

TOWN OF CLAY, WEST VIRGINIA
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS
SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)

DISTRIBUTION LIST

Issuer

Town of Clay
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Dwana Murphy, Recorder
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(304) 587-8381 Telecopier
townofclav@frontiernet.net E-Mail Add.

Bond Counsel

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A Bond Purchaser

United States of America
United States Department of Agriculture,
Rural Utilities Service
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Beckley, WV 25801
Teresa Miller, Rural Devel. Spec.
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Issuer's Counsel

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Issuer's Accountant

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Depository Bank and Registrar

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Clay County Bank, Inc.
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Municipal Bond Commission

WV Municipal Bond Commission
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B Bond Purchaser

West Virginia Infrastructure and Jobs
Development Council

180 Association Drive

Charleston, WV 25311

Angela Chestnut, Executive Secretary

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(304) 558-4609 Telecopier

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TOWN OF CLAY, WEST VIRGINIA COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)

Series 2009 A Bond Pre-Closing: October 14, 2009

Series 2009 B Bond Pre-Closing: October 15, 2009

Closing: October 16, 2009

A. BASIC

1. Grant Agreements.
2. Copy of the Authority for the Creation of the Town of Clay, West Virginia (the "Issuer").
3. Oaths of Office of Members of Town Council.
4. Bond Ordinance and Supplemental Resolution of the Issuer enacted and adopted on October 13, 2009.
5. Notice of Public Hearing on Bond Ordinance and Affidavit of Publication.
6. Minutes of Meetings of Town Council on First and Second Readings and Public Hearing with respect to Bond Ordinance.
7. Letter of Conditions from Rural Utilities Service.
8. Loan Agreement for Series 2009 B Bond.
9. Request and Authorization to Authenticate and Deliver Series 2009 B Bond.
10. Copy of Rate Ordinances/Tariffs.
11. Notice of Public Hearing on Rate Ordinances and Affidavit of Publication.
12. Minutes of Meetings of Town Council on Enactment and Public Hearing with respect to Rate Ordinances.

B. CERTIFICATES AND RECEIPTS

13. General Certificate signed by the Mayor, Recorder and Attorney of the Issuer.
14. Certificate of Consulting Engineer.

15. Certificate of Certified Public Accountant.
16. Certificate of Recorder as to Truth and Accuracy of Documents Delivered.
17. Certificate as to Use of Proceeds.
18. Consents to Issuance of Parity Bonds.
19. Acceptance of Appointment of Depository Bank.
20. Acceptance of Appointment of Registrar.
21. Registrar's Agreement.
22. Certificate of Registration of Series 2009 B Bond.
23. Bond Registry Form.
24. Cross-Receipt for Bonds and Bond Proceeds.
25. Financing Statements.

C. LEGAL OPINIONS

26. Opinion of Goodwin & Goodwin, LLP, Bond Counsel, on Series 2009 Bond.
27. Opinion of Jeffery A. Davis, Counsel to the Issuer.
28. Final Title Opinion of Issuer's Counsel.

D. MISCELLANEOUS

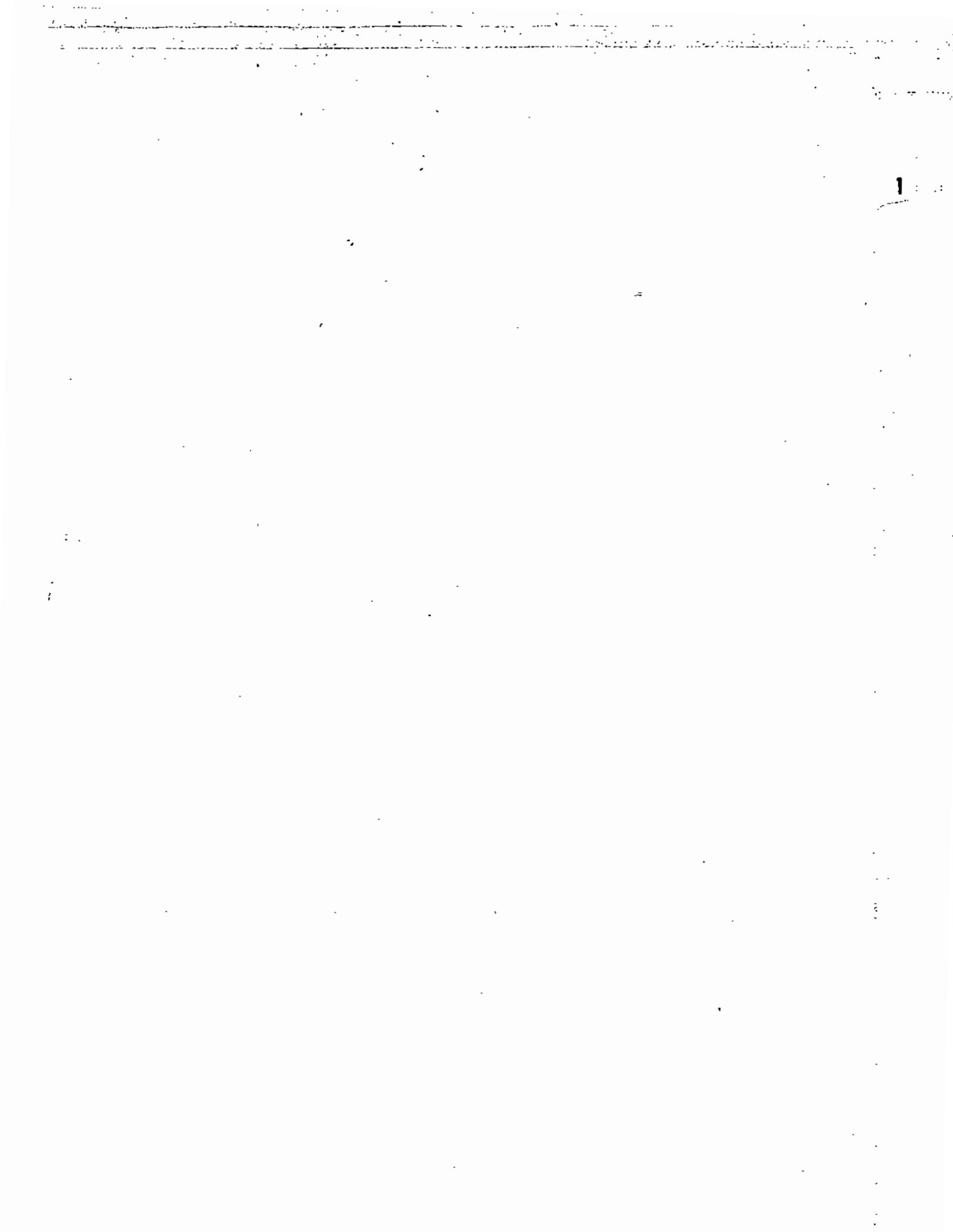
29. Municipal Bond Commission New Issue Report Form.
30. Public Service Commission Certificate of Convenience and Necessity.
31. West Virginia Infrastructure and Jobs Development Council Approval Letter.
32. Specimen Bonds and Register.
33. 1998 Bond Ordinance.
34. NPDES Permit.
35. Evidence of Insurance.

36. Closing Memorandum.

37. Copy of Statutory Authorities.

The Pre-Closing of the sale of \$830,000 in aggregate principal amount of Town of Clay, Combined Waterworks and Sewerage System Revenue Bond, Series 2009 A (United States Department of Agriculture), will take place at Town Hall, 2 Main Street, Clay, West Virginia, at 10:00 a.m., Eastern Time, on October 14, 2009. The Pre-Closing of the sale of \$550,000 in aggregate principal amount of Town of Clay, Combined Waterworks and Sewerage System Revenue Bond, Series 2009 B (West Virginia Infrastructure Fund), will take place at the West Virginia Water Development Authority's office in Charleston, West Virginia, at 3:00 p.m., Eastern Time, on October 15, 2009. The Closing of the Series 2009 Bonds will occur on October 16, 2009.

No transaction shall be deemed to have been completed and no documents shall be deemed to have been delivered unless and until all transactions are complete and all documents are delivered. Any document, which references an Exhibit or Schedule to be attached thereto, shall be considered completed and attached if the referenced Exhibit or Schedule appears elsewhere in this Transcript.



"AMENDED"

WATER OR WASTE SYSTEM GRANT AGREEMENT
UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE

THIS AGREEMENT dated 6/16/1994 between
Town of Clay

a public corporation organized and operating under _____

(Authorizing Statute)

herein called "Grantee," and the United States of America acting through the Rural Utilities Service, Department of Agriculture, herein called "Grantor," WITNESSETH:

WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement, or capital improvement of a (water) (sewer) system to serve the area under jurisdiction at an estimated cost of \$ 4,582,000 and has duly authorized the undertaking of such project.

Grantee is able to finance not more than \$ 2,412,000 of the development cost through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable user charge.

Said sum of \$ 2,412,000 has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed \$ 2,170,000 or 47.36% percent of said development costs, whichever is the lesser, subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant.

As a condition of this grant agreement, the Grantee assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive orders and other generally applicable requirements, including those set out in 7 CFR 3015.205(b), which hereby are incorporated into this agreement by reference, and such other statutory provisions as are specifically set forth herein.

NOW, THEREFORE, In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306 (a) of the Consolidated Farm and Rural Development Act the purpose only of defraying a part not to exceed 47.36% percent of the development costs, as defined by applicable Rural Utilities Service Instructions.

GRANTEE AGREES THAT GRANTEE WILL:

A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.

B. Permit periodic inspection of the construction by a representative of Grantor during construction.

C. Manage, operate and maintain the system, including this project if less than the whole of said system, continuously in an efficient and economical manner.

D. Make the services of said system available within its capacity to all persons in Grantee's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (possess capacity to enter into legal contract for services) at reasonable charges, including assessments, taxes, or fees in accordance with a schedule of such charges, whether for one or more classes

of service, adopted by resolution dated _____, as may be modified from time to time by Grantee. The initial rate schedule must be approved by Grantor. Thereafter, Grantee may make such modifications to the rate system as long as the rate schedule remains reasonable and nondiscriminatory.

E. Adjust its operating costs and service charges from time to time to provide for adequate operation and maintenance, emergency repair reserves, obsolescence reserves, debt service and debt service reserves.

F. Expand its system from time to time to meet reasonably anticipated growth or service requirements in the area within its jurisdiction.

G. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a representative of the Grantor.

H. To execute any agreements required by Grantor which Grantee is legally authorized to execute. If any such agreement has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another agreement of the same type need not be executed in connection with this grant.

I. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated herein above with the interest at the rate of 5 percentum per annum from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

J. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

K. Use the real property including land, land improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.

1. Title to real property shall vest in the recipient subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.

2. The Grantee shall obtain approval by the Grantor agency for the use of the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs or programs that have purposes consistent with those authorized for support by the Grantor.

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its successor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions:

(a) The Grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency. When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

[Revision 1, 04/17/1998]

(c) The Grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

This Grant Agreement covers the following described real property (use continuation sheets as necessary).

L. Abide by the following conditions pertaining to equipment which is furnished by the Grantor or acquired wholly or in part with grant funds. Equipment means tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A Grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

[Revision 1, 04/17/1998]

1. Use of equipment.

(a) The Grantee shall use the equipment in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the equipment in connection with its other Federally sponsored activities, if any, in the following order of priority:

(1) Activities sponsored by the Grantor.

(2) Activities sponsored by other Federal agencies.

(b) During the time that equipment is held for use on the project for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the equipment was originally acquired. First preference for such other use shall be given to Grantor sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of equipment. When the Grantee no longer needs the equipment as provided in paragraph (a) above, the equipment may be used for other activities in accordance with the following standards:

(a) Equipment with a current per unit fair market value of less than \$5,000. The Grantee may use the equipment for other activities without reimbursement to the Federal Government or sell the equipment and retain the proceeds.

(b) Equipment with a current per unit fair market value of \$5,000 or more. The Grantee may retain the equipment for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value or proceeds from sale of the equipment. If the Grantee has no need for the equipment and the equipment has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

The Grantor agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the equipment exists in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later than 120 days after the Grantee requests and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the equipment and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share ten percent of the proceeds, for Grantee's selling and handling expenses.

(2) If the Grantee is instructed to ship the equipment elsewhere the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the Grantee is instructed to otherwise dispose of the equipment, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for equipment shall also include:

(a) Records which accurately provide for: a description of the equipment; manufacturer's serial number or other identification number; acquisition date and cost; source of the equipment; percentage (at the end of budget year) of Federal participation in the cost of the project for which the equipment was acquired; location, use and condition of the equipment and the date the information was reported; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(b) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years to verify the existence, current utilization, and continued need for the equipment.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Proper sales procedures shall be established for unneeded equipment which would provide for competition to the extent practicable and result in the highest possible return.

This Grant Agreement covers the following described equipment (use continuation sheets as necessary).

M. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.
2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.
3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.
4. Accounting records supported by source documentation.

N. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photo copies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

O. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

P. Provide an audit report prepared in accordance with Grantor regulations to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

Q. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentality's of states shall not be held accountable for interest earned on grant funds pending their disbursement.

R. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item K above.

S. To include in all contracts for construction or repair a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

T. To include in all contracts in excess of \$100,000 a provision that the contractor agrees to comply with all the requirements of the Clean Air Act (42 U.S.C. §7414) and Section 308 of the Water Pollution Control Act (33 U.S.C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. In so doing the Contractor further agrees:

[Revision 1, 11/20/1997]

1. As a condition for the award of contract, to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR Part 32 as of the date of contract award.

[Revision 1, 11/20/97]

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the term "facility" means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

Grantor Agrees That It:

A. Will make available to Grantee for the purpose of this Agreement not to exceed \$2,170,000.00, which it will advance to Grantee to meet not to exceed 47.36% percent of the project development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans for sewer and water and with any State or area plans for the area in which the project is located.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of This Agreement

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph I above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized

Mayor

and attested and its corporate seal affixed by its duly authorized

Recorder

Attest:

Town of Clay

By: Dwana Murphy
DWANA MURPHY,

(Title) Recorder

By: Arthur R. Jarrett
ARTHUR R. JARRETT

(Title) Mayor

UNITED STATES OF AMERICA

RURAL UTILITIES SERVICE

By: Teresa A. Miller
TERESA A. MILLER

Rural Development Specialist
(Title)



DEPARTMENT OF THE ARMY
HUNTINGTON DISTRICT, CORPS OF ENGINEERS
502 EIGHTH STREET
HUNTINGTON, WEST VIRGINIA 25701-2070

August 10, 2009

Planning, Programs and Project Management Division
Programs and Project Management Branch
Project Management Section

Ms. Dwana Murphy
Town of Clay
207 Main Street
Clay, WV 25403

Dear Ms. Murphy:

On behalf of the U.S. Army Corps of Engineers' Section 571 Environmental Infrastructure Program, I am pleased to inform you that your request for funding for the Clay Water Treatment Plant Improvements Project located at Town of Clay in Lewis County, WV was selected for funding. Your project was deemed appropriate under the established criteria for the Section 571 Program and selected for funding in the amount of \$1,000,000 in Federal funds for project design and construction.

This is a reimbursable program and should not be considered a grant program. The Corps of Engineers is authorized to provide assistance for a defined scope of work with cost sharing at 75% Federal and 25% non-Federal. You will be working with Rick Mers of the Huntington District, the Corps' project manager, on the development of a scope of work and he will also provide you with program details.

We congratulate you and look forward to continuing to work together to make West Virginia a better place for us all. If you need to contact Mr. Mers, he can be reached at (304) 399-5836 or by email at Ricky.D.Mers@usace.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert D. Peterson".

Robert D. Peterson
Colonel, Corps of Engineers
District Engineer

GRANT AGREEMENT
(2009W-1115)

This Grant Agreement entered into by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority"), on behalf of the WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL (the "Council") and the TOWN OF CLAY (the "Governmental Agency").

RECITALS

WHEREAS, the Council has authorized the Authority to make a grant to the Governmental Agency in the amount not to exceed \$550,000 (the "Grant") for the purposes of the design, acquisition or construction of a project for which a preliminary application has been submitted and approved by the Council;

WHEREAS, the Governmental Agency wishes to accept the Grant upon such terms and conditions as are hereinafter set forth for the purposes of designing, acquiring or constructing the project described in Exhibit B attached hereto and incorporated herein by reference (the "Project");

WHEREAS, this Grant Agreement sets forth the Council, the Authority and the Governmental Agency's understandings and agreements with regard to the Grant.

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

TERMS

1. Prior to the distribution of the Grant, the Governmental Agency shall provide the Authority with a Project budget and an anticipated monthly draw schedule reflecting the receipt dates and amounts from other funding sources. The Project budget shall not be amended unless the Governmental Agency has received the prior written consent of the Council.

2. The Authority shall advance the Council's share of the Project costs from the Grant from time to time upon receipt of a requisition evidencing the costs incurred, which requisition must be satisfactory to the Authority. Unless agreed to by the Council prior to the commencement of construction, the Grant shall be the last dollars expended on the Project.

3. The monthly requisition will also set forth (i) the amounts requested for that requisition period from all other funding agencies, and (ii) the amounts advanced for the Project to date from all other funding agencies.

4. The Authority shall wire the approved requisition amount using the wiring instructions provided in Exhibit A, unless the Council and Authority are provided replacement instructions in writing.

5. The Governmental Agency will use the proceeds of the Grant only for the purposes specifically set forth in Exhibit B.

6. The Governmental Agency shall comply with and is bound by the Council's rules set forth as Title 167, Series 1 and more particularly Section 5.9 with respect to the sale of the Project.

7. The Governmental Agency acknowledges that the Grant may be reduced, from time to time, to reflect actual Project costs and availability of other funding.

8. The Governmental Agency shall list the Grant provided by the Authority and the Council in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any groundbreaking or dedication of the Project.

9. This Grant Agreement shall be governed by the laws of the State of West Virginia.

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

TOWN OF CLAY

By: William J. Brown

Its: Mayor

Date: October 16, 2009

(SEAL)

Attest:

Diana Murphy

Its: Recorder

WEST VIRGINIA WATER
DEVELOPMENT AUTHORITY

By: [Signature]

Its: Executive Director

Date: October 16, 2009

(SEAL)

Attest:

Carol A. Cummings

Its: Secretary-Treasurer

Town of Clay
PO Box 55
956 Main St.
Clay, West Virginia 25043
e-mail: townofclay@frontiernet.net
Phone: 304-587-4233
Fax: 304-587-8381

Mayor
Wallace J. Brown
Recorder
Dwana Murphy

Council Members
Betty T. Murphy
Joyce S. Gibson
Jerry Stover
Arthur Jarrett
Glada Lanham

Exhibit A

Wiring Instructions

_____, 20__

Town of Clay
P. O. Box 55
Clay, West Virginia 25043-0055

Payor: West Virginia Water Development Authority
Source: Grant Proceeds
Amount: \$ _____
Date: Oct 16, 2009
Form: Electronic Funds Transfer
Payee: Town of Clay
Bank: Clay Co. Bank
Bank Street Address: 150 Main St
Bank Contact: Judy Gray
Telephone: 304-587-4233
Routing No.: 051502641
Account No.: 177512
Account Name: Clay Municipal Water Improvements Project

Exhibit B

Project Description

The Project consists of the certain additions, betterments and improvements to the existing public combined waterworks and sewerage system of the Governmental Agency, including the construction and installation of all necessary appurtenant facilities.

TOWN OF CLAY, WEST VIRGINIA
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS
SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)

CERTIFICATE OF TOWN AS TO FORMATION

We, the undersigned, duly elected and appointed Mayor and Recorder of the Town of Clay (the "Issuer"), hereby certify that the attached Order of the Circuit Court of Clay County, West Virginia, entered on December 18, 1895, is still in full force and effect.

WITNESS our signatures and the official seal of the Town of Clay as of the 16th day of October, 2009.

(SEAL)


Recorder

TOWN OF CLAY


Mayor

Wednesday Morning, December 18th 1895

The Court. This day met pursuant to adjournment of yesterday
Present the same Judge as on yesterday

The proceedings of the Court on yesterday on the last side thereof
was this day read in open Court and signed by the Judge

Samuel Stephenson & R. Reed. }
and R. M. Cook. } On Petition

In the Circuit Court of Clay County

This Cause came on this day, to be finally heard
Upon the Petition filed herein, exhibits, and Certificate under
oath of A. H. Bell, James Froume and Henry B. Davenport, Jr.,
from which it appears that at an Election held on the 10th
day of December, 1895, within the territory mentioned in the
said petition, in pursuance of the notice duly given according
to Law a Majority of the qualified voters residing within the said
territory voted in favor of incorporation of said territory, in
the name of the town of Henry and was argued by
Council and it appearing, that to the Court that all of the
provisions of Chapter 47, of the Code of West Virginia, relative
to the incorporation of a village, town or city, have been complied
with by the said petitioners, Upon consideration whereof the
Court is of opinion that the prayer of said Petition be granted
whereupon it is adjudged, ordered and decreed, that the
Clerk of this Court, do issue a Certificate of Incorporation
of the Town of Henry in the form prescribed by the Statute
in such cases made and provided. It is further adjudged,
ordered and decreed, that A. H. Bell, R. M. Cook and Samuel
Stephenson be and are hereby appointed Commissioners
of Election to be held within said Town of Henry, for the
Election of Corporate Officers thereof. And the map of said
Incorporated Town is hereto attached and made part of the order

STATE OF WEST VIRGINIA
COUNTY OF CLAY, SS

I, Joan Sizemore Reed, Clerk of the Circuit Court of said
County and in said State, do hereby certify that the foregoing
is a true copy from the records of said Court.

Given under my hand and the seal of said Court this
.....6th..... day of August....., 1990

Joan Sizemore Reed CLE
Circuit Court
CLAY COUNTY, WEST VIRGINIA

OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF CLAY TO-WIT

I Dwana Murphy do solemnly swear that I will support the Constitution of The United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Recorder

to the best of my skill and judgement SO HELP ME GOD.

Print Name and Address:

Dwana Murphy
PO Box ~~43~~ 43
Clay WV 25043

(Signature of affiant) Dwana Murphy

Subscribed and sworn to before me, in said County and State, this 26 day of June, 2007.

[Signature]

OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF CLAY **TO-WIT**

I, Betty T Murphy do solemnly swear that I will support the Constitution of The United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Council

_____ to the best of my skill and judgement *SO HELP ME GOD.*

Print Name and Address:

(Signature of affiant) *Betty T Murphy*

Subscribed and sworn to before me, in said County and State, this 26
day of JUNE, 2007.

J. J. J.

OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF _____

CLAY

TO-WIT

I Joyce S. Gibson do solemnly swear that I will support the Constitution of The United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of _____

Council

_____ to the best of my skill and judgement *SO HELP ME GOD.*

Print Name and Address:

(Signature of affiant)

Joyce S. Gibson

Subscribed and sworn to before me, in said County and State, this 26

day of June, 2007.

J. J. J.

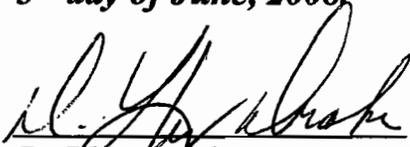
Oath of Office and Certificate

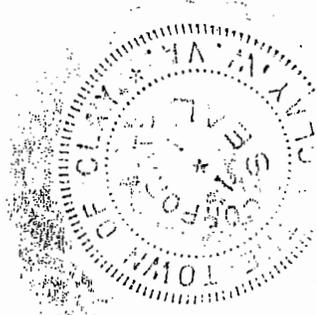
State of West Virginia, County of Clay, to wit:

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia and that I will faithfully discharge the duties of the Office of Town Council to the best of my skill and judgment SO HELP ME GOD.


Arthur Jarrett, Affiant

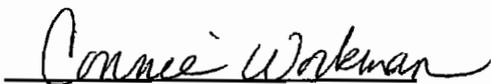
Subscribed and Sworn to before me in said County and State this the 3rd day of June, 2008,


D. Elyn Drake
Town Recorder



CLAY COUNTY, to wit:

Be it remembered that on the 7th day of January 2009 this Oath was presented in the Clerk's Office of the County Commission of Clay County, West Virginia and recorded according to law.


Connie Workman, Clerk

Oath of Office and Certificate

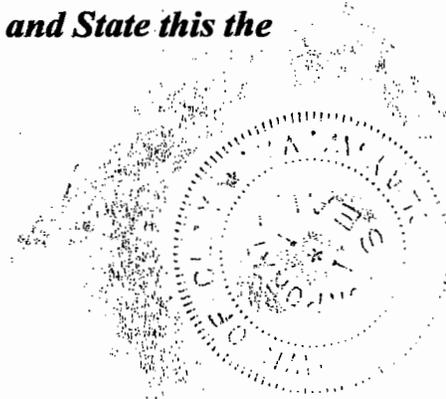
State of West Virginia, County of Clay, to wit:

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia and that I will faithfully discharge the duties of the Office of Town Council to the best of my skill and judgment SO HELP ME GOD.

Glada Lanham
 Glada Lanham, Affiant

Subscribed and Sworn to before me in said County and State this the 3rd day of June, 2008.

D. Lynn Drake
 D. Lynn Drake
 Town Recorder



CLAY COUNTY, to wit:

Be it remembered that on the 7th day of January, 2007 this Oath was presented in the Clerk's Office of the County Commission of Clay County, West Virginia and recorded according to law.

