre-program survey had been conducted at said areas and that a post-program survey would be conducted upon completion of the June 11th through July 12th enforcement period.

Attorney John Stump addressed Council concerning the funding for the City's Wastewater Treatment Plant upgrades and informed that Clarksburg was one of ten cities in the state to receive stimulus funding for said project with $1,000,000 thereof to be forgiven and the remaining $1,000,000 to be repaid over a 20-year period with very favorable terms. Mr. Stump applauded the City for having said project ready to go in order to obtain stimulus monies.

Mayor Thompson called for petitions, communications and public hearings with the following individuals appearing therefor:

**Matthew Kopcsak**, 612 S. 7th Street– addressed Council concerning parking, business growth and the Waldo Hotel. To alleviate parking concerns, Mr. Kopcsak suggested one or two larger parking facilities rather than many smaller parking areas. With regard to the Waldo Hotel, Mr. Kopscak opined that the structure has been neglected by Vandalia and further he did not believe that Vandalia was aware of the importance of the restoration of the structure to the City's economic growth.

**Manuel Jackson**, 247 ½ Clay Street – appeared before Council to discuss the City's employment policy. Mr. Jackson opined that the City had a hiring practice that benefited "friends and family" and also expressed concern with the lack of African Americans employed by the City. Mr. Jackson remarked that the hiring practice needed immediate attention in order to ensure that everyone be afforded the same opportunity regarding employment with the City.

**MOTION** by Vice Mayor Vanhorn, **SECONDED** by Councilwoman Bailey for approval of the minutes of the regular session of Council held on May 21, 2009. **MOTION APPROVED UNANIMOUSLY.**

**MOTION** by Councilwoman Bailey, **SECONDED** by Councilman Hunt for approval of the minutes of the regular session of Council held on June 4, 2009. **MOTION APPROVED UNANIMOUSLY.**

**MOTION** by Vice Mayor Vanhorn, **SECONDED** by Councilwoman Bailey for approval of the minutes of the special session of Council held on June 12, 2009. **MOTION APPROVED UNANIMOUSLY.**

**AGENDA ITEM NO. 5:** **CONSIDERATION OF SECOND AND FINAL READING AND PUBLIC HEARING OF AN ORDINANCE ESTABLISHING SALARIES OR COMPENSATION FOR MUNICIPAL OFFICERS AND EMPLOYEES FOR FISCAL YEAR 2009-2010 AND REPEALING ALL INCONSISTENT ORDINANCES**

The City Clerk informed that notices of the public hearing regarding the above-captioned matter appeared in *The Exponent-Telegram* on June 9, 2009 and June 16, 2009 and that the publisher's certificate would be filed with the permanent record.

Mayor Thompson declared the public hearing open with no one appearing therefor. Upon closing the public hearing, **MOTION** by Councilwoman Bailey, **SECONDED** by Vice Mayor Vanhorn for approval of the above-captioned ordinance on second and final reading. **MOTION APPROVED UNANIMOUSLY.**

**AGENDA ITEM NO. 6:** **CONSIDERATION OF A RESOLUTION AUTHORIZING SIGNATURES OF DOCUMENTS AS THEY RELATE TO PLANNING, DESIGN AND/OR CONSTRUCTION OF WASTEWATER FACILITIES**

**MOTION** by Councilwoman Bailey, **SECONDED** by Vice Mayor Vanhorn for adoption of the above-captioned resolution. **MOTION APPROVED UNANIMOUSLY.**

**AGENDA ITEM NO. 7:** **CONSIDERATION OF A SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNTS, DATES, MATURITY DATES, REDEMPTION PROVISIONS, INTEREST RATES, INTEREST AND PRINCIPAL PAYMENT DATES, SALES PRICES AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA SRF PROGRAM) AND SEWER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA SRF PROGRAM/ARRA) OF THE CITY OF CLARKSBURG; APPROVING AND RATIFYING THE BOND PURCHASE AGREEMENTS 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**

**MOTION** by Vice Mayor Vanhorn, **SECONDED** by Councilwoman Bailey for adoption of the above-captioned resolution. Under discussion, Councilman Hunt inquired as to the West Virginia Water Development Authority with Mr. Stump informing that said organization is a state agency that serves as its own loan programs for waste and storm water projects and also serves as an administrative body to various other entities. **MOTION APPROVED UNANIMOUSLY.**

*(Council deviated from the Agenda to address Mr. Jackson's earlier comments).*

Councilman Hunt remarked to Mr. Jackson that his point was well taken and that we want to ensure equality for everyone. Councilman Hunt requested that a report be prepared for Council concerning the hiring policy.

**AGENDA ITEM NO. 8:** **CONSIDERATION OF A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLARKSBURG, WEST VIRGINIA, TO AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE CLARKSBURG URBAN RENEWAL AUTHORITY FOR FUNDING INTEREST OF SUBSIDY PAYMENTS FOR HARRISON COUNTY ECONOMIC ALLIANCE CORPORATION LOAN PROGRAM**

**MOTION** by Councilwoman Bailey, **SECONDED** by Vice Mayor Vanhorn for adoption of the above-captioned resolution. **MOTION APPROVED UNANIMOUSLY.**

**AGENDA ITEM NO. 9:** **CITY MANAGER'S REPORT/UPDATE**

City Manager Martin Howe discussed the following written report provided to Council:

## Follow-up/General Updates

1. Energy Audit – The Administration has received the Energy Audit, along with an executive summary from CLT. The Administration will be meeting with representatives from CLT to review and discuss the Audit Report on Wednesday, June 24, 2009.
2. Hogan's Lane – The concrete footers were poured the week of June 8th. The bin blocks were being installed as of today. We are awaiting the last delivery of blocks, which will be installed next week, the project should be completed by the end of the week.
3. Public Nuisance Complaints – The City Clerk and I have been receiving an increase in inquires from citizens regarding filing Public Nuisance Complaints. We have been working with Code Enforcement and the Police Department to assist with gathering information, then sending a letter to the property owners to have the nuisance abated prior to any formal complaint being filed.
4. Prescription Drug Card – From May 1, 2009 to May 31, 2009, two hundred and thirty-four (234) registered cards have been used five hundred forty-six (546) times with a monthly savings of $6,297. The 2009 year to date savings is $31,840 to purchase two thousand seven hundred forty-five (2,745) prescriptions.

## Police & Fire

1. Police – Fifty-three (53) applications were received. After the conclusion of the written entrance exam and physical ability test, we have seventeen (17) successful applicants moving forward.
2. Fire – One-hundred twelve (112) applications were received; fifty-eight (58) applicants successfully passed the written entrance exam. Next will be the physical ability test which will take place on June 26th and 27th at the Training Center located at Gore Technical School.

## Economic Development

1. Chic-Filet – 310 Emily Drive (Next to West Union Bank) – All building plans have been submitted and approved. The contractor has applied for and received all necessary licenses.
2. Corner of Main and Broadway – The Administration is working with a developer to construct a professional office building along with fully developing the property.
3. Business Enhancement Program – The Administration has been working with the URA and the Harrison County Chamber Economic Alliance Group to implement the Business Enhancement Program. The program as of now has five (5) banks participating securing

funds of approximately $5 million to help develop and improve existing businesses. I Recommend Council authorize me to sign the agreement with the URA to fund this project.

4. Royal Glass – Ribbon Cutting Tuesday, June 30, 2009 at 11:00am located at 800 East Pike Street.

**UNFINISHED BUSINESS:** NONE.

**NEW BUSINESS:**

**A. CONSIDERATION OF APPOINTMENT TO THE CLARKSBURG-HARRISON PUBLIC LIBRARY BOARD**

**MOTION** by Councilwoman Bailey, **SECONDED** by Vice Mayor Vanhorn to appoint Jeanie Hardesty to the Clarksburg-Harrison Public Library Board. **MOTION APPROVED UNANIMOUSLY.**

**COUNCIL COMMENTS:**

Councilman Shaffer: Expressed appreciation to all in attendance; expressed appreciation to Bridgebuilders for all they have done for the community; responded to Mr. Jackson's earlier comments stating that concerns with the hiring policy are disturbing and that said policy needed to be reviewed.

Councilwoman Bailey: Commended Vice Mayor Vanhorn for his four years of service to the City as a councilmember; informed that the railing located at the bottom of the steps here in City Hall were loose; inquired as to the status of the elevator repair; shared information regarding the impact of the evaporation of water and the water crisis as a result thereof as well as concerns with ocean pollution; remarked on the traffic signal progress on Emily Drive; expressed appreciation to Mr. Jackson for expressing his concerns to Council; informed Vice Mayor Vanhorn of her sadness to see him go and noting his commendable service to the City; informed newcomer Mary Mayer of her eagerness to work with her and expressed appreciation to Mayor Thompson for his leadership and dedication to the City as well as his long-standing business in the City.

Councilman Trecost: Expressed appreciation to the Administration for the Race mile marker signs; expressed appreciation to Vice Mayor Vanhorn for the kindness he bestowed upon him and everything he has done for the City.

Councilman Lopez: Reiterated his previous complimentary remarks to Vice Mayor Vanhorn and expressed honor in serving with him.

Councilman Hunt: Announced that the City is leading the country on the prescription drug card and encouraged continued awareness as to the availability of said card to the public; reported on the June 11th "Day of Action" hosted in Council Chambers with representatives of the Mission, The Open Door, Clarksburg-Harrison Regional Housing Authority, BB&T and others participating; expressed pleasure in offering the Rex B. Hunt Memorial Scholarship in honor of his father; recognized Mayor Thompson's tenure and his dedication to the youth; expressed to Vice Mayor Vanhorn his pleasure in working with him and recognizing his contributions to the City.

Mayor Thompson: Advised of areas in need of tree trimming; expressed pride and pleasure in leading the Mayor's Youth Council; expressed his pleasure in working with Vice Mayor Vanhorn.

Vice Mayor Vanhorn: *(Addressed Council from the podium)*
In his closing remarks, Vice Mayor Vanhorn commented on the productive four years noting various City accomplishments; encouraged Council to work together and be positive; addressed his fellow Council members as well as City Manager Martin Howe and City Clerk Annette Wright as to the impact and impression each of them had made upon him; welcomed new comer Mary Mayer. Wrapping up his final comments, Vice Mayor Vanhorn left Council with the following suggestions: (1) to implement a yearly Mayoral address; (2) create a bi-monthly newsletter; (3) provide a state-of-the-art website; (4) encourage neighborhood programs to strengthen neighbor relationships. In conclusion, Vice Mayor Vanhorn bestowed God's blessings upon the city of Clarksburg.

There being no further business to come before Council, **MOTION** by Vice Mayor Vanhorn, **SECONDED** by Councilman Hunt and **APPROVED UNANIMOUSLY** for adjournment.

Mayor Margaret A. Bailey

Approved: July 2, 2009

Annette M. Wright, City Clerk

CITY OF CLARKSBURG
222 WEST MAIN STREET • CLARKSBURG, WV 26301 • PH. (304) 624-1673 • FAX (304) 624-6135
OFFICE OF CITY CLERK

STATE OF WEST VIRGINIA,
COUNTY OF HARRISON,
MUNICIPALITY OF CLARKSBURG, TO-WIT:

I, Annette M. Wright, Clerk of the City of Clarksburg, West Virginia, do hereby declare the attached to be a true and accurate copy of the Minutes of the Council of the City of Clarksburg for the regular session held on April 2, 2009. Said Minutes were approved April 16, 2009 and are of record in my office in Minute Book No. 23, at page 594.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the Official Seal of said City on this the 5th day of June, 2009.

Annette M. Wright
ANNETTE M. WRIGHT, CMC
CITY CLERK
CITY OF CLARKSBURG, WEST VIRGINIA

[SEAL]

# APRIL 2, 2009

The Clarksburg City Council met in REGULAR SESSION on Thursday, April 2, 2009 at 7:00 P.M. at the Clarksburg Municipal Building – Council Chambers, 222 West Main Street, Clarksburg, West Virginia, with Mayor Thompson presiding.

**COUNCIL MEMBERS PRESENT:**

Margaret Bailey
James Hunt
Sam Lopez
Martin Shaffer *(via telephone)*
Patsy Trecost II
Vice Mayor B.K. Vanhorn
Mayor Dan Thompson

**ALSO PRESENT:**

Martin Howe, City Manager
Gregory Morgan, City Attorney
Annette Wright, City Clerk

The opening prayer was offered by Vice Mayor Vanhorn with Councilman Hunt leading in the Pledge of Allegiance.

Mayor Thompson called for petitions, communications and public hearings with the following individuals appearing therefor:

**Ugo Annibale** – advised of his candidacy for City Council and suggested that all candidates present their own criminal record with the same to be made public opining the same to be important due to the handling of public money.

Also, Mr. Annibale read a prepared statement to Council stating, in summary, the following: Informed of his attendance at the March 10, 2009 Visitors' Bureau meeting wherein all Board members were present. Mr. Annibale expressed appreciation to Mayor Thompson and Vice Mayor Vanhorn for their silence and impartiality during said meeting. Mr. Annibale alleged that there was no explanation for the budget amount for office supplies which he previously questioned nor did he receive any explanation for the alleged discrepancies in the reported salary of Executive Director Kathie Titus. Mr. Annibale closed his comments by remarking that said event was everything except professional, polite and civilized and that he did not expect anything different.

**Mel Muntzing**, 411 Tyler Avenue – appeared before Council as a representative of the Moose Lodge to discuss the smoking ban. Mr. Muntzing requested that Council adopt a resolution to allow fraternal organizations to be exempt from the smoking ban in the event said ban is reinstated. Mr. Muntzing advised of the donations and contributions made by the various fraternal organizations to the community and the negative impact the smoking ban would have on the organizations' ability to donate due to loss of business. Also, Mr. Muntzing remarked that he would like to know Council's position as to the smoking ban before the City's election.

**Jim Harris**, Executive Director of Health Access – appeared before Council to provide an update on the Health Access Free Clinic. Mr. Harris expressed appreciation for the proclamation received from the City recognizing April as "Cover the Uninsured Month" as well as the City's $2,000 grant to Health Access. Mr. Harris advised of the small paid staff and volunteer physicians that take in 30 new patient applications per month noting that 90% of the patients live in Harrison County. Mr. Harris informed of Health Access' philosophy to provide quality health care whether or not the patient has an insurance card. Also, Mr. Harris apprised of upcoming programs and events.

**MOTION** by Councilwoman Bailey, **SECONDED** by Councilman Hunt for approval of the minutes of the Special Session held on March 12, 2009. **MOTION APPROVED UNANIMOUSLY.**

**MOTION** by Councilwoman Bailey, **SECONDED** by Councilman Hunt for approval of the minutes of the Conference (Work) Session held on March 12, 2009. **MOTION APPROVED UNANIMOUSLY.**

**MOTION** by Councilwoman Bailey, **SECONDED** by Councilman Hunt for approval of the minutes of the Regular Session held on March 19, 2009. **MOTION APPROVED UNANIMOUSLY.**

✓ **AGENDA ITEM NO. 5:** **CONSIDERATION OF FIRST READING OF AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF CLARKSBURG AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF CLARKSBURG OF NOT MORE THAN $3,000,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA SRF PROGRAM), AND NOT MORE THAN $3,000,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES B (WEST VIRGINIA SRF PROGRAM); 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 BOND PURCHASE AGREEMENTS RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO**

**MOTION** by Vice Mayor Vanhorn, **SECONDED** by Councilwoman Bailey for approval of the above-captioned ordinance on first reading. **MOTION APPROVED UNANIMOUSLY.**

**AGENDA ITEM NO. 6:** **CONSIDERATION OF FIRST READING OF AN ORDINANCE OF THE CITY OF CLARKSBURG AMENDING ARTICLE 1720(b), 1720.01(c), 1720.01(d) AND 1720.05 OF PART 17 OF THE CODIFIED ORDINANCES OF THE CITY OF CLARKSBURG RENAMING AND REDESIGNATING THE BOCA CODE APPEALS BOARD AS THE BUILDING CODE APPEALS BOARD; REVISING AND MODIFYING MEMBERSHIP REQUIREMENTS AND OTHER PROVISIONS RELATING TO THE BUILDING CODE APPEALS BOARD TO COMPLY WITH REVISIONS OF THE PROPERTY MAINTENANCE REGULATIONS WITHIN THE STATE BUILDING CODE**

**MOTION** by Councilwoman Bailey, **SECONDED** by Councilman Hunt for approval of the above-captioned ordinance on first reading. Under discussion, Council members Trecost, Lopez, Hunt and Vice Mayor Vanhorn commended the suggested revisions to the above-stated ordinances noting that this would allow BOCA to operate more efficiently in addressing matters that come before said Board. Mr. Morgan added that said amendment(s) also brings the Board into compliance with the 2003 ICC Property Maintenance Code. **MOTION APPROVED 6-0 with Councilman Shaffer abstaining citing the reason as he did not want Martin Howe to file another ethics complaint against him.**

*(**MOTION** by Councilman Hunt, **SECONDED** by Councilwoman Bailey to deviate from the Agenda to address Agenda Item No. 7 after the "Council Comments" section of the Agenda). **MOTION APPROVED UNANIMOUSLY.**)*

**AGENDA ITEM NO. 7:** **(Addressed hereinbelow).**

**AGENDA ITEM NO. 8:** **CITY MANAGER'S REPORT/UPDATE**

City Manager Martin Howe discussed the following written report provided to Council:

## Follow-up/General Updates

1. Demolition –
   a. Solicited sealed quotes from contractors which submitted bids on previous round of demolitions for 159 North 1st Street and 319 and 319 ½ Duff Street. The lowest quote submitted was Stonewall Construction in the amount of $3,200 for 159 North 1st Street and $6,990 for 319 and 319 ½ Duff. I recommend Council approve these bids.
   b. Asbestos testing has been ordered for the three (3) fire burned structures on Northcott. Once the results are received and specifications put together, the administration will solicit sealed quotes, I will then award the bid as an emergency because these structures are of immediate danger.
2. Spring Clean-up began Monday, March 23, 2009 and will be continuing through Friday, April 10, 2009. The first week of Spring Clean-up has produced seventy four (74) tons of waste which included four-hundred sixty four (464) tires. City crews have hauled fifty eight (58) loads totaling $2,814 in tipping fees at S & S Landfill.
3. Paving –
   a. Pre-bid Meeting is scheduled for Wednesday, April 15th at 10:00am at MSES Consultants
   b. Bid Opening is scheduled for Monday, May 4th at 2:00pm in the City Manager's Conference Room
   c. Council to take action on bids Thursday, May 7th.
4. The city's partnership with Utility Services will be rolled out in mid-April. This partnership will offer property owner's warranties on utilities from their property line to their home in addition to energy efficient appliances i.e. hot water tanks.

## Grants/Projects

1. Traveled to Charleston on Wednesday, April 1st to discuss various projects, grants and funding mechanisms with various State Officials.
   a. Met with Development Office officials regarding HUD funds to be used for demolition.
   b. Met with Development Office officials regarding our Community Partnership Grants and to have a change of scope for some of the excess funds.
   c. Met with West Virginia Division of Energy Director John Herholdt regarding $79,300 in local Energy Efficient Funding in which the Administration proposes to be used for additional cost-savings inductive street lighting. This grant will be accessed through the U.S. Department of Energy.
2. Discussions with the Department of Administration regarding the state owned John W. Davis building and its future. We are encouraging the State to demolish the building.

## Police & Fire

1. Police – Sixteen (16) new bullet proof vests have been purchased for the Police Department.
2. Fire – Selling 1985 Pumper Truck as surplus property
   - Minimum Bid $3,500
   - Advertising April 2nd, 5th and 9th in the local paper. Also advertising with the West Virginia Municipal League and notices sent to Fire Departments throughout the state.
   - Bid Opening Friday April 17th at 10:00am
   d. Council to act on bids April 21st (Special meeting for levy)
3. Fire – updating the Emergency Operations Plan to include NIMS – National Incident Management System which will need Council to pass by Ordinance.

## Sanitary Board

1. The Sanitary Board has been negotiating a contract with Energy Contractors, LLC to lease property adjacent to the Waste Water Treatment Plant. This lease will be reviewed and voted upon by the Sanitary Board at the April 14th meeting then forwarded for Council's consideration at the April 16th meeting.
2. Sanitary Sewer Project Update
   a. Pre-bid Meeting on Thursday, April 2nd. Approximately 20 contractors attended.
   b. Bid Opening is scheduled for Tuesday, April 21st

## FOIA

1. The Exponent Telegram filed a FOIA request for all of Council's e-mail correspondences with my office. This information was made available.
2. The Exponent Telegram filed a FOIA request to request copies of any and all documents pertaining to a potential Ethics Investigation of Councilman Shaffer.

With regard to paving, Councilwoman Bailey inquired if the list of streets had been distributed with Mr. Howe informing that he would be getting said list to Council. Mr. Howe confirmed that the energy-efficient streetlights were up and operating on the VA straight area. With regard to the Emily Drive traffic signal inquiry of Councilwoman Bailey, Mr. Howe advised that updated contracts have been sent out to the respective parties.

CITY CLERK'S INFORMATION:

A. ZONING FORM IN CONNECTION WITH A "NOTICE OF APPLICATION TO OPERATE: A PRIVATE CLUB, PRIVATE WINE RESTAURANT OR TAVERN" FILED BY L&M, INC. dba THE BLUEBIRD, 342 W. MAIN STREET – RETURNED TO APPLICANT ON MARCH 23, 2009

B. ZONING FORM IN CONNECTION WITH A "NOTICE OF APPLICATION TO OPERATE: A PRIVATE CLUB, PRIVATE WINE RESTAURANT OR TAVERN" FILED BY ROCCO J'S, LLC dba "A NIGHT OUT", 415 BALTIMORE AVENUE – RETURNED TO APPLICANT ON MARCH 26, 2009

**UNFINISHED BUSINESS:**

**A. CONSIDERATION OF REZONING AND ANNEXATION REGARDING ANGOTTI AND SATTERFIELD V. CITY OF CLARKSBURG V. MANCUSO AND STAR MOTOR COMPANY**

**MOTION** by Councilwoman Bailey, **SECONDED** by Vice Mayor Vanhorn to refer the rezoning portion of said matter to Planning & Zoning. **MOTION CARRIED 6-0 with Councilman Lopez excusing himself from the meeting during consideration of this matter and abstaining therefrom due to his son-in-law's employment with Star Motor Company).**

**NEW BUSINESS:**

**A. CONSIDERATION OF AWARD OF BID FOR THE DEMOLITION OF STRUCTURE LOCATED AT 159 N. 1ST STREET**

**MOTION** by Vice Mayor Vanhorn, **SECONDED** by Councilwoman Bailey to award the bid for the demolition of the structure located at 159 N. 1st Street to Stonewall Construction in the amount of $3,200. **MOTION APPROVED UNANIMOUSLY.**

**B. CONSIDERATION OF AWARD OF BID FOR THE DEMOLITION OF STRUCTURE LOCATED AT 319 AND 319 ½ DUFF STREET**

**MOTION** by Vice Mayor Vanhorn, **SECONDED** by Councilwoman Bailey to award the bid for the demolition of the structure located at 319 and 319 ½ Duff Street to Stonewall Construction in the amount of $6,990. **MOTION APPROVED UNANIMOUSLY.**

**C. CONSIDERATION OF ELECTION OFFICIALS (POLL WORKERS) FOR THE GENERAL NON-PARTISAN ELECTION TO BE HELD IN THE CITY OF CLARKSBURG ON TUESDAY, JUNE 2, 2009**

**MOTION** by Councilwoman Bailey, **SECONDED** by Councilman Hunt for approval of the above-captioned matter. Under discussion, Councilwoman Bailey commended the City Clerk and her assistant, Paula Hardman, for their work on this matter. **MOTION APPROVED UNANIMOUSLY.**

**COUNCIL COMMENTS:**

Councilwoman Bailey: Advised that she has received several complaints about cats and requested the preparation of a proposed ordinance to address the concerns; expressed pleasure with the work on the Waldo and the new business that has located in Glen Elk; noted the potholes in need of attention by the State; expressed support to Mr. Muntzing and fraternal organizations seeking to be exempt from the smoking ban remarking that although she doesn't smoke, she would never tell a veteran that they could not do so; and commended Mr. Harris of Health Access for his exemplary work thereat.

Councilman Lopez: Referenced comments made on a local talk radio show regarding Code Enforcement and the City Manager with Councilman Lopez commending their work in cleaning up the city and taking care of the citizens. Councilman Lopez pointed out the two new programs in the budget which will help clean up the city noting the importance in moving the city forward. With regard to Mr. Muntzing's request for Council's position as to the smoking ban, Councilman Lopez expressed his support of fraternal organizations seeking to be exempt from the smoking ban.

Councilman Hunt: Advised of an idea utilized by a city in the mid-west wherein local businesses are recognized and given the "spotlight" at Council meetings. Councilman Hunt pointed out that this would give businesses exposure and requested that the City Manager review this idea. With regard to the smoking ban matter, Councilman Hunt remarked that although he is a not a smoker, he believes the veterans have earned a right to do so and also pointed out the contributions such organizations make to the community. Councilman Hunt added that his support of fraternal organizations seeking to be exempt from the smoking ban does not mean he is favor of smoking or encourages smoking but supports the organizations' rights to allow smoking in these membership establishments. With regard to the City Manager's evaluation, Councilman Hunt requested that said evaluation take place within the next 30 days as said evaluation is in the best interest of the city and the City Manager. Councilman Hunt added that the evaluation is a good management tool and is not designed to be used for personal attacks and/or humiliation purposes.

Vice Mayor Vanhorn: With regard to the smoking ban issue, Vice Mayor Vanhorn also expressed his support of fraternal organizations seeking to be exempt; however, he was in support of such ban for the general public places. Vice Mayor Vanhorn informed of graffiti in the parking garage and suggested more police patrol in said area; and informed of a complaint about Tony's Body Shop. Mr. Howe informed that the

owner of Tony's Body Shop passed away and the deceased owner's son is continuing with the project.

Councilman Shaffer: Commended the new business in Glen Elk opining that Council needs to tour the facility. Councilman Shaffer inquired as to the legal fees incurred in the suit with Mancuso with Mr. Ferrari advising that said amount was approximately $16,000 to $18,000. With regard to the City Manager's evaluation, Councilman Shaffer alleged that he was the only council member who arrived at the last evaluation with written remarks; Councilman Shaffer remarked that there are no goals, noted the amount of time it took for the TIF, and added that Clarksburg is not doing great as it does not have a balanced budget. Councilman Shaffer referenced the bill for paving which was raised in connection with the Angotti matter stating that the person was never billed for the $7,500 cost and the business at such location was given a free paving job. Councilman Shaffer added that said business never paid B&O taxes and inquired as to how he could have faith that the City Manager was going to collect the proper B&O taxes.