Connie Workman
 Connie Workman, Clerk

OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF CLAY TO-WIT

I Jerry Stover do solemnly ^{Affirm} ~~swear~~ that I will support the Constitution of The United States of America and the Constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Council

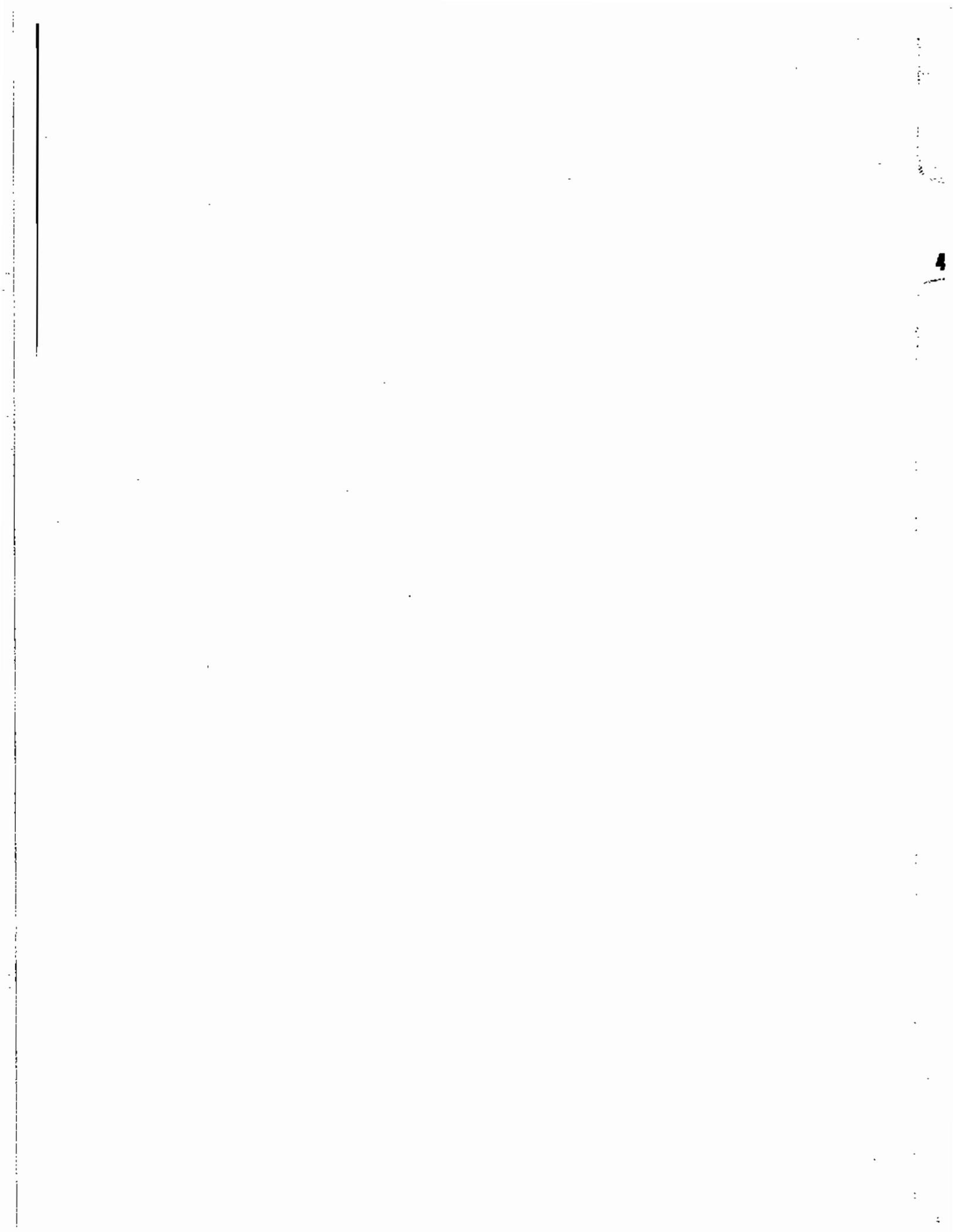
to the best of my skill and judgement SO HELP ME GOD.

Print Name and Address:

(Signature of affiant) Jerry D. Stover

Subscribed and sworn to before me, in said County and State, this 26 day of June, 2007.

[Signature]



TOWN OF CLAY, WEST VIRGINIA

BOND ORDINANCE.

ORDINANCE AUTHORIZING THE CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS FOR THE PUBLIC COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE TOWN OF CLAY, WEST VIRGINIA; AND THE FINANCING OF A PORTION OF THE COST THEREOF THROUGH THE ISSUANCE BY THE TOWN OF NOT TO EXCEED \$1,380,000 IN AGGREGATE PRINCIPAL AMOUNTS OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2009, FOR THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PUBLIC COMBINED WATERWORKS AND SEWERAGE SYSTEM THROUGH FINANCING TO BE OBTAINED BY THE TOWN AT A COST ESTIMATED TO BE APPROXIMATELY \$5,100,000; WITH SERIES 2009 BOND PROCEEDS TO BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE TOWN OF CLAY WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE OWNER OF SUCH SERIES 2009 BONDS; PLEDGING GROSS REVENUES, ON A PARITY BASIS, AS SECURITY FOR THE SERIES 2009 BONDS; PLACING LIMITATION ON SALE OF SYSTEM; AND AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH SERIES 2009 BONDS AND ENACTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE TOWN OF CLAY:

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 "Ordinance") is adopted pursuant to the provisions of Chapter 8, Article 20 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

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

A. The Town of Clay (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Clay County.

B. The Issuer now has a combined waterworks and sewerage system and desires to improve and expand that system and it is deemed essential, convenient and desirable for the health, welfare, safety, advantage and convenience of the inhabitants of the Issuer and, accordingly, it is hereby ordered, that there be acquired and constructed certain additions, betterments and improvements to the existing public combined waterworks and sewerage system of the issuer

known as the "System" (sometimes referred to herein as the "System") so as to improve the public health, comfort and convenience of residents of the City, including the construction and installation of all necessary appurtenant facilities (the "Project"), and generally described as water and sewer line extensions, pumps, filtration systems, pumping stations, water and sewer plant improvements and necessary appurtenances particularly described in and according to the plans and specifications prepared by the Consulting Engineer for the Project and heretofore filed in the office of the Recorder of the Town Council (the "Governing Body") of the Issuer. The construction and acquisition of the Project and the financing hereby authorized and provided for are public purposes of the Issuer and are ordered for the purpose of meeting and serving public convenience and necessity.

C. The estimated revenues being and to be derived in each year from the Project and the System will be sufficient to pay the costs of said System, the principal of and interest on the Bonds and all sinking funds, reserve accounts and other payments provided for herein and all as such terms are hereinafter defined.

D. The Issuer is the beneficiary of two (2) United States Department of Agriculture, Rural Utilities Service ("RUS") grants in the amounts of \$677,000 and \$1,493,000, a grant from the United States Corps of Engineers in the amount of \$1,000,000, and a grant from the West Virginia Infrastructure and Jobs Development Council in the amount of \$550,000, the proceeds of which, together with the proceeds of the Series 2009 Bonds, will be used to acquire, construct and equip the Project.

E. It is deemed necessary for the Issuer to issue its Combined Waterworks and Sewerage System Revenue Bonds, Series 2009, in the total aggregate principal amount of \$1,380,000 to finance the cost of the acquisition, construction and equipping of the Project.

F. The estimated maximum cost of the acquisition, construction and equipping of the Project is \$5,100,000, all of which will be obtained from the sale of the Series 2009 Bonds and from grants to be made available to the Issuer. The cost of such acquisition, construction and equipping shall be deemed to include but not limited to the cost of preparing drawings, plans and specifications detailing the Project and all attendant expenses; amounts which may be deposited in the Series 2009 Bond Reserve Account; 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, 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, 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 acquisition, construction and equipping purposes shall be deemed Costs of the Project, as hereinafter defined.

G. The period of usefulness of the System after completion of the Project is not less than forty (40) years.

H. It is in the best interests of the Issuer that its Series 2009 A Bond in the amount of \$830,000 be sold to the United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government") and that its Series 2009 B Bond in the amount of \$550,000 be sold to the West Virginia Water Development Authority (the "Authority"), acting on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council").

I. The Issuer has complied with all requirements of West Virginia law relating to authorization of the acquisition, construction and equipping of the Project and issuance of the Series 2009 Bonds, and will comply prior to the issuance of any additional indebtedness, including, among other things, the obtaining of a Certificate of Convenience and Necessity from the Public Service Commission of West Virginia by final order, if necessary, the time for rehearing and appeal of which will either have expired prior to the issuance of the Series 2009 Bonds or such final order will not be subject to appeal. The Issuer has received the approval of the Council.

J. The Issuer is a governmental unit which has general taxing powers to finance operations of or facilities of the nature of the Project and System, and the Issuer, all subordinate entities, all entities which issue obligations on behalf of the Issuer, and all entities formed or, to the extent provided under Section 148 of the Code, herein defined, availed of, to avoid the purposes of Section 148(f)(4)(C) of the Code and all other entities benefiting thereby reasonably expect to issue less than \$5,000,000 in aggregate principal amount of tax-exempt obligations during the calendar year in which the Series 2009 Bonds for the construction phase are to be issued.

K. The Issuer currently has outstanding its Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 A (United States Department of Agriculture) (the "Series 1998 A Bond") and Series 1998 B (West Virginia Infrastructure Fund) (the "Series 1998 B Bond" and, together with the Series 1998 A Bond, the "Prior Bonds"), issued in the original principal amounts of \$532,000 and \$185,000, respectively, currently outstanding in the principal amounts of \$476,687.09 and \$140,839, respectively, and originally used for the purpose of making improvements to the Issuer's combined waterworks and sewerage system. The 1998 A Bond is registered to the Government, and the 1998 B Bond is registered to the Authority, for the benefit of the Council. The Series 2009 Bonds will be issued on parity with the Prior Bonds as to lien on the Gross Revenues of the System. The additional bonds coverage and parity tests set forth in the ordinance authorizing the issuance of the Prior Bonds have been met.

With the exception of the revenue bonds described above, there are no other outstanding bonds or obligations of the Issuer, which will rank prior to or on parity with the Series 2009 Bonds as to lien, pledge and/or source of and security for payment.

L. The Issuer is not in default under the terms of the Prior Ordinances or any document in connection therewith, and has complied with all requirements of all the foregoing with respect to the issuance of parity bonds or has attained a sufficient and valid waiver thereof.

Section 1.03. Ordinance Constitutes Contract. In consideration of the acceptance of the Series 2009 Bonds by those who shall be the registered owners of the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the Issuer and such Series 2009 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 2009 Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Series 2009 Bond of a series and any other Series 2009 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 8, Article 20 and Chapter 31, Article 15A 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, and assignee or successor thereto.

“Authorized Officer” means the Mayor of the Issuer or any acting Mayor duly appointed by the Governing Body.

“Bondholders,” “Holders of the Series 2009 Bonds,” “Holders” or any similar term whenever used herein with respect to an outstanding Series 2009 Bond or Series 2009 Bonds, means the person or persons in whose names such Series 2009 Bonds are registered.

“Bond Registrar” means the bank or other entity designated herein or in any Supplemental Resolution and its successors and assigns.

“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.

“Bonds” means the Series 2009 Bonds and the Prior Bonds.

“Closing Date” means the date or dates upon which there is an exchange of the Series 2009 Bonds for the proceeds representing the purchase of the Series 2009 Bonds by the Government and the Authority.

“Code” means the Internal Revenue Code of 1986, as amended, and including all Regulations promulgated pursuant thereto, and any successors thereto.

“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.

“Construction Fund” means the Construction Fund established by Section 4.01 hereof.

“Consulting Engineers” means Boyles and Hildreth, Spencer, West Virginia, or any engineer or firm of engineers that shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System.

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

“Council” means the West Virginia Infrastructure and Jobs Development Council, and assignee or successor thereto.

“Debt Service” means the scheduled amounts of interest and amortization of principal payable on the Series 2009 Bonds during the period of computation, excluding amounts scheduled during such period, which relate to principal which has been retired before the beginning of such period.

“Depository Bank” means the bank designated as such in the Ordinance or in the Supplemental Resolution or letter, and its successors and assigns.

“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 or other legally constituted governing body of the Issuer, as may 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.

“Grant Agreements” means written commitments for Grants, specifying the amounts of such Grants, the terms and conditions upon which such Grants are made and the date or dates or event or events upon which such Grants are to be paid to the Issuer.

“Grant Receipts” means all moneys received by the Issuer on account of any Grant.

“Grants” means any grant or grants received by the Issuer in aid of the design, acquisition and construction of the Project.

“Gross Revenues” means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that “Gross Revenues” does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 7.01 hereof) or any Tap Fees, as hereinafter defined.

“Herein,” “hereto” and similar words shall refer to this entire Ordinance.

“Independent Certified Public Accountants” shall mean 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 Town of Clay, in Clay County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

“Loan Agreement” means the Loan Agreement heretofore entered, or to be entered, into by and between the Issuer and the Authority, on behalf of the Council, providing for the purchase of the Series 2009 B Bond 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 herein or by a Supplemental Resolution.

“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 deposited in the Series 2009 Bond 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.

“Operation and Maintenance Fund” means the Operation and Maintenance Fund established by Section 4.01 hereof.

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

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

“Outstanding,” when used with reference to Bonds and as of any particular date, describes the Series 2009 Bonds and Prior Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond canceled by the Bond Registrar at or prior to said date; (ii) any Bond 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 IX hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders or any Bonds registered to the Issuer.

“Parity Bonds” means additional bonds issued under the provisions and within the limitation prescribed by Section 6.08 hereof.

“Prior Bonds” means the Issuer’s outstanding Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 A (United States Department of Agriculture) and Series 1998 B (West Virginia Infrastructure Fund), issued in the original principal amounts of \$532,000 and \$185,000, respectively.

“Prior Ordinance” means the ordinance providing for the Prior Bonds, enacted March 23, 1998.

“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, construction and equipping of certain additions, betterments and improvements for water facilities of the Issuer, within or surrounding the Town of Clay and all appurtenant facilities.

“Purchasers” mean, collectively, the United States Department of Agriculture, Rural Utilities Service and West Virginia Water Development Authority, acting on behalf of the West Virginia Infrastructure and Jobs Development Council.

“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 Investment Management Board pursuant to Chapter 12, Article 6C, 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 federal income taxation, and which are rated at least "A" by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

"Recorder" means the Recorder or Acting Recorder of the Issuer.

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

“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 Section 4.01 hereof.

“Revenue Fund” means the Revenue Fund established by Section 4.01 hereof.

“RUS” or “Government” means the United States of America, United States Department of Agriculture, Rural Utilities Service, and assignee or successor thereto.

“Series 1998 A Bond” means the Issuer’s \$532,000 Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 A (United States Department of Agriculture).

“Series 1998 B Bond” means the Issuer’s \$185,000 Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 B (West Virginia Infrastructure Fund).

“Series 1998 Bonds” means, collectively, the Series 1998 A Bond and the Series 1998 B Bond.

“Series 2009 Bonds” means, collectively, the not more than \$830,000 in aggregate principal amount of Town of Clay, Combined Waterworks and Sewerage System Revenue Bond, Series 2009 A (United States Department of Agriculture), and the not more than \$550,000 in aggregate principal amount of Town of Clay, Combined Waterworks and Sewerage System Revenue Bond, Series 2009 B (West Virginia Infrastructure Fund), issued for the purpose of acquiring, constructing and equipping the Project, and any bonds on parity therewith authorized to be issued hereunder.

“Series 2009 Bonds Reserve Accounts” means the Series 2009 Bonds Reserve Accounts established with the Commission pursuant to Section 4.02 hereof.

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

“Series 2009 Bond Sinking Fund” means the Series 2009 Bond Sinking Fund established by Section 4.02 hereof.

“State” means the State of West Virginia.

“Supplemental Resolution” means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance.

“Surplus Revenues” means the Net Revenues not required by the Ordinance to be set aside and held for the payment of or security for the Prior Bond, the Bond, or any other obligations of the Issuer, including the Renewal and Replacement Fund, and the Series 2009 Bond Reserve Account, the proceeds of which Bond or other obligations are to be used to pay Costs of the Project.

“System” means all facilities and other property of every nature, real and personal, now or hereafter owned, held or used in connection with the combined waterworks and sewerage system; and shall also include any and all additions, extensions, improvements, properties, or other facilities at any time acquired or constructed for the combined waterworks and sewerage system after completion of the Project.

“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 CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Construction of the Project. There is hereby authorized the acquisition, construction and equipping of the Project, at an estimated cost of \$5,100,000 in accordance with plans and specifications to be prepared by the Consulting Engineers and filed in the office of the Governing Body. The proceeds of the Series 2009 Bonds hereby authorized shall be applied as provided in Article IV hereof. The Issuer has received bids and has entered or will enter into contracts for the acquisition, construction and equipping of the Project, compatible with the financing plan submitted to RUS.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF SERIES 2009 BONDS

Section 3.01. Authorization of Series 2009 Bonds. For the purposes of paying for acquisition, construction and equipping of the Project not otherwise provided for and paying certain costs of issuance of the Series 2009 Bonds and related costs, or any other purposes as determined by a Supplemental Resolution, there shall be issued negotiable Series 2009 Bonds of the Issuer, in the aggregate principal amounts of \$830,000 and \$550,000 for acquisition, construction and equipping of the Project. Said Series 2009 Bonds shall be issued and designated, “Water Revenue Bond, Series 2009 A (United States Department of Agriculture)” and “Water Revenue Bond, Series 2009 B (West Virginia Infrastructure Fund)”, in the aggregate principal amounts of \$830,000 and \$550,000, respectively, and shall have such terms as set forth hereinafter or in a Supplemental Resolution. The proceeds of the Series 2009 Bonds remaining after funding of the Series 2009

Bond Reserve Account (if funded from Series 2009 Bonds proceeds) shall, subject to Section 5.02 hereof, be deposited in or credited to the Construction Fund established by Section 4.01 hereof.

Section 3.02. Terms of Series 2009 Bonds. The Series 2009 A Bond shall be registered and numbered AR-1. The Series 2009 A Bond shall bear interest at a rate of 4.25% per annum. The Series 2009 A Bond shall mature in not more than forty (40) years; and shall be redeemable in whole or in part, all as prescribed herein. The Series 2009 A Bond shall be payable as to principal and interest monthly beginning October 16, 2011, 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. Principal and interest on the Series 2009 A Bond shall be paid by check or draft of the Paying 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 Government is the Registered Owner thereof.

The Series 2009 B Bond shall be registered and numbered BR-1. The Series 2009 B Bond shall bear interest at a rate of 0% per annum. The Series 2009 B Bond shall mature in not more than forty (40) years; and shall be redeemable in whole or in part, all as prescribed herein. The Series 2009 B Bond shall be dated the date of delivery and shall finally mature September 1, 2049. The principal of the Series 2009 B Bond shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2011, in the amounts set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Series 2009 B Bond. The Series 2009 B Bond shall be subject to redemption upon the written consent of the Authority and the Council, and upon payment of the redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the Registered Owner of the Series 2009 B Bond.

Unless otherwise provided by a Supplemental Resolution, the Series 2009 Bonds shall be issued in the form of two (2) bonds, fully registered to the Government and the Authority, with a debt service schedule attached, representing the aggregate principal amounts, and shall mature in principal installments, as provided in said Series 2009 Bonds. The Series 2009 Bonds shall be exchangeable at the option and expense of the Holders for other fully registered bonds of the same series Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Series 2009 Bonds; provided, that RUS and the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of bonds shall be issued in fully registered form and in denominations and at such interest rates and shall be payable as determined by a new Bond Ordinance.

Section 3.03. Execution of Series 2009 Bonds. The Mayor shall execute the Series 2009 Bonds in the name of the Issuer, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Recorder. 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 Series 2009 Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Series 2009 Bonds had not ceased to hold such office. Any Series 2009 Bond may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of

such Series 2009 Bond shall hold the proper office in the Issuer, although at the date of such Series 2009 Bond 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 Ordinance unless and until the Bond Registrar shall have manually executed the Certificate of Authentication and Registration on such Series 2009 Bonds, substantially in the form set forth in Section 3.09. Any such executed Certificate of Authentication and Registration upon any such Series 2009 Bonds shall be conclusive evidence that such Series 2009 Bonds have been authenticated, registered and delivered under this Ordinance. The Certificate of Authentication and Registration on the 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.

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 any of said Series 2009 Bonds shall be conclusively deemed to have agreed that such 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 shall further be conclusively deemed to have agreed that said Series 2009 Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2009 Bonds remain outstanding, the Bond Registrar shall keep and maintain books for the registration and transfer of the Series 2009 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 the Series 2009 Bonds or transferring the registered Series 2009 Bonds is exercised, the Series 2009 Bonds shall be delivered in accordance with the provisions of this Ordinance. Any Series 2009 Bond surrendered in any such exchanges or transfers shall forthwith be canceled by the Bond Registrar. For every such exchange or transfer of the 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 Series 2009 Bond upon each exchange or transfer, and any other 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 the Series 2009 Bonds during the period commencing on the 15th day of the month preceding an interest payment date on the Series 2009 Bonds or, in the case of any proposed redemption of the Series 2009 Bonds, next preceding the date of the selection of the Series 2009 Bond to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Series 2009 Bond Mutilated, Destroyed, Stolen or Lost. In case any Series 2009 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 Series 2009 Bond of the same series and of like tenor as the Series 2009 Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Series 2009 Bond, upon surrender and cancellation of such mutilated Series 2009 Bond, or in lieu of and substitution for the Series 2009 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 Series 2009 Bonds so surrendered shall be canceled by the Bond Registrar and held for the account of the Issuer. If any such Series 2009 Bond shall have matured or be about to mature, instead of issuing a substitute Series 2009 Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Series 2009 Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Series 2009 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 Gross Revenues, on parity with the Prior Bonds, derived from the operation of the System as herein provided and amounts, if any, in the Series 2009 Bond Reserve Account. No holder 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. Series 2009 Bonds Secured by Pledge of Gross Revenues. The payment of the debt service of the Series 2009 Bonds shall be secured by a lien on the Gross Revenues derived from the System on parity with the Prior Bonds. Such Gross Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 2009 Bonds and the Prior Bonds and to make the payments into the Series 2009 Bonds Sinking Funds, the Series 2009 Bond Reserve Account therein and the Renewal and Replacement Fund, hereinafter established, are hereby irrevocably pledged to the payment of the principal of and interest on the Bond as the same become due.

Section 3.09. Form of Series 2009 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 or Ordinance adopted prior to the issuance thereof:

(FORM OF SERIES 2009 A BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
TOWN OF CLAY
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BOND
SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE)

No. AR-1

\$830,000

Date: October 16, 2009

KNOW ALL MEN BY THESE PRESENTS: That TOWN OF CLAY, a municipality, public corporation and political subdivision of the State of West Virginia in Clay 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 order of the United States of America (the "Government"), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the sum of Eight Hundred Thirty Thousand and 00/100 Dollars (\$830,000.00), or such lesser amount as set forth on the Record of Advances attached as Exhibit A hereto and incorporated herein by reference, plus interest on the unpaid principal balance at the rate of four and 25/100 percent (4.25%) per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing on the 30th day following delivery of the Bond and continuing on the corresponding day of each month for the first twenty-four (24) months after the date hereof, and \$3,677.00 covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of forty (40) years from the date of this Bond, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Issuer as requested by Issuer and approved by the Government, and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto and made a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to the principal. Payments shall be made at the office of the Municipal Bond Commission, Charleston, West Virginia, and shall be mailed to the registered owner hereof at the address as it appears on the books of the Issuer in its Town as Registrar. Provided, however, for so long as the Government remains the owner of this Bond, the Issuer shall remit payments directly to the Government or any agency or department thereof.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Issuer. Refunds and extra payments, as defined in the regulations of the Rural Utilities Service, according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Issuer to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Issuer shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Issuer may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Issuer, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Issuer, and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Issuer to the Government without demand. Issuer agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

The Issuer hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond is issued (i) to pay a portion of the costs of acquisition, construction and equipping of certain additions, betterments and improvements to the combined waterworks and sewerage system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The combined waterworks and sewerage system of the Issuer, together with the Project, and any further extensions, additions, betterments or improvements thereto is 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 8, Article 20 of the West Virginia Code of 1931, as amended (the "Act"), and an Ordinance duly enacted by the Issuer and effective October 13, 2009 (the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance 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 Bond under the Ordinance.

THIS BOND IS ON PARITY AS TO LIEN, PLEDGE AND SOURCE OF SECURITY FOR PAYMENT, AND IN ALL RESPECTS WITH THE ISSUER'S COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED MARCH 27, 1998, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$532,000, COMBINED WATERWORKS AND

SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED MARCH 27, 1998, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$185,000, AND COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED OCTOBER 16, 2009, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$550,000 (COLLECTIVELY, THE "PRIOR BONDS").

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, from moneys in the Reserve Account created under the Ordinance for the Bonds (the "Series 2009 Bond Reserve Account") and unexpended proceeds of the Bond, on parity with the Prior Bonds. Such Gross Revenues shall be sufficient to pay 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 Gross Revenues, the moneys in the Series 2009 Bond Reserve Account and unexpended proceeds of the Bond. Pursuant to the Ordinance, 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 one hundred fifteen percent (115%) of the maximum amount payable in any year for principal of and interest on the Bond and the Prior Bonds, and all other obligations secured by a lien on or payable from such net revenues prior to or on parity with the Bond, provided however, that so long as there exists in the Series 2009 Bond Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bond in the then current or any succeeding year and in the reserve account established for any other obligations outstanding prior to or on parity with the Bond, an amount at least equal to the requirement therefor, such percentage may be reduced to one hundred ten percent (110%).

The Issuer has entered into certain further covenants with the registered owner of the Bond for the terms of which reference is made to the Ordinance. Remedies provided the registered owner of the Bond are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of the Issuer, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the herein defined Bond Resolution, and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions 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, but may only be transferred by transfer of registration hereof with the Bond Registrar.

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

If at any time it shall appear to the Government that Issuer may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Issuer will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government,

This Bond is given as evidence of a loan to Issuer made or insured by the Government pursuant to the Consolidated Farmers Home Rural Development Act, as amended. This Bond shall be subject to the present regulations of the Rural Development Authority and to its future regulations not inconsistent with the express provisions hereof.

The initial address of Government for purposes of bond registration is 1550 Earl Core Road, Suite 101, Morgantown, WV 26505.

This Bond will be in default should any proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as set forth in Exhibit M of subpart G of Part 1940 of Title 7 of the Code of Federal Regulations, as amended.

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 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 Ordinance, 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, TOWN OF CLAY has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder and has caused this Bond to be dated October 16, 2009.

[SEAL]

ATTEST:

Recorder

TOWN OF CLAY

By: _____
Mayor
P.O. Box 55
Clay, WV 25043-0055

ASSIGNMENT

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

Dated: _____, 200_.

(Assignor)

Witnessed in the presence of:

RECORD OF ADVANCES

| <u>AMOUNT</u> | <u>DATE</u> | <u>AMOUNT</u> | <u>DATE</u> |
|------------------|-------------|---------------|-------------|
| (1) \$149,049.75 | 10/16/09 | (6) \$ | |
| (2) \$ | | (7) \$ | |
| (3) \$ | | (8) \$ | |
| (4) \$ | | (9) \$ | |
| (5) \$ | | (10) \$ | |

TOTAL \$

(FORM OF SERIES 2009 B BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
TOWN OF CLAY
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BOND
SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)

No. BR-1

\$550,000

Date: October 16, 2009

KNOW ALL MEN BY THESE PRESENTS: That TOWN OF CLAY, a municipality, public corporation and political subdivision of the State of West Virginia in Clay 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 order of the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns, or at such other place as the Authority may hereafter designate in writing, the sum of Five Hundred Fifty Thousand and 00/100 Dollars (\$550,000.00), or such lesser amount as set forth on 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 June 1, 2011, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference.

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 Infrastructure and Jobs Development Council (the "Council"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority, on behalf of the Council, dated October 16, 2009.

This Bond is issued (i) to pay a portion of the costs of acquisition, construction and equipping of certain additions, betterments and improvements to the combined waterworks and sewerage system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The combined waterworks and sewerage system of the Issuer, together with the Project, and any further extensions, additions, betterments or improvements thereto is 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 8, Article 20 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (the "Act"), and an Ordinance duly enacted by the Issuer and effective October 13, 2009 (the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance 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 Bond under the Ordinance.

THIS BOND IS ON PARITY AS TO LIEN, PLEDGE AND SOURCE OF SECURITY FOR PAYMENT, AND IN ALL RESPECTS WITH THE ISSUER'S COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED MARCH 27, 1998, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$532,000, COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED MARCH 27, 1998, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$185,000, AND COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED OCTOBER 16, 2009, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$830,000 (COLLECTIVELY, THE "PRIOR BONDS").

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, from moneys in the Reserve Account created under the Ordinance for the Bonds (the "Series 2009 Bond Reserve Account") and unexpended proceeds of the Bond, on parity with the Prior Bonds. Such Gross Revenues shall be sufficient to pay 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 Gross Revenues, the moneys in the Series 2009 Bond Reserve Account and unexpended proceeds of the Bond. Pursuant to the Ordinance, 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 one hundred fifteen percent (115%) of the maximum amount payable in any year for principal of and interest on the Bond and the Prior Bonds, and all other obligations secured by a lien on or payable from such net revenues prior to or on parity with the Bond, provided however, that so long as there exists in the Series 2009 Bond Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bond in the then current or any succeeding year and in the reserve account established for any other obligations outstanding prior to or on parity with the Bond, an amount at least equal to the requirement therefor, such percentage may be reduced to one hundred ten percent (110%).

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 the costs of the Project and the costs of issuance hereof as described in the Bond Legislation, 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.

In accordance with the requirements of the United States Department of Agriculture for the issuance of parity obligations, this Bond will be in default should any proceeds of this Bond be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Gross 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, TOWN OF CLAY has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder and has caused this Bond to be dated October 16, 2009.

[SEAL]

ATTEST:

Recorder

TOWN OF CLAY

By: _____
Mayor
P.O. Box 55
Clay, WV 25043-0055

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is the Series 2009 B Bond 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 16, 2009.

CLAY COUNTY BANK, INC., as Registrar

By: _____
Authorized Officer

EXHIBIT B

DEBT SERVICE SCHEDULE

ASSIGNMENT

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

Dated: _____, 200_.

(Assignor)

Witnessed in the presence of:

RECORD OF ADVANCES

| <u>AMOUNT</u> | <u>DATE</u> | <u>AMOUNT</u> | <u>DATE</u> |
|-----------------|-------------|---------------|-------------|
| (1) \$12,460.00 | 10/16/09 | (6) \$ | |
| (2) \$ | | (7) \$ | |
| (3) \$ | | (8) \$ | |
| (4) \$ | | (9) \$ | |
| (5) \$ | | (10) \$ | |

TOTAL \$

BOND REGISTER

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
TOWN OF CLAY
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BOND
SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)

| <u>Bond Number</u> | <u>Principal Amount</u> | <u>Date of Bond</u> |
|--------------------|-------------------------|---------------------|
| No. BR-1 | \$550,000 | October 16, 2009 |

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

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

Signature of Registrar:

Clay County Bank, Inc.

By: _____
President

Section 3.10. Sale of Series 2009 Bonds; Incorporation of Terms. The Series 2009 A Bond shall be sold to RUS pursuant to the terms and conditions of the Letter of Conditions from RUS dated June 28, 1996, as amended by Amendment No. 1 to Letter of Conditions dated June 16, 2004. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to accept the Letter of Conditions from RUS, with such changes, insertions and omissions as may be approved by the Mayor, the execution of which shall be conclusive evidence of such approval, and any such prior execution and delivery is hereby authorized, ratified and approved.

The Series 2009 B Bond shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous resolution, the Mayor is specifically authorized and directed to execute the Loan Agreement and the Recorder is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The Loan Agreement, including all schedules and exhibits attached thereto, are hereby approved and incorporated into this Bond Legislation.

Section 3.11. Certificate of Consulting Engineers. Prior to the issuance of the Series 2009 Bonds, the Issuer must obtain the certificate of the Consulting Engineers to the effect that the Project will be constructed in accordance with the approved plans and specifications, as submitted to RUS and the Authority, the Project is or will be adequate for the purposes for which it was designed, and the funding plan, as submitted to RUS and the Authority, is sufficient to pay the costs of the acquisition and construction of the Project.

ARTICLE IV

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 4.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are created or continued and shall be held by the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and from each other:

- (1) Revenue Fund;
- (2) Operation and Maintenance Fund;
- (3) Renewal and Replacement Fund; and
- (4) Construction Fund.

Section 4.02. Establishment of Account with Commission. The following special funds or accounts are hereby created with and shall be held by the Commission separate and apart from all other funds or accounts of the Commission and the Issuer and from each other:

- (1) Series 2009 A Bond Sinking Fund;

- (2) Series 2009 B Bond Sinking Fund;
- (3) Series 2009 A Bond Reserve Account; and
- (4) Series 2009 B Bond Reserve Account.

Section 4.03. System Revenues: Flow of Funds.

A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund established herein. The Revenue Fund shall constitute a trust fund for the purposes provided in this Ordinance 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 herein provided. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order of priority:

- (1) The Issuer shall first, each month, pay from the Revenue Fund all current Operating Expenses of the System.
- (2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the National Finance Office, the amount required by the Prior Ordinance for payment of the interest on the Series 1998 A Bond; and (ii) remit to the National Finance Office for deposit in the Series 2009 A Bond Sinking Fund hereby established at the National Finance Office, the amount of interest due as set forth in the Series 2009 A Bond.
- (3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the National Finance Office, the amount required by the Prior Ordinance for payment of the principal of the Series 1998 A Bond; (ii) remit to the Commission, commencing 3 months prior to the first date of payment of principal of the Series 2009 B Bond, for deposit in the Series 2009 B Bond Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2009 B Bond 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 Bond 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) remit to the National Finance Office, commencing 24 months following the date of delivery of the Series 2009 A Bond, for deposit in the Series 2009 A Bond Sinking Fund, the amount of principal due as set forth in the Series 2009 A Bond.

The deposits into the Series 2009 A Bond Sinking Fund provided in this paragraph and in Section 4.03A(2) above, constitute actual payments of principal of and interest on the Series 2009 A Bond to the Government.

- (4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the Commission for deposit in the Reserve

Accounts for the Prior Bonds, the amounts required by the Prior Ordinance to be deposited therein; (ii) remit to the Commission, commencing 3 months after the completion of construction of the Project, as certified by the Consulting Engineers, if not fully funded upon the issuance of the Series 2009 A Bond, for deposit in the Series 2009 A Bond Reserve Account, an amount equal to 1/120th of the Series 2009 A Bond Reserve Requirement, until the amount in the Series 2009 A Bond Reserve Account equals the Series 2009 A Bond Reserve Requirement; provided that, no further payments shall be made into the Series 2009 A Bond 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 Bond Reserve Requirement; and (iii) remit to the Commission, commencing 3 months after the completion of construction of the Project, as certified by the Consulting Engineers, if not fully funded upon the issuance of the Series 2009 B Bond, for deposit in the Series 2009 B Bond Reserve Account, an amount equal to 1/120th of the Series 2009 B Bond Reserve Requirement, until the amount in the Series 2009 B Bond Reserve Account equals the Series 2009 B Bond Reserve Requirement; provided that, no further payments shall be made into the Series 2009 B Bond 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 Bond Reserve Requirement.

(5) The Issuer shall next, on the first day of each month, from the moneys remaining in the Revenue Fund, transfer to 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 VII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency 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 account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

Moneys in the Series 2009 Bonds Sinking Funds shall be used only for the purpose of paying principal of and interest, if any, on the Series 2009 Bonds as the same shall become due. Moneys in the Series 2009 Bonds Reserve Accounts shall be used only for the purpose of paying principal of and interest, if any, on the Series 2009 Bonds as the same shall come due, when other moneys in the Series 2009 Bonds Sinking Funds are insufficient therefore, and for no other purpose.

All investment earnings on moneys in the Series 2009 Bonds Sinking Funds and the Series 2009 Bonds Reserve Accounts shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due, if any, on the Series 2009 Bonds, and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2009 Bonds Reserve Accounts which result in a reduction in the balance therein below the Series 2009 Bonds Reserve Requirements shall be

subsequently restored from the first Gross Revenues available after all required payments have been made in full in the order set forth above.

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

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

Principal, interest or reserve account payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Prior Bonds and the Series 2009 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 B Bond Sinking Fund and the Series 2009 Bonds Reserve Accounts 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. The Issuer shall make the necessary arrangements whereby required payments into the Series 2009 B Bond Sinking Fund and the Series 2009 Bonds Reserve Accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Moneys in the Series 2009 B Bond Sinking Fund and the Series 2009 Bonds Reserve Accounts shall be invested and reinvested by the Commission in accordance with Section 7.01 hereof.

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

B. 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 account 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.

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 such calendar month.

D. 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.

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

F. The moneys in excess of the maximum amounts insured by FDIC in any of the funds and accounts 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 4.03, and the Gross Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

H. All remittances made by the Issuer to the Commission 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 by the Issuer, as received, in the Construction Fund, and following completion of the Project, shall be deposited in the Revenue Fund and may be used for any lawful purpose of the System.

Section 4.04. Excess Bond Proceeds. The Issuer shall place any excess proceeds from the Series 2009 Bonds not required by the Project in the Series 2009 Bonds Reserve Accounts or as otherwise directed by RUS and the Authority.

ARTICLE V

BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 5.01. Application of Bond Proceeds. From the moneys received from time to time 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 Bonds, there shall be deposited with the Commission in the Series 2009 Bonds Reserve Accounts the sum, if any, required hereunder for funding the Series 2009 Bonds Reserve Accounts.

B. The remaining moneys derived from the sale of the Series 2009 Bonds shall be deposited by the Issuer as received from time to time in the Construction Fund established hereunder.

C. The Depository Bank shall act as a trustee and fiduciary for the Bondholders with respect to the Construction Fund and shall comply with all requirements with respect to the disposition of the Construction Fund set forth in this Ordinance. Moneys in the Construction 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 Bond.

Section 5.02. Disbursements From the Construction Fund. Payments for Costs of the Project shall be made monthly.

On or before the Closing Date, the Issuer shall have delivered to RUS and the Authority 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.

Except as provided in Section 5.01 hereof, disbursements from the Construction Fund shall be made only after submission to, and approval by, RUS and the Authority of the following:

- (1) a completed and signed "Payment Requisition Form," 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 Construction Fund only the net amount remaining after deduction of any such portion. All payments made from the Construction 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 Construction 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 Construction Fund, including any accounts therein, shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

Until disbursed by the Issuer, moneys in the Construction Fund, including any accounts therein, shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

ARTICLE VI

ADDITIONAL COVENANTS OF THE ISSUER

Section 6.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Ordinance 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 Ordinance, the Issuer hereby covenants and agrees with the Holders of the Series 2009 Bonds as hereinafter provided in this Article VI. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as said Series 2009 Bonds or the interest thereon are Outstanding and unpaid.

Section 6.02. Series 2009 Bonds Not to be Indebtedness of the Issuer. The Series 2009 Bonds shall be or 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 Ordinance. 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 said Series 2009 Bonds or the interest thereon.

Section 6.03. Series 2009 Bonds Secured by Pledge of Gross Revenues. The payment of the debt service of the Series 2009 Bonds issued hereunder shall be secured forthwith on parity with the Gross Revenues with the Prior Bonds derived from the operation of the System including any other fees collected by the Issuer and imposed by the tariffs approved by the Governing Body of the Issuer on May 20, 2008 and June 23, 2009. The Revenues derived from the System, in amounts sufficient to pay the principal of and interest on the Series 2009 Bonds and to make the payments into the Series 2009 Bonds Sinking Funds, including the Series 2009 Bonds Reserve Accounts therein, and all other payments provided for in the Ordinance and the tariffs are hereby irrevocably

pledged, in the manner provided herein, to the payment of the principal of and interest on the Series 2009 Bonds as the same become due, and for the other purposes provided in the Ordinance.

Section 6.04. Rates. Prior to issuance of the Series 2009 Bonds, equitable rates or charges for the proposed and/or actual use of and services rendered by the System have been or will be established, all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Recorder, 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 hereunder. Such schedules 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. The Issuer shall take the necessary actions with respect to the imposition of rates at such times and with such provisions with respect to interest rate and maturity of the Series 2009 Bonds to finance the issuance of the Series 2009 Bonds as the purchasers thereof shall require. 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 schedules of rates or charges from time to time in effect shall be sufficient (i) to provide for all reasonable expenses of operation, repair and maintenance of the System and (ii) to leave a balance each Fiscal Year equal to at least one hundred fifteen percent (115%) of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Series 2009 Bonds, the Prior Bonds and any parity bonds issued thereafter; provided that, in the event that amounts at least equal to or in excess of the Reserve Requirements are on deposit in the Series 2009 Bonds Reserve Accounts and the Reserve Accounts for the Series 2009 Bonds and the Prior Bonds are funded at least at the requirement provided for in the Ordinance, such balances each Fiscal Year need only equal at least one hundred ten percent (110%) of the maximum amounts required in any succeeding Fiscal Year for payment of principal of and interest on the Series 2009 Bonds, the Prior Bonds and any parity bonds issued thereafter.

Section 6.05. Completion, Operation and Maintenance; Schedule of Costs. 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. The Issuer will expeditiously complete the Project and will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof from the revenues of said System in the manner provided in the Ordinance.

Section 6.06. Sale of the System. Except as otherwise required by state law, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Outstanding Bonds and effectively defease this Ordinance in accordance with Section 9.01 hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Outstanding Bonds, immediately be remitted to the Commission for deposit in the Series 2009 Bonds Sinking Funds, and, with the written permission of the Government and the Authority, or in the event the Government and the Authority are no longer Bondholders, the Issuer shall direct the Commission to apply such proceeds to the payment of principal at maturity of and interest on the

Outstanding Bonds. Any balance remaining after the payment of all the Outstanding 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 the Consulting Engineers 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 upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of \$10,000 and not in excess of \$50,000, shall with the written consent of RUS and the Authority, be remitted by the Issuer to the Commission for deposit in the Series 2009 Bonds Sinking Funds and shall be applied only to the purchase of Bonds of the last maturities then Outstanding at prices not greater than the redemption price of such Bonds. Such payment of such proceeds into the Series 2009 Bonds Sinking Funds or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Ordinance. 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 RUS and the Authority, of sixty-six and two-thirds percent (66 2/3%) in amount of the Bonds then outstanding. The Issuer shall prepare the form of such approval and consent for execution by RUS and the Authority for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 6.07. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided in this Section 6.07 and in Section 6.08B, the Issuer shall not issue any obligations whatsoever with a lien on or otherwise payable from any source of payment pledged originally 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 the Series 2009 Bonds Reserve Accounts and the Renewal and Replacement Fund 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 parity with the lien of the Series 2009 Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2009 Bonds and the interest thereon in this Ordinance, or upon the System or any part thereof. The Issuer will give RUS and the Authority prior written notice of the issuance of other obligations to be used for the Project, payable from System revenues or grants for the Project.

Section 6.08. Parity Bonds. A. No Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2009 Bonds issued pursuant to this Ordinance, except under the conditions and in the manner herein provided.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2009 Bonds and Prior Bonds and shall be issued with the written consent of the Government and the Authority.

No such Parity Bonds shall be issued except for the purpose of financing the costs of the construction or acquisition of the System or extensions, improvements or betterments to the System or refunding one or more series of bonds issued pursuant hereto, or both such purposes.

No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Recorder a written statement by the Independent Certified Public Accountants, based upon the necessary investigation and certification by the Consulting Engineers, reciting the conclusion that the Gross Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any twelve (12) consecutive months, within the eighteen (18) months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Gross Revenues to be received in each of the three (3) succeeding years after the completion of the improvements to be financed by such Parity Bonds, shall not be less than one hundred fifteen percent (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 Series 2009 Bonds and Prior Bonds then Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and
- (3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the three (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) the improvements to be financed by such Parity Bonds and (b) any increase in rates adopted by the Issuer, the period for appeal of which has expired prior to the date of delivery of such Parity Bonds, and shall not exceed

the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the Recorder prior to the issuance of such Parity Bonds.

The Gross Revenues actually derived from the System during the twelve (12) consecutive-month period hereinabove referred to may be adjusted by adding to such Gross Revenues such additional Gross Revenues which would have been received, in the opinion of the Consulting Engineers and the said Independent Certified Public Accountants, as stated in a certificate jointly made and signed by the Consulting Engineers and said Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System adopted by the Issuer, the period for appeal of which has expired prior to issuance of such Parity Bonds.

Not later than simultaneously with the delivery of such Parity Bonds, the Issuer shall have entered into written contracts for the immediate construction or acquisition of such additions, betterments or improvements, if any, to the System that are to be financed by 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 Series 2009 Bonds and the Holders of any Parity Bonds 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 Bonds theretofore issued pursuant to this Ordinance.

All Parity Bonds shall mature on the day of the years of maturities, and the semiannual interest thereon shall be payable on the days of each year, specified in a Bond Ordinance or Supplemental Resolution.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior liens of the Series 2009 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 lien on and source of and security for payment from such revenues, with the Series 2009 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 with respect to the Series 2009 Bonds then outstanding, and any other payments provided for in this Ordinance, shall have been made in full as required to the date of delivery of such Parity Bonds, and the Issuer shall then be in full compliance with all the covenants, agreements and terms of this Ordinance.

B. Notwithstanding the foregoing, the Issuer may issue Parity Bonds without compliance with any other conditions for the purpose of refunding prior to maturity any issues or series of bonds, provided that the annual debt service required on account of the refunding bonds and the

bonds which are not refunded shall not be greater in any year in which the bonds not refunded and the refunding bonds are to be Outstanding than the annual debt service required in such year if the bonds to be refunded were not so refunded.

Section 6.09. Books and Records. 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, the costs of acquiring the Project site, construction, and installing the Project, and RUS and the Authority 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 Issuer shall keep complete and accurate records of the costs of designing the System, acquiring the Project site and acquiring, constructing and installing the Project. The Issuer shall permit RUS and the Authority, or its 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 RUS and the Authority such documents and information as it 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 RUS and the Authority, or their agents and representatives, to inspect all records pertaining to the construction and operation 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 shall 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 owner of Series 2009 Bonds issued pursuant to the Ordinance 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. The Issuer shall maintain separate control accounting records. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Governing Body. The Governing Body shall prescribe and institute the manner by which subsidiary records of the accounting system, which may be installed remote from the direct supervision of the Governing Body shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Consulting Engineers, RUS and the Authority and shall mail in each year to any Holders of 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 Ordinance with respect to said Series 2009 Bonds and the status of all said funds and accounts.

(C) The amount of any Outstanding Bonds or other obligations outstanding and secured by a lien on the Gross Revenues of the System.

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 in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto, and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to the Holders of the Series 2009 Bonds and shall submit said report to RUS and the Authority. Such audit report submitted to RUS and the Authority shall include a statement that the Issuer is in compliance with the terms and provisions of this Ordinance and the Act and that Gross Revenues are adequate to meet operation/maintenance expenses and debt service requirements.

The Issuer shall permit RUS and the Authority, 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 shall also provide RUS and the Authority, or their agents and representatives, with access to the plans, drawings, specifications, System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of RUS and the Authority with respect to the System pursuant to the Act.

Section 6.10. Compliance With Ordinance, Rules and Regulations. The Issuer hereby covenants and agrees to perform and satisfy all terms and conditions of this Ordinance and to comply with all applicable laws, rules and regulations issued by the Government and the Authority, or other state, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

Section 6.11. Operating Budget and Audit. The Issuer shall annually, at least forty-five (45) days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated reserves and expenditures for operation and maintenance of the System during the succeeding Fiscal Year. 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 Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of ten percent (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 Issuer shall, within thirty (30) days of the adoption thereof, mail copies of such annual budget and all resolutions

authorizing increased expenditures for operation and maintenance to RUS and the Authority and to any Holders of the Series 2009 Bonds, who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to RUS and the Authority, or anyone acting for and on behalf of such Holders of the Series 2009 Bonds.

In addition, the Issuer shall annually cause the records of the System to be audited by an Independent Certified Public Accountant, the report of which audit shall be submitted to RUS and the Authority and which audit report shall include a statement that the Issuer is in compliance with the terms and provisions of this Ordinance.

Section 6.12. Engineering Services and Operating Personnel. The Issuer shall provide and maintain competent and adequate resident engineering services satisfactory to RUS and the Authority covering the supervision and inspection of the 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 RUS, the Authority 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 the As-Built Plans to it within sixty (60) days of the completion of the Project.

Section 6.13. 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 6.14. 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 thirty (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 combined waterworks and sewerage system, if so owned by the Issuer, to all users of the services of the

System delinquent in payment of charges for the services of 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.

Section 6.15. 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 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 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 6.16. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Series 2009 Bonds remain Outstanding, the Issuer and its contractors and subcontractors will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, ON ALL above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war, the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for said 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 prime contractor and all subcontractors, as their respective interests may appear, during construction of the Project 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 RUS and 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) WORKERS' 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 one hundred percent (100%) of the construction contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

(4) FLOOD INSURANCE, to the extent available at reasonable cost to the Issuer.

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

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 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.

C. The Issuer shall also require all contractors engaged in the construction of the Project to carry such Workers' 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. Such insurance shall be made payable to the order of RUS and the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 6.17. Completion of Project: Permits and Orders. The Issuer will complete the Project as promptly as possible and operate and maintain the System 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 and all orders and approvals from the West Virginia Public Service Commission necessary for the acquisition and construction of the Project and the operation of the System.

Section 6.18. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PUBLIC PURPOSE BONDS. The Issuer shall use the Series 2009 Bonds proceeds solely for the Project and as otherwise set forth herein, and the Project will be solely operated as a public purpose and as a local governmental activity of the Issuer.

B. PRIVATE ACTIVITY BOND COVENANT. The Issuer shall not permit at any time or times any of the proceeds of the Series 2009 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 Series 2009 Bonds from the treatment afforded by Section 103(a) of the Code by reason of the classification of the Series 2009 Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code in order to assure the tax-exempt status of the Series 2009 Bonds.

C. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of five percent (5%) of the Net Proceeds of the Series 2009 Bonds 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.

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

E. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2009 Bonds and the interest thereon, including without limitation, the information return required under Section 149(e) of the Code.

F. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it (including those deemed necessary by RUS and the Authority) so that the interest on the Series 2009 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 those determined by RUS and the Authority) which would adversely affect such exclusion.

Section 6.19. Public Service Commission Approval. The Issuer shall obtain all requisite orders of and approvals from the Public Service Commission of West Virginia necessary for the construction of the Project and operation of the System, and RUS and the Authority shall receive an opinion of counsel to the Issuer to such effect.

Section 6.20. Compensation of Members of Governing Body. The Issuer hereby covenants and agrees that no compensation for policy direction shall be paid to the members of the Governing Body in excess of the amount permitted by the Act. Payment of any compensation to any such member for policy direction shall not be made if such payment would cause the Net Revenues to fall below the amount required to meet all payments provided for herein, nor when there is default in the performance of or compliance with any covenant or provision hereof.

Section 6.21. Statutory Mortgage. 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, to be on parity with the statutory mortgage imposed upon the Prior Bonds and to take effect immediately upon delivery of the Series 2009 Bonds.

Section 6.22. Restrictions on Use of Bond Proceeds. The Issuer agrees that it will be in default hereunder if any Series 2009 Bonds proceeds are used for a purpose that contributes to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

ARTICLE VII

INVESTMENT OF FUNDS; NON ARBITRAGE

Section 7.01. Investments. Any moneys held as a part of the funds and accounts created by this Ordinance, 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 Ordinance and the need for such moneys for the purposes set forth herein.

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 bond 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, 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 the Bond is outstanding.

ARTICLE VIII

DEFAULT AND REMEDIES

Section 8.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2009 Bonds or the Prior Bonds:

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

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2009 Bonds set forth in this Ordinance, any Supplemental Resolution or the Series 2009 Bonds or in the Prior Bonds or the Prior Ordinance, and such default shall have continued for a period of thirty (30) days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, Registrar or any other Paying Agent or a Holders of the Series 2009 Bonds or the Prior Bonds; 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.

Section 8.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owners of Outstanding Bonds 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 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 Ordinance 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 Outstanding 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 Outstanding Bonds, and (v) by action or bill in equity enjoin any acts in violation of the ordinances with respect to the Outstanding Bonds, or the rights of such Registered Owners. Any such remedies shall be exercised in a manner benefiting the holders of the Series 2009 Bonds and the Prior Bonds on a parity basis.

Section 8.03. Appointment of Receiver. Any Registered Owners of the Series 2009 Bonds may, by proper legal action, compel the performance of the duties of the Issuer under this Ordinance and the Act, including, 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 Bond any Registered Owners of the Series 2009 Bonds 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 Series 2009 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 Ordinance 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 Series 2009 Bonds and under any covenants of this Ordinance 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 Ordinance 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 Owners of the Series 2009 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 Series 2009 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 possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Series 2009 Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Ordinance, 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 IX

(RESERVED)

ARTICLE X

RATES, RULES, COVENANTS, ETC.

Section 10.01. Initial Schedules of Rates and Charges.

A. The initial schedules of rates and charges for the services and facilities of the System shall be as set forth in a Water Tariff on file with the Public Service Commission effective on or after May 30, 2008, which Tariff is incorporated herein by reference and is made a part hereof, and in a Sewer Tariff on file with the Public Service Commission effective on or after June 23, 2009, which Tariff is incorporated herein by reference and is made a part hereof.

B. The Issuer hereby ratifies the Rate Ordinances enacted on May 20, 2008 and June 23, 2009, which are included on the tariff sheets filed with the Public Service Commission.

Section 10.02. Further Covenants.

The Issuer hereby further covenants and agrees as follows:

A. There shall not be any discrimination or differential in rates between customers in similar circumstances.

B. The Issuer may require any applicant for any service by the System to deposit a reasonable and equitable amount to insure payment of all charges for the services rendered by the System, which deposit shall be handled and disposed of under the applicable rules and regulations of the Public Service Commission of West Virginia.