*(Councilman Lopez excused himself from the meeting at this time due to the nature of the comments involving the Angotti matter and his son-in-law's employment with Star Motor Company).*

Councilman Shaffer rhetorically inquired as to how raises could be given when the employee pension plans were not properly funded. Councilman Shaffer stated that he did not believe that Council knew how to do a proper evaluation and that he was glad he could provide his guidance to Council in this area.

*(At this time, Councilman Hunt called for Point of Order).*

Councilman Shaffer requested that Council establish goals.

With regard to the comments concerning the budget raised by Councilman Shaffer, Councilman Lopez inquired of the Finance Director if the pensions were being funded with Mr. Ferrari pointing out that the unfunded liability is associated with insurance, not the pensions, and that said pensions were being funded. Councilman Lopez confirmed with Mr. Ferrari that there was an increase in B&O revenues in the budget and again clarified that every employee did not receive a 5% pay raise. Councilwoman Bailey inquired of the Finance Director if the City was operating on a deficit with Mr. Ferrari responding that the City was not.

**MOTION** by Councilman Hunt, **SECONDED** by Councilwoman Bailey to adjourn into Executive Session pursuant to Chapter 6, Article 9A, Section 4 of the West Virginia Code to discuss matters involving the purchase, sale or lease of property, advance construction planning, the investment of public funds or other matters involving competition which, if made public, might adversely affect the financial or other interests of the City and that the following persons be present: Mayor and Members of City Council, City Manager, City Attorney, Finance Director. **MOTION APPROVED UNANIMOUSLY.**

Following Executive Session, **MOTION** by Councilman Hunt, **SECONDED** by Councilwoman Bailey to reconvene into Regular Session. **MOTION APPROVED UNANIMOUSLY.**

**AGENDA ITEM NO. 7:** **CONSIDERATION OF A RESOLUTION OF THE COUNCIL OF THE CITY OF CLARKSBURG, WEST VIRGINIA TO AUTHORIZE THE CITY MANAGER AND CITY ATTORNEY TO ENTER INTO A SETTLEMENT AGREEMENT TO RESOLVE TWO CIVIL ACTIONS WITH GRANDEOTTO, INC. TO RESOLVE THE WEST PIKE STREET PARKING PROJECT**

**MOTION** by Councilman Hunt, **SECONDED** by Vice Mayor Vanhorn for adoption of the above-captioned resolution. **MOTION APPROVED UNANIMOUSLY.**

There being no further business to come before Council, **MOTION** by Vice Mayor Vanhorn, **SECONDED** by Councilwoman Bailey and **APPROVED UNANIMOUSLY** for adjournment.

Dan Thompson
Mayor Dan Thompson

Approved: April 16, 2009

Annette M. Wright
Annette M. Wright, City Clerk

CITY OF CLARKSBURG
222 WEST MAIN STREET • CLARKSBURG, WV 26301 • PH. (304) 624-1673 • FAX (304) 624-6135
OFFICE OF CITY CLERK

STATE OF WEST VIRGINIA,
COUNTY OF HARRISON,
MUNICIPALITY OF CLARKSBURG, TO-WIT:

I, Annette M. Wright, Clerk of the City of Clarksburg, West Virginia, do hereby declare the attached to be a true and accurate copy of the Minutes of the Council of the City of Clarksburg for the regular session held on April 16, 2009. Said Minutes were approved May 7, 2009 and are of record in my office in Minute Book No. 23, at page 601.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the Official Seal of said City on this the 5th day of June, 2009.

Annette M. Wright
ANNETTE M. WRIGHT, CMC
CITY CLERK
CITY OF CLARKSBURG, WEST VIRGINIA

[SEAL]

# APRIL 16, 2009

The Clarksburg City Council met in REGULAR SESSION on Thursday, April 16, 2009 at 7:00 P.M. at the Clarksburg Municipal Building – Council Chambers, 222 West Main Street, Clarksburg, West Virginia, with Mayor Thompson presiding.

**COUNCIL MEMBERS PRESENT:**

Margaret Bailey
James Hunt
Sam Lopez
Martin Shaffer
Patsy Trecost II
Vice Mayor B.K. Vanhorn
Mayor Dan Thompson

**ALSO PRESENT:**

Martin Howe, City Manager
Gregory Morgan, City Attorney
Annette Wright, City Clerk

The opening prayer was offered by Vice Mayor Vanhorn with Councilman Trecost leading in the Pledge of Allegiance.

Council deviated from the Agenda for the following presentations:

(1) Proclamation presented by Councilwoman Bailey, on behalf of Council, to Polly Steele proclaiming April 19-25, 2009 as "Week of the Young Child."

(2) Proclamation presented by Councilman Hunt, on behalf of Council, to Louis Aragona, Executive Director of the Clarksburg-Harrison Regional Housing Authority, proclaiming April as "Fair Housing Month." Mr. Aragona presented the City with a PILOT check, provided Council members with a copy of the annual report briefly discussing the contents thereof and apprising of new programs at the Housing Authority.

(3) Proclamation presented by Vice Mayor Vanhorn, on behalf of Council, to Bob Stemple proclaiming April 25th as "YMCA Benefit 5K Run/Walk and Kids' Run Day."

(4) "Certificate of Recognition" was presented to T. David Franklin by Councilman Shaffer, on behalf of Council, recognizing Mr. Franklin and volunteers for earning first place for their local community service project entitled "*Knock, Knock . . Who's There*."

**MOTION** by Vice Mayor Vanhorn, **SECONDED** by Councilman Hunt to amend the title of Agenda Item No. 7 from the following:

*CONSIDERATION OF **FIRST READING** OF AN **ORDINANCE** OF THE CITY OF CLARKSBURG ADOPTING THE POLICIES AND PROCEDURES OF THE NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS)*

to

*CONSIDERATION OF **FIRST READING** OF AN **ORDINANCE** OF THE CITY OF CLARKSBURG AMENDING ARTICLE 107 OF PART ONE OF THE CODIFIED ORDINANCES OF THE CITY OF CLARKSBURG BY ENACTING ARTICLE 107.06 FOR ADOPTING THE POLICIES AND PROCEDURES OF THE NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS)*

**MOTION APPROVED UNANIMOUSLY.**

Mayor Thompson called for petitions, communications and public hearings with the following individuals appearing therefor:

**Ugo Annibale** – remarked on the old Sheraton Hotel stating that he was surprised that the City never asked the State to give them the building opining that the building could be used as a school. Mr. Annibale remarked that Council was not focusing on the future on the town and opined that the sidewalk program was of no value as it was cosmetic.

**Kenneth Jenkins**, 407 Simpson Avenue – appeared before Council regarding smoking in fraternal clubs/organizations. Mr. Jenkins advised that there were periods during youth-involved events and other times wherein "no smoking" is permitted at the Moose Lodge and advised of his support to exempt fraternal clubs/organizations form the smoking ban.

**MOTION** by Councilman Trecost, **SECONDED** by Councilwoman Bailey for approval of the minutes of the Regular Session held on April 2, 2009. **MOTION APPROVED UNANIMOUSLY.**

✓ **AGENDA ITEM NO. 5**: **CONSIDERATION OF SECOND READING OF AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF CLARKSBURG AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF CLARKSBURG OF NOT MORE THAN $3,000,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA SRF PROGRAM), AND NOT MORE THAN $3,000,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES B (WEST VIRGINIA SRF PROGRAM); 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 BOND PURCHASE AGREEMENTS RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO**

**MOTION** by Vice Mayor Vanhorn, **SECONDED** by Councilwoman Bailey for approval of the above-captioned ordinance on second reading. **MOTION APPROVED UNANIMOUSLY.**

**AGENDA ITEM NO. 6**: **CONSIDERATION OF SECOND AND FINAL READING AND PUBLIC HEARING OF AN ORDINANCE OF THE CITY OF CLARKSBURG AMENDING ARTICLE 1720(b), 1720.01(c), 1720.01(d) AND 1720.05 OF PART 17 OF THE CODIFIED ORDINANCES OF THE CITY OF CLARKSBURG RENAMING AND REDESIGNATING THE BOCA CODE APPEALS BOARD AS THE BUILDING CODE APPEALS BOARD; REVISING AND MODIFYING MEMBERSHIP REQUIREMENTS AND OTHER PROVISIONS RELATING TO THE BUILDING CODE APPEALS BOARD TO COMPLY WITH REVISIONS OF THE PROPERTY MAINTENANCE REGULATIONS WITHIN THE STATE BUILDING CODE**

The City Clerk advised that notices regarding the public hearing for Agenda Item No. 6 appeared in *The Clarksburg Exponent/Telegram* on April 7, 2009 and April 14, 2009 and that the Publisher's Certificate would be filed with the permanent record. Mayor Thompson declared the public hearing open with no one appearing therefor. Upon closing the public hearing, **MOTION** by Councilwoman Bailey, **SECONDED** by Councilman Hunt for approval of the above-captioned ordinance on second and final reading. **MOTION APPROVED 6-0 with Councilman Shaffer abstaining citing the reason as his appeal before the BOCA Board.**

**AGENDA ITEM NO. 7**: **CONSIDERATION OF FIRST READING OF AN ORDINANCE OF THE CITY OF CLARKSBURG AMENDING ARTICLE 107 OF PART ONE OF THE CODIFIED**

**ORDINANCES OF THE CITY OF CLARKSBURG BY ENACTING ARTICLE 107.06 FOR ADOPTING THE POLICIES AND PROCEDURES OF THE NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS)**

**MOTION** by Vice Mayor Vanhorn, **SECONDED** by Councilwoman Bailey for approval of the above-captioned ordinance on first reading. **MOTION APPROVED UNANIMOUSLY.**

**AGENDA ITEM NO. 8:** **CONSIDERATION OF A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLARKSBURG AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE WEST VIRGINIA DEVELOPMENT OFFICE TO MODIFY THE USE OF A PREVIOUSLY AWARDED 2007 COMMUNITY PARTICIPATION GRANT IN THE AMOUNT OF $30,000**

**MOTION** by Vice Mayor Vanhorn, **SECONDED** by Councilwoman Bailey for adoption of the above-captioned resolution. **MOTION APPROVED UNANIMOUSLY.**

**AGENDA ITEM NO. 9:** **CONSIDERATION OF A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLARKSBURG EXPRESSING SUPPORT OF FRATERNAL ORGANIZATIONS SEEKING TO BE EXEMPT FROM THE RULES AND REGULATIONS SET FORTH IN THE "HARRISON COUNTY CLEAN INDOOR AIR REGULATION OF 2008" SHOULD SAID REGULATION BE REINSTATED**

**MOTION** by Councilwoman Bailey, **SECONDED** by Councilman Hunt for adoption of the above-captioned resolution. **MOTION APPROVED 6-0 with Councilman Shaffer abstaining citing that he is a founder of a business that does business with said organizations.**

**AGENDA ITEM NO. 10:** **CITY MANAGER'S REPORT/UPDATE**

City Manager Martin Howe discussed the following written report provided to Council:

**Follow-up/General Updates**

1. Demolition – Sealed quotes were opened on Monday, April 13, 2009 for the demolition of structures located at 209, 211 and 211 ½ Northcott St. The lowest quote was submitted by Feline Excavation and Construction in the amount of $5,550 for 209 Northcott St. and $7,595 for 211 and 211 ½ Northcott. I recommend Council approve bids and the contractor will begin demolition on Monday, April 20, 2009.
2. Budget – Tuesday, April 21st at 8am there will be a mandatory special meeting to adopt the Levy Order for property-tax levy rates for 2009-2010.
3. Prescription Drug Card – From March 1, 2009 to March 31, 2009, two hundred twenty-five (225) registered cards have been used five hundred fourteen (514) times with a monthly savings of $6,752. The total savings to date is $19,734.
4. Spring Clean-up has been completed. This year's Spring Clean-up produced two hundred twenty-four (224) tons of waste which included one thousand, five hundred ninety-seven (1,597) tires. City crews have hauled one hundred fifty-seven (157) loads totaling $8,515.04 in tipping fees at S & S Landfill.
5. Waste Management – Waste Management has filed for a restructuring of rates. Residential Customers will have a usage sensitive rate, while Commercial Customers could have an increase of 12.84%.
6. Emily Dr. and James St. Traffic Signal – The West Virginia Department of Highways has awarded the project as of April 9, 2009. The project completion date is scheduled for August 14, 2009.

7. Energy Audit – CLT has continually been conducting an Energy Audit on city owned property. The Administration anticipates receiving the Investment Grade Audit in late May for review.
8. At a recent City Council Meeting we received a traffic request to make Adams Ave. a one way street. One hundred two (102) surveys were mailed out on Monday, April 13th to residents in the vicinity regarding the request. To date we have received approximately fifty (50) responses. The Traffic Commission will assess this request along with the responses at a later date.
9. The city's partnership with Service Line Warranties of West Virginia was announced on Tuesday, April 14, 2009 at the Habitat for Humanity House. This partnership will offer property owner's warranties on utilities from their meter to their home.

## Sanitary Board

1. The Sanitary Board has approved a contract with Energy Contractors, LLC to lease property adjacent to the Waste Water Treatment Plant. I recommend Council's approval of this contract.
2. Bid Opening for the $2.5 million Sanitary Sewer Project is scheduled for Tuesday, April 21st.

## Police & Fire

1. Police –
   a. Applied for a $50,450 Justice Assistance Grant to be used for air cards and service to provide internet access to be utilized with the laptops in the police vehicles.
   b. Applied for a $70,808 Justice Assistance Grant, for the Hope Stop Program to deter domestic violence. Our department will receive $27,000 from this grant and the remainder will be distributed among other agencies for the Hope Stop Program to deter domestic violence.

2. Fire – Selling 1985 Pumper Truck as surplus property, bids are due Friday, April 17th at 10am. If there are any successful bidders this item will be included on Council's agenda at the Special Meeting on Tuesday, April 21st to take action.

With regard to the first police grant referenced hereinabove, Councilman Hunt inquired as to the length of said grant with Mr. Howe confirming that said grant was for two years and Lt. Matheny adding that the cost of said service is $49.00 per month, per card. It was confirmed that said card would provide officers with direct Internet and e-mail access.

CITY CLERK'S INFORMATION:

A. ZONING FORM IN CONNECTION WITH A "NOTICE OF APPLICATION TO OPERATE: A PRIVATE CLUB, PRIVATE WINE RESTAURANT OR TAVERN" FILED BY ARMONDO'S PIZZERIA, LLC, 410 N. 4TH STREET – RETURNED TO APPLICANT ON APRIL 13, 2009

**UNFINISHED BUSINESS:** None.

**NEW BUSINESS:**

A. **CONSIDERATION OF RATIFICATION AND APPROVAL OF LEASE AGREEMENT BETWEEN CLARKSBURG SANITARY BOARD AND ENERGY CONTRACTORS, LLC**

**MOTION** by Vice Mayor Vanhorn, **SECONDED** by Councilwoman Bailey for approval of the above-captioned matter. **MOTION APPROVED UNANIMOUSLY.**

**B. CONSIDERATION OF AWARD OF BID FOR THE EMERGENCY DEMOLITION OF STRUCTURE LOCATED AT 209 NORTHCOTT STREET**

**MOTION** by Vice Mayor Vanhorn, **SECONDED** by Councilman Lopez to award the bid for the emergency demolition of the structure located at 209 Northcott Street to Feline Construction in the amount of $5,550.00. **MOTION APPROVED UNANIMOUSLY.**

**C. CONSIDERATION OF AWARD OF BID FOR THE EMERGENCY DEMOLITION OF STRUCTURES LOCATED AT 211-211 ½ NORTHCOTT STREET**

**MOTION** by Vice Mayor Vanhorn, **SECONDED** by Councilwoman Bailey to award the bid for the emergency demolition of the structures located at 211-211 ½ Northcott Street to Feline Construction in the amount of $7,595.00. **MOTION APPROVED UNANIMOUSLY.**

**D. CONSIDERATION OF A PETITION FILED BY JOSEPH OLIVERIO II REQUESTING THE ABANDONMENT OF A PORTION (3' X 350') STRIP OF THE RIGHT-OF-WAY OF LAFAYETTE STREET**

**MOTION** by Councilwoman Bailey, **SECONDED** by Vice Mayor Vanhorn to forward the above-captioned petition to the Planning & Zoning Commission for their review, public hearing and recommendation. Under discussion, Councilman Hunt inquired if there was another way to allow for the use of said right-of-way without abandoning said property with Mr. Morgan advising that he would look into the same. Councilman Hunt commended Mr. Oliverio for the work he has done in said area. **MOTION APPROVED UNANIMOUSLY.**

**E. OPEN FORUM DISCUSSION OF ETHICS FOR CITY OF CLARKSBURG**

Councilman Shaffer stated that he asked for this topic to be included on the Agenda so Council could discuss what they believe is ethical pointing out that West Virginia has its own Ethics Commission that elected officials are required to abide by. Councilman Shaffer further stated that recently his own actions had been called into question by the City Manager; therefore, he believed it was time to discuss ethics in an open forum so that citizens can get a better understanding of what it means to be ethical or, at least, what City leaders believe to be ethical. Councilman Shaffer suggested that maybe Council should develop its own code of ethics. Councilman Shaffer continued that when he got elected he wanted to restore integrity to the City and Council of Clarksburg. Councilman Shaffer opined that Clarksburg has a bad reputation among some of our citizens and in Charleston and remarking that Council has not worked on this issue during his tenure on Council.

Councilman Shaffer stated that he wanted to present specific issues to Council for determination as to whether the same were ethical. Councilman Shaffer questioned personnel matters stating that our personnel code calls for such records to be confidential and the West Virginia Code of Ethics states that one may not knowingly or improperly disclose confidential information acquired through public position. Councilman Shaffer went on to state that the Code of Ethics states that *[an elected official]* should use their positions for the public benefit and not for their own private gain or gain of another. Councilman Shaffer inquired if Council's recent endorsement of a contract with a private business to perform a service was ethical and if the hiring of relatives for city jobs should be determined unethical.

Councilman Shaffer referenced private interest in public contracts, purchases and sales, remarking that the West Virginia Ethics state that *[an elected official]* may not have a financial interest in any contracts, purchase or sale, over which your public position gives you control nor may your spouse or dependent parent, dependent children or any business which you or they have an ownership interest greater than ten percent. Councilman Shaffer stated that one of the ethics concerns raised on him was his voting on issues regarding his son-in-law.

*(At this point, Mr. Howe asked to be excused from the meeting if there was going to be discussion about a potential on-going ethics violation that he filed with permission to be excused granted by the Mayor and Mr. Howe exiting the room).*

Councilman Shaffer continued by stating that his son-in-law is not his dependent and that he had previously received permission from the Ethics Commission to vote on such issues. Councilman Shaffer stated that he did not make any money off of his son-in-law, who was the lowest bidder on various projects, and that he had no influence on his contract. Councilman Shaffer inquired if it was ethical for the City to have charged thousands of dollars at an establishment where one Councilmember worked and whose relatives owned the establishment. Councilman Shaffer added that he voted against awarding contracts wherein he believed the system was flawed concerning the cost of demolitions.

Councilman Shaffer opined that controversy should be settled by negotiation before thousands of dollars are spent on litigation. Councilman Shaffer referenced ICMA's Code of Ethics and cited sections thereof. Councilman Shaffer inquired if it was wrong for a Councilmember to demand a pay raise for relatives or friends. Councilman Shaffer remarked that with regard to confidentiality, members should not divulge or discuss information with anyone about ethics cases except as specifically authorized by the rules of procedure for enforcement of the Code of Ethics.

Councilman Shaffer referenced the sidewalk program alleging that many times Council members have spun the report from the Prosecutor's Office and that customers were told to hire a certain vendor with over $400,000 of sidewalk money going to one vendor.

Councilman Shaffer remarked that he was not aware of all the facts when Council approved the changes to the police department rules and regulations which allow police officers to have a DUI on their record. Councilman Shaffer stated that members should disclose personal relationships to the governing body and that members should not endorse commercial products or services. Councilman Shaffer stated that he would like for the Mayor to appoint a committee of citizens, without any influence by Council, to review some of these issues. Councilman Shaffer remarked that he is confused on this subject.

Councilman Shaffer stated that part of the ethics investigation deals with a November 2007 letter from a contractor to the City complaining about him *[Councilman Shaffer]* taking pictures of the contractor's employees working. Councilman Shaffer informed that he did take such pictures alleging that the City changed the requirements of the contract regarding the party responsible for providing dirt as well as the requirement for the removal of all masonry on site.

Councilman Shaffer remarked that he, as a citizen, has the right to know what his tax dollars are being spent on and further that the appropriate place to discuss ethics is at a council meeting.

*(At this time, Mr. Howe was summonsed to return to the meeting).*

**COUNCIL COMMENTS:**

Councilman Lopez: Expressed appreciation to all for attending this evening's meeting, invited everyone to his kick-off rally on May 5th at the Osbourne Shelter; thanked the Public Works for another successful spring clean-up and noted the many positive programs and projects that have taken place.

Councilman Hunt: In reference to Mr. Annibale's earlier remarks concerning the old Sheraton building, Councilman Hunt apprised that then-Governor Wise committed to building a new state building; however, the State backed out of its plan and further, that the City continuously asked the State for ownership of the property. Councilman Hunt informed that said building was an old 1960s style hotel having no handicapped accessibilities and pointing out that the demolition of said building will open up the largest developable site that the City has had in its downtown. Councilman Hunt noted the positive effect of the demolition program throughout the city and the neighborhoods. Councilman Hunt informed that City Manager Martin Howe has been selected for a prestigious award given by *The State Journal* as one of "40 under 40", a young professional leadership recognition, with Mr.

Howe receiving applause for his accomplishment. In closing, Councilman Hunt shared that his wife was recently a victim of identity theft and commended the Clarksburg Police Department for their professional manner in efficiently and effectively handling this situation.

Councilwoman Bailey: Shared information about solar energy use for cities and referenced the informative ad in the newspaper by the Harrison County Waste Authority regarding the disposal of medicines. With regard to the old Sheraton building/John W. Davis Building, Councilwoman Bailey concurred with Councilman Hunt's remarks concerning the difficulties of the building as to handicapped accessibility, etc. and remarked that the concept of a culinary school in said building had been previously recommended by citizen Bernard Folio; however, the State was not interested in such concept. With regard to the company that will be providing the opportunity to our citizens for warranties for utilities, Councilwoman Bailey remarked that this is a program that has been endorsed by the WV Municipal League. Councilwoman Bailey expressed enthusiasm with the sidewalk program to start back up on May 1st noting that the citizens was not able to benefit from this program last year and pointing out that the program has merely been "tweaked" which will lower the amount of money available to the citizens. Councilwoman Bailey remarked that approximately $100,000 was lost on the perception that there was corruption with this program. With regard to the Waldomore, Councilwoman Bailey inquired as to the proposed chain-link fence with Mr. Howe informing that said fence has been installed in the rear of the property. Councilwoman Bailey closed her remarks by reading the City's mission statement contained in the personnel handbook commending the employees for adhering to said statement in serving the citizens with the utmost respect, integrity and honesty in an effort to achieve the highest professional standards and accountability.

Councilman Shaffer: In response to Mr. Annibale's comments concerning the concept of a culinary school, Councilman Shaffer remarked that the same was an excellent idea that could possibly be carried out by Fairmont State University and/or Vandalia. Councilman Shaffer stated that he took issue with his colleague concerning the monies lost on the sidewalk program and adding that monies dedicated to the sidewalk program were put to use on the Amphitheater project. Councilman Shaffer alleged that there were deficiencies with the sidewalk program including letters sent to citizens advising of their placement on a waiting list. Councilman Shaffer opined that the corrupt program has now been fixed. Councilman Shaffer stated that he was disappointed that issues were brought before the Ethics Commission rather than being addressed through Council.

Vice Mayor Vanhorn: With regard to the warranty for utilities, Vice Mayor Vanhorn stated that Dominion offered coverage/protection for gas lines; however, the company endorsed by the WVML offered water and sewage coverage as well. Vice Mayor Vanhorn concurred with the earlier remarks concerning the status of the old Sheraton building; expressed pride in being a citizen of Clarksburg and being elected to serve our citizens; and pointed out that many positive things are happening in Clarksburg.

Councilman Trecost: Noted many positive developments such as the building expansions of Dominion, Bosley and the growth at the Industrial Park site.

Councilman Shaffer remarked on a comment in the newspaper concerning the business of American Vending with Councilman Hunt apologizing to anyone who may have been offended by the retort which was made in response to Councilman Shaffer's remark that Council did not have the expertise to evaluate the City Manager.

There being no further business to come before Council, **MOTION** by Councilman Hunt, **SECONDED** by Vice Mayor Vanhorn and **APPROVED UNANIMOUSLY** for adjournment.

Dan Thompson

Mayor Dan Thompson

Approved: May 7, 2009

Annette M. Wright

Annette M. Wright, City Clerk

# CITY OF CLARKSBURG

222 WEST MAIN STREET • CLARKSBURG, WV 26301 • PH. (304) 624-1673 • FAX (304) 624-6135

OFFICE OF CITY CLERK


STATE OF WEST VIRGINIA,
COUNTY OF HARRISON,
MUNICIPALITY OF CLARKSBURG, TO-WIT:

I, Annette M. Wright, Clerk of the City of Clarksburg, West Virginia, do hereby declare the attached to be a true and accurate copy of the Minutes of the Council of the City of Clarksburg for the regular session held on May 7, 2009. Said Minutes were approved June 4, 2009 and are of record in my office in Minute Book No. 23, at page 610.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the Official Seal of said City on this the 5th day of June, 2009.

Annette M. Wright

ANNETTE M. WRIGHT, CMC
CITY CLERK
CITY OF CLARKSBURG, WEST VIRGINIA

[SEAL]

# MAY 7, 2009

The Clarksburg City Council met in REGULAR SESSION on Thursday, May 7, 2009 at 7:00 P.M. at the Clarksburg Municipal Building – Council Chambers, 222 West Main Street, Clarksburg, West Virginia, with Mayor Thompson presiding.

**COUNCIL MEMBERS PRESENT:**

Margaret Bailey
James Hunt
Sam Lopez
Martin Shaffer
Patsy Trecost II
Vice Mayor B.K. Vanhorn
Mayor Dan Thompson

**ALSO PRESENT:**

Martin Howe, City Manager
Gregory Morgan, City Attorney
Annette Wright, City Clerk

The opening prayer was offered by Councilwoman Bailey with Councilman Shaffer leading in the Pledge of Allegiance.

Council deviated from the Agenda for the following presentations:

(1) Sarah Jansen, Project Manager with Focus WV Brownfields Program, presented Council with a check for the Adamston Flat property clean-up project.
(2) Proclamation presented by Vice Mayor Vanhorn, on behalf of Council, to Captain New and members of the Salvation Army proclaiming May 11-17, 2009 as "National Salvation Army Week."