C. The Issuer, to the extent permitted by law, will not accept payment of any water bill from a customer served with water and water services by the Issuer without payment at the same time of a water bill owed by such customer for the same premises.

D. All delinquent fees, rates and charges for services or facilities of the System shall be liens on the premises served of equal degree, rank and priority with the lien on such premises of state, county, school and municipal taxes, as provided in the Act. The Issuer shall have such remedies and powers as are provided under the Act and other applicable provisions of law with regard to the collection and enforcement of such fees, rates and charges.

E. The Issuer will not render or cause to be rendered any free services of any nature by the System nor any of the facilities; and in the event that the Issuer or any department, agency, officer or employee thereof should avail itself or themselves of the services or facilities of the System, the same fees, rates and charges applicable to other customers receiving like services under similar circumstances shall be charged, such charges shall be paid as they accrue, and revenues so received shall be deposited and accounted for in the same manner as other Revenues of the System.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Filing Under Uniform Commercial Code. Contemporaneously with the delivery of the Series 2009 Bonds, the Issuer shall deliver a Financing Statement meeting the requirements of the Uniform Commercial Code of West Virginia and promptly thereafter shall file such Financing Statement in the office of the Secretary of State of West Virginia.

Section 11.02. Delivery of Series 2009 Bonds. The Mayor and Recorder of the Governing Body are hereby authorized and directed to cause the Series 2009 Bonds, numbered AR-1 and BR-1, hereby awarded to the Purchasers pursuant to prior agreements, to be delivered to the Purchasers as soon as the Purchasers will accept such delivery.

Section 11.03. Payment of Series 2009 Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of the Series 2009 Bonds, the principal of and

interest due or to become due thereon, at the times and in the manner stipulated therein and in this Ordinance, then, with respect to the Series 2009 Bonds only, the pledge of Gross Revenues and other moneys and securities pledged under this Ordinance and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2009 Bonds shall thereupon cease, terminate and become void and be discharged and satisfied. Except through such direct payment to the Holders of the Series 2009 Bonds, the Issuer may not defease the Series 2009 Bonds or otherwise provide for payment thereof by escrow or like manner.

Section 11.04. Severability of Invalid Provision. If any one or more of the covenants, agreements or provisions hereof should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions hereof, and shall in no way affect the validity of all the other provisions hereof or the Series 2009 Bonds.

Section 11.05. Amendment or Modification of Ordinance. No material modification or amendment of this Ordinance, or of any ordinance or resolution amendatory or supplemental hereto, that would materially and adversely affect the respective rights of Registered Owners of the Series 2009 Bonds shall be made without the consent in writing of the Registered Owners of 66 2/3% or more in principal amount of the Series 2009 Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of the Bond 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 Registered Owners 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 Ordinance may be amended without the consent of any Bondholders as may be necessary to assure compliance with Section 148(f) of the Code as may be necessary to assure the excludability of interest on the Series 2009 Bonds from gross income of the holder thereof.

Section 11.06. Ordinance Constitutes Contract. The provisions of this Ordinance shall constitute a contract between the Issuer and the Registered Owners of the Series 2009 Bonds, and no change, variation or alteration of any kind of the provisions of this Ordinance shall be made in any manner, except as in this Ordinance provided.

Section 11.07. Conflicting Provisions Repealed. All ordinances and orders, or parts thereof, in conflict with the provisions hereof are, to the extent of such conflicts, hereby repealed except the Prior Ordinance.

Section 11.08. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 11.09. 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 applicable thereto; and that the Mayor, Recorder 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 11.10. Supplemental Resolutions. The Issuer may pass such supplemental resolutions, if necessary, to effectuate the purposes and intent of this Ordinance.

Section 11.11. Effective Time. This Ordinance shall take effect immediately upon its enactment.

Section 11.12. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Bond 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 two (2) successive weeks within a period of fourteen (14) consecutive days, with at least six (6) full days intervening between each publication, in a qualified newspaper published and of general circulation in the Town of Clay, together with a notice stating that this Bond 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 Town Council upon a date certain, not less than ten (10) days subsequent to the date of the first publication of such abstract of this Bond Ordinance and notice, and present protests, and that a certified copy of the 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.

First Reading – October 6, 2009

Second Reading – October 13, 2009

Enacted Following Public Hearing – October 13, 2009

TOWN OF CLAY, WEST VIRGINIA

By: Wallace J. Brown
Mayor

[SEAL]

ATTEST:

Dorinda Murphy
Recorder

CERTIFICATION

The undersigned does hereby certify that the attached Ordinance is a true and accurate copy of an Ordinance duly enacted by the Council of the TOWN OF CLAY, WEST VIRGINIA on and effective on October 13, 2009, and that the foregoing document remains in full force and effect and has not been amended.

Dated: October 13, 2009.

[SEAL]


Recorder

TOWN OF CLAY
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS
SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, PAYMENT SCHEDULE, SALE PRICE AND OTHER TERMS OF THE TOWN OF CLAY COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2009 A AND B; AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF THE SERIES 2009 BONDS TO THE UNITED STATES DEPARTMENT OF AGRICULTURE AND THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, ACTING ON BEHALF OF THE WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL; DESIGNATING A DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the Town Council (the "Governing Body") of the Town of Clay (the "Issuer") has duly and officially enacted a Bond Ordinance on October 13, 2009 (the "Ordinance"), entitled:

ORDINANCE AUTHORIZING THE CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS FOR THE PUBLIC COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE TOWN OF CLAY, WEST VIRGINIA; AND THE FINANCING OF A PORTION OF THE COST THEREOF THROUGH THE ISSUANCE BY THE TOWN OF NOT TO EXCEED \$1,380,000 IN AGGREGATE PRINCIPAL AMOUNTS OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2009, FOR THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PUBLIC COMBINED WATERWORKS AND SEWERAGE SYSTEM THROUGH FINANCING TO BE OBTAINED BY THE TOWN AT A COST ESTIMATED TO BE APPROXIMATELY \$5,100,000; WITH SERIES 2009 BOND PROCEEDS TO BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE TOWN OF CLAY WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE OWNER OF SUCH SERIES 2009 BONDS; PLEDGING GROSS REVENUES, ON A PARITY BASIS, AS SECURITY FOR THE SERIES 2009 BONDS; PLACING LIMITATION ON SALE OF SYSTEM; AND AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH SERIES 2009 BONDS AND ENACTING OTHER PROVISIONS RELATING THERETO.

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

WHEREAS, the Ordinance provides for the issuance of the Combined Waterworks and Sewerage System Revenue Bonds, Series 2009 A (United States Department of Agriculture) ("Series 2009 A Bond"), and Series 2009 B (West Virginia Infrastructure Fund) ("Series 2009 B Bond"), of the Issuer, in aggregate principal amounts not to exceed \$830,000 and \$550,000, respectively (collectively, the "Bonds"), all in accordance with Chapter 8, Article 20 of the Code of West Virginia, 1931, as amended (the "Act"); and in the Ordinance it is provided that the exact principal amounts, dates, maturity dates, interest rates, payment schedules, sale prices and other terms of the Bonds should be established by a supplemental resolution, and that other matters relating to the Bonds be therein provided for;

WHEREAS, the Series 2009 A Bond is to be purchased by the United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government") pursuant to the Letter of Conditions, and the Series 2009 B Bond is to be purchased by the West Virginia Water Development Authority (the "Authority"), acting on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council") pursuant to the Loan Agreement;

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

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the Ordinance.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE TOWN OF CLAY:

Section 1. Pursuant to the 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. Combined Waterworks and Sewerage System Revenue Bond, Series 2009 A (United States Department of Agriculture), of the Issuer, originally represented by a single bond, numbered AR-1, in the original principal amount of \$830,000. The Series 2009 A Bond shall be dated the date of delivery, shall finally mature October 16, 2049, and shall bear interest at the rate of 4.25% per annum. Monthly installments of interest only on the amounts advanced under the Series 2009 A Bond are payable 30 days following the date of delivery of the Series 2009 A Bond and on the corresponding day of each month thereafter for the first 24 months after the date of delivery of the Series 2009 A Bond, and thereafter, monthly installments of principal of and interest on the Series 2009 A Bond, in the aggregate amount of \$3,677.00, are payable on the corresponding day of

each month, except that the final installment on the Series 2009 A Bond shall be paid at the end of 40 years from the date of the Series 2009 A Bond in the sum of the unpaid principal and interest due on the date thereof. The Series 2009 A Bond is subject to prepayment as set forth in the Ordinance and the Series 2009 A Bond. All principal and interest payments on the Series 2009 A Bond will be paid by the Issuer directly to the order of the United States of America at its National Finance Office, 1520 Market Street, St. Louis, Missouri 63103.

B. Combined Waterworks and Sewerage System Revenue Bond, Series 2009 B (West Virginia Infrastructure Fund), of the Issuer, originally represented by a single bond, numbered BR-1, in the original principal amount of \$550,000. The Series 2009 B Bond shall be dated the date of delivery, shall finally mature September 1, 2049, and shall bear interest at the rate of 0% per annum. Quarterly installments of principal only are payable on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2011, except that the final installment on the Series 2009 B Bond shall be paid on September 1, 2049. The Series 2009 B Bond is subject to prepayment as set forth in the Ordinance and the Series 2009 B Bond. All principal payments on the Series 2009 B Bond will be paid by the Issuer directly to the order of the West Virginia Municipal Bond Commission, 1207 Quarrier Street, Suite 401, Charleston, West Virginia 25301.

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

Section 3. The Issuer hereby ratifies, approves and accepts the Letter of Conditions, and all amendments thereto, and the Loan Agreement, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, approved and directed. The prices of the Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Bonds shall be advanced from time to time as requisitioned by the Issuer.

Section 4. The Issuer hereby appoints and designates Clay County Bank, Inc., Clay, West Virginia, to serve as the Depository Bank.

Section 5. Bond proceeds in the amount of \$-0- shall be deposited in the Series 2009 Bond Sinking Funds as capitalized interest.

Section 6. Bond proceeds in the amount of \$-0- shall be deposited in the Series 2009 Bond Reserve Accounts.

Section 7. The remaining proceeds of the Bonds, as advanced from time to time, shall be deposited in or credited to the Construction Fund, as received by the Issuer for payment of costs of the Project, including costs of issuance of the Bonds.

Section 8. The Mayor and Recorder 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 Ordinance approved and provided for, to the end that the Series 2009 A Bond may

be delivered to the Government pursuant to the Letter of Conditions dated June 28, 1996, as amended by Amendment No. 1 to Letter of Conditions dated June 16, 2004, and the Series 2009 B Bond may be delivered to the Authority, for the benefit of the Council, pursuant to the Loan Agreement dated October 16, 2009.

Section 9. The acquisition and construction of the Project and the financing thereof in part with proceeds of the Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 10. The Issuer hereby determines to invest all moneys in the funds and accounts established by the Ordinance held by the Depository Bank until expended, in money market accounts secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to invest all moneys in such money market accounts until further directed in writing by the Issuer. Moneys in the Sinking Funds and the Reserve Accounts for the Bonds shall be invested by the Commission in the West Virginia Consolidated Fund.

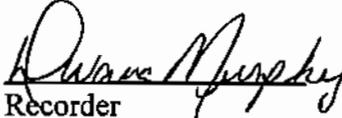
Section 11. The Issuer hereby approves and accepts all contracts relating to the financing, acquisition and construction of the Project.

Section 12. The Issuer hereby approves the costs of issuance and authorizes the payment of the same.

Section 13. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 13th day of October, 2009.


Mayor

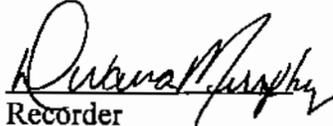

Recorder

CERTIFICATION

Certified as a true copy of a Supplemental Resolution duly adopted by the City Council of the Town of Clay on the 13th day of October, 2009.

Dated this 13th day of October, 2009.

[SEAL]


Recorder

Legal Notice
ABSTRACT OF ORDINANCE AND NOTICE OF PUBLIC HEARING

Pursuant to the provisions of West Virginia Code Chapter 6, Article 9A, Section 6 and Chapter 8, Article 20, as amended, you are hereby notified that a public hearing before the Town Council (the "Council") of the Town of Clay (the "Town") will be held at 4:00 pm on the 13th day of October, 2009, at which public hearing the Council will consider for final adoption an Ordinance entitled:

ORDINANCE AUTHORIZING THE CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS FOR THE PUBLIC COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE TOWN OF CLAY, WEST VIRGINIA; AND THE FINANCING OF A PORTION OF THE COST THEREOF THROUGH THE ISSUANCE BY THE TOWN OF NOT TO EXCEED \$1,380,000 IN AGGREGATE PRINCIPAL AMOUNTS OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2009, FOR THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PUBLIC COMBINED WATERWORKS AND SEWERAGE SYSTEM THROUGH FINANCING TO BE OBTAINED BY THE TOWN AT A COST ESTIMATED TO BE APPROXIMATELY \$5,100,000; WITH SERIES 2009 BOND PROCEEDS TO BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE TOWN OF CLAY WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE OWNER OF SUCH SERIES 2009 BONDS; PLEDGING GROSS REVENUES, ON A PARITY BASIS, AS SECURITY FOR THE SERIES 2009 BONDS; PLACING LIMITATION ON SALE OF SYSTEM; AND AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH SERIES 2009 BONDS AND ENACTING OTHER

PROVISIONS RELATING THERETO.

The Ordinance will be read and considered by the Council on first reading on October 6, 2009, and will be read and considered on second reading on October 13, 2009. The Ordinance would authorize the issuance of the Town's \$830,000 Combined Waterworks and Sewerage System Revenue Bond, Series 2009 A (United States Department of Agriculture) and \$550,000 Combined Waterworks and Sewerage System Revenue Bond, Series 2009 B (West Virginia Infrastructure Fund) (collectively, the "Bonds"). The Bonds would provide a portion of the funds to acquire, construct and equip certain betterments and improvements to the Town's combined waterworks and sewerage system (the "System").

The entire amount of the principal of and interest on the Bonds would be paid from revenues generated from the operation of the System. The Ordinance further provides as follows:

1. The debt service on the Bonds would be payable from the revenues of the System.

2. The Town has the authority under Chapter 8, Article 20 of the Code of West Virginia of 1931, as amended, to finance the operations of the System.

3. The Town has determined that the revenues generated by the operation of the System are sufficient to pay the principal of and interest on the Bonds as the same become due including all sinking fund and other payments provided for in the Ordinance.

4. The Ordinance provides that it is in the best interests of the Town to sell the Series 2009 A Bond at an annual interest rate of 4.50% and in the principal amount of \$830,000 to the United States of America, United States Department of Agriculture, Rural Utilities Service, and the Series 2009 B Bond at an annual interest rate of 0% and in the principal amount of \$550,000 to the West Virginia Water Development Authority, for the benefit of the West Virginia Infrastructure and Jobs Development

Council. The Bonds shall mature not more than 40 years from their date of issuance.

5. The Ordinance provides that the Mayor shall execute the Bonds in the name of the Town, and the seal of the Town shall be affixed thereto or imprinted thereon and attested by the Recorder.

6. The Ordinance provides for the continuation of the Revenue Fund, the disposition of System revenues, the payment of operating expenses, the payment of monthly or quarterly principal and interest when due, the creation of reserve accounts, the continuation of a Renewal and Replacement Fund, and the use of excess funds of the System.

7. The Ordinance provides for the use of Bond Proceeds for the construction of additions and betterments to the System and the manner and method of disbursing the proceeds of the Bonds.

8. The Ordinance provides for the investment of the proceeds of the Bonds and includes covenants designed to maintain the Bonds' tax-exempt status.

9. The Ordinance establishes terms for default and remedies of the owners of the Bonds.

A copy of the Ordinance is available for examination by any interested person at the Water Plant during regular office hours of such office, which are 8:00 a.m. to 4:00 p.m., Monday through Friday.

The Town contemplates the issuance of the Bonds described in and under the conditions set forth in the Ordinance abstracted above. The public hearing will be held at the Water Plant Office, 956 Main Street, Clay, West Virginia, on the 13th day of October, 2009, at 4:00 p.m., and any person or persons interested may appear before Council and be heard and may present protests and objections to the passage of the Ordinance and the issuance of the Bonds. Dated this 24th day of September, 2009.

TOWN OF CLAY, CLAY COUNTY, WEST VIRGINIA

Wallace J. Brown, Mayor
Dwana Murphy, Recorder

PUBLISHERS CERTIFICATE OF PUBLICATION

CLAY COUNTY FREE PRESS

CLAY, WEST VIRGINIA 25043-0180

I, Clinton Nichols, Publisher of the Clay County Free Press, a Newspaper of General Circulation, Published at Clay, in the county of Clay, West Virginia, do Certify that the attached:

Legal

was published in said Newspaper for

one

consecutive weeks, to-wit, in its issues of

September 30, 20 09.

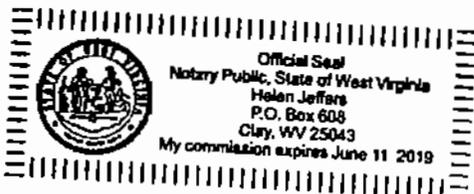
Clinton Nichols

Publisher

Taken, Sworn to and Subscribed by the said Clinton Nichols before me, in Clay County, West Virginia this 14th day of October, 20 09.

Helen Jeffers
Notary Public

My commission expires June 11, 2019



TOWN OF CLAY, WEST VIRGINIA
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS
SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)

ABSTRACT OF MINUTES OF MEETING TO CONSIDER ADOPTION OF BOND
ORDINANCE - FIRST READING

I, Dwana Murphy, Recorder of the Town of Clay, West Virginia, hereby certify that the following is a true and correct excerpt of the minutes of a regular meeting of the said Town:

* * *

* * *

* * *

The Council of the Town of Clay met in regular session, pursuant to notice duly given, on the 6th day of October, 2009, at Clay, West Virginia, at the hour of 6:00 p.m.

PRESENT: Mayor – Wallace J. Brown
Recorder – Dwana Murphy
Council Members:
Betty T. Murphy
Joyce Gibson
Jeremy Hanshaw
Jerry Stover

The Mayor announced that a quorum of members was present and that the meeting was open for any business properly before it. He stated that the proposed Bond Ordinance would be subject to protests and suggestions from any interested person at a public meeting to be held according to law on October 13, 2009, in the Town Council chambers.

Thereupon, the Mayor stated that it would be in order to consider the said Bond Ordinance for enactment upon first reading and he asked the Recorder to read the title of the said Ordinance as follows:

ORDINANCE AUTHORIZING THE CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS FOR THE PUBLIC COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE TOWN OF CLAY, WEST VIRGINIA; AND THE FINANCING OF A PORTION OF THE COST THEREOF THROUGH THE ISSUANCE BY THE TOWN OF NOT TO EXCEED \$1,380,000 IN AGGREGATE PRINCIPAL AMOUNTS OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2009, FOR THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PUBLIC COMBINED WATERWORKS AND SEWERAGE SYSTEM THROUGH FINANCING TO BE OBTAINED BY THE TOWN AT A COST ESTIMATED TO BE APPROXIMATELY \$5,100,000; WITH SERIES 2009 BOND PROCEEDS TO BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE TOWN OF CLAY WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, AND TO PAY OTHER COSTS IN

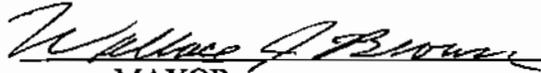
CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE OWNER OF SUCH SERIES 2009 BONDS; PLEDGING GROSS REVENUES, ON A PARITY BASIS, AS SECURITY FOR THE SERIES 2009 BONDS; PLACING LIMITATION ON SALE OF SYSTEM; AND AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH SERIES 2009 BONDS AND ENACTING OTHER PROVISIONS RELATING THERETO.

Thereupon, on motion duly made and seconded, the Bond Ordinance was approved unanimously on first reading.

After the completion of all other business to come before the meeting, on motion duly made, seconded and unanimously approved, the meeting was adjourned.

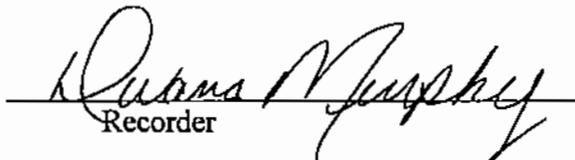
(SEAL)


RECORDER


MAYOR

I further hereby certify that the foregoing action of said Council remains in full force and effect and has not been amended or repealed.

WITNESS my signature as of the 16th day of October, 2009.


Recorder

TOWN OF CLAY, WEST VIRGINIA
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS
SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)

ABSTRACT OF MINUTES OF MEETING TO CONSIDER ENACTMENT OF BOND
ORDINANCE - SECOND READING AND PUBLIC HEARING

I, Dwana Murphy, Recorder of the Town of Clay, West Virginia, hereby certify that the following is a true and correct excerpt of the minutes of a special meeting of said Town:

The Council of the Town of Clay met in special session, pursuant to notice duly given, on the 13th day of October, 2009, at Clay, West Virginia, at the hour of 4:00 p.m.

PRESENT: Mayor – Wallace Brown
Recorder – Dwana Murphy
Council Members:
Betty T. Murphy
Joyce Gibson
Jeremy Hanshaw
Jerry Stover

The Mayor announced that a quorum of members was present and that the meeting was open for any business properly before it. He stated that the proposed Bond Ordinance would be subject to protests and suggestions from any interested person at a public meeting, after having been approved on first reading, and to be considered on second reading following the public hearing.

Thereupon, the Mayor asked those in attendance for any comments, suggestions or protests to said Ordinance. Hearing none, the Mayor declared the public hearing closed.

Thereupon, the Mayor stated that it would be in order to consider the Bond Ordinance for approval upon second reading, and he asked the Recorder to read the title of said Ordinance as follows:

ORDINANCE AUTHORIZING THE CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS FOR THE PUBLIC COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE TOWN OF CLAY, WEST VIRGINIA; AND THE FINANCING OF A PORTION OF THE COST THEREOF THROUGH THE ISSUANCE BY THE TOWN OF NOT TO EXCEED \$1,380,000 IN AGGREGATE PRINCIPAL AMOUNTS OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2009, FOR THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PUBLIC COMBINED WATERWORKS AND SEWERAGE SYSTEM THROUGH FINANCING TO BE OBTAINED BY THE TOWN AT A COST ESTIMATED TO BE APPROXIMATELY \$5,100,000; WITH

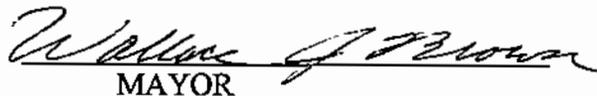
SERIES 2009 BOND PROCEEDS TO BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE TOWN OF CLAY WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE OWNER OF SUCH SERIES 2009 BONDS; PLEDGING GROSS REVENUES, ON A PARITY BASIS, AS SECURITY FOR THE SERIES 2009 BONDS; PLACING LIMITATION ON SALE OF SYSTEM; AND AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH SERIES 2009 BONDS AND ENACTING OTHER PROVISIONS RELATING THERETO.

Thereupon, on motion duly made and seconded, the Bond Ordinance was approved unanimously on second reading.

After the completion of all business to come before the meeting, on motion duly made, seconded and unanimously approved, the meeting was adjourned.

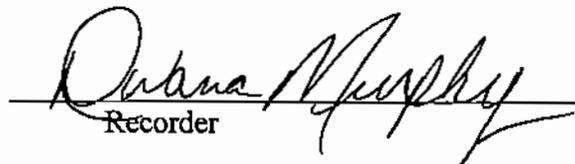
(SEAL)


RECORDER


MAYOR

I further hereby certify that the foregoing action of said Council remains in full force and effect and has not been amended or repealed.

WITNESS my signature as of the 16th day of October, 2009.


Recorder

UNITED STATES
DEPARTMENT OF
AGRICULTURE

RURAL
DEVELOPMENT

298 RAGLE ROAD
BECKLEY, WV 25801
TELEPHONE (304) 252-8644
FAX (304) 252-2734
TTY/TTD (304) 284-5941

7-826

A/c

June 28, 1996

The Honorable Timothy O. Butcher
Mayor, Town of Clay
P.O. Box 55
Clay, WV 25043

Dear Mayor Butcher:

This letter, with attachments I through II and enclosures, establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by Rural Utilities Service (RUS) by written amendment to this letter. Any changes not approved by RUS shall be cause for discontinuing processing of the application.

The Rural Utilities Service Water and Waste Disposal Loan and Grant Program is administered by USDA- Rural Development, formerly known as the Farmers Home Administration.

This letter is not to be considered as loan [and grant] approval or as representation to the availability of funds. The docket may be completed on the basis of an RUS loan not to exceed \$1,155,000.00 and an RUS grant not to exceed \$677,000.00 and other funding in the amount of \$2,750,000.00, for a total project cost of \$4,582,000.00. The other funding is planned in the form of a SCBG grant in the amount of \$1,250,000.00 together with a \$1,000,000.00 loan and \$500,000.00 grant from West Virginia Infrastructure and Jobs Development Council.

If the loan is made, you may make a written request that the interest rate be the lower of the rate in effect at the time of loan approval or the time of loan closing. If you do not request the lower of the two interest rates, the interest rate charged will be the rate in effect at the time of loan approval. The loan will be considered approved on the date a signed copy of Form FmHA 1940-1, "Request for Obligation of Funds," is mailed to you. If you want the lower of the two rates, your written request should be submitted to Rural Utility Service as soon as practical. In order to avoid possible delays in loan closing, such a request should ordinarily be submitted at least 30 calendar days before loan closing.

USDA, Rural Development is an equal opportunity Lender. Complaints of discrimination should be sent to:
Secretary of Agriculture, Washington, D.C. 20250

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. The enclosures and attachments listed below are attached to the copies as noted. Enclosed are the following:

- Attachment No. 1 - Final Project Planning Factors
(All Copies)
- Attachment No. 2 - Town of Clay Loan and Grant Docket
Table of Contents (All Copies)
- Attachment No. 3 - FmHA Instruction 1942-A, Section 1942.17
(Applicant Copy)
- Attachment No. 4 - FmHA Instruction 1942-A, Section 1942.18
(Engineer Copy)
- Attachment No. 5 - FmHA Instruction 1942-A, Section 1942.19
(Attorney and Bond Counsel Copies)
- Attachment No. 6 - FmHA Supplemental General Conditions
(Engineer Copy)
- Attachment No. 7 - Standards for Audit of Governmental Organizations,
Programs, Activities and Functions (Accountants Copy)
- Attachment No. 8 - U.S. Department of Agriculture Farmers Home
Administration Audit Program, December 1989
(Accountants Copy)
- Attachment No. 9 - Water Purchase Contract
(Form FmHA 4420-30)(Atty. Copy)
- Attachment No. 10 - Sample Credit Agreement
(Applicant and Attorney Copies)
- Attachment No. 11 - Various other FmHA Forms as identified on Attachment No. 2

Your documents concerning the creation of your authority are administratively acceptable; however, they will be further reviewed by our Office of the General Counsel at the time your file is forwarded for closing instructions. Any changes required by our Office of the General Counsel will be included in the closing instructions.

The conditions referred to above are as follows:

1. Loan Repayment - The loan will be scheduled for repayment over a period of 40 years. The payments due the first 24 months will consist of interest only. Payments for the remaining 456 months will equal amortized monthly installments. For planning purposes use a 4.5 % interest rate and a monthly amortization factor of 0.00459 , which provides for a monthly payment of \$5,302.00. You have the option of participating in the PREAUTHORIZED DEBIT (PAD) payment process. It will allow for your payment to be electronically debited from your account on the day your payment is due. Your authority must establish and fund monthly a debt service reserve account in an amount equal to at least 1/10th of your monthly debt service payment.

You are reminded that your authority may be required to refinance (graduate) the unpaid balance of its RUS loan, in whole or in part, upon the request of Rural Utility Service if at anytime it shall be determined the authority is able to obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time.

2. Security - The loan must be secured by a statutory lien of first priority, a pledge of the system's revenues and other agreements between you and the lender (RUS) as set forth in the bond ordinance which must be properly adopted and executed by the appropriate officials of your organization. Additional security requirements are contained in Form FmHA 1942-31 and Form FmHA 1942-47 which are mentioned later.
3. Users - The RUS must be assured that the Town of Clay will have a demand for water equaling that projected in our budget planning process (Attachment No. 1, Project Planning Factors). This conditional commitment is based upon the Town providing evidence supporting projections for retail sales (residential and commercial users) and large volume users (Clay County PSD and Clay-Roane PSD).

The Town must provide written documentation to satisfy this requirement. First, you must submit a written certification that attests to the number of users that are actually connected to and using the Town's existing water system that is being upgraded with the new water plant (including users in the Maysel area). A minimum of at least 721 bona fide users is required. Written certification must be submitted at the time you request authorization to advertise the proposed project for construction bids.

Second, evidence must be provided to show (a) both PSD's will actually be connected to and planning to use the system when it is completed, and (b) that the projected annual water sales to each PSD can reasonable be expected to equal or exceed the level planned in Attachment No. 1, "Project Planning Factors."

Evidence of the large volume user requirements shall consist of (1) Form FmHA 442-30, "Water Purchase Contract" executed for each PSD and approved by the West Virginia Public Service Commission. If you desire to use a water purchase contract other than that referenced above, written authorization must first be obtained from the Rural Utilities Service. Evidence that reaffirms projected water sales to PSD's as realistic shall consist of your accountant's written certification that he/she has independently examined water purchases and growth/decline in number of customers for each PSD during the past 12 months and is of the opinion that future water purchases can reasonable be expected to equal or exceed those projected in the Project Planning Factors.

If either large volume users refuses the offered service, the Town of Clay must obtain enough additional revenue (i.e. increase user rates, sign up additional users, reduce the project scope to reduce debt service and operating & maintenance expense) to make up the projected income that would be lost by not having the user(s) on the system.

4. **Bond Counsel** - The services of a recognized bond counsel are required. The bond counsel will prepare the form of ordinance to be used, in accordance with Section 1942.19 of FmHA Instruction 1942-A. You should immediately provide your bond counsel with a copy of this letter of conditions, its attachments and enclosures.
5. **Professional Services** - You must obtain the services of an attorney and an engineer. RUS has received and is currently reviewing your proposed Form FmHA 1942-19, "Agreement for Engineering Services" and Guide 14, "Legal Services Agreement". Attachment No. 1 includes the cost of these services for planning purposes.
6. **Facility Control** - Prior to advertisement for construction bids, you must furnish satisfactory evidence that you have or can obtain adequate continuous and valid control over the lands and rights needed for the project. Such evidence must be in the following form:
 - a. A right-of-way map showing clearly the location of all lands and rights needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.
 - b. A copy of deeds, contracts or options for any lands needed other than rights-of-way, along with a preliminary title opinion covering such lands. Form FmHA 1927-9, "Preliminary Title Opinion," may be used. Also, in the case of existing systems or where the Town has already acquired real property (land or facilities), a preliminary title opinion(s) concerning all such property(s) will be provided.
 - c. A narrative opinion from your attorney concerning all permits, certifications and other items necessary to show that all legal requirements can be met and stating how they will be met. This narrative should also identify any condemnation proceedings that are anticipated and state how they will be handled.
 - d. A copy of the right-of-way easements for any rights-of-way needed on private lands. Form FmHA 442-20, "Right-of-Way Easement," may be used. Each easement need not be provided this office; however, each must be available for review. A copy of the easement being used must be provided.
 - e. A certification and legal opinion relative title to rights-of-way and easements Form 442-21, "Right-of-Way Certificate," and Form FmHA 442-22, "Opinion of Counsel Relative to Rights-of-Way," may be used. These forms may contain a few exceptions such as properties that must be condemned; however, prior to the start of construction or loan closing, whichever occurs first, new Forms, FmHA 442-21 and 442-22, must be provided which do not provide for any exceptions.

- f. On the day of loan closing, the Town's attorney must furnish final title opinions on all land being acquired. Form FmHA 1927-10, "Final Title Opinion", may be used. In the case of existing systems or where the Town has already acquired real property (land or facilities), the Town's attorney will provide a separate final title opinion covering such properties on the day of loan closing.
7. Permits - Copies of all permits needed for the project must be provided for review prior to advertisement for construction bids. Such permits will include but are not limited to the following:
- West Virginia Department of Highways
 - State Department of Health
 - Department of Environmental Protection (formerly Dept. of Natural Resources)
 - Corps of Engineers
 - Public Land Corporation
8. Public Service Commission Approvals and Rates - You must determine that the Certificate of Convenience and Necessity which you now have from the Public Service Commission of West Virginia is adequate to cover the entire area to be served by the proposed system. If it is not adequate, a new certificate must be obtained and a copy provided for RUS. If it is determined the Town's present certificate is adequate, written evidence of that fact must be provided RUS. The Town must properly develop, adopt, and promulgate the required rates in accordance with the applicable provisions of Article I, Chapter 24 of the Code of West Virginia, as amended, and to the satisfaction of your bond counsel. The rate ordinance as adopted must include, as a minimum, all the rate related items (everything except project costs section, the use analysis section, and the operation and maintenance expense breakdown section) contained in the attached project planning factors (Attachment No. 1). The draft rate ordinance must be provided for RUS review and concurrence prior to its adoption.
9. Accounting - You must obtain the services of a qualified accountant. That accountant must agree (by letter) to develop and provide the following:
- a. All necessary accounting material required by the Public Service Commission of West Virginia (Rule 42).
 - b. Prior to advertisement for bids, your accountant must state in writing that he/she will establish your accounts and records in accordance with the requirements of the ordinance and the requirements of the Public Service Commission within 20 days from the notice to do such.
 - c. Prior to the start of construction, the accountant must certify that the accounts and records as required in (b) above have been established and are operational.

A representative of my office will review your accounts and records prior to authorizing the issuance of awards to the contractors.

FmHA regulations (Attachment No. 3) outline requirements for the submission of management reports and audits. Appropriate state statutes place certain audit requirements for your Town. The attached booklet, "Standards for Audit of Governmental Organizations, Programs, Activities and Functions," (Attachment No. 7) and "U.S. Department of Agriculture Farmers Home Administration Audit Program" (December 1989) (Attachment No. 8) outlines FmHA Audit requirements. You are reminded that certain provisions of the Office of Management and Budget Circular (A-128)(A-133) are applicable to any public body that received \$100,000 or more in federal funds in any one year. You must enter into an agreement annually with an accountant (or the State Tax Commission) to perform the audit. The agreement must be in accordance with the requirements of the State Tax Commissioner of West Virginia.

Audit Reports must be prepared to comply with the requirements of OMB Circular A-128 or A-133, as applicable.

10. Insurance and Bonding Requirements:

- a. Prior to preliminary loan closing, you must acquire the following insurance and bond coverage:
 - (1) Liability Insurance - Personal Liability - \$500,000; Property Damage - \$200,000-\$200,000. The limits of liability coverage noted herein should be considered as suggested amounts only. Rural Utility Service recommends that you consider analyzing your actual needs in detail before you obtain coverage in a specific amount.
 - (2) Workers' Compensation - In accordance with appropriate State Laws.
 - (3) Position Fidelity Bond (s) - All positions occupied by persons entrusted with the receipt and/or disbursement of funds must be bonded. As a good business practice you will probably wish to have each position bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time. The minimum coverage acceptable to Rural Utility Service will be for each position to be bonded for an amount at least equal to one annual installment on your loan(s). Form FmHA 440-24, "Position Fidelity Bond," may be used.
 - (4) National Flood Insurance - In addition to meeting the requirements for the type of assistance requested, the following requirements must be met for financial assistance for acquisition and/or construction in designated special flood or mudslide prone areas:

(a) If flood insurance is available, you must purchase a flood insurance policy at the time of loan closing.

(b) Applicants whose buildings, machinery or equipment are to be located in a community which has been notified as having special flood or mudslide prone areas will not receive financial assistance where flood insurance is not available.

(5) Real Property Insurance - Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all above-ground structures, to include machinery and equipment housed therein. This does not apply to water reservoirs, standpipes, elevated tanks or noncombustible materials used in treatment plants, clearwells, filters and the like.

11. You are, have been or may be approved to become, a recipient of Federal financial assistance from the United States Department of Agriculture. In the case of Paralyzed Veterans of America, et al. Plaintiff, V. William French Smith, et al. Defendants, United States District Court, Central District of California, No. 79-1979 WPG, the Honorable William P. Gray ordered the United States Department of Agriculture to notify you that as a recipient of such assistance you are required to comply with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794), even though the United States Department of Agriculture has not yet issued final regulations implementing Section 504 of the Rehabilitation Act.

Section 504 of the Rehabilitation Act is designed to assure that those who receive Federal financial assistance will not discriminate against handicapped persons. It provides in relevant part as follows:

"No otherwise qualified handicapped individual in the United States... shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program activity receiving Federal financial assistance."

Effective June 3, 1977, the Department of Health and Human Services issued final regulations implementing Section 504 as it applies to recipients of Federal financial assistance from that agency (45 C.F.R. Part 84). You may look to the HHS regulation for guidance as to your obligation under Section 504 of the Rehabilitation Act.

12. Contract Documents, Final Plans and Specifications:

a. The contract documents should consist of the following:

- (1) FmHA Instruction 1942-A, Guide 19, "Agreement," and Attachments 1-9. (Attachment No. 4) or other agreement approved by Rural Utility Service.
 - (2) Farmers Home Administration Supplemental General Conditions (Guide 18, 4-6-92 Revised WV). One copy of this item is attached hereto (Attachment No. 6). Additional copies must be reproduced by the engineer.
 - b. The Contract documents must provide, as a minimum, the following insurance:
 - (1) Liability Insurance - Personal Liability - \$500,000; Property Damage - \$200,000-\$200,000. (This coverage must include indemnification of the Town and its engineer.) FmHA Guide 18 suggests certain limits of liability for insurance coverage. Those limits should be considered as minimum requirements only. It is recommended you consider increasing the given limits of liability after analyzing your specific needs.
 - (2) Builder's Risk Insurance - On all structures and mechanical and electrical equipment in place or stored on the site to the full insurable value thereof.
 - (3) Workers' Compensation - In accordance with applicable State laws.
 - c. The contract documents and final plans and specifications must be submitted to Rural Utility Service for approval.
 - d. The project must be designed in compliance with Section 504 of the Rehabilitation Act of 1973.
13. Interim Financing - Interim financing will be used for the Rural Utility Service loan if it is available at reasonable rates and terms. You must provide Rural Utility Service with a copy of the tentative agreement reached in connection with interim financing. The enclosed Sample Credit Agreement (Attachment No.10) is an acceptable agreement and may be used.
 14. Disbursement of Funds - The Rural Utility Service (RUS) funds will be advanced as they are needed in the amounts necessary to cover Rural Development's proportionate share of any disbursements required of your Town over 30 day periods. Any funds not disbursed immediately upon receipt must be deposited in an interest bearing account in

accordance with OMB Circular A-133. Interest earned on these funds must be remitted promptly, at least quarterly, to the RUS. The Town must assure that all project funds are expended only for the eligible items included in the final project budget or as may be later approved by RUS.

15. **Other Grants** - Prior to advertisement for construction bids, you must provide evidence showing the approval of the other grants. This evidence should include a copy of the grant award. Prior to award of the contract(s) to the contractor(s), you must provide evidence that the "other" grant funds are available for expenditure. This evidence should consist of at least a letter from the grantor stating the funds are available for expenditure.
16. At a properly called meeting, you must adopt and properly execute the following forms, and minutes showing the adoption must be provided:

Form FmHA 442-7 - "Operating Budget"

Form FmHA 1940-1 - "Request for Obligation of Funds"

Form FmHA 1942-31 - "Association Water or Sewer System Grant Agreement"

Form FmHA 1942-47 - "Loan Resolution -- (Public Bodies)"

Form FmHA 400-1 - "Equal Opportunity Agreement"

Form FmHA 400-4 - "Assurance Agreement"

Form AD 1047 - "Certification Regarding Debarment -Primary"

Form AD 1049 - "Certification Regarding Drug-Free Workplace"

Form FmHA 1910-11 - "Applicant Certification, Federal Collection Policies"

FmHA Instruction 1940-Q, Exhibit A-1, "Certification for Contracts, Grants & Loans"

Standard Form LLL - "Disclosure of Lobbying Activities"

(If Applicable)

17. The enclosed Loan Processing Checklist (Attachment No. 2) outlines the items needed to complete the loan and grant docket. All the items listed must be included in the loan and grant docket when it is forwarded to the USDA, Rural Development State Office with a request for loan closing instructions to be issued.
18. Upon receipt of the loan and grant docket, which contains all the items required above, Rural Utility Service may authorize you to advertise the project for construction bids. Such advertisement must be in accordance with appropriate State statutes. Immediately after bid opening you must provide USDA, Rural Utility Service with (a) a bid tabulation, (b) recommendations from you and your engineer as to the acceptability of the bids received, and (c) your recommendations for contract awards. If all parties then agree the construction bids received are acceptable, it is determined that adequate funds are available to cover the total facility costs, and that all the administrative conditions of loan approval have been satisfied, loan closing instructions will be issued. The closing instructions, a copy of which will be forwarded to you, will set forth any further requirements that must be met before the loan can be closed. When all parties agree that the closing requirements can be met, a mutually acceptable date for the preliminary loan closing will be scheduled.

Attached is a copy of Form FmHA 1942-31, "Association Water and Sewer System Grant Agreement," for your review. You will be required to execute a completed form at the time of grant closing.

Any applicant contribution shall be considered as the first funds expended. After providing for all authorized costs, any remaining Rural Development project funds will be considered to be RUS grant funds and refunded to RUS. If the amount of unused RUS project funds exceeds the Rural Utility Service grant, that part would be RUS loan funds.

We believe the information herein clearly sets forth the actions which must be taken; however, if you have any questions, please do not hesitate to contact me.

Please complete and return the enclosed Form FmHA 1942-46, "Letter of Intent to Meet Conditions," if you desire further consideration be given your application.

If the conditions set forth in this letter are not met within six (6) months from the date hereof, RUS reserves the right to discontinue processing of the application. In the event the project has not advanced to the point of loan closing within the six-month period and it is determined the authority still wishes to proceed, it will be necessary that the proposed budget be reviewed again in detail. If during that review, it is determined the budget is no longer current and/or adequate, RUS reserves the right to require that it be revised or replaced.

Sincerely yours,

MELVIN E. KNICELEY
Rural Development Manager

cc: Administrator, Rural Utilities Service
Attn: Water and Waste Disposal Division
Washington, DC

Bobby Lewis, State Director
Rural Development, Morgantown, WV

Wayne King, Attorney at Law
Clay, WV

Community Development Manager
Summersville, WV

Chapman Technical Group, Ltd.
St. Albans, WV

Tom Elgin, Accountant
Montgomery, WV

Steptoe & Johnson, Bond Counsel
Clarksburg, WV

Attachment No. 1 to Letter of Conditions
 Dated: June 28, 1996
 For: Town of Clay

Project Planning Factors

The following estimates are to be used as a basis for project planning and must not be changed without prior approval of RUS.

| <u>Project Costs</u> | <u>SCBG</u> | <u>IJDC*</u> | <u>IDJC*</u> | <u>RUS</u> | <u>RUS</u> | |
|----------------------|------------------|----------------|------------------|----------------|------------------|------------------|
| | <u>Grant</u> | <u>Grant</u> | <u>Loan</u> | <u>Grant</u> | <u>Loan</u> | <u>Total</u> |
| Construction | 1,000,000 | 400,000 | 820,000 | 557,000 | 800,000 | 3,577,000 |
| Construction Contg. | | 50,000 | 100,000 | 54,000 | 100,000 | 304,000 |
| Land and Rights | | | | | 20,000 | 20,000 |
| Legal and Admin Fees | 25,000 | | | | 17,000 | 42,000 |
| Engineering Fees | 225,000 | 35,000 | 80,000 | 50,000 | 99,000 | 489,000 |
| Basic 278,000 | | | | | | |
| Insp. 151,000 | | | | | | |
| Spec. 60,000 | | | | | | |
| Bond Counsel | | | | | 15,000 | 15,000 |
| Interest | | | | | 104,000 | 104,000 |
| Proj. Contg. | | 15,000 | | 16,000 | | 31,000 |
| TOTALS | 1,250,000 | 500,000 | 1,000,000 | 677,000 | 1,155,000 | 4,582,000 |

* West Virginia Infrastructure and Jobs Development Council (IJDC)

Rates

Available for general domestic commercial, and industrial service.

First 2,000 gals. @ \$5.75 per M gals.
 Next 3,000 gals. @ \$5.25 per M gals..
 Over 5,000 gals. @ \$4.60 per M gals.

Minimum monthly bill - \$11.50 for 2,000 gals.

Water Sold for Resale - \$1.85 per 1,000 gals.

Minimum Charge

No bill shall be rendered for less than the following amounts according to the size of meter installed.

5/8"x 3/4" meter - \$ 11.50 per month
 3/4" meter - \$ 17.25 per month
 1" meter - \$ 28.75 per month
 1 1/2" meter - \$ 57.50 per month
 2" meter - \$ 92.00 per month
 3" meter - \$ 172.50 per month
 4" meter - \$ 287.50 per month
 6" meter - \$ 575.00 per month
 8" meter - \$ 920.00 per month

2010-3-15-2010

Delayed Payment Penalty

The above tariff is net. On all accounts not paid in full within twenty (20) days of date of bill, ten percent (10%) will be added to net amount shown.

If any bill is not paid within sixty (60) days after date, water service to the customer will be discontinued. Water service will not be restored until all past due water bills have been paid in full and all accrued penalties plus a reconnection charge have been paid.

Connection Charge

Prior to Construction - \$50.00

After the start of construction, there shall be a charge of \$300.00 for connection to the system.

Reconnection Charge

\$25.00

Use and Income Analysis

229 users @ min. gallons @ \$ 11.50 per user = \$2,633.50 monthly
288 users @ 3.142 gallons @ \$ 17.50 per user = 5,040.00 monthly
204 users @ 12.789 gallons @ \$ 63.08 per user = \$12,868.32 monthly
Monthly Income from retail sales = \$20,541.82

Annual Retail Sales \$20,541.82 X 12 months = \$246,502 annually

Annual Bulk Sales

Clay-Rone PSD: 14,400m gal. @ \$1.85/m = 26,640

Clay County PSD 17,900m gal. @ \$1.85/m = 33,115

Annual Miscellaneous Operating Income 4,500

TOTAL PROJECTED ANNUAL INCOME \$310,757

Budget

| | | |
|--------------------------|-----------|-------------|
| Income | | \$310,757 |
| Expenses | | |
| O & M | \$207,000 | |
| Debt Service | 89,934* | |
| Reserve | 8,993** | \$305,927 |
| Balance and Depreciation | | \$ 4,830*** |

Operating and Maintenance Expenses

| | |
|-------------------------------|-----------------|
| Source of Supply | \$ 9,500 |
| Pumping | 13,000 |
| Treatment | 96,000 |
| Transportation & Distribution | 16,000 |
| Customer Service | 22,000 |
| Administration & General | 46,000 |
| Taxes | 4,000 |
| Replacement & Additions | 500 |
| | <hr/> |
| | TOTAL \$207,000 |

| | |
|-------------------------|----------------|
| * Existing Debt Service | \$ 0. |
| Proposed Debt Service | <u>89,934.</u> |
| Total Debt Service | \$ 89,934 |

| | |
|---------------------------------|---------------|
| **Existing Debt Service Reserve | \$ 0. |
| Proposed Debt Service Reserve | <u>8,993.</u> |
| Total Debt Service Reserve | \$ 8,993. |

***Infrastructure & Jobs Development Council Bond requirement includes a 115% debt service coverage ratio. Ten percent is included in the proposed Debt Service Reserve while the remainder is included in "Balance and Depreciation."

UNITED STATES DEPARTMENT OF AGRICULTURE
 RURAL DEVELOPMENT
 Table of contents
 Preapplication, Applications - Complete Docket
 Water and Sewer Systems

| <u>Form No.</u> | <u>Document or Action</u> | <u>No. Needed</u> | <u>Proced. Ref.</u> | <u>Respons. Party</u> | <u>Target Date</u> | <u>Date Rec'd</u> | <u>File Pos.</u> |
|-----------------|--|-------------------|------------------------|-----------------------|--------------------|-------------------|------------------|
| SF 424 | Application for Federal Assistance | O & 2 | 1942.2 (a)(1) | App. | | Have | 3 |
| | Regional Planning & Development Council Review | 2 | 1942.2 (a)(1) | App. | | Have | 3 |
| | State Clearinghouse Review or IJDC Review | 2 | 1942.2 (a)(1) | App. | | Have | 3 |
| Guide 7/8 | Preliminary Engr. Report | 2 | 1942.18(c) | Engr. | | Have | 6 |
| | Bond Ordn. or Resol. On Outstanding Debts | 1 | 1942.17(h) | App./Att. | | Defeased | 2 |
| | Bonds or Notes Outstanding Debts | 1 | 1942.17(h) | App./Att. | | Defeased | 2 |
| | Audit for last year of operation | 1 | 1942.17(h) | App./Att. | | '95 PSC Report | 1 |
| AD 1049 | Certification Regarding Drug Free Workplace | 1 | 1940-M 1940.606 (b)(2) | App. | | Have | 5 |
| | Minutes Adopting Drug Free Workplace Program | 1 | LOC | App. | | Have | 5 |