Mayor Thompson called for petitions, communications and public hearings with the following individuals appearing therefor:

**David L. Meadows**, 165 Winding Way – appeared before Council to discuss the rate increase proposed by Waste Management informing that he would be opposing the rate increase and urged Council to do the same. Mr. Meadows cited the following reasons for his opposition: (1) increase unnecessary at this time as fuel cost has been lowered; (2) increase appears to be in excess of 11.49% for residential customers; (3) the mandatory rental of the container from Waste Management; (4) harm the recycling program; and (5) increase cost would result in littering.

**Kimberly Davis**, P.O. Box 345, Clarksburg – appeared before Council to inform of offensive graffiti located behind the old Sheraton building and provided pictures relative thereto. Mr. Howe advised that the graffiti would be taken care of the very next day. Also, Ms. Davis referenced comments contained in the newspaper regarding Council's last meeting noting the controversy therewith. Ms. Davis stated that Councilman Shaffer's election materials indicated what he was going to be doing, that everyone has the right to be heard and that there must have been people who wanted him to represent them as he was elected.

With Mr. Bob Orndorff and Corky DeMarco signing up to speak about the Marcellus well issue, Council agreed to deviate from the agenda to address the single item found under "Unfinished Business" being:

**DISCUSSION OF THE CONTRACT REGARDING BRINE WATER AND THE DISPOSITION OF THE BRINE**

Mr. Orndorff stated that he was not here this evening in his capacity as an employee of Dominion; however, he did want to address the disposal of frac fluids in the Waste Treatment Plant and introduced Mr. Corky DeMarco, Executive Director of the WV Oil and Natural Gas Association. Mr. DeMarco informed that hydraulic fracing has been around for many years and explained the known ingredients of the formula and how the same works. Mr. DeMarco advised that he would provide information to those interested as well as attend future meeting(s) to answer questions.

Councilman Shaffer informed that he put this item on the agenda because he believed that Council needed to learn more about it. Mr. Orndorff advised that the water is tested before and after it goes through the treatment facility. Mr. DeMarco explained the treating and discharging process as well as the requirements therefor informing that the State does not have an overall total dissolved

solids for all discharge stations. Councilwoman Bailey remarked that the Sanitary Board was reviewing all available information to make informed decisions adding that she believed this to be a step in the right direction rhetorically inquiring as to what was happening to the brine before Clarksburg started to treat it. Councilwoman Bailey added that she was pleased that the City was working on this matter noting public safety being the number one priority of the City.

Mr. Greg Stark, representative of Energy Contractors, remarked that this has been a good project and commended the intelligence of Mr. Bill Goodwin, Superintendent of the Wastewater Treatment Plant. Mr. Stark informed that they worked directly with the DEP and that everything has been done within the guidelines of the DEP. Councilman Hunt commended the media for covering this matter.

**MOTION** by Councilman Trecost, **SECONDED** by Vice Mayor Vanhorn for approval of the minutes of the Regular Session held on April 16, 2009. **MOTION APPROVED UNANIMOUSLY.**

**MOTION** by Councilman Hunt, **SECONDED** by Councilwoman Bailey for approval of the minutes of the Special Session held on April 21, 2009. **MOTION APPROVED UNANIMOUSLY.**

✓**AGENDA ITEM NO. 5**: **CONSIDERATION OF THIRD AND FINAL READING AND PUBLIC HEARING OF AN ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF CLARKSBURG AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF CLARKSBURG OF NOT MORE THAN $3,000,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA SRF PROGRAM), AND NOT MORE THAN $3,000,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES B (WEST VIRGINIA SRF PROGRAM); 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 BOND PURCHASE AGREEMENTS RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO**

The City Clerk advised that notices regarding the public hearing for the above-captioned matter appeared in *The Clarksburg Exponent/Telegram* on April 23, 2009 and April 30, 2009 and that the publisher's certificate would be filed with the permanent record.

Mayor Thompson declared the public hearing open with no one appearing therefor. Upon closing the public hearing, **MOTION** by Councilman Hunt, **SECONDED** by Councilman Trecost for approval of the above-captioned ordinance on third and final reading. At the request of Councilwoman Bailey, Mr. Howe explained how the funding would be utilized to eliminate problematic lift stations, put in gravity lines, allow for new storm sewer and a new sewer line. Mr. Howe also explained that many rights-of-way would need to be acquired for said improvements. Councilman Lopez commended the Sanitary Board for their work in this matter noting that the improvements are being made without raising the rates to our customers. **MOTION APPROVED UNANIMOUSLY.**

**AGENDA ITEM NO. 6**: **CONSIDERATION OF SECOND AND FINAL READING AND PUBLIC HEARING OF AN ORDINANCE OF THE CITY OF**

**CLARKSBURG AMENDING ARTICLE 107 OF PART ONE OF THE CODIFIED ORDINANCES OF THE CITY OF CLARKSBURG BY ENACTING ARTICLE 107.06 FOR ADOPTING THE POLICIES AND PROCEDURES OF THE NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS)**

The City Clerk advised that notices regarding the public hearing for Agenda Item No. 6 appeared in *The Clarksburg Exponent/Telegram* on April 21, 2009 and April 28, 2009 and that the publisher's certificate would be filed with the permanent record.

Mayor Thompson declared the public hearing open with no one appearing therefor. Upon closing the public hearing, **MOTION** by Councilwoman Bailey, **SECONDED** by Vice Mayor Vanhorn for approval of the above-captioned ordinance on second and final reading. **MOTION APPROVED UNANIMOUSLY.**

**AGENDA ITEM NO. 7:** **CONSIDERATION OF A RESOLUTION OF THE COUNCIL OF THE CITY OF CLARKSBURG ADOPTING AN EMERGENCY OPERATIONS PLAN ESTABLISHING SPECIFIC OPERATIONAL RESPONSIBILITIES AND PRESCRIBING ACTIONS NECESSARY TO RESPOND TO DISASTERS OR EMERGENCIES**

**MOTION** by Vice Mayor Vanhorn, **SECONDED** by Councilwoman Bailey for adoption of the above-captioned resolution. **MOTION APPROVED UNANIMOUSLY.**

**AGENDA ITEM NO. 8:** **CONSIDERATION OF A RESOLUTION APPOINTING EMERGENCY ABSENTEE VOTING COMMISSIONERS FOR THE GENERAL ELECTION TO BE HELD IN THE CITY OF CLARKSBURG ON TUESDAY, JUNE 2, 2009**

**MOTION** by Vice Mayor Vanhorn, **SECONDED** by Councilwoman Bailey for adoption of the above-captioned resolution to appoint Abbie Pierce and Peggy Krupia as Emergency Absentee Voting Commissioners for the City's June 2, 2009 Election. **MOTION APPROVED UNANIMOUSLY.**

**AGENDA ITEM NO. 9:** **CITY MANAGER'S REPORT/UPDATE**

City Manager Martin Howe discussed the following written report provided to Council:

**Follow-up/General Updates**

1. Paving – The Bid Opening for this year's paving project was held this past Monday, May 4th. The City received two (2) bids for this project. The low bid was submitted by Dodd General Contractors with a base bid of $206,975.16 for resurfacing and $5,378.76 for milling, totaling $212,353.92. I recommend that Council award this bid.
2. Emily Drive Traffic Signal Project – Contractors began the project this week by removing four (4) of the street lights currently in place.
3. Surplus Property – The City will be conducting a sale of fourteen (14) city vehicles and equipment by sealed bid:
   a. Advertise for bids on Wednesday, May 13th and Wednesday, May 20th.
   b. Bid Opening is scheduled for Monday, June 1st at 10:00 a.m.
   c. Council to award bids on Thursday, June 4th.
4. Health Board – I have been staying in constant communication with the Clarksburg-Harrison Health Department Director and Health Board members regarding the swine flu. There is a Pandemic Influenza Community Response Plan in place, if needed.
5. Utility Services Agreement – Approximately 6,600 letters were sent out to property owners on April 15th. The company has received a 4% response rate of property owners taking advantage of the service.
6. Public Works – Filled one (1) vacancy in the Public Works Department.

## Police & Fire

1. Police –
   a. Reinstated Officer Chris Willis was sworn in on Friday, May 1st. Our staffing level is currently forty-three (43) offices with one (1) vacancy left to fill.
   b. The City of Clarksburg will be hosting a Fallen Officer Memorial Program on Monday, May 11th at 8:30 a.m. in front of City Hall. The Clarksburg Police Color Guard will be lowering the flag to half-mast.

## Grants/Projects

1. Safe Routes to School – The Interview Committee has interviewed all six (6) firms in which submitted proposals for the Safe Routes to School project. The Committee recommends that we negotiate a contract with Hornor Brothers Engineers of Clarksburg.

## FOIA

1. *The Exponent Telegram* filed a FOIA request on April 30, 2009 requesting a copy of the discharge monitoring reports the Sanitary Board has compiled to date regarding the receipt of brine water, also called the frac fluid. This information will be made available on Monday, May 11th at 9:00 a.m.

## Events

1. On the evening of Tuesday, June 30, 2009, the Official United States Army Field National Band will be performing a free concert at Jackson Square.

**UNFINISHED BUSINESS:**

A. **DISCUSSION OF THE CONTRACT REGARDING BRINE WATER AND THE DISPOSITION OF THE BRINE** - (*Previously addressed during petitions*).

**NEW BUSINESS:**

A. **DISCUSSION OF AWARDING OF BID FOR RESURFACING AND MILLING OF CITY STREETS AND ALLEYS**

**MOTION** by Councilwoman Bailey, **SECONDED** by Vice Mayor Vanhorn to award the bid for resurfacing and milling of City streets and alleys to Dodd General Contractors in the amount of $212,353.92. **MOTION APPROVED UNANIMOUSLY.**

B. **CONSIDERATION OF APPROVAL OF RECOMMENDATION OF INTERVIEW COMMITTEE ON FIRM TO PROVIDE CONSULTING SERVICES FOR SAFE ROUTES TO SCHOOLS SIDEWALK – CURB PROJECT**

**MOTION** by Vice Mayor Vanhorn, **SECONDED** by Councilwoman Bailey to accept the recommendation of the Interview Committee on the firm to provide consulting services for Safe Routes to School Sidewalk – Curb project and further to authorize the City Manager to negotiate a contract therefor with Hornor Brothers. **MOTION APPROVED UNANIMOUSLY.**

C. **CONSIDERATION TO WAIVE COMPETITIVE BIDDING FOR THE CONSTRUCTION OF A FIRING RANGE TRAINING TOWER**

**MOTION** by Vice Mayor Vanhorn, **SECONDED** by Councilman Hunt to waive competitive bidding for the construction of a firing range training tower and to award the contract therefor to Haught & Sons Construction in the amount of $15,768.00. **MOTION APPROVED UNANIMOUSLY.**

## D. DISCUSSION OF WEBSITE

Councilman Shaffer advised that he had this item placed on the agenda commenting that the City's website is looking better and that the website serves as a great marketing tool. Councilman Shaffer commended Staunton, Virginia's website opining that we should do something similar thereto as well as adding Council contact information to our website. Councilman Hunt noted available features of other city websites and suggested that the IT person be contacted as to what may be needed for "upgrades" as well as costs associated therewith and possibly a demonstration of various features.

*Prior to addressing Agenda Item 11(E), Council deviated from the order of the Agenda for Council Comments.*

**COUNCIL COMMENTS:**

| | |
|---|---|
| Councilman Shaffer: | Councilman Shaffer opined that Council members' expressions during his discussion regarding ethics at the previous Council meeting were unprofessional. |
| Councilwoman Bailey: | Commended Officer Wygal and the Police Department for their work with the US Marshal's Office in capturing a sex offender; advised of the blue ribbon awards obtained by Mrs. Kozakewich and Mrs. Yoke of the Goff Plaza Garden Club for their project educating the public as to the benefits of the City's Compost Facility. |
| Councilman Trecost: | Inquired as to available help to address the condition of the riverbanks and roadsides with Mr. Howe informing that there were few groups and/or funding available to help with such projects; however, he would continue to look into the same. |
| Councilman Lopez: | Reminded of Council's agreement to financially assist the Park Board with addressing the surface of the basketball courts. |
| Councilman Hunt: | Noted the recent legislative change concerning DUIs commenting on the ability of those charged with DUIs to perform community service; pointed out how improvements to the area located on E.B. Saunders Way could assist with flooding concerns and beautification thereof; commented on the importance of City personnel to immediately address hate-related graffiti. |
| Vice Mayor Vanhorn: | Concurred with the remarks concerning prompt attention to such graffiti; commended the informative discussion concerning brine. |
| Mayor Thompson: | Recognized Matthew Mayor of the MYC who was in attendance this evening; commented on the poor condition of the Exxon property located on Joyce Street with Mr. Howe advising that a letter has been sent to the property owner; inquired as to the lights on Route 50 with Mr. Howe advising that said lights are to be addressed by the DOH. Also, Mr. Howe informed that he would again inform the DOH of the need to have the Joyce Street bridge milled. |

## E. CONSIDERATION OF EVALUATION OF CITY MANAGER AND SALARY RELATIVE THERETO

**MOTION** by Vice Mayor Vanhorn, **SECONDED** by Councilman Hunt to adjourn into Executive Session pursuant to Chapter 6, Article 9A, Section 4 of the West Virginia Code to discuss personnel matters and that the following persons be present: Mayor and Members of City Council, City Manager and City Attorney. **MOTION APPROVED UNANIMOUSLY.**

Concluding Executive Session, **MOTION** by Councilman Trecost, **SECONDED** by Vice Mayor Vanhorn to reconvene into Regular Session. **MOTION APPROVED UNANIMOUSLY.**

**MOTION** by Councilman Trecost, **SECONDED** by Councilman Hunt to give the City Manager a $4,500 increase in annual salary effective July 1st. Under discussion, Councilwoman Bailey remarked that the City Manager received a positive evaluation and expressed concern with granting any increase under $5,000. Councilman Hunt noted Mr. Howe's recent recognition in being named as one of 40 outstanding leaders in the State, remarked on his professional representation of our City and pointed out that Mr. Howe is one of the lowest paid city managers noting his experience and responsibilities. **MOTION APPROVED 6-1 (upon Councilwoman Bailey changing her opposing vote) with Councilman Shaffer casting the dissenting vote. Councilwoman Bailey commented that she originally voted against said motion opining that the City Manager is deserving of a larger increase.**

There being no further business to come before Council, **MOTION** by Councilman Hunt, **SECONDED** by Vice Mayor Vanhorn and **APPROVED UNANIMOUSLY** for adjournment.

Dan Thompson
Mayor Dan Thompson

Approved: June 4, 2009

Annette M. Wright
Annette M. Wright, City Clerk

NOTICE OF PUBLIC HEARING ON THE CITY OF CLARKSBURG BOND ORDINANCE

A public hearing will be held on the followingentitled Ordinance at a regular meeting of the Council of the City of Clarksburg (the "City") to be held on Thursday, May 7, 2009, at 7:00 p.m. at the City Hall, 222 West Main Street, Clarksburg, West Virginia, and at such hearing any person interested may appear before the City and present protests, and all protests and suggestions shall be heard by the City and it shall then take such actions as it shall deem proper in the premises upon an Ordinance entitled:

CITY OF CLARKSBURG ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF CLARKSBURG AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF CLARKSBURG OF NOT MORE THAN $3,000,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA SRF PROGRAM), AND NOT MORE THAN $3,000,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA SRF PROGRAM); 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 BOND PURCHASE AGREEMENTS RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

The abovequoted title of the Ordinance describes generally the contents thereof and the purposes of the Bonds contemplated thereby. The City contemplates the issuance of the Bonds described in the Ordinance. The proceeds of the Bonds will be used (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the public sewerage system of the Issuer (the "Project"); (ii) to fully fund the Reserve Accounts; and (iii) to pay certain costs of issuance of the Bonds (the "Bonds") and related costs. The Bonds are payable only from the Net Revenues to be derived from the operation of the System. No taxes may at any time be levied for the payment of the Bonds or the interest thereon.

The above-entitled Ordinance was adopted by the Council of the City of Clarksburg on April 16, 2009. A certified copy of the aboveentitled Ordinance is on file with the City for review by interested parties during regular office hours. Following the public hearing, the City intends to enact the Ordinance upon final reading.

/s/ Dan Thompson
Mayor

# PUBLISHER'S CERTIFICATE

I, Sara V. Shingleton, Classified Manager of THE EXPONENT TELEGRAM, a newspaper of general circulation published in the City of Clarksburg, County and state aforesaid, do hereby certify that the annexed:

NOTICE OF PUBLIC HEARING

was published in THE EXPONENT-TELEGRAM 2 time(s) commencing on
the 23rd day of April 2009 and ending on
the 30th day of April 2009 at the request of
STEPTOE & JOHNSON.
Given under my hand this 4th day of May 2009

The publisher's fee for said publication is: $97.60
for 429 words at $0.1138 per word per day.

Sara V. Shingleton
Classified Manager of The Exponent-Telegram

SEAL

Subscribed to and sworn to before me this 4th day of May 2009.

Shelley P. Riffle
Notary Public in and for Harrison County, WV

My commission expires on:
The 21 day of July 2009

OFFICIAL SEAL
NOTARY PUBLIC
STATE of WEST VIRGINIA
SHELLEY P. RIFFLE
Clarksburg Publishing Co.
PO Box 2000, 324 Hewes Ave.
Clarksburg, WV 26302-2000
My Commission Expires July 21, 2009

**WV MUNICIPAL BOND COMMISSION**
1207 Quarrier Street
Suite 401
Charleston, WV 25301
(304) 558-3971

**NEW ISSUE REPORT FORM**

Date of Report: 7/8/2009

ISSUE: City of Clarksburg
Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program)

ADDRESS: 222 West Main Street, Clarksburg, West Virginia 26301 COUNTY: Harrison

PURPOSE OF ISSUE:
New Money: X
Refunding:

REFUNDS ISSUE(S) DATED: NA

ISSUE DATE: 7/8/2009

CLOSING DATE: 7/8/2009

ISSUE AMOUNT: $1,000,000.00

RATE: 0%; Administrative Fee 1%

1ST DEBT SERVICE DUE: 1-Sep-10

1ST PRINCIPAL DUE 1-Sep-10

1ST DEBT SERVICE AMOUNT 12,500.00

PAYING AGENT: Municipal Bond Commission

BOND COUNSEL:
Firm: Steptoe & Johnson PLLC
Contact John Stump, Esquire
Phone: (304) 353.8196

UNDERWRITERS COUNSEL
Firm: Jackson Kelly, PLLC
Contact: Samme Gee, Esquire
Phone: (304) 340-1318

CLOSING BANK:
Bank: Huntington Bank
Contact: Margaret Saliga
Phone: 304.623.7106

ESCROW TRUSTEE:
Firm:
Contact:
Phone:

KNOWLEDGEABLE ISSUER CONTACT
Contact: Dan Thompson
Position: Mayor
Phone: (304) 624.1677

OTHER:
Agency: W.V. Department of Environmental Protection
Contact: Rosalile Brodersen
Position: Program Manager
Phone: (304) 926.0499 (ext. 1608)

DEPOSITS TO MBC AT CLOSE
By: x Wire
Check

Accrued Interest: $
Capitalized Interest: $
x Reserve Account: $ $50,000.00
Other: $

REFUNDS & TRANSFERS BY MBC AT CLOSE
By: Wire
Check
IGT

To Escrow Trustee $
To Issuer $
To Cons. Invest. Fun $
To Other: $

NOTES: The Series 2009 A Bonds to be funded with bond proceeds.

FOR MUNICIPAL BOND COMMISSION USE ONLY:
DOCUMENTS REQUIRED:
TRANSFERS REQUIRED:

**WV MUNICIPAL BOND COMMISSION**
1207 Quarrier Street
Suite 401
Charleston, WV 25301
(304) 558-3971

**NEW ISSUE REPORT FORM**

Date of Report: 7/8/2009

ISSUE: City of Clarksburg
Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA)

ADDRESS: 222 West Main Street, Clarksburg, West Virginia 26301 COUNTY: Harrison

PURPOSE OF ISSUE:
New Money: X
Refunding: ____

REFUNDS ISSUE(S) DATED: NA

ISSUE DATE: 7/8/2009

CLOSING DATE: 7/8/2009

ISSUE AMOUNT: $1,000,000.00

RATE: 0%; Administrative Fee 0%

1ST DEBT SERVICE DUE: 100% forgivable

1ST PRINCIPAL DUE 100% forgivable

1ST DEBT SERVICE AMOUNT 100% forgivable

PAYING AGENT: Municipal Bond Commission

BOND COUNSEL:
Firm: Steptoe & Johnson PLLC
Contact John Stump, Esquire
Phone: (304) 353.8196

UNDERWRITERS COUNSEL
Firm: Jackson Kelly, PLLC
Contact: Samme Gee, Esquire
Phone: (304) 340-1318

CLOSING BANK:
Bank: Huntington Bank
Contact: Margaret Saliga
Phone: 304.623.7106

ESCROW TRUSTEE:
Firm: ____
Contact: ____
Phone: ____

KNOWLEDGEABLE ISSUER CONTACT
Contact: Dan Thompson
Position: Mayor
Phone: (304) 624.1677

OTHER:
Agency: W.V. Department of Environmental Protection
Contact: Rosalile Brodersen
Position: Program Manager
Phone: (304) 926.0499 (ext. 1608)

DEPOSITS TO MBC AT CLOSE
By: ____ Wire ____ Check

| | | |
|---|---|---|
| ____ | Accrued Interest: | $ ____ |
| ____ | Capitalized Interest: | $ ____ |
| ____ | Reserve Account: | $ ____ |
| ____ | Other: | $ ____ |

REFUNDS & TRANSFERS BY MBC AT CLOSE
By: ____ Wire ____ Check ____ IGT

| | | |
|---|---|---|
| ____ | To Escrow Trustee | $ ____ |
| ____ | To Issuer | $ ____ |
| ____ | To Cons. Invest. Fun | $ ____ |
| ____ | To Other: ____ | $ ____ |

NOTES: The Series 2009 B Bonds are 100% forgivable. The Series 2009 B Bonds Reserve Account will not be funded

FOR MUNICIPAL BOND COMMISSION USE ONLY:
DOCUMENTS REQUIRED: ____
TRANSFERS REQUIRED: ____

28B

CITY OF CLARKSBURG

Sewer Revenue Bonds, Series 2009 A
(West Virginia SRF Program) and
Sewer Revenue Bonds, Series 2009 B
(West Virginia SRF Program/ARRA)

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

Huntington National Bank, Clarksburg, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Ordinance of the City of Clarksburg (the "Issuer") enacted by the Issuer on May 7, 2009, and a Supplemental Resolution adopted by the Issuer on June 18, 2009 (collectively, the "Bond Legislation"), authorizing issuance of the Issuer's Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) and Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA), each dated July 8, 2009, in the respective aggregate principal amounts of $1,000,000 and $1,000,000 (collectively, 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 8th day of July, 2009.

HUNTINGTON NATIONAL BANK

By: Margaret M Saliga
Its: Authorized Officer

06.17.09
155510.00002

CITY OF CLARKSBURG

Sewer Revenue Bonds, Series 2009 A
(West Virginia SRF Program) and
Sewer Revenue Bonds, Series 2009 B
(West Virginia SRF Program/ARRA)

ACCEPTANCE OF DUTIES AS REGISTRAR

The Huntington National Bank, Charleston, West Virginia, hereby accepts appointment as Registrar in connection with the City of Clarksburg Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) and Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA), each dated July 8, 2009, in the respective aggregate principal amounts of $1,000,000 and $1,000,000 (collectively, the "Series 2009 Bonds"), and agrees to perform all duties of Registrar in connection with the Series 2009 Bonds, all as set forth in the Bond Legislation authorizing issuance of the Series 2009 Bonds.

WITNESS my signature on this 8th day of July, 2009.

THE HUNTINGTON NATIONAL BANK

By: _____
Its: Authorized Officer

06.17.09
155510.00002

CITY OF CLARKSBURG

Sewer Revenue Bonds, Series 2009 A
(West Virginia SRF Program) and
Sewer Revenue Bonds, Series 2009 B
(West Virginia SRF Program/ARRA)

CERTIFICATE OF REGISTRATION OF BONDS

The Huntington National Bank, Charleston, West Virginia, as Registrar under the Bond Legislation and Registrar's Agreement providing for the above-captioned Bonds of the City of Clarksburg (the "Issuer"), hereby certifies that on the date hereof, the single, fully registered Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program), of the Issuer, dated July 8, 2009, in the principal amount of $1,000,000, numbered AR-1, and the single, fully registered Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA), of the Issuer, dated July 8, 2009, in the principal amount of $1,000,000 numbered BR-1, were registered as to principal only 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 Registrar.

WITNESS my signature on this 8th day of July, 2009.

THE HUNTINGTON NATIONAL BANK

By: _____
Its: Authorized Officer

06.17.09
155510.00002

CITY OF CLARKSBURG

Sewer Revenue Bonds, Series 2009 A
(West Virginia SRF Program) and
Sewer Revenue Bonds, Series 2009 B
(West Virginia SRF Program/ARRA)

# REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 8th day of July, 2009, by and between the CITY OF CLARKSBURG, a municipal 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 principal amount of Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) and $1,000,000 principal amount of Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA), in fully registered form (collectively, the "Series 2009 Bonds"), pursuant to a Bond Ordinance of the Issuer duly enacted May 7, 2009, and a Supplemental Resolution and Conformed Ordinance of the Issuer duly adopted June 18, 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 Series 2009 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 Series 2009 Bonds, all as set forth in the Bond Legislation, such duties including, among other things, the duties to authenticate, register and deliver the Series 2009 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, if any, on the Series 2009 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:
City of Clarksburg
222 West Main Street
Clarksburg, West Virginia 26301
Attention: Mayor

REGISTRAR:
The Huntington National Bank
One Huntington Square
Charleston, West Virginia 25301

8. The Registrar is hereby requested and authorized to authenticate and deliver the Series 2009 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.