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| <u>Form No.</u> | <u>Document or Action</u> | <u>No. Needed</u> | <u>Proced. Ref</u> | <u>Respons. Party</u> | <u>Target Date</u> | <u>Date Recd</u> | <u>File Pos.</u> |
|-----------------|--|-------------------|--------------------|-----------------------|--------------------|------------------|------------------|
| 1940-20 | Request for Env. Info | 2 | 1942.17(j)(7) | App./Eng. | | Have | 3 |
| | Env. Assessment for Class II Actions (Exhibit H, 1940 G) | 2 | 1942.17 | RUS | | Have | 3 |
| | Statement from State Historical Preservation Office | 2 | 1940.304(d) | App. | | Have | 3 |
| | Comments from Dept. of Commerce Labor & Environ. Resources (DNR) | 2 | 1942.17 (j)(2) | App. | | Have | 3 |
| | Comments from U.S. Fish & Wildlife Service (Endangered Species) | 2 | 1942.17 (j)(2) | App. | | Have | 3 |
| | Comments from U.S. Forest Service (Wild & Scenic Rivers) | 2 | 1942.17 (j)(2) | App. | | | 3 |
| | Brief Stmt. telling how facility will be operated | 1 | 1942.17(b)(3) | App. | | | 5 |
| | Copy of Existing Rate Tariff | 2 | 1942.17(h) | App. | | Have | 8 |
| | Bill analysis for existing systems | 2 | 1942.17 | App./Engr/Acct | | Have | 8 |

| <u>Form No.</u> | <u>Document or Action</u> | <u>No. Needed</u> | <u>Proced. Ref</u> | <u>Respons. Party</u> | <u>Target Date</u> | <u>Date Recd</u> | <u>File Pos.</u> |
|-----------------|--|-------------------|-------------------------------|-----------------------|--------------------|------------------|------------------|
| | Statement reporting the <u>total</u> number of <u>potential</u> users | | 1942.17 (h)(2)(i)(A) | App./Engr/Acct. | | Have | 8 |
| 1942-19 | Agreement for Engineering Services | 3 | 1942.17 (1)(1) | App./Engr. | | Have | 6 |
| | Legal Services Agreement | | Guide 14 1942.17 (1)(1) | App./Engr | | | 5 |
| | Documentation on Service Area | 1 | 1942.5(a) | RUS | | Have | 3 |
| | Written Certification from Applicant that "Other" credit is <u>NOT</u> available | 2 | 1942.17(b)(2) | App. | | Have | 3 |
| | RUS determin. on the availability of other credit | 2 | 1942.17 (b)(3) | RUS | | Have | 3 |
| | Documentation from lender(s) regarding the availability of other credit | 2 | 1942.17 (b)(3) | RUS | | Have | S/O |
| | Documentation on Historical and Archaeological Assessments | 2 | 1901.255(2) | RUS | | Have | 3 |
| | Copy of Certification of Publication and related Environmental Information | 2 | 1940.331(c) | App. | | Have | 3 |
| | Project Planning Factors | 4 | S/Office | RUS | | Have | 3 |

| <u>Form No.</u> | <u>Document or Action</u> | <u>No. Needed</u> | <u>Proced. Ref</u> | <u>Respons. Party</u> | <u>Target Date</u> | <u>Date Recd</u> | <u>File Pos.</u> |
|---------------------------|---|-------------------|--------------------|-----------------------|--------------------|--------------------------|------------------|
| 1942-51 | Grant Determination | 3 | 1942-H | RUS | | Have | 2 |
| | Finding of No Significant Impact (FONSI) | 2 | 1940-G | RUS | | Have | 3 |
| | Evidence of Public Meeting Minutes | 2 | 1942.17 (j)(9) | App. | | <i>Have</i> | 3 |
| AD 622 | Notice of Preapplication Review | O & 3 | 1942.17 (m)(4) | RUS | | Have | 3 |
| SF 424 | Application for Federal Assistance | O & 1 | 1942.17 (m)(5) | App. | | <i>Have</i> | 3 |
| FmHA Inst. 1940-Q Exh.A-1 | Certification For Contracts, Grants and Loans | O & 1 | 1940-Q | App. | | <i>Have</i> | 5 |
| SF LLL | Disclosure of Lobbying Activities | O & 1 | 1940-Q | App. | | <i>Delivered to App.</i> | 5 |
| 1942-45 | Project Summary | O & 2 | 1942.5(a)(1) | RUS | | <i>Have</i> | 1 |
| 442-3 | Balance Sheet | O & 1 | 1942.17(h) | App. | | <i>Auditor's Report</i> | 1 |
| 442-7 | Operating Budget | O & 2 | 1942.17(h) | App. | | <i>Have</i> | 3 |
| 1942-14 | Project Fund Analysis | O & 4 | 1942.5(c) | RUS | | Have | 2 |
| Guide 26 | CP Program Project Selection Criteria | 2 | 1942-A | RUS | | Have | 2 |

| <u>Form No.</u> | <u>Document or Action</u> | <u>No. Needed</u> | <u>Proced. Ref</u> | <u>Respons. Party</u> | <u>Target Date</u> | <u>Date Recd</u> | <u>File Pos.</u> |
|-----------------|--|-------------------|------------------------|-------------------------|--------------------|------------------|------------------|
| | Letter of Conditions | 7 | 1942.5(c) | RUS | | Have | 3 |
| 1942-46 | Letter of Intent to Meet Conditions | 2 | 1942.5(c) | App. | | Have | 3 |
| 1940-1 | Request for Obligation of Funds | 4 | 1942.5 (c)(3) | RUS/App. | | Have | 2 |
| | Written Request from Applicant for the Lower Interest Rate | 2 | 1942.17 (f)(1) | RUS/App. | | Have | 2 |
| 1942-31 | Association Water or Sewer Grant Agreement | 2 | 1942-H | RUS/App. | | Have | 2 |
| | Evidence of "Other" Funds | 1 | 1942.17 (n)(5) | App. | | Have | 2 |
| AD 1047 | Certification Regarding Debarment (Primary) | 1 | 1940-M 1940.606 (b)(1) | App. | | Have | 5 |
| AD 1048 | Certification Regarding Debarment (Contractor) | 1ea | 1940-M 1940.606 (b)(1) | All Appropriate Vendors | | | 5 |
| 1910-11 | Applicant Certification Federal Collection Policies | 1 | 1942.5 (a)(1)(i) | App. | | Have | 3 |
| | Preliminary Bond Transer. Documents w/no Defeasance Provisions | 2 | 1942.17 (j)(6) (ii) | B. Counsel | | | 2 |

| <u>Form No.</u> | <u>Document or Action</u> | <u>No. Needed</u> | <u>Proced. Ref</u> | <u>Respons. Party</u> | <u>Target Date</u> | <u>Date Recd</u> | <u>File Pos.</u> |
|-----------------|---|-------------------|----------------------|-----------------------|--------------------|------------------------------|------------------|
| | Right-of-Way Map | 1 | Form FmHA 1942-19 | Engr. | | | Sep. File |
| | Deeds and/or Options | | 1942.17 (j)(4)(i) | App./Att. | | | |
| 1927-9 | Preliminary Title Opinion | 1 | 1942.17 (j)(4)(i) | App./Att. | | | 5 |
| 1927-10 | Final Title Opinion | 1 | 1942.17 (j)(4)(i) | App./Att. | | | 5 |
| | Narrative Opinion from Attorney | 1 | LOC | Att. | | | 5 |
| 442-20 | Right-of Way Easement | 1 | 1942.17 (j)(4)(i) | App. | | | 5 |
| 442-21 | Right-of-Way Certificate | 1 | 1942.17 (j)(4)(i) | App. | | | 5 |
| 442-22 | Opinion of Counsel Relative to Right of Way | | 1942.17 (j)(4)(i) | Att. | | | 5 |
| 1942-47 | Loan Resolution | 1 | 1942.17 (n)(2) | App. | | Have | 5 |
| | Copy of PSC Rule 42 Exh. | 1 | State | Att./Acct. | | | 3 |
| | Agreement w/Accountant | 1 | 1942.17 (1)(1) | App./Acct. | | Have | 5 8 |
| | Interim Financing Agreement | 1 | 1942.17 (n)(3) | App./Att. | | | 1 |
| 442-30 | Water Purchase Contract | 1 | 1942.18(f) 6 | App./Att. | | N/A Town has own water | 5 |

| <u>Form No.</u> | <u>Document or Action</u> | <u>No. Needed</u> | <u>Proced. Ref</u> | <u>Respons. Party</u> | <u>Target Date</u> | <u>Date Recd</u> | <u>File Pos.</u> |
|-----------------|--|-------------------|-----------------------|-----------------------|--------------------|------------------|------------------|
| 400-1 | Equal Opportunity Agreement | 1 | 1942.17 (n)(2)(x) | App.. | | <i>Have</i> | 6 |
| 400-4 | Assurance Agreement | 1 | 1942.17 (n)(2)(x) | App. | | <i>Have</i> | 3 |
| | Bond Transcript Documents w/no Defeasance Provisions | 3 | 1942.17 (j)(6)(ii) | B. Counsel | | | Sep. File |
| | OGC Closing Instructions | 1 | 1942.17 (n)(3) | RUS | | | 5 |
| | S/O Closing Instructions | 1 | 1942.17 (n)(3) | RUS | | | 5 |
| | DOH Permit | 1 | 1942.17 (j)(4)(i) | App. | | | 6 |
| | Public Land Corp. Permit | 1 | 1942.17 (j)(4)(i) | App.. | | | 6 |
| | Corps of Engrs. Permit | 1 | 1942.17 (j)(4)(i) | App. | | | 6 |
| | Contract Documents Plans & Specs. | 2 | 1942.18 | Engr. | | | Sep. File |
| | Dept. of Health Approval | 1 | 1942.17 (i)(iv) | Engr. | | | 6 |
| | Dept. of Environmental Protection Permit | 1 | 1942.17(k) | Engr. | | | 6 |
| | Accountant's Certification on Accounting System | 1 | 1942.17 (q) (1) | | | | 3 |
| | Compensation Certificate | 1 | 1942.17 (j)(3)(iv) | App. | | | 7 |
| | Flood | | | | | | |

USDA UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT

Engineer

75 High Street Federal Building, Suite 320, Morgantown, WV 26505-7500
304.284.4888 • 1.800.295.8228 • fax 304.284.4892 • TTY/TDD 304.284.4836

June 16, 2004

The Honorable Arthur R. Jarrett
Mayor, Town of Clay
P.O. Box 55
Clay, WV 25043

RE: Amendment No. 1 to
Letter of Conditions

Dear Mayor Jarrett:

This letter, with Attachment No. 1 amends the letter of conditions dated June 28, 1996 and further established conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan and grant will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA, Rural Development. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by USDA, Rural Development by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

The docket may be completed on the basis of a reduced RUS loan in the amount of \$830,000, and initial RUS grant in the amount of \$677,000, a subsequent RUS grant in the amount of \$1,493,000 for a total project cost of \$3,000,000.

Subject to the requirements noted herein, all of the conditions of the June 28, 1996 letter of conditions remain in effect and must be satisfied prior to loan and grant closing.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. The enclosures and attachments listed below are attached to the copies as noted.

Enclosed are the following:

Attachment No. 1 – Project Construction Budget (All Copies)

The conditions referred to above are as follows:

[Http://www.rurdev.usda.gov/wv](http://www.rurdev.usda.gov/wv)



USDA Rural Development is an Equal Opportunity Lender, Provider and Employer
Complaints of discrimination should be sent to: USDA Director, Office of Civil Rights, Washington, D.C. 20250-9410

COMMITTED TO THE FUTURE OF RURAL COMMUNITIES

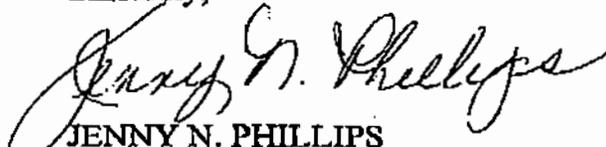
1. Loan Repayment – The reduced loan will be scheduled for repayment over a period of 40 years. The payments due the first 24 months will consist of interest only. The remaining 456 months will be equal amortized monthly installments. For planning purposes, use a 4.5% interest rate and a monthly amortization factor of 0.00459 which provides for a monthly payment of \$3810.00.
2. Public Service Commission Approval – You must obtain PSC approval of the project's proposed financing and user rates as may result from this amendment to the letter of conditions.
3. At a properly called meeting, you must adopt and properly execute the following forms, and minutes showing the adoption must be provided (you must also provide us with a copy of the minutes showing the adoption of the forms associated with the original letter of conditions):

RUS Bulletin 1780-12 - "Water or Waste System Grant Agreement"
Form RD 442-7 - "Initial Operating Budget"
Form 1940-1 - "Request for Obligation of Funds"
RUS Bulletin 1780-27 - "Loan Resolution"
Form RD 1942-46 - "Letter of Intent to Meet Conditions"

If the conditions set forth in this letter are not met within six (6) months from the date hereof, RUS reserves the right to discontinue processing of the application. In the event the project has not advanced to the point of loan closing within the six-month period and it is determined the Town still wishes to proceed, it will be necessary that the proposed budget be reviewed again in detail. If, during that review, it is determined the budget is no longer current and/or adequate, RUS reserves the right to require that it be revised or replaced.

We believe the information herein clearly sets forth the actions which must be taken; however, if you have any questions, please do not hesitate to contact me.

Sincerely,


JENNY N. PHILLIPS
State Director

Enclosures

cc: RUS Rural Development Specialist
Beckley, WV

Teed & Associates
Certified Public Accountants
Charleston, WV

Wayne King
Attorney at Law
Clay, WV

Stephoe & Johnson
Attorneys at Law
Charleston, WV

Boyles & Hildreth
Consulting Engineers
Spencer, WV

Attachment No. Letter of Conditions
 For: Town of Clay (Water)
 Date: June 16, 2004

Project Construction Budget

| <u>PROJECT COST</u> | <u>RUS GRANT</u> | <u>RUS LOAN</u> | <u>TOTAL</u> |
|---------------------|---------------------|-------------------|---------------------|
| CONSTRUCTION | \$ 1,747,000 | \$ 608,000 | \$ 2,355,000 |
| CONST. CONTINGENCY | \$ 89,000 | \$ 31,000 | \$ 120,000 |
| LEGAL FEES | \$ 3,700 | \$ 1,300 | \$ 5,000 |
| BOND COUNSEL | \$ 11,200 | \$ 3,800 | \$ 15,000 |
| ACCOUNTING | \$ 5,050 | \$ 1,700 | \$ 6,750 |
| ENGINEERING FEES | \$ 256,000 | \$ 89,000 | \$ 345,000 |
| Basic - \$245,000 | | | |
| Insp. - \$85,000 | | | |
| Special - \$15,000 | | | |
| INTEREST | | \$ 74,700 | \$ 74,700 |
| PROJECT CONTG. | \$ 58,050 | \$ 20,500 | \$ 78,550 |
| TOTAL | \$ 2,170,000 | \$ 830,000 | \$ 3,000,000 |

Rates

Available for general domestic, commercial, and industrial service.

| | | |
|-------|------------------|----------------------|
| First | 2,000 gallons @ | \$5.30 per M gallons |
| Next | 18,000 gallons @ | \$4.70 per M gallons |
| Over | 20,000 gallons @ | \$2.83 per M gallons |

Minimum Charge

No bill shall be rendered for less than the following amounts according to the size of meter installed.

| | | | |
|-------------|-------|-----------|-----------|
| 5/8" x 3/4" | meter | \$ 10.60 | per month |
| 3/4" | meter | \$ 15.90 | per month |
| 1" | meter | \$ 26.50 | per month |
| 1 1/2" | meter | \$ 53.00 | per month |
| 2" | meter | \$ 84.80 | per month |
| 3" | meter | \$ 159.00 | per month |
| 4" | meter | \$ 265.00 | per month |
| 6" | meter | \$ 530.00 | per month |
| 8" | meter | \$ 848.00 | per month |

Minimum Monthly Bill \$10.60 for \$ 2,000.00 gallons

Resale Rates

\$2.61 per 1,000 gallons

Delayed Payment Penalty

The above tariff is net. On all accounts not paid in full within twenty (20) days of date of bill, ten percent (10%) will be added to net amount shown.

If any bill is not paid within sixty (60) days after date, water service to the customer will be discontinued. Water service will not be restored until all past due water bills have been paid in full and all accrued penalties plus a reconnection charge have been paid.

Connection Charge

Prior to Construction - \$100.00

After the start of construction, there shall be a charge of \$300.00 for connection to the system.

Reconnection Charge

\$25.00

Deposit

A refundable security deposit of \$50.00 shall be charged to all new customers.

Water Hauled by Customers

Customers who haul their own water shall be charged \$5.30 per 1,000 gallons, with a minimum charge of \$5.30.

Use and Income Analysis - See Attached

Cash Flow Analysis - See Attached



**United States Department of Agriculture
Rural Development
West Virginia State Office**

October 14, 2009

The Honorable Wallace J. Brown
Mayor, Town of Clay
P. O. Box 55
Clay, WV 25043

RE: Amendment No. 2 to
Letter of Conditions

Dear Mayor Brown:

This letter, with Attachment No. 1 amends the letter of conditions dated June 28, 1996 and Amended Letter of Conditions dated June 16, 2004 and further establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan and grant will be administered by the State and Area staff of USDA, Rural Development. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by USDA, Rural Development by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

The docket may be completed on the basis of an RD loan in the amount of \$830,000 an RD grant in the amount of \$2,170,000 and other funding in the amount of \$2,100,000, for a total project cost of \$5,100,000. The other funding is planned in the form of an Army Corps of Engineers grant in the amount of \$1,000,000 and a loan and grant from West Virginia Infrastructure and Jobs Development Council in the amount of \$1,100,000.

Subject to the requirements noted herein, all of the conditions of the June 28, 1996 Letter of conditions and the Amended Letter of Conditions dated June 16, 2004 remain in effect and must be satisfied prior to loan and grant closing.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. The enclosures and attachments listed below are attached to the copies as noted.

Enclosed are the following:

Attachment No. 1 - Project Construction Budget (All Copies)

1550 Earl Core Road • Suite 101 • Morgantown, WV 26505
Phone: (304) 284-4860 OR 1-800-295-8228 • Fax: (304) 284-4893 • TDD: (304) 284-4836
Web: <http://www.rurdev.usda.gov/wv>

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W.,
Washington, DC 20250-9410 or call (800)795-3272 (voice) or (202) 720-6382 (TDD).

If the conditions set forth in this letter are not met within six (6) months from the date hereof, USDA, Rural Development reserves the right to discontinue processing of the application. In the event the project has not advanced to the point of loan closing within the six-month period and it is determined the Town still wishes to proceed, it will be necessary that the proposed budget be reviewed again in detail. If, during that review, it is determined the budget is no longer current and/or adequate, our agency reserves the right to require that it be revised or replaced.

We believe the information herein clearly sets forth the actions which must be taken; however, if you have any questions, please do not hesitate to contact me.

Sincerely,


BOBBY LEWIS
State Director

Enclosures

cc: Area Specialist
Beckley, WV

Smith, Cochran & Hicks, CPA
405 Capitol Street, Suite 908
Charleston, WV 25301

Jim Hildreth, P.E.
Boyles & Hildreth, Consulting Engineers
108 Court Street
Spencer, WV 25276

West Virginia Infrastructure and Jobs Development Council
180 Association Drive
Charleston, WV 25311

✓ Goodwin & Goodwin, LLP
300 Summers Street, Suite 1500
Charleston, WV 25301

Department of the Army
Huntington District, Corps of Engineers
502 Eighth Street
Huntington, WV 25701-2070

Jeff Davis, Attorney at Law
P. O. Box 65
Clay, WV 25043

Attachment No. 1 to Letter of Conditions
 For: Town of Clay
 Date: October 14, 2009

Project Construction Budget

| <u>PROJECT COST</u> | <u>COE GRANT</u> | <u>WVIJDC LOAN</u> | <u>WVIJDC GRANT</u> | <u>RUS GRANT</u> | <u>RUS LOAN</u> | <u>TOTAL</u> |
|---------------------|---------------------|--------------------|---------------------|---------------------|-------------------|---------------------|
| CONSTRUCTION | \$ 870,000 | \$ 528,580 | \$ 425,530 | \$ 2,011,530 | \$ 525,370 | \$ 4,361,010 |
| CONTINGENCY | | | \$ 124,470 | \$ 60,328 | | \$ 184,798 |
| LEGAL FEES | | | | | \$ 3,500 | \$ 3,500 |
| BOND COUNSEL | | \$ 5,500 | | | \$ 10,000 | \$ 15,500 |
| ACCOUNTING | | \$ 5,420 | | | \$ 9,580 | \$ 15,000 |
| ENGINEERING FEES | \$ 100,000 | | | \$ 34,000 | \$ 211,000 | \$ 345,000 |
| Basic - \$ | 245,000 | | | | | |
| Insp. - \$ | 85,000 | | | | | |
| Special - \$ | 15,000 | | | | | |
| INTEREST | | | | | \$ 70,550 | \$ 70,550 |
| REGISTRAR FEE | | \$ 500 | | | | \$ 500 |
| ADMINISTRATION | \$ 30,000 | \$ 10,000 | | | | \$ 40,000 |
| PROJECT CONTG. | | | | \$ 64,142 | | \$ 64,142 |
| TOTAL | \$ 1,000,000 | \$ 550,000 | \$ 550,000 | \$ 2,170,000 | \$ 830,000 | \$ 5,100,000 |

IC-1
(08/09)

LOAN AGREEMENT

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

TOWN OF CLAY
(2009W-1115)

(Governmental Agency)

WITNESSETH:

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

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

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

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

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

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

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

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

ARTICLE I

Definitions

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

The Project and the System

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III

Conditions to Loan; Issuance of Local Bonds

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV

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

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

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

(i) to pay Operating Expenses of the System;

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

principal payment next coming due on the Local Bonds and, beginning three (3) months prior to the first date of payment of principal of the Local Bonds, if the reserve account for the Local Bonds (the "Reserve Account") was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof (which, with an approving opinion of bond counsel to the Governmental Agency, may be with a letter of credit or surety) in an amount equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "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; and

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

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

(b) Covenants substantially as follows:

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

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

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

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

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

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

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

(viii) That the Authority may, by proper legal action, compel the performance of the duties of the Governmental Agency under the Local Act, including the making and collection of sufficient rates or charges for services rendered by the System, and shall also have, in the event of a default in payment of principal 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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE V

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

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

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

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

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

ARTICLE VI

Other Agreements of the Governmental Agency

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

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

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

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

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

ARTICLE VII

Miscellaneous

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

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

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

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

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

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

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

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

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

7.10 This Loan Agreement shall terminate upon the earlier of:

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

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

TOWN OF CLAY

(SEAL)

By: Wallace J Brown

Its: Mayor

Date: October 16, 2009

Attest:

Diane Murphy
Its: Recorder

WEST VIRGINIA WATER
DEVELOPMENT AUTHORITY

(SEAL)

By: [Signature]

Its: Executive Director

Date: October 16, 2009

Attest:

Coral A. Cummings
Its: Secretary-Treasurer

{C1614087.1}

EXHIBIT A

FORM OF CERTIFICATE OF CONSULTING ENGINEER

(Issuer)

(Name of Bonds)

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

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

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

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by [DEP/BPH/PSC] and any change orders approved by the Issuer, the Council and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least _____ years if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in the Schedule B attached hereto as Exhibit A and my firm¹ has ascertained that all _____

¹If another responsible party, such as the Issuer's attorney, reviews the insurance and payment bonds, then insert the following: [and in reliance upon the opinion of _____,

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

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

[SEAL]

By: _____
West Virginia License No. _____

Esq.] and delete "my firm has ascertained that".

²If 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 (ix).

EXHIBIT B

OPINION OF BOND COUNSEL FOR GOVERNMENTAL AGENCY

[To Be Dated as of Date of Loan Closing]

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

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

Ladies and Gentlemen:

We are bond counsel to _____ (the
"Governmental Agency"), a _____.

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

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

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

EXHIBIT C

MONTHLY FINANCIAL REPORT

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

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

Name of Person Completing Form

Address

Telephone

INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

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

The Governmental Agency must complete the Monthly Financial Report and forward it to the Water Development Authority by the 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 D

MONTHLY PAYMENT FORM

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

Re: [Name of bond issue]

Ladies and Gentlemen:

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

Sinking Fund:

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

Witness my signature this ___ day of _____.

[Name of Governmental Agency]

By: _____
Authorized Officer

Enclosure: copy of check(s)

SCHEDULE X

DESCRIPTION OF LOCAL BONDS

Principal Amount of Local Bonds \$550,000
Purchase Price of Local Bonds \$550,000

The Local Bonds shall bear no interest. Commencing June 1, 2011, principal on the Local Bonds is payable quarterly. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

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

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

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

As of the date of the Loan Agreement, the Local Bonds are on a parity as to liens, pledge and source of and security for payment with the following obligations of the Governmental Agency: Town of Clay Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 A (United States Department of Agriculture) and Series 1998 B (West Virginia Infrastructure Fund).

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

**SCHEDULE Y
DEBT SERVICE SCHEDULE**

| | | 0% Interest Rate | | |
|----------|-----------|----------------------------|----------|--|
| | | 40 Years from Closing Date | | |
| | | Dated | | |
| | | Date | 10/16/09 | |
| | | Delivery | | |
| | | Date | 10/16/09 | |
| Period | Principal | Interest | Debt | |
| Ending | | | Service | |
| 10/16/09 | | | | |
| 6/1/11 | 3,572 | | 3,572 | |
| 9/1/11 | 3,572 | | 3,572 | |
| 12/1/11 | 3,572 | | 3,572 | |
| 3/1/12 | 3,572 | | 3,572 | |
| 6/1/12 | 3,572 | | 3,572 | |
| 9/1/12 | 3,572 | | 3,572 | |
| 12/1/12 | 3,572 | | 3,572 | |
| 3/1/13 | 3,572 | | 3,572 | |
| 6/1/13 | 3,572 | | 3,572 | |
| 9/1/13 | 3,572 | | 3,572 | |
| 12/1/13 | 3,572 | | 3,572 | |
| 3/1/14 | 3,572 | | 3,572 | |
| 6/1/14 | 3,572 | | 3,572 | |
| 9/1/14 | 3,572 | | 3,572 | |
| 12/1/14 | 3,572 | | 3,572 | |
| 3/1/15 | 3,572 | | 3,572 | |
| 6/1/15 | 3,572 | | 3,572 | |
| 9/1/15 | 3,572 | | 3,572 | |
| 12/1/15 | 3,572 | | 3,572 | |
| 3/1/16 | 3,572 | | 3,572 | |
| 6/1/16 | 3,572 | | 3,572 | |
| 9/1/16 | 3,572 | | 3,572 | |
| 12/1/16 | 3,572 | | 3,572 | |
| 3/1/17 | 3,572 | | 3,572 | |
| 6/1/17 | 3,572 | | 3,572 | |
| 9/1/17 | 3,572 | | 3,572 | |
| 12/1/17 | 3,572 | | 3,572 | |
| 3/1/18 | 3,572 | | 3,572 | |
| 6/1/18 | 3,572 | | 3,572 | |
| 9/1/18 | 3,572 | | 3,572 | |
| 12/1/18 | 3,572 | | 3,572 | |
| 3/1/19 | 3,572 | | 3,572 | |
| 6/1/19 | 3,572 | | 3,572 | |
| 9/1/19 | 3,572 | | 3,572 | |
| 12/1/19 | 3,572 | | 3,572 | |
| 3/1/20 | 3,572 | | 3,572 | |
| 6/1/20 | 3,572 | | 3,572 | |
| 9/1/20 | 3,572 | | 3,572 | |
| 12/1/20 | 3,572 | | 3,572 | |
| 3/1/21 | 3,572 | | 3,572 | |
| 6/1/21 | 3,572 | | 3,572 | |
| 9/1/21 | 3,572 | | 3,572 | |
| 12/1/21 | 3,572 | | 3,572 | |
| 3/1/22 | 3,572 | | 3,572 | |

| 0% Interest Rate | | | | |
|----------------------------|-----------|----------|--------------|--|
| 40 Years from Closing Date | | | | |
| Period Ending | Principal | Interest | Debt Service | |
| 6/1/22 | 3,572 | | 3,572 | |
| 9/1/22 | 3,572 | | 3,572 | |
| 12/1/22 | 3,572 | | 3,572 | |
| 3/1/23 | 3,572 | | 3,572 | |
| 6/1/23 | 3,572 | | 3,572 | |
| 9/1/23 | 3,572 | | 3,572 | |
| 12/1/23 | 3,572 | | 3,572 | |
| 3/1/24 | 3,572 | | 3,572 | |
| 6/1/24 | 3,572 | | 3,572 | |
| 9/1/24 | 3,572 | | 3,572 | |
| 12/1/24 | 3,572 | | 3,572 | |
| 3/1/25 | 3,572 | | 3,572 | |
| 6/1/25 | 3,572 | | 3,572 | |
| 9/1/25 | 3,572 | | 3,572 | |
| 12/1/25 | 3,572 | | 3,572 | |
| 3/1/26 | 3,572 | | 3,572 | |
| 6/1/26 | 3,572 | | 3,572 | |
| 9/1/26 | 3,572 | | 3,572 | |
| 12/1/26 | 3,572 | | 3,572 | |
| 3/1/27 | 3,572 | | 3,572 | |
| 6/1/27 | 3,572 | | 3,572 | |
| 9/1/27 | 3,571 | | 3,571 | |
| 12/1/27 | 3,571 | | 3,571 | |
| 3/1/28 | 3,571 | | 3,571 | |
| 6/1/28 | 3,571 | | 3,571 | |
| 9/1/28 | 3,571 | | 3,571 | |
| 12/1/28 | 3,571 | | 3,571 | |
| 3/1/29 | 3,571 | | 3,571 | |
| 6/1/29 | 3,571 | | 3,571 | |
| 9/1/29 | 3,571 | | 3,571 | |
| 12/1/29 | 3,571 | | 3,571 | |
| 3/1/30 | 3,571 | | 3,571 | |
| 6/1/30 | 3,571 | | 3,571 | |
| 9/1/30 | 3,571 | | 3,571 | |
| 12/1/30 | 3,571 | | 3,571 | |
| 3/1/31 | 3,571 | | 3,571 | |
| 6/1/31 | 3,571 | | 3,571 | |
| 9/1/31 | 3,571 | | 3,571 | |
| 12/1/31 | 3,571 | | 3,571 | |
| 3/1/32 | 3,571 | | 3,571 | |
| 6/1/32 | 3,571 | | 3,571 | |
| 9/1/32 | 3,571 | | 3,571 | |
| 12/1/32 | 3,571 | | 3,571 | |
| 3/1/33 | 3,571 | | 3,571 | |
| 6/1/33 | 3,571 | | 3,571 | |
| 9/1/33 | 3,571 | | 3,571 | |
| 12/1/33 | 3,571 | | 3,571 | |
| 3/1/34 | 3,571 | | 3,571 | |
| 6/1/34 | 3,571 | | 3,571 | |

| 0% Interest Rate | | | |
|----------------------------|-----------|----------|--------------|
| 40 Years from Closing Date | | | |
| Period Ending | Principal | Interest | Debt Service |
| 9/1/34 | 3,571 | | 3,571 |
| 12/1/34 | 3,571 | | 3,571 |
| 3/1/35 | 3,571 | | 3,571 |
| 6/1/35 | 3,571 | | 3,571 |
| 9/1/35 | 3,571 | | 3,571 |
| 12/1/35 | 3,571 | | 3,571 |
| 3/1/36 | 3,571 | | 3,571 |
| 6/1/36 | 3,571 | | 3,571 |
| 9/1/36 | 3,571 | | 3,571 |
| 12/1/36 | 3,571 | | 3,571 |
| 3/1/37 | 3,571 | | 3,571 |
| 6/1/37 | 3,571 | | 3,571 |
| 9/1/37 | 3,571 | | 3,571 |
| 12/1/37 | 3,571 | | 3,571 |
| 3/1/38 | 3,571 | | 3,571 |
| 6/1/38 | 3,571 | | 3,571 |
| 9/1/38 | 3,571 | | 3,571 |
| 12/1/38 | 3,571 | | 3,571 |
| 3/1/39 | 3,571 | | 3,571 |
| 6/1/39 | 3,571 | | 3,571 |
| 9/1/39 | 3,571 | | 3,571 |
| 12/1/39 | 3,571 | | 3,571 |
| 3/1/40 | 3,571 | | 3,571 |
| 6/1/40 | 3,571 | | 3,571 |
| 9/1/40 | 3,571 | | 3,571 |
| 12/1/40 | 3,571 | | 3,571 |
| 3/1/41 | 3,571 | | 3,571 |
| 6/1/41 | 3,571 | | 3,571 |
| 9/1/41 | 3,571 | | 3,571 |
| 12/1/41 | 3,571 | | 3,571 |
| 3/1/42 | 3,571 | | 3,571 |
| 6/1/42 | 3,571 | | 3,571 |
| 9/1/42 | 3,571 | | 3,571 |
| 12/1/42 | 3,571 | | 3,571 |
| 3/1/43 | 3,571 | | 3,571 |
| 6/1/43 | 3,571 | | 3,571 |
| 9/1/43 | 3,571 | | 3,571 |
| 12/1/43 | 3,571 | | 3,571 |
| 3/1/44 | 3,571 | | 3,571 |
| 6/1/44 | 3,571 | | 3,571 |
| 9/1/44 | 3,571 | | 3,571 |
| 12/1/44 | 3,571 | | 3,571 |
| 3/1/45 | 3,571 | | 3,571 |
| 6/1/45 | 3,571 | | 3,571 |
| 9/1/45 | 3,571 | | 3,571 |
| 12/1/45 | 3,571 | | 3,571 |
| 3/1/46 | 3,571 | | 3,571 |
| 6/1/46 | 3,571 | | 3,571 |
| 9/1/46 | 3,571 | | 3,571 |

SCHEDULE Z

None.

\$550,000
TOWN OF CLAY
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BOND
SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)

REQUEST AND AUTHORIZATION TO
AUTHENTICATE AND DELIVER B BOND

October 16, 2009

Mr. Greg Gency, President
Clay County Bank, Inc.
150 Main Street
Clay, WV 25043-0239

Dear Mr. Gency:

We herewith hand to you, duly executed, the \$550,000 Town of Clay, Combined Waterworks and Sewerage System Revenue Bond, Series 2009 B (West Virginia Infrastructure Fund), in the form of one bond, numbered BR-1, dated the date hereof (the "Bond"), issued by the Town of Clay (the "Issuer"), authorized to be issued under and pursuant to the Bond Ordinance enacted on October 13, 2009 (the "Ordinance"). Other defined terms herein shall have the meanings respectively given such terms in the Ordinance.

You have received all the documents required to be filed with you pursuant to the Ordinance.

You are hereby requested and authorized to authenticate, register and deliver the Bond on behalf of the Issuer to the West Virginia Water Development Authority, acting on behalf of the West Virginia Infrastructure and Jobs Development Council, as the Purchaser of the Bond, upon payment to the Issuer of \$12,460.00, being the first advance of the principal of the Bond.

TOWN OF CLAY

By: 
Mayor

P.S.C. W. Va. No. 9
Canceling P.S.C. W. Va. No. 8

TOWN OF CLAY, a municipal corporation

OF

CLAY, WEST VIRGINIA

RATES, RULES AND REGULATIONS FOR FURNISHING

WATER

at Clay and Maysel, Clay County, West Virginia

Filed with **THE PUBLIC SERVICE COMMISSION**
of
WEST VIRGINIA

W VA PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE

SEP 15 AM 9:29

RECEIVED

Issued July 9, 2008

**Effective for service rendered on and after July 4, 2008
or as otherwise provided herein**

Adopted by Town Council

Issued by Town of Clay, a municipal corporation

By

[Handwritten Signature]
Town Recorder

Title

RULES AND REGULATIONS

- I. Rules and Regulations for the Government of Water Utilities, adopted by the Public Service Commission of West Virginia, and now in effect, and all amendments thereto and modifications thereof hereafter made by said Commission.

(C) APPLICABILITY

Applicable within entire area served.

(C) AVAILABILITY OF SERVICE

Available for general domestic, commercial and industrial service.

(C,I) METERED RATES

For all customers with meter water supply:

| | | |
|----------|-------------------------------|--------------------------|
| First | 2,000 gallons used per month | \$6.51 per 1,000 gallons |
| Next | 18,000 gallons used per month | 5.05 per 1,000 gallons |
| All Over | 20,000 gallons used per month | 3.48 per 1,000 gallons |

(C,I) MINIMUM CHARGE

No monthly bill will be rendered for less than the following amounts, according to the size of the meter installed:

| | |
|--------------------|------------|
| 5/8 inch meter | \$ 13.02 |
| 3/4 inch meter | \$ 19.53 |
| 1 inch meter | \$ 32.55 |
| 1 - 1/2 inch meter | \$ 65.10 |
| 2 inch meter | \$ 104.16 |
| 3 inch meter | \$ 195.30 |
| 4 inch meter | \$ 325.50 |
| 6 inch meter | \$ 651.00 |
| 8 inch meter | \$1,041.60 |

(C,I) RESALE RATE

Sales for resale \$3.16 per 1,000 gallons

Applicable to Clay County PSD and Clay -- Roane PSD

(C) DELAYED PAYMENT PENALTY

The above tariff is net. On all current usage billings not paid within twenty (20) days, ten (10) percent will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

(C) Indicates change in text

(I) Indicates increase

(C,I) CONNECTION CHARGE

A service charge of Three Hundred Dollars (\$300.00) shall be made for each separate connection to the water system from and after the effective date of passage of the Town ordinance.

(N) DISCONNECTION FOR NON-PAYMENT

If any bill is not paid within sixty (60) days after the date of the bill, service to the customer will be disconnected and will not be restored until all past due bills have been paid in full and all accrued penalties plus a reconnection charge have been paid.

(C) RECONNECTION CHARGE

The reconnection charge shall be \$25.00

(C) DEPOSIT

A deposit fee of fifty (\$50.00) shall be required of each customer prior to being connected or reconnected. Said deposit shall be refunded to the customer after the customer has paid all bills in full for 12 consecutive months.

(C,I) LEAK ADJUSTMENT INCREMENT \$0.90 per 1000 gallons

To be used when the bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate is used to calculate consumption above the customers' historical usage.

WATER HAULED BY CUSTOMERS

Customers who haul their own water shall be charged \$6.14 per 1,000 gallons, with a minimum charge of \$6.14.

PUBLIC FIRE PROTECTION SERVICE

The Town of Clay shall pay a public fire service of \$120.00 per annum, payable in twelve equal monthly payments. This charge covers all water system facilities existing at the Town of Clay, which are use in whole or in part for public fire service.

(C) Indicates change in text

(I) Indicates increase

TOWN OF CLAY (Water)

P.S.C. W.VA. Tariff No. 9
Original Sheet No. 5

P.S.C. W. Va. No. 7
Canceling P.S.C. W. Va. No. 6

TOWN OF CLAY, a municipal corporation
OF
CLAY, WEST VIRGINIA
RATES, RULES AND REGULATIONS FOR FURNISHING
SEWERAGE AND SEWAGE DISPOSAL SERVICE

at Clay, Clay County, West Virginia

Filed with **THE PUBLIC SERVICE COMMISSION**
of
WEST VIRGINIA

RECEIVED
2009 AUG 27 AM 11 04
WVA PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE

Issued August 20, 2009

Effective for service rendered on or after August 7, 2009
or as otherwise provided herein

Adopted by Town Council

Issued by THE TOWN OF CLAY, a municipal utility

By *Danna Murphy*
Recorder
Title

THE TOWN OF CLAY (Sewer)

P.S.C. W.Va. Tariff No. 7
Original Sheet No. 1

RULES AND REGULATIONS

- I. **Rules and Regulations for the Government of Sewerage Utilities**, adopted by the Public Service Commission of West Virginia, and now in effect, and all amendments thereto and modifications thereof hereafter made by said Commission.

THE TOWN OF CLAY (Sewer)

P.S.C. W. Va. No. 7
Original Sheet No. 2

(C) APPLICABILITY

Applicable inside the Town of Clay.

AVAILABILITY OF SERVICE

Available for general domestic, commercial and industrial service

(C,I) RATES:

For all customers with sewer service:

| | |
|------------------------|---------------------------|
| First 2,000 gallons | \$11.31 per 1,000 gallons |
| All over 2,000 gallons | \$11.31 per 1,000 gallons |

(C,I) MINIMUM CHARGE

No monthly bill will be rendered for less than \$22.62.

DELAYED PAYMENT PENALTY

All sewer bills are payable when rendered. All accounts not paid in full within twenty (20) days of the date of the bill, ten percent (10%) penalty shall be added to the net amount shown.

RECONNECT FEE

\$25.00

TAP FEE

\$325.00

DEPOSIT

\$50.00

DISCONNECT FOR NON-PAYMENT

If any bill is not paid within 60 days from the date of the bill, water service to the customer will be discontinued and will not be restored until all past due bills have been paid in full, together with all penalty charges, subject to applicable rules of the Public Service commission of West Virginia.

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

PUBLISHERS CERTIFICATE OF PUBLICATION

CLAY COUNTY FREE PRESS

CLAY, WEST VIRGINIA 25043-0180

I, Clinton Nichols, Publisher of the Clay County Free Press, a Newspaper of General Circulation, Published at Clay, in the county of Clay, West Virginia, do Certify that the attached:

Legal

was published in said Newspaper for

two

consecutive weeks, to-wit, in its issues of

June 10 & June 17, 20 09.

Clinton Nichols

Publisher

Taken, Sworn to and Subscribed by the said Clinton Nichols before me, in Clay County, West Virginia this 17 day of June, 20 09.

Helen Jefferson
Notary Public

My commission expires June 11, 2019

Legal Notice
Town of Clay Public Hearing

The town of Clay will be holding a public hearing on June 23rd, starting at 5:00 p.m. The purpose the hearing will be to get comments from citizens who may support or oppose the increase of the Ordinance and Notice. The Ordinance and Notice sets forth new sewer rates for the service to customers of the sewer system of the town of Clay. All interested parties may attend, and present any comment or protest thereto. A copy of the Ordinance and notice may be obtained for inspection at the Office of the Recorder, Town Hall in Clay, s/s Jack Brown, Mayor, Town of Clay. 2tc 6/10



PUBLISHERS CERTIFICATE OF PUBLICATION

CLAY COUNTY FREE PRESS

CLAY, WEST VIRGINIA 25043-0180

I, Clinton Nichols, Publisher of Clay County Free Press, a Newspaper of General Circulation, Published at Clay County, West Virginia. Certify that the attached:

Legal

was published in said Newspaper for

+ w/d

consecutive weeks, to-wit, in its issue:

June 10 & June 17, 20

Clinton Nichols

Publ

Taken, Sworn to and Subscribed by the said Clinton Nichols before me, in Clay County, West Virginia this 17 day of June 20 09.

Sharon Jeffers
Notary

My commission expires June 11, 20

**Legal Notice
Town of Clay**

An ordinance setting forth sewer rates for service to customers of the sewer system of the town of Clay.

The Town Council of Clay hereby ordains; The following rates, rules and charges are hereby fixed, determined and established for sewer services provided to all general domestic, commercial, and industrial users and customers of the Town of Clay Municipal Sewer System, commencing upon the effective date as hereinafter provided and in accordance with the following Rates and Schedules:

Section 1: Schedule Of Rates

Schedule 1:

Applicability:

Applicable inside the Town of Clay.

Applicability of Service:

Available for general domestic, commercial and industrial service.

Rates:

For all customers with sewer service:

| | |
|-----------------------|--------------------------|
| First 2000 gallons | \$11.31 per 1000 gallons |
| All over 2000 gallons | \$11.31 per 1000 gallons |

Minimum Charge:

No monthly bill will be rendered for less than **\$22.62.**

Section 2: Effective Date

The Schedule No. 1—Sewer rates shall become effective forty-five (45) days after final enactment hereof, or as soon as the same may be approved by the Public Service Commission.

Section 3: Separability, Repeal of Conflicting Ordinances

The provisions of the Ordinance are separable and if any clause, provision or section hereof shall be held void or unenforceable by the West Virginia Public Service Commission or any competent Court of jurisdiction, shall not affect the remainder of this Ordinance. Upon the effective date hereof all Ordinances are, to the extent of such conflict, hereby repealed and to the extent that the provisions of prior Ordinances, Resolutions, Orders or parts thereof, shall remain in full force and effect.

Section 4: Statutory Notice and Public Hearing

Upon introduction hereof, the Recorder shall cause there to be published a copy of this Ordinance once a week for two (2) successive weeks within a period of fourteen (14) consecutive days, with at least six (6) days between each publication in the Clay County Free Press, a qualified newspaper of general circulation in the Town of Clay and said Notice shall state that this Ordinance has been introduced and that any person interested may appear before Council on Tuesday, June 23, 2009 at 5:00 pm at which time a public hearing shall be held on this matter and which date is not less than ten (10) days after the first publication of the Ordinance and Notice, and present any comment or protest thereto, following which hearing Council shall take such action as it deems proper. Copies of this Ordinance shall be available to the public for inspection at the Office of the Recorder, Town Hall, Clay, West Virginia.

First Reading: June 2, 2009

Second Reading: June 23, 2009

Public Hearing: June 23, 2009

Town of Clay, West Virginia, a municipal corporation:

Wallace J. Brown, Mayor

D. Lynn Drake, Recorder

2tc 6/10





CHARLESTON NEWSPAPERS

P.O. Box 2993
Charleston, West Virginia 25330
Billing 348-4898
Classified 348-4848
1-800-WVA-NEWS



Table with 2 columns: Field Name, Value. Fields include INVOICE DATE (04/28/08), ACCOUNT NBR (095092001), SALES REP ID (0022), INVOICE NBR (499763001).

M

BILLED TO

CLAY TOWN HALL
BETTY MURPHY
PO BOX 55
CLAY WV 25043 USA

Please return this portion with your payment.
Make checks payable to: Charleston Newspapers

AMOUNT PAID: _____



CHARLESTON NEWSPAPERS

P.O. Box 2993
Charleston, West Virginia 25330
Billing 348-4898
Classified 348-4848
1 800 WVA-NEWS
FEIN 55-0676079

Table with 2 columns: Field Name, Value. Fields include INVOICE DATE (04/28/08), ACCOUNT NBR (095092001), SALES REP ID (0022), INVOICE NBR (499763001).

Legal pricing is based upon 63 words per column inch.

Each successive insertion is discounted by 25% of the first insertion rate.

The Daily Mail rate is \$.13 per word, the Charleston Gazette rate is \$.14 per word, and the Metro Putnam rate is \$.07 per word.

Main invoice table with columns: ISSUE DATE, AD TYPE, SALES REP, DESCRIPTION, AD NUMBER, AD SIZE, RATE, GROSS AMOUNT, NET AMOUNT. Includes rows for PUBLICNOTICEOFCHANGE and LEGAL DISCOUNT 25%.

State of West Virginia, AFFIDAVIT OF PUBLICATION

I, L. Maria Seggs of



THE SATURDAY GAZETTE MAIL,
do solemnly swear that the legal notice of:
PUBLICNOTICEOFCHANGEINRA

was duly published in said newspaper(s) at the stated price for the respective newspaper(s) and during the dates listed below:
04/19/08-04/26/08

Subscribed and sworn to before me this 29 day of April 2008 by Lynn R. Fielder

PUBLIC NOTICE OF CHANGE IN RATES BY MUNICIPALITIES

Notice is hereby given that the Town of Clay, West Virginia Public Utility, has adopted by ordinance on April 15, 2008, an ordinance containing increased rates and charges for furnishing water and sewer service to the residents of Clay, in the County of Clay, West Virginia.

The following is a schedule of the proposed increased rates and charges and the effective dates:

The proposed increased rates and charges will become effective May 1, 2008, unless otherwise ordered by the Public Service Commission. The proposed rates and charges are set forth in the attached schedule of rates and charges. The various items of the schedule will be changed as follows:

(Attachment)

The Commission is hereby notified that the proposed rates and charges are being filed for its review and approval. The Commission is hereby notified that the proposed rates and charges are being filed for its review and approval. The Commission is hereby notified that the proposed rates and charges are being filed for its review and approval.

The Town of Clay, West Virginia Public Utility, is a public utility as defined in the Public Service Act, West Virginia Code, Chapter 21, Article 2, and is subject to the jurisdiction of the Public Service Commission. The proposed rates and charges are being filed for its review and approval.

The Commission is hereby notified that the proposed rates and charges are being filed for its review and approval. The Commission is hereby notified that the proposed rates and charges are being filed for its review and approval. The Commission is hereby notified that the proposed rates and charges are being filed for its review and approval.

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Minutes of the Regular Meeting of Town of Clay Town Council
June 2, 2009
Council accepted the resignation of Lynn Drake.

Joyce Gibson made the motion to appoint Dwana Murphy as Interim Recorder.
Arthur Jarrett, second,, none opposed.

Betty Murphy made the motion to approve the minutes.
Glady Lanham second, none opposed.

Arthur Jarrett made the motion to approve the bills.
Joyce Gibson second, none opposed.

Clinton Nichols came before council asking that he be allowed to make a driveway on the upper side of the Clay Post Office, council approved

Council told the Mayor to get lease signed with Telford and move the office this month.

Council informed the Mayor to juggle the sewer bills until the new rate increase went into effect.

Arthur Jarrett mace the motion to adjourn.
Glady Lanham second, none opposed.

Wallace J Brown
Dwana Murphy

Minutes of the Public Hearing on the Sewer Rate Ordinance.
June 23, 2009

Meeting called to order by the Mayor @ 6:00pm.

Jerry Summers, and Nona Carte were present to talk about water pressure in Pisgah, Mayor will look into it.

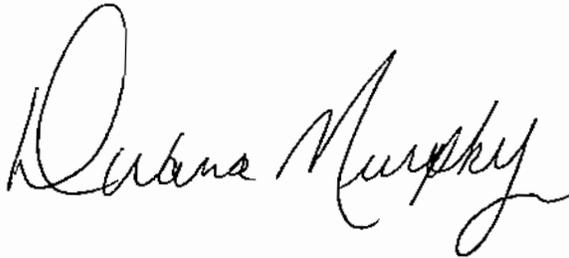
Andy Waddell says no to the Sewer Rate Increase, he says that you can get the loan that you have lowered. Andy is against the sewer rate increase.

Minutes of the Special Council Meeting June 23, 2009

Jerry Stover read the Sewer Ordinance for the second time.

Arthur Jarrett made the motion to approve the 2nd reading of the sewer rate increase ordinance. Jerry Stover second, none opposed ordinance passed.

Arthur Jarrett made the motion to adjourn.
Jerry Stover second, none opposed.

Handwritten signature of Wallace J. Brown in cursive script.Handwritten signature of Dabene Murphy in cursive script.

Minutes of the Hearing and Special Town Council Meeting held May 20, 2008 - Second Reading of the Water Rate Increase Ordinance

Present: Mayor Jack Brown, Recorder D. Llyn Drake, Council Members: Jerry Stover, Glada Lanham, Arthur Jarrett

Mayor Jack Brown called for the hearing to be open at 5:00pm

Mayor called for any protests or comments regarding the Water Rate Increase Ordinance

- no one came forward

OCT-10-2008 05:24 hearing closed by the Mayor at 5:30 p.m.

Mayor opened the special meeting and called the same to order.

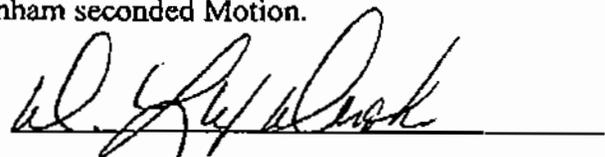
Recorder, D. Llyn Drake, provided a second reading of the proposed Water Rate Increase Ordinance

Mayor Brown called for a vote on accepting the second reading. D. Llyn Drake moved for approval of the second reading; Arthur Jarrett seconded the Motion, Motion carried by Council voting "aye"

Arthur Jarrett moved we adjourn; Glada Lanham seconded Motion.

7-1-08

July 1, 2008



Recorder

TOWN OF CLAY

ORDINANCE

WHEREAS, the below Ordinance, on first reading; second reading; adoption; publication and posting was deficient in that the "METERED RATES" were inaccurate and should have read as follows with the necessary changes highlighted and underlined:

" METERED RATE:

For all customers with meter water supply:

| | |
|-----------------------------------|---------------------------------|
| First 2000 gallons per month | \$6.51 <u>per 1000 gallons</u> |
| Next 18,000 gallons per month | \$5.05 <u>per 1000 gallons</u> |
| All over 20,000 gallons per month | \$3.48 <u>per 1000 gallons"</u> |

WHEREFORE, Town of Clay desires to RE-ENACT the Ordinance to include the accurate information as stated above and does hereby offer:

AN ORDINANCE SETTING FORTH WATER RATES; CONNECTION CHARGES; RECONNECTION CHARGES; DELAYED PAYMENT PENALTY AND OTHER CHARGES FOR SERVICE TO CUSTOMERS OF THE WATER WORKS SYSTEM OF THE TOWN OF CLAY.

THE TOWN COUNCIL OF CLAY HEREBY ORDAINS: The following rules, rates and charges are hereby fixed, determined and established for water services provided to all general domestic, commercial and industrial users and customers of the Town of Clay Municipal Waterworks System, commencing upon the effective date as hereinafter provided and in accordance with the following Rates and Schedules:

SECTION I. SCHEDULE OF WATER RATES AND CHARGES

SCHEDULE NO. 1

APPLICABILITY:

Applicable within entire area served.

AVAILABILITY OF SERVICE:

Available for general domestic, commercial and industrial service.

METERED RATE:

For all customers with meter water supply:

| | |
|-----------------------------------|-------------------------|
| First 2000 gallons per month | \$6.51 per 1000 gallons |
| Next 18,000 gallons per month | \$5.05 per 1000 gallons |
| All over 20,000 gallons per month | \$3.48 per 1000 gallons |

MINIMUM CHARGE:

No monthly bill will be rendered for less than the following amounts, according to the size of the meter installed:

| | |
|------------------|------------|
| 5/8-inch meter | \$13.02 |
| 3/4-inch meter | \$19.53 |
| 1-inch meter | \$32.55 |
| 1 1/2-inch meter | \$65.10 |
| 2-inch meter | \$104.16 |
| 3-inch meter | \$195.30 |
| 4-inch meter | \$325.50 |
| 6-inch meter | \$651.00 |
| 8-inch meter | \$1,041.60 |

RESALE RATE:

Sales for resale \$3.16 per 1000 gallons

Applicable to Clay County PSD and Clay--Roane PSD

DELAYED PAYMENT PENALTY:

The above tariff is net. On all current usage billings not paid within twenty (20) days, ten (10) percent will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

COLLECTION CHARGE:

A service charge of Three Hundred Dollars (\$300.00) shall be made for each separate connection to the water system from and after the effective date of passage of the Town Ordinance.

DISCONNECTION FOR NON-PAYMENT:

If any bill is not paid within sixty (60) days after the date of the bill, service to the customer will be disconnected and will not be restored until all past due bills have been paid in full and all accrued penalties plus a reconnection charge have been paid.

RECONNECTION CHARGE:

The reconnection charge shall be \$25.00.

DEPOSIT:

A deposit of fifty (\$50.00) shall be required of each customer prior to being connected or reconnected. Said deposit shall be refunded to the customer after the customer has paid all bills in full for 12 consecutive months.

LEAK ADJUSTMENT INCREMENT:**\$0.90 per 1000 gallons**

To be used when the bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate is used to calculate consumption above the customers' historical usage.

SECTION 2. EFFECTIVE DATE

The Schedule No. 1- Water Rates, delayed payment penalty, tap fees, reconnection charge, leak adjustment rate and other charges provided herein shall become effective forty-five(45) days after final enactment hereof, or as soon as the same may be approved by the Public Service Commission of West Virginia.

SECTION NO. 3. SEPARABILITY, REPEAL OF CONFLICTING ORDINANCES

The provisions of the Ordinance are separable and if any clause, provision or section hereof shall be held void or unenforceable by the West Virginia Public Service Commission or any Court of competent jurisdiction such as holding shall not affect the remainder of this Ordinance. Upon the effective date hereof all Ordinances are, to the extent of such conflicts, hereby repealed and to the extent that the provisions of the Ordinance do not touch upon the provisions of prior Ordinances, resolutions, orders or parts thereof, the same shall remain in full force and effect.