CITY OF CLARKSBURG

By: _____
Its: Mayor

THE HUNTINGTON NATIONAL BANK

By: _____
Its: Authorized Officer

06.17.09
155510.00002

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

Huntington

STATEMENT OF REGISTRAR'S FEES
Invoice Date July 8, 2009

**City of Clarksburg**
**Account Number 6089001809**

City of Clarksburg
Sewer Revenue Bonds, Series 2009 A
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 |
| **TOTAL DUE** | **$** | **500.00** |

* 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

**Private Financial Group**
P.O. Box 633 - WE3013
Charleston, West Virginia 25322-0633

Huntington

STATEMENT OF REGISTRAR'S FEES
Invoice Date July 8, 2009

**City of Clarksburg**
**Account Number 6089001809**

City of Clarksburg
Sewer Revenue Bonds, 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 |
| **TOTAL DUE** | **$** | **500.00** |

* 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

# CITY OF CLARKSBURG

## SEWER REVENUE BONDS, SERIES 1996
## (WEST VIRGINIA SRF PROGRAM)

## BOND ORDINANCE

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CITY OF CLARKSBURG

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF CLARKSBURG AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $6,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1996 (WEST VIRGINIA SRF PROGRAM); 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 ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF CLARKSBURG:

## ARTICLE I

## STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation"), supplemental to the Prior Ordinance (as hereinafter defined), is enacted pursuant to the provisions of Chapter 16, Article 13 and Chapter 22C, Article 2 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. The City of Clarksburg (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Harrison 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, betterments and

improvements to the existing public sewerage system of the Issuer, consisting of upgrading the existing five million gallon per day treatment plant to an eight million gallon per day unit, together with all appurtenant facilities (collectively, the "Project"), which constitute properties for the collection, transportation, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (the existing public sewerage facilities of the Issuer, the Project and any further additions thereto or extensions thereof 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 City Clerk of the Issuer.

C. 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 the operation and maintenance of the System, the principal of and interest on the Prior Bonds and the Series 1996 Bonds and to make payments into all funds, accounts and other payments provided for herein and in the Prior Ordinance, all as such terms are hereinafter defined.

D. 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 Revolving Fund program (the "SRF Program"), pursuant to the Act, in order to take advantage of the favorable terms available to the Issuer under the SRF Program.

E. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds, Series 1996 (West Virginia SRF Program) (the "Series 1996 Bonds"), in the total aggregate principal amount of not more than $6,500,000, initially to be represented by a single bond, 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. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest upon the Series 1996 Bonds prior to and during construction or acquisition and for a period not exceeding 6 months after completion of construction or acquisition of the Project; amounts which may be deposited in the Series 1996 Bonds 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, including the SRF Administrative Fee (as hereinafter defined); discount; initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 1996 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 1996 Bonds or the repayment of indebtedness incurred by the Issuer for such purposes, including the Notes (as hereinafter defined), 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 20 years.

G. It is in the best interests of the Issuer that its Series 1996 Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement by and among the Issuer, the Authority and the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of Environment (the "DEP"), in form satisfactory to the Issuer, the Authority and the DEP (the "Loan Agreement"), 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 1996 Bonds as to liens, pledge, source of and security for payment, being the Issuer's Sewer Refunding Revenue Bonds, Series 1995, dated September 7, 1995, issued in the original aggregate principal amount of $600,000 (the "Prior Bonds"), pursuant to an ordinance enacted July 20, 1995 (as supplemented, the "Prior Ordinance").

The Issuer has met the coverage requirements for issuance of parity bonds of the Prior Bonds and the Prior Ordinance and the Series 1996 Bonds shall be issued on a parity with the Prior Bonds, with respect to liens, pledge and source of and security for payment and in all other respects. The Issuer will, prior to the issuance of the Series 1996 Bonds, obtain the written consent of the Holder of the Prior Bonds to the issuance of the Series 1996 Bonds on a parity with the Prior Bonds.

Other than the Prior Bonds, there are no outstanding obligations of the Issuer which will rank prior to or on a parity with the Series 1996 Bonds as to liens, pledge and/or source of and security for payment or in any other respects.

On the date of issuance of the Series 1996 Bonds, the Issuer will use a portion of the proceeds of the Series 1996 Bonds to reimburse itself for paying in full its outstanding Sewerage System Bond Anticipation Notes, Series 1995, dated September 1, 1995, issued in the original aggregate principal amount of $900,000, of which $180,000 principal amount is currently outstanding (the "Notes"), and all interest accrued to the date of payment.

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 and issuance of the Series 1996 Bonds, or will have so complied prior to issuance of any thereof, including, among other things and without limitation, the obtaining of a certificate of public convenience and necessity, from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of

which will either have expired prior to the issuance of the Series 1996 Bonds or such final order will not be subject to appeal.

J. Pursuant to the Act, the Issuer has heretofore established a Sanitary Board, and the Sanitary Board has petitioned the Council to issue the Series 1996 Bonds for the purposes set forth herein.

K. The Project has been approved 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 Series 1996 Bonds by those who shall be 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 Registered Owners of any and all of such Series 1996 Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series, 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 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 1996 Bonds, or any other agency, board or department of the State of West Virginia that succeeds to the functions of the Authority.

"Authorized Officer" means the Mayor of the Issuer, or any other officer of the Issuer specifically designated by resolution of the Governing Body.

"Board" means the Sanitary Board of the Issuer.

"Bond Construction Trust Fund" means the Bond Construction Trust Fund established by Section 5.01 hereof.

"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 in whose name such Bond is registered.

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

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

"Bonds" means, collectively, the Series 1996 Bonds, the Prior Bonds, and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance 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.

"City Clerk" means the City Clerk of the Issuer.

"City Manager" means the City Manager of the Issuer.

"Closing Date" means the date upon which there is an exchange of the Series 1996 Bonds for the proceeds or at least a de minimis portion thereof representing the purchase price of the Series 1996 Bonds from the Authority and the DEP.

"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.

"Completion Date" means the completion date of the Project, as defined in the SRF Regulations.

"Consulting Engineers" means Thrasher Engineering, Inc., Clarksburg, West Virginia, or any qualified engineer or firm of engineers that shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System or portion thereof; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or 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 City Council of the Issuer or any other governing body of the Issuer that succeeds to the functions of the Council as presently constituted.

"DEP" means the West Virginia Division of Environmental Protection, a division of the West Virginia Bureau of Environment, or any other agency, board or department of the State that succeeds to the functions of the DEP.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

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

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

"Governing Body" means the Council 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, (ii) evidences of ownership of a proportionate interest in specified direct obligations of, or specified obligations which are unconditionally and fully guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian and (iii) obligations, the sole source of the payment of the principal of and interest on which are obligations of the nature of those described in clause (i), which are irrevocably pledged for such purposes.

"Gross Revenues" shall mean 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" shall not include any proceeds from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, 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 or the West Virginia Department of Tax and Revenue 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 any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract, investment-type property or 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, excluding, however, obligations the interest on which is excluded from gross income, under Section 103 of the Code, for federal income tax purposes other than specified private activity bonds as defined in Section 57(a)(5)(C) of the Code.

"Issuer" means the City of Clarksburg, a municipal corporation and political subdivision of the State of West Virginia, in Harrison County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body and the Sanitary Board of the Issuer.

"Loan Agreement" means the Loan Agreement, heretofore entered, or to be entered, into by and among the Authority, the DEP and the Issuer, providing for the purchase of the Series 1996 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.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 1996 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 1996 Bonds 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 1996 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 which is acquired with the gross proceeds or any other proceeds of the Series 1996 Bonds and is not acquired in order to carry out the governmental purpose of the Series 1996 Bonds.

"Notes" means the Issuer's Sewerage System Bond Anticipation Notes, Series 1995, dated September 1, 1995, issued in the original aggregate principal amount of $900,000.

"Operating Expenses" shall mean 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 Paying Agent (all as hereinafter 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 or Prior Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond or Prior Bond cancelled by the Bond Registrar or Registrar for Prior Bonds, at or prior to said date; (ii) any Bond or Prior Bonds, for the payment of which moneys, 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 deemed to have been paid as provided in Article X hereof; (iv) any Prior Bond deemed to have been paid; and (v) 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 other entity or authority designated as such for the Series 1996 Bonds in the Supplemental Resolution with the written consent of the Authority and the DEP.

"Prior Bonds" means the Issuer's Sewer Refunding Revenue Bonds, Series 1995, dated September 7, 1995, issued in the original aggregate principal amount of $600,000.

"Prior Ordinance" means, collectively, the ordinance of the Issuer enacted July 20, 1995, as supplemented by the supplemental resolution of the Issuer adopted August 17, 1995, authorizing the issuance of the Prior Bonds.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, or in any activity carried on by a person other than a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, excluding, however, use by a state or local governmental unit and use as a member of the general public. All of the foregoing shall be determined in accordance with the Code, including, without limitation, giving due regard to "incidental

use," if any, of the proceeds of the issue and/or proceeds used for "qualified improvements," if any.

"Project" means the acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer, consisting of upgrading the existing five million gallon per day treatment plant to an eight million gallon per day unit, together will all appurtenant facilities.

"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 or Federal Savings and Loan Insurance Corporation, 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 State Board of Investments pursuant to Chapter 12, Article 6 of the West Virginia Code of 1931, as amended; and

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

"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 to the Code.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund created by the Prior Ordinance and continued hereby.

"Revenue Fund" means the Revenue Fund created by the Prior Ordinance and continued hereby.

"Series 1996 Bonds" means the not more than $6,500,000 in aggregate principal amount of Sewer Revenue Bonds, Series 1996 (West Virginia SRF Program), of the Issuer.

"Series 1996 Bonds Reserve Account" means the Series 1996 Bonds Reserve Account established in the Series 1996 Bonds Sinking Fund pursuant to Section 5.02 hereof.

"Series 1996 Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1996 Bonds in the then current or any succeeding year.

"Series 1996 Bonds Sinking Fund" means the Series 1996 Bonds Sinking Fund established by Section 5.02 hereof.

"SRF Administrative Fee" means any administrative fee required to be paid pursuant to the Loan Agreement.

"SRF Program" means the State's Water Pollution Control Revolving Fund Program, under which the Authority purchases the water pollution control revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of a capitalization grant award from the United States Environmental Protection Agency and funds of the State.

"SRF Regulations" means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolution authorizing the sale of the Series 1996 Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 1996 Bonds, and not so included may be included in another Supplemental Resolution.

"System" means, collectively, the complete existing municipal sewage treatment and collection system of the Issuer, as presently existing in its entirety or any integral part thereof, and shall include the Project and any further extensions, additions, betterments and improvements thereto hereafter acquired or constructed for said 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.

Additional terms and phrases are defined in this Ordinance as they are used. 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.

## 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 $7,350,000, 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 Series 1996 Bonds hereby authorized 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, compatible with the financing plan submitted to the SRF Program.

The cost of the Project is estimated not to exceed $7,350,000, of which approximately $6,500,000 will be obtained from proceeds of the Series 1996 Bonds and approximately $850,000 from funds of the Issuer.

## 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 1996 Bonds, funding a reserve account for the Series 1996 Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 1996 Bonds 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 negotiable Series 1996 Bonds of the Issuer, in an aggregate principal amount of not more than $6,500,000. The Series 1996 Bonds shall be issued as a single Bond, designated as "Sewer Revenue Bond, Series 1996 (West Virginia SRF Program)," and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 1996 Bonds remaining after funding of the Series 1996 Bonds Reserve Account (if funded from Bond proceeds) and capitalization of interest on the Series 1996 Bonds, if any, shall be deposited in or credited to the Bond 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 1996 Bonds shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum, 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 a Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 1996 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 1996 Bonds, if any, 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 1996 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 1996 Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 1996 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 and in denominations as determined by a Supplemental Resolution. The Bonds shall be dated as of the date specified in a Supplemental Resolution and shall bear interest from such date.

Section 3.03. Execution of Bonds. The Series 1996 Bonds shall be executed in the name of the Issuer by the Mayor and the City Manager, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the City Clerk. In case any one or more of the officers who shall have signed or sealed the Series 1996 Bonds shall cease to be such officer of the Issuer before the Series 1996 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 Series 1996 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 the authorization of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 1996 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 Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 1996 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 Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 1996 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 1996 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 1996 Bonds remain outstanding, the Issuer, through the Bond Registrar as its agent, shall keep and maintain books for the registration and transfer of the Series 1996 Bonds.

The registered Series 1996 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 Series 1996 Bonds or transferring the registered Series 1996 Bonds are exercised, all Series 1996 Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 1996 Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Series 1996 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 Series 1996 Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 1996 Bonds or, in the case of any proposed redemption of Series 1996 Bonds, next preceding the date of the selection of Series 1996 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 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 1996 Bonds shall not, in any event, be or constitute an 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 1996 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 1996 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 the Series 1996 Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the operation of the System, on a parity with the lien on the Net Revenues in favor of the Holders of the Prior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Prior Bonds and the Series 1996 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 to such payments as the same become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 1996 Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 1996 Bonds to the original purchasers upon receipt of the documents set forth below:

A. If other than the Authority, a list of the names in which the Series 1996 Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;

B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 1996 Bonds to the original purchasers;

C. An executed and certified copy of Bond Legislation;

D. An executed copy of the Loan Agreement; and

E. The unqualified approving opinion of bond counsel on the Series 1996 Bonds.

Section 3.10. Form of Series 1996 Bonds. The text of the Series 1996 Bonds shall be in substantially the following form, 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 1996 BOND]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF CLARKSBURG
SEWER REVENUE BOND, SERIES 1996
(WEST VIRGINIA SRF PROGRAM)

No. R-____ $_____

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF CLARKSBURG, a municipal corporation and political subdivision of the State of West Virginia in Harrison 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 of _____ 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, 199____, as set forth on the "Schedule of Annual Debt Service" attached as EXHIBIT B hereto and incorporated herein by reference with interest on each installment at the rate per annum set forth on said EXHIBIT B. The interest and the SRF Administrative Fee (as defined in the hereinafter described Bond Legislation), shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing _____ 1, 199____, as set forth on 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 One Valley Bank, National Association, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next 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 Division of Environmental Protection (the "DEP"), and upon the terms and conditions

prescribed by, and otherwise in compliance with, the Loan Agreement by and among the Issuer, the Authority and the DEP, dated _____, 199____.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); (ii) to reimburse the Issuer for payment in full of the Issuer's Sewerage System Bond Anticipation Notes, Series 1995, heretofore issued to temporarily finance a portion of the costs of acquisition and construction of the Project (the "Notes"); (iii) [to pay interest on the Bonds of this Series (the "Bonds") during the construction of the Project and for not more than 6 months thereafter; (iv) to fund a reserve account for the Bonds; (v)] to pay certain costs of issuance hereof 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 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (the "Act"), and a Bond Ordinance duly enacted by the Issuer on _____, 199____, and a Supplemental Resolution duly adopted by the Issuer on _____, 199____ (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 OTHER RESPECTS, WITH THE ISSUER'S SEWER REFUNDING REVENUE BONDS, SERIES 1995, DATED SEPTEMBER 7, 1995, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $600,000 (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 Prior Bonds, and from moneys in the reserve account created under the Bond Legislation for the Bonds (the "Series 1996 Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay all operating expenses of the System and the principal of and interest on 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 moneys in the Series 1996 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 prior to or on a parity with the Bonds, including the Prior Bonds; provided however, when the Prior Bonds are no longer outstanding and so long as there exists in the Series 1996 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 prior to or on a parity with the 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 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 pay the costs of the Project and costs of issuance hereof described in the Bond Legislation and to reimburse the Issuer for payment of the Notes, and there shall be and hereby is created and granted a lien upon such moneys, 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 in the issuance of this Bond have existed, 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.

IN WITNESS WHEREOF, the CITY OF CLARKSBURG has caused this Bond to be signed by its Mayor and its City Manager and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated _____, 199____.

[SEAL]

_____
Mayor

_____
City Manager

ATTEST:

_____
City Clerk

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1996 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: _____, 199____.

ONE VALLEY BANK, NATIONAL
ASSOCIATION, as Registrar

By _____
Its Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

| | AMOUNT | DATE | | AMOUNT | DATE |
|---|---|---|---|---|---|
| (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

SCHEDULE OF ANNUAL DEBT SERVICE

(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 1996 Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous ordinance or resolution, the Mayor and the City Manager are specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "Exhibit A" and made a part hereof, and the City Clerk 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.

Section 3.12. "Amended Schedule A" Filing. Within 60 days following the Completion Date, the Issuer will file with the Authority a schedule in substantially the form of the "Amended Schedule A" to the Loan Agreement, setting forth the actual costs of the Project and sources of funds therefor.

## ARTICLE IV

## INTERIM CONSTRUCTION FINANCING

Section 4.01. Interim Construction Financing. In order to pay certain costs of the Project pending receipt of proceeds of the Bonds, the Issuer may issue and sell its interim construction notes in an aggregate principal amount not to exceed $1,000,000 (the "Notes"). The Notes shall be in the form of a line of credit from a commercial bank or other lender, and the Issuer is hereby authorized to enter into a loan agreement with such commercial bank or other lender. The Notes shall bear interest from the date or dates, at such rate or rates, payable on such dates and shall mature on such date or dates and be subject to such prepayment or redemption, all as provided in the loan agreement.

The Notes shall be special obligations of the Issuer payable as to principal and interest solely from proceeds of the Bonds. The Notes do not and shall not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions. The general funds of the Issuer are not liable, and neither the full faith and credit nor the taxing power of the Issuer, if any, is pledged for the payment of the Notes. The Holders of the Notes shall never have the right to compel the forfeiture of any property of the Issuer. The Notes shall not be a debt of the Issuer, nor a legal or equitable pledge, charge, lien or encumbrance upon any property of the Issuer or upon any of its income, receipts or revenues except as set forth herein.

## 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 the Prior Ordinance) with, and shall be held by, the Depository Bank, separate and apart from all other funds and accounts of the Depository Bank or the Issuer and from each other:

(1) Revenue Fund (established by the Prior Ordinance);

(2) Renewal and Replacement Fund (established by the Prior Ordinance); and

(3) Bond Construction Trust Fund.

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

(1) Series 1995 Bonds Sinking Fund (established by the Prior Ordinance);

(2) Series 1996 Bonds Sinking Fund; and

(3) Within the Series 1996 Bonds Sinking Fund, the Series 1996 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 by the Issuer in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Prior Ordinance and 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 the Prior Ordinance and in this Bond Legislation. All revenues in the Revenue Fund shall be disposed of only in the following manner and order of priority:

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

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Series 1995 Bonds Sinking Fund the amount required by the Prior Ordinance to pay interest on the Prior Bonds and (ii) commencing 4 months prior to the first date of payment of interest on the Series 1996 Bonds for which interest has not been capitalized or as required in the Loan Agreement, for deposit in the Series 1996 Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will become due on the Series 1996 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 1996 Bonds Sinking Fund and the next quarterly interest payment date is less than 4 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, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) for deposit in the Series 1995 Bonds Sinking Fund the amount required by the Prior Ordinance to pay principal of the Prior Bonds and (ii) commencing 4 months prior to the first date of payment of principal of the Series 1996 Bonds, for deposit in the Series 1996 Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 1996 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 1996 Bonds Sinking Fund and the next quarterly principal payment date is less than 4 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, commencing 3 months prior to the first date of payment of principal of the Series 1996 Bonds, if not fully funded upon issuance of the Series 1996 Bonds, transfer from the Revenue Fund and remit to the Commission for deposit in the Series 1996 Bonds Reserve Account, an amount equal to 1/120 of the Series 1996 Bonds Reserve Requirement; provided, that no further payments shall be made into the Series 1996 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 1996 Bonds Reserve Requirement.

$98,542/yr
= $821.18/m

(5) The Issuer shall next, on the first day of each month, from the moneys remaining in the Revenue Fund (as previously set forth in the Prior

Ordinance and not in addition thereto), transfer to the Renewal and Replacement Fund, a sum equal to 2 1/2% of the Gross Revenues each month. 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 deficiency in the Series 1996 Bonds Reserve Account, 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 by Subsection 5.03A(4) hereof, shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

Moneys in the Series 1996 Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 1996 Bonds as the same shall become due. Moneys in the Series 1996 Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 1996 Bonds, as the same shall come due, when other moneys in the Series 1996 Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 1996 Bonds Sinking Fund and the Series 1996 Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Bond Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 1996 Bonds and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 1996 Bonds Reserve Account which result in a reduction in the balance of the Series 1996 Bonds Reserve Account to below the Series 1996 Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full to the Series 1995 Bonds Sinking Fund and the Series 1996 Bonds Sinking Fund.

As and when additional Bonds ranking on a parity with the Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the appropriate reserve account in an amount equal to the maximum amount of principal and interest which will become due in any year for account of the Bonds of such series, including such additional Bonds.

The Issuer shall not be required to make any further payments into the Series 1996 Bonds Sinking Fund or into the Series 1996 Bonds Reserve Account therein when the aggregate amount of funds in the Series 1996 Bonds Sinking Fund and the

Series 1996 Bonds Reserve Account are at least equal to the aggregate principal amount of the Series 1996 Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

Principal and interest payments, whether for a deficiency or otherwise, shall be made on a parity basis and pro rata with respect to the Prior Bonds and Series 1996 Bonds, in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 1996 Bonds Sinking Fund and the Series 1996 Bonds Reserve Account created hereunder, and all amounts required for the Series 1996 Bonds Sinking Fund and the Series 1996 Bonds Reserve Account shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein.

Moneys in the Series 1996 Bonds Sinking Fund and the Series 1996 Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 1996 Bonds Sinking Fund, including the Series 1996 Bonds Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 1996 Bonds and any additional Bonds ranking on a parity therewith that may be issued and Outstanding under the conditions and restrictions hereinafter set forth.

B. The Issuer shall on the first day of each month (if such day is not a business day, then the next succeeding business day), deposit with the Commission the required interest, principal and reserve payments with respect to the 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.

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

D. The Issuer shall on the first day of each month (if such day is not a business day, then the next succeeding business day), deposit with the Commission the SRF Administrative Fee as set forth in Schedule Y attached to the Loan Agreement.

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.

F. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in the Revenue Fund and the Renewal and Replacement Fund shall at all times be secured, to the full extent thereof in excess of such insured sum, by 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 hereinabove 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.

## ARTICLE VI

## BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the moneys received from the sale of the Series 1996 Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 1996 Bonds, there shall first be deposited with the Commission in the Series 1996 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 1996 Bonds for the period commencing on the date of issuance of such Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. Next, from the proceeds of the Series 1996 Bonds, there shall be deposited with the Commission in the Series 1996 Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding the Series 1996 Bonds Reserve Account.

C. Next, from the proceeds of the Series 1996 Bonds, there shall first be credited to the Bond Construction Trust Fund and then reimbursed to the Issuer for payment of the Notes and any and all other borrowings by the Issuer made for the purpose of temporarily financing a portion of the Costs of the Project and any borrowings by the Issuer from the Authority, including interest accrued thereon to the date of such payment; provided that the Authority and the DEP have previously consented to the payment of such borrowings.

D. As the Issuer receives advances of the remaining moneys derived from the sale of the Series 1996 Bonds, such moneys shall be deposited with the Depository Bank in the Bond Construction Trust Fund and applied solely to payment of Costs of the Project in the manner set forth in Section 6.02 hereof.

E. 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 1996 Bonds shall be used to fund the Series 1996 Bonds Reserve Account, if not funded upon issuance of the Series 1996 Bonds, in an amount not to exceed the Series 1996 Bonds Reserve Requirement; provided that, in no event shall more than 10% of the proceeds of the Series 1996 Bonds be deposited in the Series 1996 Bonds Reserve Account.

F. The Depository Bank shall act as a trustee and fiduciary for the Bondholder with respect to the Bond Construction Trust Fund and shall comply with all requirements with respect to the disposition of the Bond Construction Trust Fund set forth

in the Bond Legislation. Moneys in the Bond Construction Trust Fund shall be used solely to pay Costs of the Project and until so transferred or expended, are hereby pledged as additional security for the Series 1996 Bonds.

Section 6.02. Disbursements From the Bond Construction Trust Fund. On or before the Closing Date, the Issuer or the Board shall have delivered to the Authority and the DEP a report listing the specific purposes for which the proceeds of the Series 1996 Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Bond Construction Trust Fund shall be made only after submission to, and approval from, the Authority and the DEP of the following:

(1) a completed and signed "Payment Requisition Form," a form of which is attached to the Loan Agreement as Exhibit C, and

(2) a certificate, signed by an Authorized Officer and the Consulting Engineers, stating:

(A) That none of the items for which the 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 made 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; and

(D) That payment for each of the items proposed is then due and owing.

In case any contract provides for the retention of a portion of the contract price, the Depository Bank shall disburse from the Bond Construction Trust Fund only the net amount remaining after deduction of any such portion. All payments made from the Bond Construction Trust Fund shall be presumed by the Depository Bank to be made for the purposes set forth in said certificate, and the Depository Bank shall not be required to monitor the application of disbursements from the Bond Construction Trust Fund. The Consulting Engineers shall from time to time file with the Depository Bank written statements advising the Depository Bank of its then authorized representative.

Pending such application, moneys in the Bond Construction Trust Fund, including any accounts therein, 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 1996 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 1996 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 1996 Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 1996 Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the Net Revenues pledged for such payment by this Bond Legislation. No Holder or Holders of the Series 1996 Bonds, shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 1996 Bonds or the interest 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 the Series 1996 Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the operation of the System, on a parity with the lien on the Net Revenues in favor of the Holders of the Prior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest on the Prior Bonds and the Series 1996 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. Rates and Charges. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the sewer rate ordinance of the Issuer enacted on August 18, 1994.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, mortgage, lease, or otherwise dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinance and with the written consent of the Authority and the DEP. Additionally, so long as the Series 1996 Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority and the DEP, 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 or to effectively defease the pledge created by this Bond Legislation in accordance with Section 10.01 hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 1996 Bonds, immediately be remitted to the Commission for deposit in the Series 1996 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 at maturity of and interest on the Series 1996 Bonds as prescribed by Section 10.01 hereof, all on a parity basis and pro rata with the Prior Bonds. Any balance remaining after the payment of the Bonds and the 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 Revenue 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 Issuer may then, if it be so advised, by resolution duly adopted, 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.

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 shall be in excess of $200,000 and insufficient to pay or defease all Bonds then Outstanding, without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of over 60% in amount of all 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 7.07 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 Series 1996 Bonds and the Prior Bonds. All obligations issued

by the Issuer after the issuance of the Series 1996 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 Series 1996 Bonds and the Prior Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts established by this Bond Legislation and the Prior Ordinance at the time of the issuance of such subordinate obligations have been made and are current.

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 Series 1996 Bonds and the Prior Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 1996 Bonds and the Prior 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 DEP 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 Project, 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 Ordinance 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 1996 Bonds pursuant to this Bond Legislation, without the prior written consent of the Authority and the DEP and without complying with the conditions and requirements herein provided (unless less restrictive than the provisions of the Prior Ordinance).

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 1996 Bonds.

No such Parity Bonds shall be issued except for the purposes of financing the costs of the design, acquisition or construction of additions, extensions, improvements or betterments to the System, refunding all or a portion of one or more series of Bonds issued by the Issuer, or paying claims which may exist against the revenues or facilities of the System or any combination of such purposes.

No Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the City Clerk 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 date of issuance of such Parity Bonds, shall be not less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

(1) The Bonds then Outstanding, including, without limitation, the Prior Bonds;

(2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Bond Legislation 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 (a) any improvements to be financed by such Parity Bonds and (b) any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the date of delivery of such Parity Bonds. For purposes of this test, the terms "Gross Revenues" and "Net Revenues" shall not include proceeds from the sale of capital assets.

The term "Parity Bonds," as used in this section, shall be deemed to mean additional Bonds issued under the provisions and within the limitations of this section and the Prior Ordinance, payable from the Net Revenues of the System on a parity with the Bonds, and all the 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 theretofore or subsequently issued from time to time within the limitations of and in compliance with this section and the Prior Ordinance. All the Series 1996 Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System, and their source of and security for payment from said Net 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.

The term "Parity Bonds," as used in this section, 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 lien of the Series 1996 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 equally, as to lien on and source of and security for payment from such revenues, with the Series 1996 Bonds except in the manner and under the conditions provided in this section.

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 and the Prior Ordinance with respect to the Bonds then Outstanding, and any other payments provided for in this Bond Legislation and the Prior Ordinance, shall have been made in full as required to the date of issuance of the Parity Bonds, and the Issuer then be in full compliance with all the covenants, agreements and terms of this Bond Legislation and the Prior Ordinance and every ordinance supplemental thereto, or shall have fully corrected any delinquency or deficiency in such payments and compliance.

Section 7.08. Books; Records and Facilities. The Issuer or the Board 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 DEP, 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 or the Board shall submit to the Authority and the DEP 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 or the Board shall permit the Authority and the DEP, 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 or the Board 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 Board or 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 Board. 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 Board. The Board 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 Board shall be reported to such agent of the Board as the Board shall direct.

The Issuer or the Board shall file with the Consulting Engineers, the Authority and the DEP, or any other original purchaser of the Series 1996 Bonds, and shall mail in

each year to any Holder or Holders of the Series 1996 Bonds requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses, Net 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 or the Board 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 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 1996 Bonds and shall submit said report to the Authority and the DEP, or any other original purchaser of the Series 1996 Bonds. Such audit report submitted to the Authority and the DEP 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.

The Issuer or the Board shall provide the DEP 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 or the Board shall permit the Authority and the DEP, 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 of the Project, the Issuer or the Board shall also provide the Authority and the DEP, 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 DEP with respect to the System pursuant to the Act.

Section 7.09. Rates. Equitable rates or charges for the use of and service rendered by the System have been 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 City Clerk, 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 said System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created (or, where appropriate, continued) 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 reasonable expenses of operation, repair and maintenance 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 1996 Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Series 1996 Bonds, including the Prior Bonds; provided that, when the Prior Bonds are no longer outstanding and amounts equal to or in excess of the reserve requirements are on deposit respectively in the Series 1996 Bonds Reserve Account and any reserve accounts for obligations prior to or on a parity with the Series 1996 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 1996 Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Series 1996 Bonds. In any event, subject to any requirements of law, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinance described in Section 7.04 hereof.

Section 7.10. Operating Budget; Audit and Monthly Financial Report. The Board shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed 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 DEP 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 the Consulting Engineers, 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 Board 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 the Consulting Engineers that such increased expenditures are necessary for the continued operation of the System. The Board shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority, the DEP and to any Holder of any Bonds who shall file his or her address with the Board and request in writing that copies of all such budgets and resolutions be furnished him or her, within 30 days of adoption thereof, and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Bonds, or anyone acting for and in behalf of such Holder of any Bonds.

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

Section 7.11. Engineering Services and Operating Personnel. The Issuer or the Board 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 DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the DEP 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 or the Board shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority and the DEP 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 resident engineer shall certify to the Authority, the DEP, the Board 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.

The Issuer or the Board shall require the Consulting Engineers to submit Recipient As-Built Plans, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer or the Board shall notify the DEP in writing of such receipt. The Issuer or the Board shall submit a "Performance Certificate," a form of which is attached to the Loan Agreement as Exhibit A, to the DEP within 60 days of the end of the first year after the Project is completed.

The Issuer or the Board shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to the DEP when the Project is 90% completed.

The Issuer and the Board agree that qualified operating personnel properly certified by the State will be employed before the Project is 25% complete and agrees that it will retain such a certified operator(s) to operate the System during the entire term of the Loan Agreement. The Issuer or the Board shall notify the DEP in writing of the certified operator employed at the 25% completion stage.

Section 7.12. No Competing Franchise. To the extent legally allowable, neither the Issuer nor the Board will 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 or the Board 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 30 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 and to the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, all delinquent 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 and facilities of the System, and any services and facilities of the Issuer's waterworks system, to all delinquent users of the services and facilities of the System and will not restore such services of either system until all delinquent charges for the services and facilities 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 and the Board 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, the Board, or any department, agency, instrumentality, officer or employee of the Issuer 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, the Board and any such department, agency, instrumentality, officer or employee. Such charges shall be paid as they accrue, and the Issuer and the Board shall transfer from its general funds sufficient sums to pay such charges for service to any of its department or properties. 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 Series 1996 Bonds remain Outstanding, the Issuer or the Board will, as an Operating Expense, procure, carry and maintain insurance and

bonds and worker's compensation coverage with a reputable insurance carrier or carriers or bonding company or companies covering the following risks and 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 greater of the fair appraised value or the original 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. In the event of any damage to or destruction of any portion of the System, the proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs or reconstruction of such damaged or destroyed portion or for the other purposes provided herein for the Renewal and Replacement Fund. The Board 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 Board, 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 Board, the contractors and subcontractors, as their interests may appear.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than $1,000,000 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 amount of any 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 System facilities 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 Board or 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 or the Board 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 or the Board 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 DEP. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the Board, 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, 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, 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 and the Board will complete 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 and the Board will obtain all permits required by state and federal laws for the acquisition and construction of the Project and all orders and approvals from the Public Service Commission of West Virginia necessary for the acquisition and construction of the Project and the operation of the System.

Section 7.18. Compliance with Loan Agreement and Law. The Issuer and the Board agree to comply with all the terms and conditions of the Loan Agreement and the Act. Notwithstanding anything herein to the contrary, the Issuer and the Board will provide the DEP with copies of all documents submitted to the Authority.

The Issuer and the Board also agree to comply with all applicable laws, rules and regulations issued by the Authority, the DEP 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 and the Board hereby further covenant and agree 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 1996 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 1996 Bonds during the term thereof is, under the terms of the Series 1996 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) that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 1996 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 1996 Bonds during the term thereof is, under the terms of the Series 1996 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 1996 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 1996 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 that 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 5% of the Net Proceeds of the Series 1996 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 1996 Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

D. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 1996 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 1996 Bonds will be and remain excludable 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 or the Board 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 (17CFR Part 240).

## ARTICLE VIII

## INVESTMENT OF FUNDS; NON ARBITRAGE

Section 8.01. Investments. Any moneys 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 Prior Ordinance, the need for such moneys 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 moneys 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, the Depository Bank, or such other bank or national banking association, as the case may be, 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 or such other bank or national banking association, as the case may be, 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 as 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 assure the exclusion of interest on the Series 1996 Bonds from gross income for federal income tax purposes.

Section 8.02. Arbitrage and Tax Exemption. The Issuer covenants that (i) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Series 1996 Bonds which would cause the Series 1996 Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and (ii) it will take any and all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to the Series 1996 Bonds) so that the

interest on the Series 1996 Bonds will be and remain excludable from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 8.03. Tax Certificate and Rebate. The Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Series 1996 Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Series 1996 Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Bond Legislation.

If the Issuer is subject to the rebate requirements of Section 148(f) of the Code, and not exempted from such requirements, the Issuer covenants to make, or cause to be made, all rebate calculations, computations and payments in the time, manner and as required in Section 148(f) of the Code and the Regulations from time to time in effect and applicable to the Series 1996 Bonds and otherwise covenants and agrees to comply with the provisions of such Section 148(f) of the Code and the Regulations from time to time in effect and applicable to the Series 1996 Bonds. In the event of a failure to pay the correct rebate amount or amounts, the Issuer will pay, from any lawful sources available therefor, to the United States such amount or amounts, plus a penalty equal to 50% of the rebate amount not paid when required to be paid, plus interest on that amount; unless waived. In order to provide for the administration of this paragraph, the Issuer may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the Issuer may deem appropriate.

The Issuer shall furnish to the Authority, annually, and at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested by the Authority. In addition, the Issuer shall cooperate with the Authority in preparing any required rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer.

The Issuer shall submit to the Authority within 15 days following the end of each Bond Year a certified copy of its rebate calculation or, if the Issuer qualifies for any exception to rebate, the Issuer shall submit a certificate stating that it is exempt from the rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Series 1996 Bonds subject to rebate. The Issuer shall also furnish the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority, including information with respect to earnings on

all funds constituting "gross proceeds" of the Bonds (as such term "gross proceeds" is defined in the Code).

## 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 1996 Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on the Series 1996 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 1996 Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 1996 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; or

(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 Ordinance.

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 1996 A Bonds shall be on a parity with those of the Holders of the Prior 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 the Series 1996 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 the 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 exercise.

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 said 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

## DEFEASANCE

Section 10.01. Defeasance of Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of the Series 1996 Bonds, the principal of and interest due or to become due thereon, if any, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 1996 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 1996 Bonds from gross income for federal income tax purposes.

The Series 1996 Bonds, for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due either at maturity or at the next redemption date, the principal installments of and interest on such Series 1996 Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 1996 Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay, when due, the principal installments of and interest due and to become due on said Series 1996 Bonds on and prior to the next redemption date or the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of and interest on said Series 1996 Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of and interest to become due on said Bonds on and prior to the next redemption date or the maturity dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Commission or its agent, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

## ARTICLE XI

## MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 1996 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 1996 Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 1996 Bonds shall be made without the consent in writing of the Registered Owners of 60% or more in principal amount of the Series 1996 Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or 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 respectively pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 1996 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 exclusion of interest, if any, on the Series 1996 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 1996 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 Ordinance 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 Ordinance, the Supplemental Resolution or the Series 1996 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 Ordinance. All ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed, provided that, in the event of any conflict between this Ordinance and the Prior Ordinance, the Prior Ordinance 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 Ordinance 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 Mayor, the City Manager, the City Clerk and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.07. Effective Date. This Ordinance shall take effect immediately following public hearing hereon.

Section 11.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in The Clarksburg Exponent and The Clarksburg Telegram, two newspapers published and of general circulation in the City of Clarksburg, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 1996 Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

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| Passed on First Reading: | - | August 15, 1996 |
| Passed on Second Reading: | - | September 5, 1996 |
| Passed on Final Reading Following Public Hearing: | - | September 19, 1996 |

Mayor

ATTEST:

City Clerk

APPROVED AND CORRECT AS TO FORM:

City Attorney

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of the CITY OF CLARKSBURG on the 19th day of September, 1996.

Dated: October 24, 1996.

[SEAL]

Annette M. Wright
City Clerk

09/25/96
CSRFJM.A4
155510/95003

EXHIBIT A

Loan Agreement included in bond transcript as Document No. 3

CITY OF CLARKSBURG

Sewer Revenue Bonds, Series 1996
(West Virginia SRF Program)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 1996 (WEST VIRGINIA SRF PROGRAM), OF THE CITY OF CLARKSBURG; RATIFYING AND APPROVING A 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 city council (the "Governing Body") of the City of Clarksburg (the "Issuer"), has duly and officially adopted and enacted a bond ordinance, effective September 19, 1996 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF CLARKSBURG AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN $6,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1996 (WEST VIRGINIA SRF PROGRAM); 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 Ordinance when used herein;

WHEREAS, the Bond Ordinance provides for the issuance of Sewer Revenue Bonds, Series 1996 (West Virginia SRF Program), of the Issuer (the "Bonds" or "Series 1996 Bonds"), in the aggregate principal amount not to exceed $6,500,000, and has authorized the execution and delivery of a loan agreement relating to the Bonds dated September 10, 1996 (the "Loan Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Division of Environmental Protection (the "DEP"), all in accordance with Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"); and in the Bond Ordinance it is provided that the form of the Loan Agreement and the exact principal amount, date, maturity date, interest rate, interest and principal payment dates, sale price 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 and that the Loan Agreement be ratified and approved by the Issuer, that the exact principal amount, the date, the maturity date, the interest rate, the interest and principal payment dates and the sale price 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 THE CITY OF CLARKSBURG:

Section 1. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Sewer Revenue Bonds, Series 1996 (West Virginia SRF Program), of the Issuer, originally represented by a single Bond, numbered R-1, in the principal amount of $6,484,243. The

Bonds shall be dated the date of delivery thereof, shall finally mature June 1, 2018, and shall bear interest at the rate of 2% per annum. Principal of and interest on the Bonds shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 1998, and ending June 1, 2018, and in the amounts as set forth in "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Bonds. The Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the registered owner of the 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 Ordinance.

Section 3. The Issuer does hereby approve and shall pay the administrative fee equal to 1% of the principal amount of the Bonds set forth in the "Schedule Y" attached to the Loan Agreement.

Section 4. The Issuer does hereby ratify, approve and accept the Loan Agreement, a copy of which is incorporated herein by reference, and the execution and delivery of the Loan Agreement by the Mayor, 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 application to the DEP 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 5. The Issuer does hereby appoint and designate One Valley Bank, National Association, Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Bonds 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 Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, approved and directed.

Section 6. The Issuer does hereby appoint and direct the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Bonds.

Section 7. The Issuer does hereby appoint Bank One, West Virginia, NA, Clarksburg, West Virginia, to serve as Depository Bank under the Bond Ordinance.

Section 8. Series 1996 Bonds proceeds in the amount of $-0- shall be deposited in the Series 1996 Bonds Sinking Fund, as capitalized interest.

Section 9. Series 1996 Bonds proceeds in the amount of $-0- shall be deposited in the Series 1996 Bonds Reserve Account.

Section 10. The balance of the proceeds of the Bonds shall be deposited in or credited to the Bond Construction Trust Fund as received from time to time for payment of Costs of the Project, including costs of issuance of the Bonds and related costs and reimbursing the Issuer for payment of its Sewerage System Bond Anticipation Notes, Series 1995.

Section 11. The Mayor, the City Manager and the City Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered on or about October 24, 1996, to the Authority pursuant to the Loan Agreement.

Section 12. The acquisition and construction of the Project and the financing thereof in part with proceeds of the Bonds is in the public interest, serves a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 13. The Issuer hereby determines to invest all moneys in the funds and accounts established by the Bond Ordinance 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 Series 1996 Bonds Sinking Fund, including the Series 1996 Bonds Reserve Account therein, shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 14. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder or under any predecessor thereto (the "Code"), by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code and Treasury Regulations to be promulgated thereunder.

Section 15. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 19th day of September, 1996.

CITY OF CLARKSBURG

Mayor

ATTEST:

City Clerk

APPROVED AND CORRECT AS TO FORM:

City Attorney

## CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of the City of Clarksburg on the 19th day of September, 1996.

Dated: October 24, 1996.

[SEAL]

Annette M. Wright
City Clerk

09/25/96
CSRFJM.B2
155510/95003

(SPECIMEN BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
CITY OF CLARKSBURG
SEWER REVENUE BOND, SERIES 1996
(WEST VIRGINIA SRF PROGRAM)

No. R-1 $6,484,243

KNOW ALL MEN BY THESE PRESENTS: That the CITY OF CLARKSBURG, a municipal corporation and political subdivision of the State of West Virginia in Harrison 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 of SIX MILLION FOUR HUNDRED EIGHTY-FOUR THOUSAND TWO HUNDRED FORTY-THREE DOLLARS ($6,484,243), 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 September 1, 1998, as set forth on the "Schedule of Annual Debt Service" attached as EXHIBIT B hereto and incorporated herein by reference with interest on each installment at the rate per annum set forth on said EXHIBIT B. The interest and the SRF Administrative Fee (as defined in the hereinafter described Bond Legislation), shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 1998, as set forth on 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 One Valley Bank, National Association, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next 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 Division of Environmental Protection (the "DEP"), and upon the terms and

conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and among the Issuer, the Authority and the DEP, dated September 10, 1996.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); (ii) to reimburse the Issuer for payment in full of the Issuer's Sewerage System Bond Anticipation Notes, Series 1995, heretofore issued to temporarily finance a portion of the costs of acquisition and construction of the Project (the "Notes"); 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 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (the "Act"), and a Bond Ordinance duly enacted by the Issuer on September 19, 1996, and a Supplemental Resolution duly adopted by the Issuer on September 19, 1996 (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 OTHER RESPECTS, WITH THE ISSUER'S SEWER REFUNDING REVENUE BONDS, SERIES 1995, DATED SEPTEMBER 7, 1995, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $600,000 (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 Prior Bonds, and from moneys in the reserve account created under the Bond Legislation for the Bonds (the "Series 1996 Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay all operating expenses of the System and the principal of and interest on 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 moneys in the Series 1996 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 prior to or on a parity with the Bonds, including the Prior Bonds; provided however, when the Prior Bonds are no longer outstanding and so long as there exists in the Series 1996 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 prior to or on a parity with the 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 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 pay the costs of the Project and costs of issuance hereof described in the Bond Legislation and to reimburse the Issuer for payment of the Notes, and there shall be and hereby is created and granted a lien upon such moneys, 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 in the issuance of this Bond have existed, 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.

IN WITNESS WHEREOF, the CITY OF CLARKSBURG has caused this Bond to be signed by its Mayor and its City Manager and its corporate seal to be hereunto affixed and attested by its City Clerk, and has caused this Bond to be dated October 24, 1996.

[SEAL]

_____
Mayor

_____
City Manager

ATTEST:

_____
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1996 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: October 24, 1996.

ONE VALLEY BANK, NATIONAL
ASSOCIATION, as Registrar

By_____
Its Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

| | AMOUNT | DATE | | AMOUNT | DATE |
|---|---|---|---|---|---|
| (1) | $332,128 | 10/24/96 | (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

SCHEDULE OF ANNUAL DEBT SERVICE

City of Clarksburg
$6,484,243.00 20 Year Loan @ 2% Interest
1% Administrative Fee

DEBT SERVICE SCHEDULE

| DATE | PRINCIPAL | COUPON | INTEREST | DEBT SERVICE |
|---|---|---|---|---|
| 6/01/1998 | - | - | - | - |
| 9/01/1998 | 66,120.06 | 2.00000% | 32,421.22 | 98,541.28 |
| 12/01/1998 | 66,450.66 | 2.00000% | 32,090.61 | 98,541.27 |
| 3/01/1999 | 66,782.91 | 2.00000% | 31,758.36 | 98,541.27 |
| 6/01/1999 | 67,116.83 | 2.00000% | 31,424.45 | 98,541.28 |
| 9/01/1999 | 67,452.41 | 2.00000% | 31,088.86 | 98,541.27 |
| 12/01/1999 | 67,789.67 | 2.00000% | 30,751.60 | 98,541.27 |
| 3/01/2000 | 68,128.62 | 2.00000% | 30,412.65 | 98,541.27 |
| 6/01/2000 | 68,469.26 | 2.00000% | 30,072.01 | 98,541.27 |
| 9/01/2000 | 68,811.61 | 2.00000% | 29,729.66 | 98,541.27 |
| 12/01/2000 | 69,155.67 | 2.00000% | 29,385.60 | 98,541.27 |
| 3/01/2001 | 69,501.45 | 2.00000% | 29,039.83 | 98,541.28 |
| 6/01/2001 | 69,848.95 | 2.00000% | 28,692.32 | 98,541.27 |
| 9/01/2001 | 70,198.20 | 2.00000% | 28,343.07 | 98,541.27 |
| 12/01/2001 | 70,549.19 | 2.00000% | 27,992.08 | 98,541.27 |
| 3/01/2002 | 70,901.94 | 2.00000% | 27,639.34 | 98,541.28 |
| 6/01/2002 | 71,256.45 | 2.00000% | 27,284.83 | 98,541.28 |
| 9/01/2002 | 71,612.73 | 2.00000% | 26,928.55 | 98,541.28 |
| 12/01/2002 | 71,970.79 | 2.00000% | 26,570.48 | 98,541.27 |
| 3/01/2003 | 72,330.65 | 2.00000% | 26,210.63 | 98,541.28 |
| 6/01/2003 | 72,692.30 | 2.00000% | 25,848.97 | 98,541.27 |
| 9/01/2003 | 73,055.76 | 2.00000% | 25,485.51 | 98,541.27 |
| 12/01/2003 | 73,421.04 | 2.00000% | 25,120.23 | 98,541.27 |
| 3/01/2004 | 73,788.14 | 2.00000% | 24,753.13 | 98,541.27 |
| 6/01/2004 | 74,157.09 | 2.00000% | 24,384.19 | 98,541.28 |
| 9/01/2004 | 74,527.87 | 2.00000% | 24,013.40 | 98,541.27 |
| 12/01/2004 | 74,900.51 | 2.00000% | 23,640.76 | 98,541.27 |
| 3/01/2005 | 75,275.01 | 2.00000% | 23,266.26 | 98,541.27 |
| 6/01/2005 | 75,651.39 | 2.00000% | 22,889.89 | 98,541.28 |
| 9/01/2005 | 76,029.64 | 2.00000% | 22,511.63 | 98,541.27 |
| 12/01/2005 | 76,409.79 | 2.00000% | 22,131.48 | 98,541.27 |
| 3/01/2006 | 76,791.84 | 2.00000% | 21,749.43 | 98,541.27 |
| 6/01/2006 | 77,175.80 | 2.00000% | 21,365.47 | 98,541.27 |
| 9/01/2006 | 77,561.68 | 2.00000% | 20,979.59 | 98,541.27 |
| 12/01/2006 | 77,949.49 | 2.00000% | 20,591.79 | 98,541.28 |
| 3/01/2007 | 78,339.24 | 2.00000% | 20,202.04 | 98,541.28 |
| 6/01/2007 | 78,730.93 | 2.00000% | 19,810.34 | 98,541.27 |
| 9/01/2007 | 79,124.59 | 2.00000% | 19,416.69 | 98,541.28 |
| 12/01/2007 | 79,520.21 | 2.00000% | 19,021.06 | 98,541.27 |
| 3/01/2008 | 79,917.81 | 2.00000% | 18,623.46 | 98,541.27 |
| 6/01/2008 | 80,317.40 | 2.00000% | 18,223.87 | 98,541.27 |
| 9/01/2008 | 80,718.99 | 2.00000% | 17,822.29 | 98,541.28 |
| 12/01/2008 | 81,122.58 | 2.00000% | 17,418.69 | 98,541.27 |
| 3/01/2009 | 81,528.19 | 2.00000% | 17,013.08 | 98,541.27 |
| 6/01/2009 | 81,935.84 | 2.00000% | 16,605.44 | 98,541.28 |
| 9/01/2009 | 82,345.51 | 2.00000% | 16,195.76 | 98,541.27 |
| 12/01/2009 | 82,757.24 | 2.00000% | 15,784.03 | 98,541.27 |
| 3/01/2010 | 83,171.03 | 2.00000% | 15,370.25 | 98,541.28 |
| 6/01/2010 | 83,586.88 | 2.00000% | 14,954.39 | 98,541.27 |
| 9/01/2010 | 84,004.82 | 2.00000% | 14,536.46 | 98,541.28 |
| 12/01/2010 | 84,424.84 | 2.00000% | 14,116.43 | 98,541.27 |

City of Clarksburg
$6,484,243.00 20 Year Loan @ 2% Interest
1% Administrative Fee

DEBT SERVICE SCHEDULE

| DATE | PRINCIPAL | COUPON | INTEREST | DEBT SERVICE |
|---|---|---|---|---|
| 3/01/2011 | 84,846.97 | 2.00000% | 13,694.31 | 98,541.28 |
| 6/01/2011 | 85,271.20 | 2.00000% | 13,270.07 | 98,541.27 |
| 9/01/2011 | 85,697.56 | 2.00000% | 12,843.72 | 98,541.28 |
| 12/01/2011 | 86,126.05 | 2.00000% | 12,415.23 | 98,541.28 |
| 3/01/2012 | 86,556.68 | 2.00000% | 11,984.60 | 98,541.28 |
| 6/01/2012 | 86,989.46 | 2.00000% | 11,551.82 | 98,541.28 |
| 9/01/2012 | 87,424.41 | 2.00000% | 11,116.87 | 98,541.28 |
| 12/01/2012 | 87,861.53 | 2.00000% | 10,679.75 | 98,541.28 |
| 3/01/2013 | 88,300.84 | 2.00000% | 10,240.44 | 98,541.28 |
| 6/01/2013 | 88,742.34 | 2.00000% | 9,798.93 | 98,541.27 |
| 9/01/2013 | 89,186.05 | 2.00000% | 9,355.22 | 98,541.27 |
| 12/01/2013 | 89,631.98 | 2.00000% | 8,909.29 | 98,541.27 |
| 3/01/2014 | 90,080.14 | 2.00000% | 8,461.13 | 98,541.27 |
| 6/01/2014 | 90,530.54 | 2.00000% | 8,010.73 | 98,541.27 |
| 9/01/2014 | 90,983.20 | 2.00000% | 7,558.08 | 98,541.28 |
| 12/01/2014 | 91,438.11 | 2.00000% | 7,103.16 | 98,541.27 |
| 3/01/2015 | 91,895.30 | 2.00000% | 6,645.97 | 98,541.27 |
| 6/01/2015 | 92,354.78 | 2.00000% | 6,186.50 | 98,541.28 |
| 9/01/2015 | 92,816.55 | 2.00000% | 5,724.72 | 98,541.27 |
| 12/01/2015 | 93,280.63 | 2.00000% | 5,260.64 | 98,541.27 |
| 3/01/2016 | 93,747.04 | 2.00000% | 4,794.24 | 98,541.28 |
| 6/01/2016 | 94,215.77 | 2.00000% | 4,325.50 | 98,541.27 |
| 9/01/2016 | 94,686.85 | 2.00000% | 3,854.42 | 98,541.27 |
| 12/01/2016 | 95,160.29 | 2.00000% | 3,380.99 | 98,541.28 |
| 3/01/2017 | 95,636.09 | 2.00000% | 2,905.19 | 98,541.28 |
| 6/01/2017 | 96,114.27 | 2.00000% | 2,427.01 | 98,541.28 |
| 9/01/2017 | 96,594.84 | 2.00000% | 1,946.43 | 98,541.27 |
| 12/01/2017 | 97,077.81 | 2.00000% | 1,463.46 | 98,541.27 |
| 3/01/2018 | 97,563.20 | 2.00000% | 978.07 | 98,541.27 |
| 6/01/2018 | 98,051.02 | 2.00000% | 490.26 | 98,541.28 |
| TOTAL | 6,484,243.00 | - | 1,399,058.91 | 7,883,301.91 * |

*Plus a one-percent annual administrative fee paid quarterly in the amount of $8,744.12. The total administrative fee over the life of the loan is $699,529.60

YIELD STATISTICS

| | |
|---|---|
| Accrued Interest from 06/01/1998 to 06/01/1998... | - |
| Average Life..... | 10.788 YEARS |
| Bond Years..... | 69,952.95 |
| Average Coupon..... | 2.0000000% |
| Net Interest Cost (NIC)..... | 2.0000000% |
| Bond Yield for Arbitrage Purposes..... | 3.0112500% |
| True Interest Cost (TIC)..... | 2.0050000% |
| Effective Interest Cost (EIC)..... | 3.0112500% |

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:

_____

WEST VIRGINIA
**Water Development Authority**
Celebrating 34 Years of Service 1974 - 2008

July 8, 2009

CITY OF CLARKSBURG

Sewer Revenue Bonds, Series 2009 A
(West Virginia SRF Program) and
Sewer Revenue Bonds, Series 2009 B
(West Virginia SRF Program/ARRA)

TO WHOM IT MAY CONCERN:

In reliance upon the certificate of Tetrick and Bartlett, independent certified public accountants, and an opinion of Steptoe & Johnson PLLC, as bond counsel, that the coverage and parity tests have been met, the undersigned duly authorized representative of the West Virginia Water Development Authority (the "WDA"), the registered owner of the Series 1996 Bonds, hereinafter defined and described, hereby consents to the issuance of the Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) and the Sewer Revenue Bonds, Series 2009 B (West Virginia SRF Program/ARRA) (collectively, the "Series 2009 Bonds"), in the respective aggregate principal amounts of $1,000,000 and $1,000,000, by the City of Clarksburg (the "Issuer"), under the terms of the ordinance authorizing the Series 2009 Bonds, on a parity, with respect to liens, pledge and source of and security for payment, with the Issuer's outstanding Sewer Revenue Bonds, Series 1996 (West Virginia SRF Program), dated October 24, 1996, issued in the original aggregate principal amount of $6,484,283 (the "Series 1996 Bonds").

WEST VIRGINIA WATER DEVELOPMENT
AUTHORITY

Chris E. Jarrett – Executive Director

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY) 3/11/09

**PRODUCER**

Wells Fargo Ins. Services
of West Virginia, Inc.
109 Platinum Drive Suite I
Bridgeport WV 26330-2007
(304) 623-3721

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURED**

City of Clarksburg
222 W. Main Street
Clarksburg, WV 26301

**COMPANIES AFFORDING COVERAGE**

COMPANY A St. Paul Fire & Marine Ins Co.

COMPANY B

COMPANY C

COMPANY D

## COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| CO LTR | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS | |
|---|---|---|---|---|---|---|
| A | GENERAL LIABILITY | GP09313156 | 10/01/08 | 10/01/09 | GENERAL AGGREGATE | $ 2,000,000 |
| | X COMMERCIAL GENERAL LIABILITY | | | | PRODUCTS-COMP/OP AGG | $ 2,000,000 |
| | CLAIMS MADE X OCCUR | | | | PERSONAL & ADV INJURY | $ 1,000,000 |
| | OWNER'S & CONTRACTOR'S PROT | | | | EACH OCCURRENCE | $ 1,000,000 |
| | | | | | FIRE DAMAGE (Any one fire) | $ 100,000 |
| | | | | | MED EXP (Any one person) | $ |
| A | AUTOMOBILE LIABILITY | GP09313156 | 10/01/08 | 10/01/09 | COMBINED SINGLE LIMIT | $ 1,000,000 |
| | X ANY AUTO | | | | BODILY INJURY (Per person) | $ |
| | ALL OWNED AUTOS | | | | BODILY INJURY (Per accident) | $ |
| | SCHEDULED AUTOS | | | | PROPERTY DAMAGE | $ |
| | HIRED AUTOS | | | | | |
| | NON-OWNED AUTOS | | | | | |
| | GARAGE LIABILITY | | | | AUTO ONLY - EA ACCIDENT | $ |
| | ANY AUTO | | | | OTHER THAN AUTO ONLY: | |
| | | | | | EACH ACCIDENT | $ |
| | | | | | AGGREGATE | $ |
| A | EXCESS LIABILITY | GP09313156 | 10/01/08 | 10/01/09 | EACH OCCURRENCE | $ 1,000,000 |
| | X UMBRELLA FORM | | | | AGGREGATE | $ 1,000,000 |
| | OTHER THAN UMBRELLA FORM | | | | | $ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | | | | WC STATUTORY LIMITS / OTHER | |
| | THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE: INCL / EXCL | | | | EL EACH ACCIDENT | $ |
| | | | | | EL DISEASE-POLICY LIMIT | $ |
| | | | | | EL DISEASE-EA EMPLOYEE | $ |
| | OTHER | | | | | |

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS**

CERTIFICATE HOLDER IS NAMED AS AN ADDITIONAL INSURED WITH RESPECTS TO THE $2.5M SRF LOAN FOR THE CLARKSBURG SANITARY BOARD PROJECT

**CERTIFICATE HOLDER**

WEST VIRGINIA WATER
DEVELOPMENT AUTHORITY
180 ASSOCIATION DRIVE
CHARLESTON, WV 25311

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Rosanna Funk

Rosanna Funk



© ACORD CORPORATION 1988

CERTIFICATE: 059/001/ 00043

# IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

STEPTOE & JOHNSON PLLC
ATTORNEYS AT LAW

Chase Tower, Eighth Floor
P.O. Box 1588
Charleston, WV 25326-1588
(304) 353-8000 (304) 353-8180 Fax
www.steptoe-johnson.com

Writer's Contact Information

# CLOSING MEMORANDUM

**To:** **Financing Team**

**From:** **John C. Stump, Esquire**

**Date:** **July 8, 2009**

**Re:** **City of Clarksburg Sewer Revenue Bonds, Series 2009 A (West Virginia SRF Program) and Sewer Revenue Bonds Series 2009 B (West Virginia SRF Program/ARRA)**

---

## 1. DISBURSEMENTS TO THE CITY OF CLARKSBURG

A.

| | |
|---|---|
| Payor: | West Virginia Department of Environmental Protection |
| Source: | Series 2009 A Bonds Proceeds |
| Amount: | $623,459 |
| Form: | Wire Transfer |
| Payee: | City of Clarksburg |
| Bank: | The Huntington National Bank |
| Routing #: | 051903761 |
| Account #: | 01521220546 |
| Contact: | Margaret Saliga, 304.623.7106 |
| Account: | Series 2009 Bonds Construction Trust Fund |

B.

| | |
|---|---|
| Payor: | West Virginia Department of Environmental Protection |
| Source: | Series 2009 B Bonds Proceeds |
| Amount: | $10,702 |
| Form: | Wire |
| Payee: | City of Clarksburg |
| Bank: | The Huntington National Bank |
| Routing #: | 051903761 |
| Account #: | 01521220546 |
| Contact: | Margaret Saliga, 304.623.7106 |
| Account: | Series 2009 Bonds Construction Trust Fund |

## 2. DISBURSEMENTS TO MUNICIPAL BOND COMMISSION

| | |
|---|---|
| Payor: | West Virginia Department of Environmental Protection |
| Source: | Series 2009 A Bonds Proceeds |
| Amount: | $50,000 |
| Form: | Wire Transfer |
| Payee: | City of Clarksburg |
| Bank: | Municipal Bond Commission |
| Routing #: | 051503394 |
| Account #: | 5270517317 |
| Contact: | Sara Boardman, 558.3971 |
| Account: | Series 2009 A Bonds Reserve Account |

File copy

# DEP PAYMENT REQUISITION FORM

Rev 04/07/09

1. LOAN RECIPIENT/VENDOR:

NAME: City of Clarksburg

ADDRESS:

222 West Main Street, Clarksburg, WV 26301

FEIN: 55-6000164001

DUNS: 835 876 087

2. SRF #: C-544319

3. INVOICE NUMBE 1.00

4. PERIOD COVERED BY THIS REQUEST (MO/DAY/YR)

FROM: (MO/DAY/YR) 4/17/01

TO: (MO/DAY/YR) 7/8/09

5. % OF PHYSICAL CONSTRUCTION COMPLETION 0

| CLASSIFICATION | A) APPROVED BUDGET | B) PREVIOUS APPROVED | C) THIS REQUEST | D) TOTAL COLUMNS B&C | E) AGENCY USE ONLY SRF | E) AGENCY USE ONLY ARRA |
|---|---|---|---|---|---|---|
| 1) CONSTRUCTION | 925,330 | | 0.00 | 0.00 | | |
| 2a Equipment | 85,749 | | 85,749.00 | 85,749.00 | 85,749 | |
| 2b repairs | 63,968 | | 0.00 | 0.00 | | |
| 3) ENGINEERING | | | | | | |
| a. Basic | 135,200 | | 0.00 | 0.00 | | |
| b. Design | 442,500 | | 442,500.02 | 442,500.02 | 442,500 | |
| c. Const Basic | 30,000 | | 0.00 | 0.00 | | |
| d. Spec Services | 25,000 | | 0.00 | 0.00 | | |
| e. Inspection | 60,000 | | 0.00 | 0.00 | | |
| 4) LEGAL | 40,000 | | 10,159.48 | 10,159.48 | 10,159 | |
| 5) ACCOUNTING | 0 | | 0.00 | 0.00 | | |
| 6) ADMINISTRATIVE | 308 | | 307.55 | 307.55 | 308 | |
| 7) CONTINGENCY | 46,500 | | 0.00 | 0.00 | | |
| 8) LOAN REPAYMENT | 0 | | 0.00 | 0.00 | | |
| 9) Int Financing | 69,445 | | 69,444.77 | 69,444.77 | 65,298 | 4147 |
| 9) RESERVE FUND | 50,000 | | 50,000.00 | 50,000.00 | 50,000 | |
| 10) CLOSING COSTS | 26,000 | | 26,000.00 | 26,000.00 | 26,000 | |
| 11) SUBTOTAL | 2,000,000 | | 684,160.82 | 684,160.82 | 680,014 | 4,147 |
| 12) LESS PREVIOUSLY PAID | | | | | Ø | Ø |
| 13) INVOICE AMOUNT | | | | | 684,161 | |

14) [signature] 6/9/09

AUTHORIZED SIGNATURE DATE

Frank L. Ferrari, Treasurer

TYPED OR PRINTED NAME AND TITLE

15) [signature] 6/9/09

PERSON PREPARING FORM SIGNATURE DATE

Katy Mallory, Project Finance Manager

TYPED OR PRINTED NAME AND TITLE

AGENCY USE ONLY:

THIS REQUEST APPROVED BY: WV DEPARTMENT OF ENVIRONMENTAL PROTECTION

[signature] 6/30/09

PROJECT REVIEWER DATE

[signature] 7/1/09

AUTHORIZED OFFICER DATE

RF - 91

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 July 7, 2009 Time 1:30pm LGA Clarksburg Program CWSRF

| NAME | COMPANY, AGENCY, OR ORGANIZATION | TELEPHONE | FAX | E-MAIL |
|---|---|---|---|---|
| ROSE BRODERSEN | WV DEP | 926 0499 x1608 | 926 0496 | Rosalie.M.Brodersen@wv.gov |
| John Stump | Steptoe & Johnson PLLC | 304.353.8196 | 304.353.8181 | john.stump@steptoe-johnson.com |
| Ryan White | Jackson Kelly PLLC | 340-1283 | 340-1272 | srwhite@jacksonkelly.com |
| Shanna Gee | Jackson Kelly PLLC | 340.1318 | 340.1272 | sgee@jacksonkelly.com |
| Chris Jarrett | WVWDA | 558.3612 ext 108 | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

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 Martin Howe, City Manager Telephone 304.624.1673 E-Mail mhowe@cityofclarksburg.com

Address 222 West Main Street, Clarksburg, 26301

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.

2-874

Dave Watson
Dan F
Ken M
Neva

west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street S.E.
Charleston, WV 25304
Phone: (304) 926-0495
Fax: (304) 926-0496

Joe Manchin III, Governor
Randy C. Huffman, Cabinet Secretary
www.wvdep.org

RECEIVED
OCT 14 2008
THRASHER ENGINEERING, INC.

September 30, 2008

Mr. Dave Watson
Thrasher Engineering
P. O. Box 1532
Clarksburg, WV 26301

RE: Clarksburg Sanitary
Sewer Improvements
SRF No. C-544319

Dear Mr. Watson:

The plans and specifications for the Clarksburg Sanitary Board Proposed Improvements to the Sanitary Sewer Collection System are hereby approved.

This approval DOES NOT constitute authority to advertise for bids. You will be advised by separate letter from this agency as to when such an advertisement can be initiated.

Please be advised it will be necessary to issue an addendum to the contract documents, prior to opening of bids, to include the current minimum prevailing wages, as promulgated by the WV Division of Labor. This and all addenda and revisions to the contract documents must be telefaxed to this office for approval and issued to plan holders five (5) days prior to bid opening. Failure to submit addenda in a timely manner will automatically nullify approval to open bids. Any addenda issued inside the five (5) day period prior to the bid opening must include an automatic extension to the bid opening date of a minimum of seven (7) days.

If any questions arise, please contact Robert Coontz, P. E., at 304-457-4588, ext. 3209.

Sincerely,

Scott G. Mandirola
Acting Director

SGM/rc
cc: Clarksburg Sanitary Board, Martin Howe

Promoting a healthy environment.

**SWEEP RESOLUTION**

**CITY OF CLARKSBURG**

**WHEREAS**, The City of Clarksburg (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 administrative fees, 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, to the extent funds are available, 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 Mayor and City Clerk 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 18th day of June, 2009.

Margaret A. Bailey

Mayor

## American Recovery and Reinvestment Act of 2009 (ARRA)

**Project Certification**

**Program:** West Virginia Clean Water State Revolving Fund

**Project:** City of Clarksburg, Harrison County

**Description:**

Sanitary sewer line installation along Davisson Run Road; improvements to existing system by cleaning of sewer lines; removal and replacement of combined sewer overflow structure.

**Total Project Cost**

$2,000,000

**ARRA Assistance Provided**

$1,000,000

I hereby certify that the above project has received the full review and vetting required by federal law and that the investment of federal and state funds in this infrastructure project is an appropriate use of taxpayer dollars.

This certification will be posted on the Governor's website and linked to the federal ARRA website www.recovery.gov

Randy C. Huffman, Cabinet Secretary

6/26/09
Date

west virginia department of environmental protection

**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 16th day of April 2009

GENERAL ORDER NO. 182.09

Public Service Commission intended procedures concerning water and sewer projects that are funded with federal stimulus funds.

## COMMISSION ORDER

Earlier this year, Congress enacted and the President signed the *American Recovery and Reinvestment Act of 2009*. Under this legislation, the State of West Virginia is to receive certain stimulus funds, a portion of which will be dedicated to the construction of water and sewer infrastructure. The Public Service Commission ("Commission") has received information from various funding agencies. The State Bureau for Public Health through its drinking water treatment revolving fund will have approximately $19.5 million for water projects. In addition, the State Department of Environmental Protection through the clean water state revolving fund will have approximately $61 million for sewer projects. Both of these state agencies have indicated that they intend to have the projects bid by August 2009 and contracts awarded by October 2009. In addition, certain other stimulus funds for water and sewer projects will be administered by the U.S. Department of Agriculture, Rural Utilities Service.

Although the Commission is not a funding source for the stimulus funds, it will nonetheless be called upon to process utility applications for certificates of public convenience and necessity ("certificates") to authorize the construction of stimulus-funded water and sewer projects. Given the aggressive schedule planned by the funding agencies, and the requirement in the federal law that water and sewer projects be "shovel ready," meaning under construction within a quick time line, the Commission intends to expedite these applications to the greatest extent possible consistent with existing State Law.

As a preliminary observation, the Commission would stress that applications must be complete and the statutory thirty-day notice to the public must be given at the outset of the application. Failure to file complete applications or failure to provide timely public notice will lead to delays in processing projects and jeopardize the ability to receive federal stimulus funds. The Commission anticipates that it will receive (i) new applications for water and sewer projects using federal stimulus funds, (ii) amendments to pending applications

containing some measure of federal stimulus funds, and (iii) petitions to reopen certificates already issued seeking to amend funding by including federal stimulus funds. The Commission issues this General Order to inform the public, regulated utilities, attorneys who practice before the Commission, funding agencies, and the staff of the Commission of its intended procedures and processes.

With respect to new stimulus project applications, the Commission intends that applicants and Staff observe the following procedures. At the outset, the Commission again stresses that it is essential that a utility project sponsor file a complete application and provide timely public notice of its application.

1. Staff assigned to the case should immediately review the filing to determine if it is complete. The Initial Joint Staff Memorandum should be filed within ten days.[1]

2. If the filing is complete and does not require an increase in rates for the project, Staff should file its Final Joint Staff Memorandum in thirty-five days which allows for the protest period assuming the applicant has timely published notice.

3. If the filing is complete and includes a proposed increase in rates for the project, Staff may deem it necessary to file a data request for items needed to complete the review and make a final Staff recommendation. This data request should be filed within ten days. The applicant should expedite its response to Staff's requests and Staff should file its Final Joint Staff Memorandum within forty-five to sixty days

4. If the filing is not complete, irrespective of whether or not the application seeks an increase in rates, Staff should file a data request, if necessary, for the items needed to complete the review and make a final Staff recommendation. This data request should be filed within ten days. The applicant should expedite its responses to Staff's requests and Staff should file its Final Joint Staff Memorandum within forty-five to sixty days.

5. If rates are required for the project and a rate change has not been included with the application:

   A. For municipalities, the processing time is out of the Commission's ability to control. Staff needs to determine where the municipality is in the ordinance process and what else is needed to process the case. This should all be part of the Initial Joint Staff Memorandum to let the Commission know if the case can be processed or needs dismissed. (Certificates and rate ordinances need to be coordinated for a municipal appeal.) Data requests should still be filed within the ten-day period.

---

[1] Days in this Order are calendar days. Filings due on weekends or holidays are due the next working day.

B. Public service districts ("districts") that need rates for the project can follow steps 1 and 3 or 4 above.

C. Districts that require rates outside of the project and are in default on bonds cannot move forward. Staff must address this in its initial memorandum.

5. For newly-filed water or sewer applications for certificates of convenience and necessity where the funding is described at the time of the filing as Stimulus Funding the Commission shall designate the filings as "SCN." The Commission, its Staff and Administrative Law Judges, will process those designated filings as expeditiously as possible.

The stimulus funds may be used to replace existing funding for projects that are ready to proceed, allowing the State of West Virginia to fund more projects than planned and provide an enhanced investment in water and sewer infrastructure to unserved and under-served areas of the State. To expedite the processing of projects that have already received a certificate and are eligible to receive stimulus funds, the Commission plans the following process and procedures:

6. In instances where municipalities or municipal water or sewer boards ("municipal utilities") have already been granted certificates, and in the event the municipality is awarded a stimulus assistance funding package to replace either existing grant or loan funding from another source, the municipal utility shall only be required to file with the Commission a letter from the funding agency that describes the change in the project funding. The filing will be treated as a closed entry by the Executive Secretary and the Commission anticipates no further action by the Commission.

7. Similarly, for districts that are awarded a stimulus assistance funding package equivalent to the existing grant money from another source, that has no impact on rates, the district shall only be required to file with the Commission a letter from the funding agency that describes the change in the project funding. The filing will be treated as a closed entry by the Executive Secretary and the Commission anticipates no further action by the Commission.

8. In the event that a district is awarded a stimulus assistance funding package and the benefit to the customers of such improved financing is lower project costs, the district will only be required to file a petition to reopen the original formal case granting the certificate in order that the Commission may review the rates established for the project.

The Commission will provide for such petitions to reopen to be handled in an expedited manner. To that end, the district will be required to file with its petition to reopen a letter from the funding agency that describes the change in project funding, specifically setting forth the newly-committed funding and an accompanying calculation by the district

of the impact to its rates together with supporting documentation. Upon the filing of this information, Staff will perform a review of the revised project funding and rate calculations and file a final recommendation with the Commission stating its recommended rates as soon as possible, but no later than ten days after receipt of the petition. The Commission will issue an order as soon thereafter as possible.

9. For districts that are awarded a stimulus assistance funding package to supplement funding to deal with a cost overrun in whole or part, that has no impact on rates, the district may utilize the enhanced funding to first fund any project alternatives that were reviewed as either deducts or adducts that were approved as a part of the original certificate, contingent upon funding, in order that all portions of the project can be constructed. In this event, the district shall be required to file with the Commission a letter from the funding agency that describes both the change in the project funding and also notes the deducts or adducts that will be funded for construction. The filing will be treated as a closed entry by the Executive Secretary and the Commission anticipates no further action on its part.

The issuance of these guidelines should expedite these projects and the continuing effort to provide quality water and sewer service throughout the State of West Virginia. The Commission understands that there will be instances and situations where events will disrupt these intended procedures; however, the Commission expects all parties to use their best efforts to process these cases in a timely manner. Finally, given the aggressive time frame contemplated by the funding agencies and the intent to have bids out by August 2009, project applications should be filed no later than June 1, 2009, to avoid jeopardizing the timely consideration of those applications.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission give public notice of this order in a manner deemed most efficient and appropriate.

A True Copy, Teste:

Sandra Squire
Executive Secretary

go18209c.wpd

# CHARTER

# OF THE CITY OF

# CLARKSBURG, WEST VIRGINIA

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Section 42. Meetings and Other Acts or Legal Holidays.
Section 43. Separability.
Section 44. Effective Date of Charter.

# CHARTER

# OF THE CITY OF

# CLARKSBURG, WEST VIRGINIA

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SECTION 1. INCORPORATION.

The inhabitants of the City of Clarksburg, Harrison County, West Virginia, within the corporate limits thereof as now established or as may hereafter be established in the manner provided by law, shall be and continue in perpetuity to be a municipal body politic and corporate, under the name of the "City of Clarksburg," with all the powers of self-government granted by the constitution and laws of the state.

SECTION 2. SUCCESSION.

The City of Clarksburg, as successor in interest of the present municipal corporation of the same name, shall succeed to, own, possess and enjoy all the property and all the rights, titles and interest of every kind and nature vested in or belonging to such municipal corporation at the time this charter becomes effective, shall be subject to all existing liabilities, shall be bound by and through the appropriate agency shall pay all existing debts, and shall faithfully perform all present duties and discharge all present obligations of such corporation.

SECTION 3. FORM OF GOVERNMENT.

There is established by this Charter the council-manager form of municipal government, as prescribed in sections five and five-a, article three, chapter eight-a of the official code of West Virginia, as amended. Except as otherwise provided in this charter, the council shall be the governing authority of the city, and shall appoint the city manager who shall execute the laws and administer the government of the city, except as otherwise provided herein.

SECTION 4. POWERS OF CITY.

The city shall have all the powers specifically provided for in this charter, and shall also have all the powers now or hereafter granted to municipal corporations and to cities of its class by the constitution and general laws of the state, together with all the implied powers necessary and proper to carry into execution the powers so granted. The enumeration herein of particular powers shall not be deemed exclusive, but the city shall have and may exercise all the powers which under the constitution and laws of the state might properly be specifically enumerated in this charter.

SECTION 5. THE COUNCIL; QUALIFICATIONS, TERM OF OFFICE, AND SALARY OF MEMBERS; SELECTION OF MAYOR; VACANCIES.

The Council shall consist of seven members to be elected at large by the qualified .ers of the city for terms of four years beginning on the first day of July following their ction, except that of the seven councilmen elected at the first election held under the ›visions of this charter the three receiving the smallest numbers of votes shall be :cted for terms of two years. At each regular election thereafter either three or four ıncilmen, as the case may be, shall be elected to succeed the incumbent members ose terms of office expire on the thirtieth day of June following the election. The terms office of all councilmen in office on the date this charter is adopted shall continue until close of business on the thirtieth day of June following the first regular election held :eunder.

Councilmen shall be qualified voters of the city, shall have been residents of the y for at least one year prior to their nomination for the office, shall hold no other ›lic office except that of notary public or member of the National Guard or naval or litary reserve, and shall not be employed by the city in any capacity. If a councilman ıll cease to be qualified or shall be convicted of any crime involving moral turpitude, office shall immediately become vacant.

A special meeting of the council shall be held at 7:30 P.M. on the first day of July owing each regular city election. Following the selection of a temporary chairman, newly elected councilmen shall be inducted into office. The council shall then elect of its members to serve as mayor for a term of two years. The mayor shall preside neetings of the council and shall be recognized as the head of the city government for ceremonial and military purposes, but shall have no regular administrative duties.

The salary of the Mayor and Council shall be fixed by ordinance.

If any vacancy occurs in the office of councilman, the council shall within thirty days the affirmative vote of at least four members appoint a qualified person to fill the :ancy for the unexpired term. If the vacancy is not so filled within thirty days after it :urs, then of the unsuccessful candidates for the office of councilman at the last election, o are still qualified and willing to serve, the one who received more votes than any of : others shall be entitled to the office. If the vacancy is not filled by either of these :thods, it shall be filled at a special election to be held on a date not more than four ›nths after the vacancy occurs. In the resolution calling the special election, the council ıll specify procedures for the conduct of the election, and dates for the circulation and .ng of nominating petitions and for the holding of the election, which shall conform as arly as may be practicable to the procedures and schedule established by this charter · regular city elections. (Amended 6-1-93)

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SECTION 6. MEETINGS OF THE COUNCIL; RULES OF PROCEDURE; JOURNAL.

Regular meetings of the council shall be held at 7:30 P.M. on the first and third Mondays of each month, or on such other stated days as the council may by ordinance prescribe. Special meetings may be held at any time upon call of the mayor or any three councilmen and upon such notice as the council may by rule prescribe. All meetings of the council shall be open to the public.

Four members of the council shall constitute a quorum. The mayor shall be entitled to vote on all matters before the council. The council shall by resolution adopt by-laws prescribing its own rules, procedure, and order of business, and shall keep a journal of all of its proceedings, which shall be available for public inspection.

SECTION 7. POWERS OF THE COUNCIL; APPOINTMENT AND TENURE OF CITY MANAGER.

Subject to any limitations imposed by the constitution and general laws of the state, all powers of the city shall be vested in and exercised by the council, except such powers as are by this charter specifically vested in the water board and such powers as are by general law vested in the other boards or commissions provided for in this charter or hereafter created by council pursuant to general law. No franchise granted by the council may be transferred in whole or in part without the written consent of council.

The council shall appoint a city manager to serve for an indefinite term, and may at any time remove him from office by the affirmative vote of not less than four of its members. At least thirty days before such removal shall become effective, the council shall adopt a preliminary resolution stating the reasons for his removal, and specifying the date on which his removal shall become final. At any time within ten days after the adoption of such resolution, upon the written request of the manager, he shall be afforded an opportunity to be heard at a public meeting of the council, which shall be held no earlier than ten nor later than twenty days after the request was made, and at a time and place to be fixed by council. After such public hearing if one is requested, after full consideration, the council by the affirmative vote of four of its members may adopt a final resolution of removal. By the preliminary resolution the council may suspend the manager with pay for a period not to exceed thirty days, and may designate some other person to perform the duties of the manager during the period of his suspension.

The city manager shall be a person of proved executive and administrative ability, preferably with experience and training in the field of city management. At the time of his appointment he need not be a resident of the city or state, but during his tenure of office shall reside within the city. No councilman, during his term and for a year thereafter, shall be eligible for appointment as city manager.

Neither the council nor any of its members shall direct or in any manner interfere with or obstruct the appointment or removal of any city officer or employee by the city manager or by any of his subordinates. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the city manager and neither the council nor any member thereof shall give orders to any subordinates of the city manager, either publicly or privately. If any councilman shall violate the provisions of this section, he shall be subject to removal from office in the

anner provided for the removal of municipal officers in section seven, article six, ıapter six of the official code of West Virginia, as amended.

Except as otherwise provided by this charter, and within the limitations imposed by the ›nstitution and general laws of the state, the council may determine the powers and duties ' city officers, and subject to the requirements of general law may regulate the number, ethod of selection, qualifications, tenure, and compensation of city officers and employees, cluding the establishment of civil service for such employees.

SECTION 8. POWERS AND DUTIES OF CITY MANAGER.

Except as otherwise provided in the charter, the city manager shall be the head of the lministrative branch of the city government. He shall be responsible to the council for e proper and efficient adminstration of all affairs of the city under his authority, and to at end, except as otherwise provided in this charter, he shall have the power and shall be ›quired to:

(1) Appoint and, when he deems it necessary or advisable, remove all officers and employees of the city except as otherwise provided by this charter or by general law, and except as he may authorize the head of a department or office to appoint and remove subordinates in such department or office.
(2) Prepare the annual budget, submit it to the council for adoption, and be responsible for its administration after adoption.
(3) Prepare and submit to the council as of the end of each fiscal year a complete report on the finances and administrative activities of the city for the preceding year.
(4) Advise the council with respect to future plans and physical needs, and keep it informed concerning the current financial condition of the city.
(5) Require the chief of police and the chief of the fire department to establish for their respective departments a course of training designed to promote the more efficient and safe operation of their departments.
(6) Execute on behalf of the city all legal and other written documents requiring execution by the chief executive officer of the city, acknowledge the same if necessary, and perform all other acts and duties required of the chief executive officer of the city.
(7) Perform such other duties as may be required of him by this charter, by general law, or by order of the council not inconsistent with this charter or with general law.

The manager may by letter filed with the city clerk designate some qualified iministrative officer of the city to perform the duties of the manager during his temporary ›sence or disability. If the manager fails to make such designation, the council may by esolution appoint an officer of the city to act for the manager during his absence or lsability.

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SECTION 9. CITY CLERK.

The Council shall appoint a resident of the city to serve as city clerk at the will and pleasure of the council. Except as otherwise provided in this charter and subject to the supervision of the city manager, the clerk shall have the power and it shall be his duty to:

(1) Give notice of and attend all meetings of the council, keep the journal of its proceedings, authenticate by his signature and record in full in a book kept for the purpose all ordinances and resolutions of the council, prepare and keep up to date an index of all such ordinances and resolutions, and keep all such records available for public inspection when not in use.

(2) Make and certify copies of any ordinance, resolution or order of the council whenever required to do so, and affix the corporate seal of the city to any paper required to be sealed and to any certified copy of any paper, order or proceeding which he may make.

(3) Prepare and cause to be served all notices required to be given to any person, firm or corporation, and after the proper service and return of any notice he shall file and preserve the same.

(4) Have custody of and keep available for public inspection the permanent records of the city and file and properly index all records of such city officers and departments as the city manager may direct.

(5) Perform such other duties as may be required of him by this charter, by general law, or by city ordinance or order of the city manager not inconsistent with this charter or with general law.

SECTION 10. POLICE COURT AND JUDGE; JURISDICTION; PRACTICE AND PROCEDURE.

The police court now existing shall be continued and shall have criminal jurisdiction over violations of city ordinances and the criminal jurisdiction of a justice of the peace with respect to offenses committed within any territory within or beyond the city limits over which the city has police jurisdiction under provisions of general law. The sessions of the court shall be held at such times and places as the council by ordinance or resolution may direct.

The judge of the police court shall be a resident of Harrison County and a member in good standing of the Harrison County Bar. He shall be appointed by the city manager to serve for an indefinite term. In the event of the temporary absence or disability of the regular judge, the city manager shall appoint some other qualified person to serve as judge of the police court. During the period of such temporary service the salary of the regular judge shall be transferred and paid to the temporary judge, except that both shall be paid during the customary vacation period granted to the regular judge.

The judge shall issue warrants upon complaint under oath of any person or officer for the arrest of anyone charged with any offense within the jurisdiction of the police court. He shall try and determine all cases over which the court has jurisdiction, and within the limits prescribed by ordinance or by law shall punish by fine or imprisonment, or both, any person convicted of any offense. He shall have power to summon witnesses for the trial of any case before him, to compel the attendance of police officers of the city, to require of the chief of police the enforcement of all judgements or orders entered by him in the exercise of his powers as police judge, and to issue executions for all fines,

penalties and costs imposed by him. The proceedings for the recovery of fines of for the enforcement of penalties fixed by any ordinance or law shall conform to the regulations, so far as they are applicable, prescribed by general law for civil proceedings before justices of the peace. The police judge, however, for good cause shown by affidavit, may order by an indorsement upon the summons that any defendent be arrested and brought before the court to be dealt with according to law.

All processes and orders of the police court shall be signed by the police judge and shall be directed to the chief of police, to be executed by him or by one of his subordinates. The police officer executing any such process or order shall have the same powers, be governed by the same rules of law and be subject to the same liabilities as sheriffs in the performance of like services. There may be charged for the services of such officer the same fees as the sheriff is entitled to charge for like services, but no such charge shall be made against the city. All such fees as well as all fines and penalties imposed by the court shall be collected by the chief of police, and accounted for and paid by him into the treasury of the city.

In the discharge of his duties and in the trial of cases the judge of the police court shall follow the rules prescribed by law for criminal proceedings before a justice of the peace, except that all cases shall be tried by the judge without a jury. The judge shall keep a record of all warrants issued by him, of all persons arrested and brought before him, and of all trials, fines or sentences imposed, or judgments entered by him, in a permanent book to be known as the police court docket. A record of all entries made in the docket each day shall be signed by the judge at the close of the day.

In cases where the evidence discloses such a violation of the laws of the state that in the opinion of the police judge the person accused should be committed to await action by the grand jury, the judge shall have the same jurisdiction and power as a justice of the peace in regard to the apprehension, commitment and admission to bail of the person so accused.

A person convicted in the police court shall have the same right to an appeal and a trial de novo as is provided by law for appeals from justice of the peace courts.

SECTION 11. CITY ATTORNEY.

The city attorney shall be a resident of Harrison County and a member in good standing of the Harrison County Bar. He shall be appointed by the city manager to serve for an indefinite term. He shall perform all duties and exercise all powers which shall be conferred upon him by any ordinance or resolution of the council and, except as otherwise provided in this charter, he shall have the power and it shall be his duty to:

(1) Act as legal adviser and counsel for the city council and for all administrative boards and officers thereof with respect to their official duties. Upon request, he shall furnish to the city council or to such officers a written opinion upon any question concerning their respective powers and duties.

(2) Prosecute and defend all suits for or against the city, and prepare all ordinances and all contracts, bonds or other writings in which the city is concerned, and endorse on each his approval of the form and correctness thereof.

(3) Prosecute all cases brought before or appealed from the police court, and perform the same duties so far as they are applicable thereto as are required by law of prosecuting attorneys.

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(2) Prosecute and defend all suits for or against the city, and prepare all ordinances and all contracts, bonds or other writings in which the city is concerned, and endorse on each his approval of the form and correctness thereof.

(3) Prosecute all cases brought before or appealed from the police court, and perform the same duties so far as they are applicable thereto as are required by law of prosecuting attorneys.

Whenever the exigencies of the business of the city require such action, the city manager shall have the right to employ special counsel to assist the city attorney.

SECTION 12. ADMINISTRATIVE OFFICES AND DEPARTMENTS.

There shall be in the city government a police department, a fire department, a department of public works, a department of finance, and such other administrative departments as now exist or may by ordinance be created by the council. The city manager shall appoint as the head of each department a chief, supervisor or director, who shall be responsible for the efficient administration of the department, subject to the supervision and control of the manager. Except as otherwise provided by this charter or by general law, the head of a department need not be a resident of the city or state at the time of his appointment, but during his tenure of office shall reside in Harrison County.

The council may by ordinance create, combine, change or abolish offices, departments or agencies, other than those established by this charter. Except as otherwise provided in this charter, the council may assign additional functions or duties to any office, department or agency created by it or by this charter, but may not discontinue or transfer any function or duty assigned by this charter to any particular office, department or agency.

SECTION 13. CHIEF OF POLICE.

The chief of police shall be appointed by the city manager to serve for an indefinite term. The chief of police shall be a resident of the state and shall be a person of proved executive and administrative ability, with experience or training in law enforcement. Subject to the direction and control of the city manager, the chief of police shall be responsible for the supervision and administration of the police department, and shall require of all police officers the proper discharge of their duties. He shall see to the protection of property and the preservation of peace, order and public safety throughout the city, and to that end he shall cause all violators of city ordinances and of general law to be apprehended and brought to trial before the police court or other proper tribunal. Under the direction of the city manager, he shall also perform such other duties as may be required of him by this charter, by general law or by city ordinance or order of the city manager not inconsistent with this charter or with general law.

SECTION 14. CHIEF OF FIRE DEPARTMENT.

The chief of the fire department shall be appointed by the city manager to serve for an indefinite term. The chief of the fire department shall be a person of proved executive and administrative ability, with experience or training in the suppression and prevention of fires. Subject to the direction and control of the city manager, the chief of the fire department shall be responsible for the supervision and administration of the fire department, and shall require of all firemen the proper discharge of their duties. He shall make such inspections of buildings and property throughout the city as may be necessary to discover fire hazards, shall take all proper measures to eliminate such hazards, and shall keep an accurate record of all fires, inspections and fire hazards within the city. Under the direction of the city manager, he shall also perform such other duties as may be required of him by this charter, by general law, or by city ordinance or order of the city manager not inconsistent with this charter or with general law.

SECTION 15. DIRECTOR OF PUBLIC WORKS.

The city manager shall appoint a director of public works, who shall be a registered civil engineer, to serve for an indefinite term. Subject to the direction and control of the city manager, the director of public works shall be responsible for the supervision and administration of the department of public works.

In addition, except as otherwise provided in this charter and subject to the supervision of the city manager, he shall have the power and it shall be his duty to:

(1) Inspect the construction or repair of all buildings, the installation of all electrical wiring or equipment, and the installation of all plumbing, to the extent that such activities are controlled or regulated by the city, for the purpose of seeing that all city regulations are obeyed.

(2) Issue permits for the construction or repair of homes and other buildings upon the payment of such fee as may be fixed by council, but he shall issue no such permit unless the proposed construction or repair is in conformity with city zoning laws and regulations.

(3) Supervise all work done by any contractor for the city while the work is being performed.

(4) Make surveys, fix grades, and prepare plats, plans and specifications for all improvements which may be undertaken by the city, when required to do so by the city manager.

(5) Furnish on the demand of any resident the grade of any street or sewer upon the payment of such fee as may be fixed by council.

(6) Make complete maps of all streets, alleys, lanes, parks and public property owned by the city, keep such maps on file in his office and available for public inspection, and furnish a copy thereof to the city manager.

(7) Require that all pavements, sidewalks, curbs, gutters and sewers in the city are kept clean and repaired.

(8) Perform such other duties as may be required of him by this charter, by general law, or by city ordinance or order of the city manager not inconsistent with this charter or with general law.

SECTION 16. DIRECTOR OF FINANCE.

The city manager shall appoint a director of finance, who shall be a person experienced in accounting and budgeting, to serve for an indefinite term.

Under the direction and control of the city manager and subject to the provisions of this charter, the director of finance shall be responsible for the proper adminstration of the financial affairs of the city, and except as otherwise provided by this charter or by general law shall have the power and shall be required to:

(1) Collect all taxes, special assessments, license fees and other revenues of the city, and receive all other moneys payable to the city.

(2) Have custody of all funds of the city or of any office, department or agency thereof, and deposit such funds in the bank or banks designated by the council.

(3) Supervise the purchase, storage and distribution of all equipment and supplies used by any office, department or agency of the city.

(4) Supervise the receipt and disbursement of all moneys and control all expenditures to ensure that budget appropriations are not exceeded. No proposed

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expenditure shall be made unless the director of finance shall certify that there is available for the purpose an unencumbered balance in the proper item of appropriation.

(5) Maintain a general accounting system for the city and each of its offices, departments and agencies, and keep a separate account for each item of appropriation in the budget, showing the total appropriation, the amounts paid therefrom, the unpaid obligations charged thereto, and the unencumbered balance.

(6) Prepare for submission to the council by the city manager a cumulative monthly statement of all receipts and disbursements in sufficient detail to show the exact financial condition of the city and each of its offices, departments and agencies.

(7) Prepare for submission to the council by the city manager a complete financial statement and report as of the end of each fiscal year.

(8) Compile for use by the city manager in the preparation of the budget an estimate of anticipated revenues during the coming year and an estimate of probable expenditures for current expenses and capital improvements.

(9) Perform such other duties as may be required of him by this charter, by general law, or by city ordinance or order of the city manager not inconsistent with this charter or with general law.

SECTION 17. BUDGET AND BUDGET MESSAGE; PUBLIC HEARING; ADOPTION AND REVISION.

The fiscal and budget year of the City shall begin on the 1st day of July and shall end on the 30th day of June of each calendar year. The budget for each succeeding fiscal year submitted and amended as provided in this section, shall be adopted by the council not later than the 28th day of March of the then current fiscal year.

Not later than the 1st day of March of each year, the City Manager shall submit to the Council a budget for the next fiscal year, together with a budget message which shall contain an outline of the proposed financial operation of the City for the coming year, shall describe the important features of the budget plan, and shall set forth the reasons for the salient changes from the previous year in cost and revenue items. The budget prepared by the City Manager shall not cover the financial operations of the Water Department. In respect to proposed appropriations for capital improvements, there shall be included in the budget message, or attached thereto, a program and schedule of capital projects recommended by the City Planning Commission for the next five fiscal years. A copy of the budget and budget message, and all supporting documents, shall at the same time the budget is submitted to the Council be filed with the City Clerk as a public record, and shall be available for inspection by any interested person.

The budget shall provide a complete financial plan for the budget year, including any estimate of any anticipated surplus at the beginning of the year, an estimate of anticipated revenues from all sources during the year, and a detailed estimate of proposed appropriations for expenditure during the year by each office, department, and agency of the City. The total of appropriations of the budget as submitted by the Manager or as adopted by the Council shall not exceed the sum of estimated revenues and surplus.

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The budget shall provide a complete financial plan for the budget year, including any estimate of any anticipated surplus at the beginning of the year, an estimate of anticipated revenues from all sources during the year, and a detailed estimate of proposed appropriations for expenditure during the year by each office, department, and agency of the City. The total of appropriations of the budget as submitted by the Manager or as adopted by the Council shall not exceed the sum of estimated revenues and surplus.

At a regular or special meeting of Council between the 7th and 28th days of March of each year, there shall be a public hearing on the proposed budget, at which time all interested persons shall be given an opportunity to be heard for or against any estimate of revenue or any item of appropriation contained therein. At said meeting, Council shall ascertain the fiscal condition of the corporation, and make an itemized statement setting forth:

(1) The amount due and the amount that will become due and collectible from every source during the current fiscal year except from the levy of taxes to be made for the year;

(2) The interest, sinking fund and amortization requirements for the fiscal year of bonded indebtedness, legally incurred upon a vote of the people as provided by law, prior to the adoption of the tax limitation amendment;

(3) Other contractual indebtedness, not bonded, legally incurred prior to the adoption of the tax limitation amendment, owing by the Municipality;

(4) All other expenditures to be paid out of the receipts of the Municipality for the current fiscal year with proper allowance for delinquent taxes, exonerations, and contingencies;

(5) The toal amount necessary to be raised by the levy of taxes for the current fiscal year;

(6) The proposed rate of levy in cents on each one hundred dollars assessed valuation of each class of property; and

(7) The separate and aggregate assessed valuations of real, personal and public utility property in each class in the Municipality.

The Recording Officer of the Municipality shall forward immediately a certified copy of the statement to the Tax Commissioner, and shall publish the statement forthwith. The session shall then stand adjourned until the 3rd Tuesday in April, at which time it shall reconvene.

The Council shall, when it reconvenes upon the 3rd Tuesday in April, hear and con-
ider any objections made orally or in writing by the City Attorney, by the Tax
Commissioner or his representative, or by any taxpayer of the City, for the estimate
and proposed levy, or to any item thereof. Council shall enter of record any objections
so made and the reasons and grounds therefor. The Council, after hearing objections,
shall reconsider the proposed original estimate and proposed rates of levy, and if
the objections are well taken, shall correct the estimate and levy. No such estimate
and levy, however, shall be entered until the same shall have first been approved, in
writing, by the Tax Commissioner. When the same shall have been approved by the
Tax Commissioner, the Clerk shall then enter the estimate and levy, together with
the order of the Council approving them and the written approval of the Tax Com-
missioner thereof, in the proper record book.

In addition to the provisions set forth herein, Council shall be subject to the
requirements contained in Chapter 11, Article 8, Section 1, et seq. of the West
Virginia Code, as amended, as the same may apply to municipal corporations.

After the beginning of the fiscal year, the Council shall make only such changes
in the budget as may be required because of action taken by the State Tax Commissioner
in respect to the proposed tax levy of the City or as may be permitted or required
by general law. Thereafter, the Council shall make no other changes in the budget
unless permitted or required to do so by general law. After the final adoption of the
budget, the several amounts stated therein as proposed appropriation shall be
appropriated to the specified objects and purposes. Except as otherwise provided
by general law, the City Manager may at any time transfer any unencumbered
appropriation balance of an appropriated line item from that line item to another
line item with the same account category established by the State Tax Commissioner,
subject to the approval of City Council. No transfers from one account category to
another may be made without revision of the budget and approval by the Tax
Commissioner pursuant to Chapter 11, Article 8, Section 1, et seq.

For the purposes of accounting for the budget, the modified accrual basis of
accounting will be used, or any other basis of accounting required by the State
Tax Commissioner. The ending unencumbered balance at the end of the fiscal
year shall be the starting unencumbered balance for the new fiscal year.

In addition to the foregoing, Council and the City Manager shall comply with
all applicable federal and state laws which in any way relate to the governing
of the financial affairs of a municipal corporation.
(Amended 6-1-93)

SECTION 18. BONDS OF OFFICERS AND EMPLOYEES; AUDITS AND ACCOUNTS.

The chief of police and every member of the police department, and every officer and
employee of the city into whose custody or control shall come any of the moneys or funds of
the city shall before entering upon the discharge of his duties give a bond with corporate
surety conditioned upon the faithful discharge of his duties and the faithful accounting for all
moneys or funds coming into his hands by reason of his office or employment. The amount
of the bond shall be fixed by resolution of the council or, in the case of officers and employ-
ees of the water department, by resolution of the water board. As required by law, all

The Council shall, when it reconvenes upon the 3rd Tuesday in April, hear and consider any objections made orally or in writing by the City Attorney, by the Tax Commissioner or his representative, or by any taxpayer of the City, for the estimate and proposed levy, or to any item thereof. Council shall enter of record any objections so made and the reasons and grounds therefor. The Council, after hearing objections, shall reconsider the proposed original estimate and proposed rates of levy, and if the objections are well taken, shall correct the estimate and levy. No such estimate and levy, however, shall be entered until the same shall have first been approved, in writing, by the Tax Commissioner. When the same shall have been approved by the Tax Commissioner, the Clerk shall then enter the estimate and levy, together with the order of the Council approving them and the written approval of the Tax Commissioner thereof, in the proper record book.

In addition to the provisions set forth herein, Council shall be subject to the requirements contained in Chapter 11, Article 8, Section 1, et seq. of the West Virginia Code, as amended, as the same may apply to municipal corporations.

After the beginning of the fiscal year, the Council shall make only such changes in the budget as may be required because of action taken by the State Tax Commissioner in respect to the proposed tax levy of the City or as may be permitted or required by general law. Thereafter, the Council shall make no other changes in the budget unless permitted or required to do so by general law. After the final adoption of the budget, the several amounts stated therein as proposed appropriation shall be appropriated to the specified objects and purposes. Except as otherwise provided by general law, the City Manager may at any time transfer any unencumbered appropriation balance of an appropriated line item from that line item to another line item with the same account category established by the State Tax Commissioner, subject to the approval of City Council. No transfers from one account category to another may be made without revision of the budget and approval by the Tax Commissioner pursuant to Chapter 11, Article 8, Section 1, et seq.

For the purposes of accounting for the budget, the modified accrual basis of accounting will be used, or any other basis of accounting required by the State Tax Commissioner. The ending unencumbered balance at the end of the fiscal year shall be the starting unencumbered balance for the new fiscal year.

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The chief of police and every member of the police department, and every officer and employee of the city into whose custody or control shall come any of the moneys or funds of the city shall before entering upon the discharge of his duties give a bond with corporate surety conditioned upon the faithful discharge of his duties and the faithful accounting for all moneys or funds coming into his hands by reason of his office or employment. The amount of the bond shall be fixed by resolution of the council or, in the case of officers and employees of the water department, by resolution of the water board. As required by law, all

bonds shall be payable to the state of West Virginia and shall as to form and substance be subject to the approval of the city attorney, evidenced by his signed endorsement on each bond. All bonds when executed and approved shall be recorded in a book kept for that purpose by the city clerk, who is hereby made custodian of all such bonds. At the annual audit made by the state tax commissioner, the auditor shall report to the city council and to the water board respectively whether the required bonds are in any respect insufficient, and may require of any official or employee a new or additional bond. Any new or additional bond so required shall be given within thirty days after notice of such requirement, and a failure to give such bond shall at the expiration of thirty days work a forfeiture of the office or employment of the official or employee failing to give the same. The premium on all bonds given as provided in the section shall be paid from the appropriate fund of the city.

The council by resolution shall provide for such system of collecting, disbursing, budgeting, auditing, accounting and record-keeping, not inconsistent with other provisions of this charter, as may in its opinion be necessary or desirable.

In addition to the regular annual audit made by the state tax commissioner, the council may at any time it is deemed necessary employ qualified public accountants to make a special independent audit of the finances of the city or of the accounts of any city officer, department or agency, other than the accounts of the water board.

SECTION 19. BOARD OF PARK COMMISSIONERS; SUPERINTENDENT OF PARKS AND RECREATION.

The board of park commissioners heretofore created and now existing shall be continued. As authorized under the provisions of chapter ninety-one, acts of the legislature, regular session, one thousand nine hundred thirty-nine, as amended, the city council shall by ordinance provide that the board shall consist of five members, and shall also provide that the members shall be appointed by the council. Of the four members first appointed after the membership has been increased from three to five, two shall be appointed for terms of two years and two for terms of six years. Thereafter all appointments shall be for terms of six years. The members of the board in office on the date this charter becomes effective shall, unless sooner removed, continue to serve until their respective terms expire and their successors have been appointed.

The board shall have the powers and shall perform the duties conferred and required by general law. More particularly, the board shall be charged with the responsibility of providing public parks, playgrounds, athletic fields, swimming pools and other recreational facilities, and of providing an adequate recreational program for the inhabitants of the city. The board shall appoint a superintendent of parks and recreation, who shall be a person of proved executive and administrative ability, with experience or professional training in physical education and community recreation. At the time of his appointment he need not be a resident of the city or state, but during his tenure of office shall reside in Harrison County.

The council shall provide and allocate in the annual city budget sufficient funds for the operation and maintenance of an adequate system of city parks and recreational facilities and of an adequate recreational program.

As provided by law, the board may in its own name accept and disburse any funds it may receive by gift, bequest or devise for park or recreational purposes.

SECTION 20. BOARD OF DIRECTORS OF PUBLIC LIBRARY.

The Board of Directors of the public library heretofore created and now existing shall be continued. The members of the Board in office on the date this Charter as amended becom effective, shall unless sooner removed, continue to serve until their respective terms expire and their successors are appointed. The five members of the Board shall be appointed, in

accordance with the provisions of Chapter 10, Article I of the Official Code of West Virginia as amended. Future appointments to the Board of Directors of the Public Library shall be made as follows: The Harrison County Commission shall appoint a person to a five-year term beginning July 1, 1983, and such person so appointed shall reside outside the city limits of the City of Clarksburg; the Clarksburg City Council shall appoint a person to a five-year term beginning July 1, 1984, and said person shall reside within the City of Clarksburg; the Harrison County Board of Education shall appoint a person to a five-year term beginning July 1, 1985, and said person shall reside outside the corporate limits of the City of Clarksburg. The Clarksburg City Council shall appoint a person to a five-year term beginning on July 1, 1986 and July 1, 1987, and such person shall reside within the corporate limits of the City of Clarksburg, West Virginia.

The Board of Directors shall have the powers and shall perform all the duties conferred and required by general law.

The Clarksburg City Council, the Harrison County Commission and the Harrison County Board of Education shall jointly provide sufficient funds in their respective budgets for the adequate operation, maintenance and repair of the Clarksburg-Harrison County Public Library, and transfer such funds to the Board of Directors.

The Board shall be known as the Clarksburg-Harrison County Public Library.

This charter amendment will not become effective until formal action is taken by the Harrison County Commission and the Harrison County Board of Education agreeing to join with the City of Clarksburg in creating the new Clarksburg-Harrison County Public Library Board. (Ord. 83-17. Passed 7-21-83.)

SECTION 21. CITY PLANNING COMMISSION; ZONING COMMISSION AND BOARD OF ADJUSTMENT.

The council shall provide for the establishment and the financial support of a city planning commission as provided in article five, chapter eight of the official code of West Virginia, as amended. The commission shall be composed of eleven members, who shall be nominated by the city manager and confirmed by the council. The members of the commission shall be freeholders of the city. The commission shall have the powers and shall perform the duties prescribed by general law. It shall be the responsibility of the commission to prepare comprehensive plans for the future development of the city, including recommendations concerning needed streets, bridges, parks, parkways, playgrounds, public buildings, and other public improvements. Such plans and recommendations shall be submitted to the city manager and to the council and other appropriate agencies of the city for such action as the council or other agencies may deem proper. In addition, the commission shall submit annually to the city manager, not less than ninety days prior to the beginning of the budget year, a list of recommended capital improvements which in the opinion of the commission are necessary or desirable to be constructed during the forthcoming five-year period. Such list shall be arranged in order of preference, with recommendations as to which projects shall be constructed in which year.

The planning commission shall also act as the zoning commission and as such shall have the authority and shall perform the duties prescribed by general law, including the authority and duty to prepare and recommend to council for enactment any revisions or amendments of the city zoning ordinance it may deem advisable. The council shall in the manner prescribed by law provide for a board of adjustment which shall hear all appeals arising in connection with the enforcement of the city zoning ordinance.

SECTION 22. PUBLIC HEALTH UNIT.

The city council either by itself or in conjunction with one or more other political subdivisions shall in the manner provided by law establish and maintain a public health unit. The public health unit so established shall have the powers and shall perform the duties

accordance with the provisions of Chapter 10, Article I of the Official Code of West Virginia as amended. Future appointments to the Board of Directors of the Public Library shall be made as follows: The Harrison County Commission shall appoint a person to a five-year term beginning July 1, 1983, and such person so appointed shall reside outside the city limits of the City of Clarksburg; the Clarksburg City Council shall appoint a person to a five-year term beginning July 1, 1984, and said person shall reside within the City of Clarksburg; the Harrison County Board of Education shall appoint a person to a five-year term beginning July 1, 1985, and said person shall reside outside the corporate limits of the City of Clarksburg. The Clarksburg City Council shall appoint a person to a five-year term beginning on July 1, 1986 and July 1, 1987, and such person shall reside within the corporate limits of the City of Clarksburg, West Virginia.

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SECTION 23. SANITARY BOARD.

The council shall provide for the establishment of a sanitary board which shall have the powers and shall perform the duties prescribed by general law with respect to the construction, operation and maintenance of sewage disposal facilities. The sanitary board shall be composed of the city manager, who shall be the chairman of the board, and two other persons appointed by the council, one of whom shall be a registered professional engineer.

SECTION 24. PARKING AUTHORITY.

The parking authority heretofore created and now existing shall be continued. The parking authority shall have the power and the responsibility to establish, operate and finance automobile parking facilities for the city, as provided in article four-a, chapter eight of the official code of West Virginia, as amended.

SECTION 25. THE WATER BOARD; CONTINUANCE; QUALIFICATIONS, TERM OF OFFICE, AND SALARY OF MEMBERS; SELECTION OF PRESIDENT; VACANCIES.

The water board of the city in existence on the date this charter is adopted shall be continued. The water board shall consist of three members to be elected at large by the qualified voters of the city for terms of four years beginning on the first day of July following their election. The terms of office of all members of the water board in office on the date this charter is adopted shall continue until the close of business on the thirtieth day of June following the date on which their terms of office would otherwise expire. At the first election held under the provisions of this charter one member of the water board shall be elected. At each regular election thereafter either one or two members of the board, as the case may be, shall be elected to succeed the incumbent member or members whose term of office expires on the thirtieth day of June following the election.

Members of the water board shall be qualified voters of the city, shall have been residents of the city for at least one year prior to their nomination for the office, shall hold no other public office except that of notary public or member of the National Guard or naval or military reserve, and shall not be employed by the city in any capacity. If a member of the board shall cease to be qualified or shall be convicted of any crime involving moral turpitude, his office shall immediately become vacant.

A special meeting of the water board shall be held at 7:30 P.M. on the first day of July following each regular city election. Following the selection of a temporary chairman, the newly elected member or members of the water board shall first be inducted into office. The board shall then elect one of its members to serve as president for a term of two years.

The salary of each member of the water board shall be twenty dollars for each meeting of the board attended by him, not to exceed five hundred dollars in any fiscal year. Until the maximum limit is reached, the salary of each member shall be paid monthly as earned.

If any vacancy occurs on the water board, the board shall within thirty days appoint a qualified person to fill the vacancy for the unexpired term. If the vacancy is not so filled within thirty days after it occurs, then of the unsuccessful candidates for the office of member of the water board at the last election, who are still qualified and willing to serve, the one who received more votes than any of the others shall be entitled to the office. If the vacancy is not filled by either of these methods, it shall be filled at a special election to be

held on a date not more than four months after the vacancy occurs. In the resolution calling the special election, the council shall specify procedures for the conduct of the election, and dates for the circulation and filing of nominating petitions and for the holding of the election, which shall conform as nearly as may be practicable to the procedures and schedule established by this charter for regular city elections.

SECTION 26. MEETINGS OF THE WATER BOARD; RULES OF PROCEDURE; JOURNAL.

Regular meetings of the water board shall be held at least twice each month, on such days and at such times as the board may by published resolution prescribe. Special meetings may be held at any time upon call by the president or any two members and upon such notice as the board may by rule prescribe. All meetings of the board shall be open to be public.

Two members of the board shall constitute a quorum. The president shall be entitled to vote on all matters before the board.

The board shall by resolution adopt by-laws prescribing its own rules, procedure, and order of business, and shall keep a journal of all of its proceedings, which shall be available for public inspection.

SECTION 27. GENERAL POWERS OF THE WATER BOARD.

All of the powers now or hereafter conferred upon municipalities by the laws of the state for the operation of a water system, and all powers and duties of the city pertaining to the construction, acquisition, establishment, improvement, operation, management, maintenance, and repair of the municipal water system, and the determination of all matters of policy with respect thereto, are vested in and shall be exercised by the water board. The water board shall have full and exclusive jurisdiction of the exercise and discharge of such municipal powers so conferred upon it, independent of control by the council and the city manager. The city council shall upon request of the water board enact such ordinances, enter such or-orders, and adopt such resolutions as may be required by law in connection with the issuance of any water works revenue bonds, the acquisition by purchase or condemnation of any property needed for the proper operation of the water department, or the transaction of any other business of the water board.

In addition to the general powers mentioned in the preceding paragraph, and without any limitation upon such powers, the water board subject to provisions of general law shall have the following authority and shall perform the following duties:

(1) Fix, regulate and change rates and charges for water supplied to all consumers; adopt and prescribe reasonable rules and regulations which shall be observed by all consumers in reference to the use and consumption of water taken from the city mains, the terms and conditions upon which connections to the mains shall be permitted, and the place and manner of making the same; fix penalties by way of additional charges for failure to pay water bills promptly, and to this end the board may discontinue the supply of water to any consumer who fails to pay for the same as required; require all users of water for temporary purposes to pay for the privilege in advance; refuse to furnish water to any building or habitation unless the owner thereof shall assume liability for the payment of the charges for the water so furnished, and charge to and collect from the owner the cost of water furnished to any tenant or occupant of such building or habitation not paid for by the tenant or occupant; charge the cost of installing water service lines from the

held on a date not more than four months after the vacancy occurs. In the resolution calling the special election, the council shall specify procedures for the conduct of the election, and dates for the circulation and filing of nominating petitions and for the holding of the election, which shall conform as nearly as may be practicable to the procedures and schedule established by this charter for regular city elections.

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In addition to the general powers mentioned in the preceding paragraph, and without any limitation upon such powers, the water board subject to provisions of general law shall have the following authority and shall perform the following duties:

(1) Fix, regulate and change rates and charges for water supplied to all consumers; adopt and prescribe reasonable rules and regulations which shall be observed by all consumers in reference to the use and consumption of water taken from the city mains, the terms and conditions upon which connections to the mains shall be permitted, and the place and manner of making the same; fix penalties by way of additional charges for failure to pay water bills promptly, and to this end the board may discontinue the supply of water to any consumer who fails to pay for the same as required; require all users of water for temporary purposes to pay for the privilege in advance; refuse to furnish water to any building or habitation unless the owner thereof shall assume liability for the payment of the charges for the water so furnished, and charge to and collect from the owner the cost of water furnished to any tenant or occupant of such building or habitation not paid for by the tenant or occupant; charge the cost of installing water service lines from the

payment in advance for installing and connecting such line with the water main. The powers of the water board to fix and charge rates for water and water service and to make rules and regulations governing the supply of such water and water service shall be subject to the supervision, regulation and control of the Public Service Commission of the state to the extent and in the manner now or hereafter prescribed by general law.

(2) Whenever the city council shall determine to pave or repave any street in the city, the water board is authorized to make a proper connection and lay a water service line from the main to the curb for each and every lot or for any part of a lot under separate ownership, although no water service may, at any time be necessary or required for any such lot or part of lot, and to charge the cost of making such connection and laying such water service line against the owner of the property. The cost of laying such water service lines and making such connections shall in every instance be a lien upon the lot or part of lot to be benefited thereby, and the water board shall have the right, in the name of the city, to institute and prosecute any proper suit in the circuit court of Harrison County for the collection of such charges by a sale of the property on which the same constitutes a lien. Whenever the council decides to pave or repave any street, it shall be the duty of the water board to lay necessary water mains and service lines as soon as may be practicable in order not to delay the paving program. In order to coordinate the making of such improvements it shall be the duty of both the council and the water board to cooperate with each other in making plans for such improvements or repairs, and to keep each other informed concerning future needs and plans.

(3) The board shall have power from time to time to repair, extend and amplify the water works plant and system, and to make such additions to the pumping station, filtration plant and water mains and lines as may at any time be deemed necessary for the proper operation of the system.

(4) The water board shall require the general manager to examine the sources of water supply for the city and to report to the board from time to time whether the waters are being polluted. The water board may, in the name of the city, institute and prosecute in any court having jurisdiction any legal action, civil or criminal, necessary to enjoin any person, firm or corporation from continuing any nuisance caused by such pollution or to prohibit the violation of any city ordinance or of any provision of general law concerning pollution or concerning the protection of the city water supply.

(5) Whenever the city shall in the manner prescribed by law provide for the imposition of a sewage service charge based on the consumption of water upon the customers of the water department, it shall be the duty of the water board to add the charge to the water bills and collect the same. All sewage charges collected by the water board shall be accounted for monthly and paid into the operating fund of the sanitary board. The sanitary board shall pay any additional cost incurred by the water board in the collection of sewage charges.

SECTION 28. APPOINTMENT AND TENURE OF GENERAL MANAGER OF THE WATER DEPARTMENT.

The water board shall appoint a general manager of the water department to serve for an indefinite term, and may at any time remove him from office by the affirmative vote of not less than two of its members. At least thirty days before such removal shall become effective, the board shall adopt a preliminary resolution stating the reasons for his removal and specifying the date on which his removal shall become final. At any time within ten days after the adoption of such resolution, upon the written request of the manager, he shall be afforded an opportunity to be heard at a public meeting of the board, which shall be held no earlier than ten nor later than twenty days after the request was made, and at a time and place to be fixed by the water board. After such public hearing if one is requested, and after full consideration, the board by affirmative vote of two if its members may adopt a final resolution of removal. By the preliminary resolution the board may suspend the manager with pay for a period not to exceed thirty days, and may designate some other person to perform the duties of the manager during the period of his suspension.

The general manager shall be a person of proved executive and administrative ability, preferably with experience and training in the management of a water or other utility system. At the time of his appointment he need not be a resident of the city or state, but during his tenure of office shall reside in Harrison County. No member of the water board, during his term and for a year thereafter, shall be eligible for appointment as general manager of the water department.

Neither the water board nor any of its members shall direct or in any manner interfere with or obstruct the appointment or removal of any employee by the general manager or by any of his subordinates. Except for the purpose of inquiry, the board and its members shall deal with the employees of the water department solely through the general manager and shall give no orders to such employees, either publicly or privately. If any member of the board shall violate the provisions of this section, he shall be subject to removal from office in the manner provided for the removal of municipal officers in section seven, article six, chapter six of the official code of West Virginia, as amended.

SECTION 29. POWERS AND DUTIES OF GENERAL MANAGER OF THE WATER DEPARTMENT.

The general manager of the water department shall be the administrative authority of the city insofar as the water department is concerned. He shall be ex officio the secretary and treasurer of the water board, and shall devote all of his time to his official duties. He shall be responsible to the board for the proper and efficient administration of the water department, and to that end he shall have power and shall be required to:

(1) Appoint and, when he deems it necessary or advisable, remove all employees of the water department, except as he may authorize such appointment and removal by his subordinates.

(2) Prepare the annual budget of the water department, submit it to the board for adoption, and be responsible for its administration after adoption.

(3) Prepare and submit to the board as of the end of each fiscal year a complete report on the finances and the administration of the department for the preceding year.

SECTION 28. APPOINTMENT AND TENURE OF GENERAL MANAGER OF THE WATER DEPARTMENT.

The water board shall appoint a general manager of the water department to serve for an indefinite term, and may at any time remove him from office by the affirmative vote of not less than two of its members. At least thirty days before such removal shall become effective, the board shall adopt a preliminary resolution stating the reasons for his removal and specifying the date on which his removal shall become final. At any time within ten days after the adoption of such resolution, upon the written request of the manager, he shall be afforded an opportunity to be heard at a public meeting of the board, which shall be held no earlier than ten nor later than twenty days after the request was made, and at a time and place to be fixed by the water board. After such public hearing if one is requested, and after full consideration, the board by affirmative vote of two if its members may adopt a final resolution of removal. By the preliminary resolution the board may suspend the manager with pay for a period not to exceed thirty days, and may designate some other person to perform the duties of the manager during the period of his suspension.

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(1) Appoint and, when he deems it necessary or advisable, remove all employees of the water department, except as he may authorize such appointment and removal by his subordinates.

(2) Prepare the annual budget of the water department, submit it to the board for adoption, and be responsible for its administration after adoption.

(3) Prepare and submit to the board as of the end of each fiscal year a complete report on the finances and the administration of the department for the preceding year.

(4) Advise the board with respect to future plans and physical needs of the water department, and keep it informed concerning the current financial condition of the department.

(5) Enforce, or cause the enforcement of, all city ordinances and all laws of the state applicable to the water system, and of all rules and regulations of the water board.

(6) Prepare and cause to be served all notices required to be given to any person, firm or corporation in connection with any activity or business of the water board, and after the proper service and return of any notice he shall file and preserve the same.

(7) Collect all revenues of the water department, deposit them in the bank or banks designated by the water board, and disburse them upon such requisition or order as the board may prescribe.

(8) Supervise the purchase, storage and distribution of all equipment and supplies for the water department.

(9) Make and keep up to date, and place on file for public information at the office of the water board, complete maps, plans and details showing the dams, pumping stations, reservoirs, tanks, pipes, valves, connections, water lines, fire hydrants, and all other data necessary to show all the physical properties of the water department.

(10) Attend all meetings of the water board, give notice of its meetings, keep the journal of its proceedings, and keep or cause to be kept full and accurate record books and books of account covering all the business and transaction of the water department, all of which shall be available for public inspection.

(11) Execute on behalf of the water board all legal and other written documents requiring execution by the chief executive officer of the board, acknowledge the same if necessary, and perform all other acts and duties required of the chief executive officer of the board.

(12) Perform such other duties as may be required of him by this charter, by general law, or by order of the board not inconsistent with this charter or with general law.

The general manager may by letter filed with the president of the board designate one of his subordinates to perform the duties of the general manager during his temporary absence or disability. If the manager fails to make such designation, the board may by resolution appoint an employee of the water department to act for the manager during his absence or disability.

SECTION 30. EMPLOYMENT OF COUNSEL BY WATER BOARD; AUDITS AND ACCOUNTS.

The water board may employ legal counsel to assist and advise it in the discharge of its duties, and to represent it and the city in all litigation conducted by the water board in connection with the exercise of its powers and the transaction of its business. The cost of all such litigation, including any judgment or decree against the water board in the name of the city, as well as all fees and compensation for counsel employed by it, shall be paid out of the revenues of the water board.

The water board by resolution shall provide for such system of collecting, disbursing, budgeting, auditing, accounting and record-keeping, not inconsistent with other provisions of this charter, as may in its opinion be necessary or desirable.

In addition to the regular annual audit made by the state tax commissioner, the board may at any time it is deemed necessary employ qualified public accountants to make a special independent audit of the finances of the water board or of the accounts of the general manager or any other employee of the water department.

SECTION 31. APPLICATION OF FUNDS OF WATER BOARD.

All revenues derived from the operation of the water department, from the sale of water works bonds, or from the sale by the water board of any of its property, shall be applied by the water board solely for the payment of expenses incurred in the exercise of authority or in the discharge of duties imposed on the board by this charter or by general law, for the payment of the cost of operating, improving, and managing the water system, and for the payment of principal, interest and sinking fund requirements necessary for the discharge of any water works bonds heretofore or hereafter issued.

SECTION 32. CONTRACTS AND PURCHASES.

All contracts and purchases by any City officer, department or agency shall be void unless made in conformity with all applicable provisions of general law, this Charter, and with all rules and regulations fixed by ordinance, from time to time, concerning a dollar amount for which competitive bids shall be required for contracts for improvements or purchases of materials, supplies and equipment.

In the case of contracts for the construction of any improvements in which competitive bids shall be required, sealed competitive bids shall be obtained by notice published at least once each week for two successive weeks in two newspapers of opposite politics published in the City. The notice shall refer to necessary specifications and plans, shall invite the submission of bids, and shall specify the date on which the bids will be opened. In the case of contracts or purchases of supplies, materials and equipment or personal services, sealed competitive bids shall be obtained either (a) by published notice inviting bids as in the case of contracts for the construction of improvements, or (b) by mailed notice stating the necessary specifications, inviting the submission of bids, and stating the date on which the bids will be opened. The first of these methods shall be used unless the Council or Water Board, as the case may be, shall enter an order of record authorizing the use of the second method and stating the reasons why such method was authorized. Whether or not it is so stated in the published mailed notice, all bids may be rejected. No City officer, department or agency shall subdivide any contract or purchase for the purpose of evading the requirements of this section with respect to competitive bidding.

The water board by resolution shall provide for such system of collecting, disbursing, budgeting, auditing, accounting and record-keeping, not inconsistent with other provisions of this charter, as may in its opinion be necessary or desirable.

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The Water Board with respect to any improvements, extensions or additions to the water system, and the Council with respect to City improvements under its jurisdiction, shall cause to be prepared accurate and complete maps, plans and specifications therefor and shall have the authority to cause such work to be done either by the employment of labor and the furnishings of material, or by entering into a contract for the performance of the labor and for the material. If a contract is let for any improvement, the Water Board or the Council, as the case may be, shall require the contractor to give a sufficient bond with corporate surety to guarantee the faithful performance of the contract and the payment for all labor performed and all materials furnished in the performance of the contract, as provided in section thirty-nine, article two, chapter thirty eight of the official code of West Virginia, as amended. Any change or alteration in the contract after it is entered into shall be made only upon resolution passed by the Water Board, or the Council, as the case may be, and shall not be effective until the price to be paid for the work and material, or both, under the altered or modified contract, shall have been agreed upon in writing and such agreement signed by the contractor and the general manager with the approval of the Water Board, or the City Manager with the approval of the Council, as the case may be.

The Water Board with respect to contracts and purchases of the Water Department, and the City Council, with respect to contracts and purchases of other City offices, departments and agencies, may by resolution prescribe additional rules and regulations governing the making of contracts and purchases, not inconsistent with general law or with the provisions of this Charter.

In the case of an emergency the City Council or Water Board, as the case may be, may by special resolution setting forth the facts constituting the emergency dispense with the requirement of competitive bidding and with the requirements of its rules and regulations governing contracts and purchases.

Any officer or employee of the City who shall be directly or indirectly interested in any contract with the City, or in the profits to be derived thereform, shall forthwith forfeit his office or employment, and in addition thereto any such contract shall be void and uneforceable against the City. The acceptance by any officer or employee of any interest in such contract or of any gift or gratutity from any person, firm or corporation dealing with the City which might influence the officer or employee and in the discharge of his duties shall forever disqualify such officer or employee from holding any office or employment in the City government, and in addition he shall be subject to criminal prosecution as provided by general law or by City ordinance. (Amended February 18, 1982)

SECTION 33. STATUS OF EXISTING OFFICERS AND EMPLOYEES.

Every person holding an appointive office or employment in the city government on the effective date of this charter shall retain the same or the similar office or employment hereunder, pending action by the competent authority of the city having the power appointment and removal with respect to such office or position. At any time within four months after the effective date of this charter, the city manager and the general manager of the water department in office on that date shall be subject to replacement by the council and by the water board, respectively, without regard to the removal provisions of sections seven and twenty-eight of this charter.

SECTION 34. DISCRIMINATORY PRACTICES PROHIBITED.

No person holding any appointive office or employment in the service of the city, or seeking appointment thereto, shall be appointed, promoted, demoted or removed, or in any way favored or discriminated against because of political opinions or affiliations, or because of race, color or religious beliefs.

SECTION 35. SOCIAL SECURITY.

The city council, the water board, and every other board or commission provided for this charter, or hereafter created by council pursuant to general law, shall in the ınner prescribed by law provide social security coverage for all eligible city officers and ıployees.

SECTION 36. OATH OF OFFICE.

Before taking office every officer of the city and the head of each administrative de-rtment shall take the oath of affirmation required by section five, article four of the nstitution of the state.

SECTION 37. ELECTIONS.

Regular city elections shall be held on the first Tuesday in June, one thousand nine ndred fifty-seven, and on the first Tuesday in June of every second year thereafter. ecial elections shall be held at such times as may be fixed by the council in accordance th the provisions of this charter and of general law.

The ballot to be used in city elections shall be prepared by the council and shall have t forth thereon in one division the names of all properly nominated candidates for election membership on the council, and in another division the names of all properly nominated ndidates for election to membership on the water board. In the printing of the ballots, e position of the names of the candidates shall be in like manner as is provided general law for the printing of official primary ballots. The ballots shall state that the ection is non-partisan and shall clearly indicate the number of candidates for each office r whom the voter is entitled to vote. At least ten days before the election a sample ballot owing the names of all properly nominated candidates shall be published once in two wspapers published in the city in the same manner as is provided by law for the publication the list of nominations in a general election.

Except as otherwise provided in this charter, city elections shall be conducted and the sult determined and certified in accordance with the provisions of general law with spect to primary, general and special elections, so far as they are applicable, except at the duties devolving upon the county court and the clerk thereof under the general laws r conducting elections shall be performed by the city council and the city clerk. The uncil shall appoint three commissioners and two clerks to serve as election officials in ch precinct in the city. At least three days before the date of the election the city clerk all procure from the clerk of the county court the necessary registration records and her election supplies and shall deliver them together with the ballots to the election ficials. The election officials shall as soon as possible after the closing of the polls on ection day return to the city clerk the ballots, tally sheets, certificates of the result of e election, registration records, ballot boxes and other election supplies. On the first onday following the election the council shall canvass the returns of the election and de-are the result. In the case of a contest the council shall be the judge of the election and alifications of all city officials.

The cost incurred in holding and conducting regular city elections, after deducting all mination fees received in connection therewith, shall be paid one-half out of the general ty revenues and one-half out of the revenues of the water board. The costs of conducting ecial elections shall be paid out of general city revenues, except that the cost of any

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## SECTION 38. CANDIDATES FOR CLARKSBURG CITY COUNCIL OR CLARKSBURG WATER BOARD; FILING FEE; FILING DATE.

A filing fee to be set by ordinance and candidate's signed certificate of announcement stating that he/she is a qualified voter of the City and he/she has resided therein for at least 30 days and that he/she declares himself/herself a candidate for election to such office of Councilman/Councilwoman of the Clarksburg City Council or Member of the Water Board and will serve if elected, shall be filed in person with the City Clerk in the office of the City Clerk, Municipal Building, Clarksburg, West Virginia, not earlier than the first day of March, nor later than 4:30 p.m. on the fifteenth day of March preceding the election. The Clerk shall make a record of the exact time each statement and fee was filed and the name and address of the person by whom it was filed. The filing dates provided herein shall be changed or amended by regular ordinance thereafter.

In case there shall not be a number of candidates for any office equal to the number of persons to be elected to such office at any election, then the Council for the office of Councilman/Councilwoman and the Water Board for the office of a member of the Water Board, shall on or before the 20th day of March preceding the election make by appropriate resolution such additional nominations of candidates to be elected to such office. The nomination of any person by such a resolution shall, however, not be complete unless the person so nominated shall within three days after his nomination pay to the City Clerk the prescribed filing fee and file with the Clerk a signed statement that he/she is a qualified voter of the City and has resided therein for at least 30 days before his/her nomination, and that he/she accepts the nomination and will serve, if elected.

The word announce or announcement as used herein or as used in the Clarksburg City Charter shall for the purposes of the Clarksburg City Charter be synonymous with and shall mean the same as nominate or nomination. The word nominate or nomination as used herein or as used in the Clarksburg City Charter shall for the purposes of the Clarksburg City Charter be synonymous with and shall mean the same as announce or announcement.

(Amended 6-1-93)

SECTION 39. FORM OF CERTIFICATE OF ANNOUNCEMENT; BLANK FORMS TO BE FURNISHED BY CITY CLERK.

The City Clerk shall prepare and furnish printed forms for certificates of nouncement substantially in the form set forth and authorized by ordinance of the ity Council.
Amended 6-1-93)

SECTION 40. EFFECT OF CHARTER ON EXISTING ORDINANCES AND ADMINISTRATIVE RULES AND REGULATIONS.

All existing ordinances and all existing administrative rules, regulations and ractices, if not inconsistent or in conflict with this charter, shall continue in full force nd effect until repealed or modified by the council or other competent authority of the city. ll ordinances, rules, regulations and practices that are inconsistent or in conflict with is charter shall, unless sooner repealed or modified, continue in full force and effect for period of sixty days only, and at the end of that period shall to the extent of such nconsistency or conflict be of no further force or effect.

SECTION 41. REFERENCE TO GENERAL LAW.

A reference contained in this charter to a provision of general law shall be construed mean the provision as it now exists or as it may hereafter be amended. Where additionl sections are added to the subject matter of a provision of general law referred to in this harter, the reference shall include such additional sections.

SECTION 42. MEETINGS AND OTHER ACTS ON LEGAL HOLIDAYS.

Whenever under the provisions of this charter it is required that a meeting be held or at an act be done on a date which is a legal holiday, the meeting shall be held or the act hall be done on the next day not a legal holiday.

SECTION 43. SEPARABILITY.

The provisions of this charter shall be construed as severable, and should any provision be held unconstitutional, or for any other reason invalid, such holding shall in no way ffect any other provision thereof.

SECTION 44. EFFECTIVE DATE OF CHARTER.

For the purpose of extending the terms of office of present elective officers and for the urpose of nominating candidates and conducting the first election held hereunder, this harter shall be in effect from and after the date of its adoption by the voters of the city. or all other purposes it shall be in effect on and after the first day of July next following e first election held under its provisions.

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