SECTION NO. 4. STATUTORY NOTICE AND PUBLIC HEARING

Upon introduction hereof, the Recorder shall cause there to be published a copy of this Ordinance once a week for two (2) successive weeks within a period of fourteen (14) consecutive days, with at least six (6) days between each publication in the Clay County Free Press, a qualified newspaper of general circulation in the Town of Clay and said notice shall state that this Ordinance has been introduced and that any person interested may appear before Council on Tuesday, May 20, 2008 at 5:00 p.m., at which time a public hearing shall be held on this matter and which date is not less than ten (10) days after the first publication of the Ordinance and Notice, and present any comment or protest thereto, following which hearing Council shall take such action as it shall deem proper. Copies of this Ordinance shall be available to the public for inspection at the Office of the Recorder, Town Hall, Clay, West Virginia.

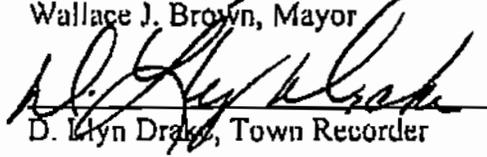
First Reading: May 6, 2008

Second Reading: May 20, 2008

TOWN OF CLAY, WEST VIRGINIA, a municipal corporation.



Wallace J. Brown, Mayor



D. Lynn Drake, Town Recorder

TOWN OF CLAY, WEST VIRGINIA
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS
SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)

GENERAL CERTIFICATE

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES
6. INCUMBENCY AND OFFICIAL NAME
7. PUBLIC SERVICE COMMISSION ORDER
8. LAND AND RIGHTS-OF-WAY
9. MEETINGS
10. INSURANCE
11. RATES
12. TRUTH AND ACCURACY
13. SPECIMEN BONDS
14. BOND PROCEEDS
15. PRIVATE USE OF FACILITIES
16. NO FEDERAL GUARANTY
17. CONFLICT OF INTEREST
18. CLEAN WATER ACT
19. COUNTERPARTS

We, the undersigned MAYOR and RECORDER of the TOWN OF CLAY, Clay County, West Virginia (the "Town"), and the undersigned ATTORNEY for said Town, hereby certify in connection with the Town of Clay, Combined Waterworks and Sewerage System Revenue Bond, Series 2009 A (United States Department of Agriculture) (the "Series 2009 A Bond"), in the aggregate principal amount of \$830,000, numbered AR-1, dated the date hereof and bearing interest at the rate of four and 25/100 percent (4.25 %), and the Town of Clay, Combined Waterworks and Sewerage System Revenue Bond, Series 2009 B (West Virginia Infrastructure Fund) (the "Series 2009 B Bond" and, together with the Series 2009 A Bond, the "Series 2009 Bonds"), in the aggregate principal amount of \$550,000, numbered BR-1, dated the date hereof and bearing interest at the rate of zero percent (0 %), 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 in the Ordinance enacted by the Town Council (the "Council") and effective on October 13, 2009 (the "Ordinance").
2. **NO LITIGATION:** No controversy or litigation of any nature is now pending, or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting the issuance and delivery of the Series 2009 Bonds; nor questioning the proceedings and authority by which the Council authorized the issuance and sale of the Series 2009 Bonds; nor affecting the validity of the

Series 2009 Bonds or any provisions made or authorized for the payment thereof, including, but not limited to the pledge of Gross Revenues of the System for such payment; nor questioning the existence of the Town or the title of the members or officers of the Town or the Council to their respective offices; nor questioning the acquisition, construction and equipping of certain additions, betterments and improvements to the combined waterworks and sewerage system facilities of the Town (the "System"), which is being financed out of the proceeds of sale of the Series 2009 Bonds.

3. GOVERNMENTAL APPROVALS AND BIDDING: All applicable approvals and certificates required by law for the acquisition, construction and equipping of the Project, the operation of the System and the issuance of the Series 2009 Bonds have been or will be duly and timely obtained and remain in full force and effect, including approval by the Public Service Commission of West Virginia. Competitive bids for construction of the Project will be solicited in accordance with West Virginia law. The Issuer has procured the services of the Consulting Engineers in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended.

4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the Town or the System since the approval of the Ordinance. There has been no adverse change in the financial condition of the Town or the System since the approval by United States Department of Agriculture, Rural Utilities Service (the "Government") and the West Virginia Infrastructure and Jobs Development Council (the "Council") of loans to assist in the acquisition, construction and equipping of the Project. Upon issuance and delivery of the Series 2009 Bonds, the Town will have the Series 2009 Bonds and its Combined Waterworks and Sewerage System Revenue Bond, Series 1998 A (United States Department of Agriculture) and Series 1998 B (West Virginia Infrastructure Fund) (collectively, the "Prior Bonds"), as debt outstanding, all of which constitute a first parity lien on the Gross Revenues of the System. The Town has obtained the consent of the holders of the Prior Bonds to the issuance of the Series 2009 Bonds.

5. SIGNATURES: The undersigned MAYOR and RECORDER are the duly elected or appointed, qualified and serving officials as indicated by the official titles opposite their signatures below, are duly authorized to execute and seal the Series 2009 Bonds for the Town, and on the date hereof have signed and sealed the Series 2009 Bonds for the Town. The seal appearing hereon and on the Series 2009 Bonds is the only official seal of the Town.

6. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Town is "Town of Clay", and it is a municipality, public corporation and political subdivision duly created under the laws of the State of West Virginia in Clay County of said State. The governing body of the Town is the Mayor, Recorder and the Town Council of six (6) council members, whose names, terms and offices are as follows:

| <u>Name</u> | <u>Date of Termination of Office</u> | <u>Office</u> |
|------------------|--|---------------|
| Wallace J. Brown | June 30, 2011 | Mayor |
| Dwana Murphy | June 30, 2011 | Recorder |

| | | |
|-----------------|---------------|----------------|
| Betty T. Murphy | June 30, 2011 | Council Member |
| Joyce S. Gibson | June 30, 2011 | Council Member |
| Arthur Jarrett | June 30, 2011 | Council Member |
| Glada Lanham | June 30, 2011 | Council Member |
| Jerry Stover | June 30, 2011 | Council Member |

The duly appointed and acting Attorney for the Town is Jeffery A. Davis, Clay, West Virginia.

7. PUBLIC SERVICE COMMISSION ORDER: The Town covenants that it has filed any information with the PSC and taken any other actions required to maintain the PSC Recommended Decision entered on October 8, 2008, which become final on October 28, 2008, in Case No. 08-0586-W-CN, in full force and effect, with the time for rehearing and appeal having expired.

8. LAND AND RIGHTS-OF-WAY: All land in fee simple and all rights-of-way and easements necessary for the construction, operation and maintenance of this System have been acquired or can and will be acquired by purchase, or, if necessary, by condemnation by the Town 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 Town to pay for the same without jeopardizing the security of or payments on the Series 2009 Bonds.

9. MEETINGS: All actions, ordinances, Ordinances, orders and agreements taken, adopted and entered into by or on behalf of the Town in any way connected with the acquisition, construction, equipping and financing of the Project and the operation of the System were authorized or adopted at meetings of the Council duly called and held pursuant to all applicable statutes and the customary procedure of the Council, and a quorum of duly appointed, qualified and acting members of the Council 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.

10. INSURANCE: The Town will maintain or, as appropriate, will require all contractors to maintain Workers' Compensation, public liability and property damage insurance, standard hazard insurance, builder's risk insurance, flood insurance and business interruption insurance, where applicable, in accordance with the Ordinance.

11. RATES: Based upon information submitted by the Consulting Engineers and an independent Certified Public Accountant, the rates and charges for the System which were authorized on May 20, 2008 and June 23, 2009, and remain in full force and effect, will, so long as the Series 2009 Bonds are outstanding, provide Gross Revenues sufficient to pay (a) the interest upon the Series 2009 Bonds and the Prior Bonds, (b) the necessary fiscal agency charges, (c) the principal amount of the Series 2009 Bonds and the Prior Bonds at or before its maturity, (d) a margin of safety or reserve for such Series 2009 Bonds and the Prior Bonds and for the payment into the reserve account created on account of the Series 2009 Bonds, and (e) meet the requirements set forth in the Ordinance.

12. **TRUTH AND ACCURACY:** As of the date hereof, Wallace Brown, Mayor, and Dwana Murphy, Recorder, hereby certify that the copies of documents previously or on the date hereof certified by them as being true and accurate are true and accurate as of the date hereof and that none of such documents have been repealed, rescinded, amended or otherwise modified.

13. **SPECIMEN BONDS:** Attached hereto as Exhibit A are specimens of the Series 2009 Bonds, which, except as to execution and authentication, are identical in all respects with such Series 2009 Bonds this day delivered to the Government and the West Virginia Water Development Authority (the "Authority"), for the benefit of the Council, and being substantially in the form prescribed in the Ordinance.

14. **BOND PROCEEDS:** On the date hereof, the Town received \$149,049.75 from the Government and \$12,460.00 from the Authority, being portions of the principal amounts of the Series 2009 Bonds and more than a de minimis amount of the proceeds of the Series 2009 Bonds. The balance of the principal amount of the Series 2009 Bonds will be advanced to the Town as acquisition, construction and equipping of the Project progresses.

15. **PRIVATE USE OF FACILITIES:** The Town shall at all times take, and refrain from taking, and shall not fail to take, any and all actions necessary in order to assure the initial and continued tax-exempt status of the Series 2009 Bonds and the interest thereon. Less than ten percent (10%) of the proceeds of the Series 2009 Bonds will be used, directly or indirectly, for any private business use, and less than ten percent (10%) of the payment of principal of, or the interest on, such issue, under the terms of such issue or any underlying arrangement, is, directly or indirectly, secured by any interest in property used or to be used for a private business use, payments in respect of such property, or to be derived from payments (whether or not to the Town) in respect of property, or borrowed money, used or to be used for a private business use. None of the proceeds of the Series 2009 Bonds will be used, directly or indirectly, for any private business use which is not related to the governmental use of the proceeds of the Series 2009 Bonds, including the disproportionate related business use of the proceeds of the Series 2009 Bonds, and none of the payment of principal on, or the interest on, such issue, under the terms of any underlying arrangement, is, directly or indirectly, secured by any interest in property used, or to be used for a private business use, payments in respect of such property or 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 with respect to such private business use, which is not related to any government use of such proceeds, including the disproportionate business use of the issue of the Series 2009 Bonds. None of the proceeds of the issue of the Series 2009 Bonds will be used, directly or indirectly, to make or finance loans to persons other than governmental units. For purposes of this paragraph, private business use means use, directly or indirectly, in a trade or business carried on by any person, including related persons, other than a governmental unit or other than use as a member of the general public. All of the foregoing shall be determined in accordance with and within the meaning of the Internal Revenue Code of 1986, as amended, including any successor provisions and rules and regulations thereunder (the "Code").

16. **NO FEDERAL GUARANTY:** The Series 2009 Bonds are not and will not be, in whole or part, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

17. CONFLICT OF INTEREST: No officer or employee of the Town has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Town or in the sale of any land, materials, supplies or services to the Town or to any contractor supplying the Issuer, relating to the Series 2009 Bonds, the Ordinance, 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 five percent (5%) of the particular business enterprise or contract.

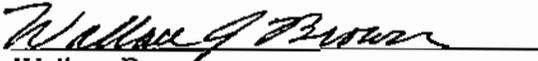
18. CLEAN WATER ACT: The project as described in the Ordinance complies with Sections 208 and 303(e) of the Clean Water Act.

19. COUNTERPARTS: This Certificate may be executed in counterpart, and such parts shall be deemed to be the Certificate.

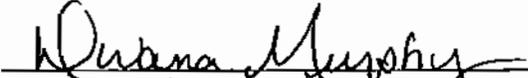
WITNESS our signatures and the official seal of the Town of Clay as of the 16th day of October, 2009.

SIGNATURE

OFFICIAL TITLE


Wallace Brown

Mayor


Dwana Murphy

Recorder


Jeffery A. Davis

Attorney

Exhibit A

(Specimen Bonds-See Tab 32)

TOWN OF CLAY, WEST VIRGINIA
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS
SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)

CERTIFICATE OF CONSULTING ENGINEER

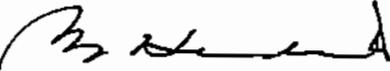
I, Jim Hildreth, Registered Professional Engineer, of Boyles and Hildreth, Spencer, West Virginia, West Virginia License No. 7719, hereby certify that I am the engineer for the acquisition, construction and equipping of certain additions, betterments and improvements to the combined waterworks and sewerage system (herein called the "Project") of the Town of Clay (the "Issuer"), located in Clay County, West Virginia, which acquisition, construction and equipping cost is being financed by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized terms used and not otherwise defined herein shall have the meaning assigned to such terms in the Ordinance enacted by the Town Council of the Issuer and effective on October 13, 2009 (the "Ordinance").

1. The Bonds are being issued for the purpose of financing a portion of the costs of the Project.

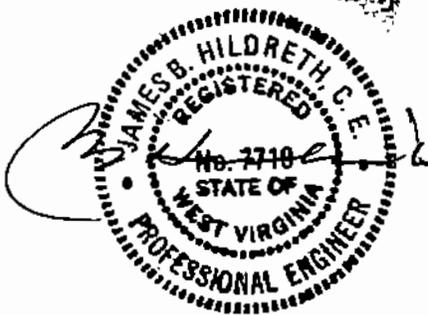
2. The undersigned hereby certifies that to the best of his knowledge after due inquiry (i) the Project will consist of the acquisition, construction and equipping of water system improvements based upon approved plans, specifications and designs which will be prepared by my firm and which have been or will be approved by all necessary governmental bodies, (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least forty (40) years, if properly constructed, operated and maintained, excepting anticipated replacements due to normal wear and tear, (iii) the Issuer has received bids for the construction of the Project which are in an amount and otherwise compatible with the plan of financing, and my firm has ascertained that all contractors 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 by my firm for accuracy, (iv) the chosen bidder received any and all addenda to the original bid documents, (v) the bid documents reflect the Project as approved by all required governmental agencies; (vi) the chosen bid includes every construction item necessary to complete the Project, or explains any deviation thereof, (vii) the uniform bid procedures were followed, (viii) the Issuer has obtained or will obtain all permits required by the laws of the State and the federal government necessary for the construction of the Project, (ix) in reliance upon the certificate of Smith, Cochran & Hicks, P.L.L.C., CPA, as of the effective date thereof, the rates and charges for the System, as approved by the Public Service Commission of West Virginia and as adopted by the Council of the Issuer, will be sufficient to comply with the provisions of the Ordinance, (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, are or will be sufficient to pay the costs of acquisition, construction and equipping of the Project, and (xi) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project and Sources of Funds" for the Project.

WITNESS my signature as of the 16th day of October, 2009.

BOYLES AND HILDRETH

By: 
West Virginia License No. 7719

[SEAL]



Schedule A - Total Cost of Project and Source of Funds

TOTAL COST OF PROJECT

| | |
|---|---------------|
| Acquisition, Construction and Equipping | 4,361,010 |
| Construction Contingency | 184,798 |
| Engineering – Basic Services | 245,000 |
| Engineering – Special Services | 15,000 |
| Inspection | 85,000 |
| COE Administration | 40,000 |
| Legal | 3,500 |
| Bond Counsel | 15,500 |
| Accounting | 15,000 |
| Interest | 70,550 |
| Registrar Fee | 500 |
| Project Contingency | <u>64,142</u> |
| | \$ 5,100,000 |

SOURCE OF FUNDS

Rural Utilities Service loan in the amount of \$830,000 at 4.25% for a term not to exceed 40 years, an RUS grant in the amount of \$677,000, a subsequent RUS grant in the amount of \$1,493,000, an Army Corps of Engineers grant in the amount of \$1,000,000, and West Virginia Infrastructure and Jobs Development Council grant in the amount of \$550,000 and a West Virginia Infrastructure and Jobs Development Council loan in the amount of \$550,000 at 0% for a term not to exceed 40 years.





Smith, Cochran & Hicks, P.L.L.C.
Certified Public Accountants

Oak Hill

Charleston

Montgomery

405 Capitol Street • Suite 908 • Charleston, WV 25301 • 304-345-1151 • Fax 304-346-6731

TOWN OF CLAY
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS
SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)

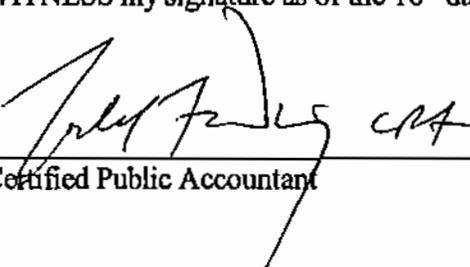
CERTIFIED PUBLIC ACCOUNTANT'S CERTIFICATE

I, Todd Dingess, of Smith, Cochran & Hicks, P.L.L.C., a Certified Public Accountant, License No. 2295, Charleston, West Virginia, have reviewed the combined waterworks and sewerage system rates set forth in the water rate ordinance enacted by the Town of Clay (the "Town"), by a Rate Ordinance enacted on May 20, 2008, and in the sewer rate ordinance enacted by the Town, by a Rate Ordinance enacted on June 23, 2009. It is our opinion that the schedules of rates set forth therein are adequate (i) to pay all operating expenses of the System, as defined in the Bond Ordinance, hereinafter described and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of the principal of and interest on the Series 2009 Bonds and the Prior Bonds, as set forth in the Bond Ordinance enacted by the City Council of the City and effective on October 13, 2009, (the "Bond Ordinance").

It is further our opinion that the Gross Revenues for the fiscal year following the year in which the Series 2009 Bonds are to be issued will be at least 120% of the average annual debt service requirements on the Prior Bonds and the Series 2009 Bonds.

It is further our opinion that the Gross Revenues actually derived from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of the Series 2009 Bonds, plus the estimated average increased annual Gross Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by the Series 2009 Bonds, will not be less than 115% of the maximum annual amount which will mature and become due in any succeeding year for principal of and interest on the Prior Bonds and the Series 2009 Bonds.

WITNESS my signature as of the 16th day of October, 2009.



Certified Public Accountant

TOWN OF CLAY, WEST VIRGINIA
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS
SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)

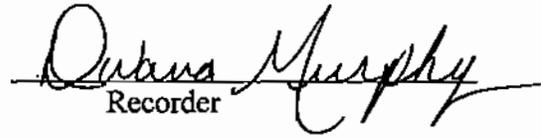
CERTIFICATE OF RECORDER AS TO TRUTH
AND ACCURACY OF DOCUMENTS DELIVERED

I, Dwana Murphy, the duly appointed Recorder of the Town of Clay (the "Issuer"), hereby certify that the copies of the following documents being delivered in connection with the closing of the sale of the \$830,000 Town of Clay, Combined Waterworks and Sewerage System Revenue Bond, Series 2009 A (United States Department of Agriculture) and \$550,000 Town of Clay, Combined Waterworks and Sewerage System Revenue Bond, Series 2009 B (United West Virginia Infrastructure Fund) (collectively, the "Bonds"), are, as of the date hereof, true and accurate copies of the originals of those documents maintained on file with the Issuer and delivered in the transcript of proceedings, and that said documents are still in full force and effect as of the date hereof and have not been repealed, rescinded, superseded, amended or modified in any way unless the document effecting such repeal, rescission, supersession, amendment or modification is also listed below:

1. Charter of the Issuer.
2. Oaths of Office of the Mayor, Recorder and Members of the Council (the "Council").
3. Water Rate Tariff authorized on May 20, 2008 and Sewer Rate Tariff authorized on June 23, 2009.
4. Minutes of the meetings of the Council wherein the Water Rate Tariff and Sewer Rate Tariff were adopted.
5. Bond Ordinance (the "Ordinance") enacted on October 13, 2009.
6. Minutes of the October 6 and October 13, 2009 meetings and the October 13, 2009 public hearing of the Council wherein the Ordinance was read and approved.
7. Affidavit of publication of the abstract and notice of meeting on the Ordinance published in *The Clay County Free Press*.
8. Recommended Decision of the Public Service Commission of West Virginia entered on October 8, 2008, in Case No. 08-0586-W-CN.
9. Approval Letter from the West Virginia Infrastructure and Jobs Development Council dated August 10, 2009.

WITNESS my signature and the official seal of the Town of Clay as of the 16th day of October, 2009.

(SEAL)


Recorder

\$550,000
TOWN OF CLAY
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BOND
SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)

CERTIFICATE AS TO USE OF PROCEEDS

The undersigned Mayor of the Town of Clay in Clay County, West Virginia (the "Issuer"), being one of the officials of the Issuer duly charged with the responsibility for the issuance of the \$550,000 Combined Waterworks and Sewerage System Revenue Bond, Series 2009 B (West Virginia Infrastructure Fund), of the Issuer, dated October 16, 2009 (the "Series 2009 B Bond"), hereby certifies as follows:

1. I am one of the officers of the Issuer duly charged with the responsibility of issuing the Series 2009 B Bond. I am familiar with the facts, circumstances and estimates herein certified and am 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 same meanings set forth in the Series 2009 B Bond Ordinance duly enacted by the Issuer on October 13, 2009 (the "Bond Ordinance"), authorizing the Series 2009 B Bond.

2. This certificate may be relied upon as the certificate of the Issuer. Simultaneously with the issuance of the Series B Bond, the Issuer intends to issue its \$830,000 Combined Waterworks and Sewerage System Revenue Bond, Series 2009 A (United States Department of Agriculture) (the "Series 2009 A Bond" and, together with the Series B Bond, the "Series 2009 Bonds").

3. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on October 16, 2009, the date on which the Series 2009 B Bond is being physically delivered in exchange for a portion of the principal amount of the Series 2009 B Bond, 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 Series 2009 B Bond is 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 Series 2009 B Bond that 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 Series 2009 B Bond are derived, to lose their status as tax-exempt bonds. The Issuer hereby covenants to take all actions necessary to comply with such covenant.

5. The Series 2009 B Bond was sold on October 16, 2009, to the Authority, pursuant to a Loan Agreement dated October 16, 2009, by and among the Issuer, the Authority and West Virginia Infrastructure and Jobs Development Council ("IJDC"), for the aggregate purchase price of \$550,000 (100% of par), at which time, the Issuer received \$12,460.00 from the

Authority and IJDC, being a portion of the principal amount of the Series 2009 B Bond. No accrued interest has been or will be paid on the Series 2009 B Bond. The balance of the principal amount of the Series 2009 B Bond will be advanced to the Issuer as acquisition and construction of the Project progresses.

6. The Series 2009 B Bond is being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying a portion of the costs of acquiring, constructing and equipping certain improvements and extensions to the existing public combined waterworks and sewerage system facilities of the Issuer (the "Project"); and (ii) paying certain costs of issuance of the Series 2009 B Bond and related costs.

7. The Issuer shall, on the date hereof or immediately hereafter, enter into agreements which require the Issuer to expend at least 5% of the net sale proceeds of the Series 2009 B Bond for the acquisition, construction and equipping of the Project, constituting a substantial binding commitment, or has already done so. The acquisition, construction and equipping of the Project and the allocation of the net sale proceeds of the Series 2009 B Bond to expenditures of the Project shall commence immediately and shall proceed with due diligence to completion, and all of the proceeds from the sale of the Series 2009 B Bond, together with any investment earnings thereon, will be expended for payment of costs of the Project on or before October 1, 2011. The acquisition, construction and equipping of the Project is expected to be completed by October 1, 2011.

8. The total cost of the Project is estimated at \$5,100,000. Sources and uses of funds for the Project are as follows:

| | |
|-------------------------------|--------------------|
| <u>SOURCES</u> | |
| Series 2009 A Bond | \$ 830,000 |
| USDA RUS Grants | 2,170,000 |
| Army Corps of Engineers Grant | 1,000,000 |
| WV IJDC Grant | 550,000 |
| Series 2009 B Bond | <u>550,000</u> |
| Total Sources | <u>\$5,100,000</u> |
| <u>USES</u> | |
| Project Costs | \$5,084,000 |
| Cost of Issuance | <u>16,000</u> |
| Total Uses | <u>\$5,100,000</u> |

9. Pursuant to Article IV of the Bond Ordinance, the following special funds have been created or continued with respect to the Series 2009 Bonds:

- (1) Revenue Fund;
- (2) Operation and Maintenance Fund;
- (3) Renewal and Replacement Fund;
- (4) Construction Fund
- (5) Series 2009 A Bond Sinking Fund;
- (6) Series 2009 B Bond Sinking Fund;

- (7) Series 2009 A Bond Reserve Account; and
- (5) Series 2009 B Bond Reserve Account.

10. Pursuant to Article V of the Bond Ordinance, all of the proceeds of the Series 2009 Bonds will be deposited in Construction Fund and applied solely to payment of costs of the Project, including costs of issuance of the Series 2009 Bonds and related costs, and for no other purpose.

11. Moneys held in the Series 2009 B Bond Sinking Fund will be used solely to pay principal of and interest, if any, on the Series 2009 B Bond and will not be available to meet costs of acquisition, construction and equipping of the Project.

12. The acquisition, construction and equipping of the Project will proceed with due diligence to completion. The acquisition, construction and equipping of the Project is expected to be completed within 24 months of the date hereof. All proceeds of the Series 2009 B Bond will be expended on the Project within 36 months from the date hereof

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

14. 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 Series 2009 B Bond.

15. The amount designated as costs of issuance of the Series 2009 B Bond consists only of costs that are directly related to and necessary for the issuance of the Series 2009 B Bond.

16. All property financed with the proceeds of the Series 2009 B Bond will be owned and held by (or on behalf of) a qualified governmental unit.

17. No proceeds of the Series 2009 B Bond will be used, directly or indirectly, in any trade or business carried on by any person who is not a governmental unit.

18. The original proceeds of the Series 2009 B Bond will not exceed the amount necessary for the purposes of the issue. The Issuer covenants that it shall maintain thorough and accurate accounting records, in conformance with generally accepted accounting principles, relative to the proceeds of the Series 2009 B Bond so that use of proceeds from the Series 2009 B Bond can be accounted for.

19. The Issuer shall use the Series 2009 B 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.

20. The Series 2009 B Bond is not federally guaranteed.

21. The Issuer has retained the right to amend the Bond Ordinance authorizing the issuance of the Series 2009 B Bond if such amendment is necessary to assure that the Series 2009 B Bond remains a governmental or public purpose bond.

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

23. Except as provided in Paragraph 2 hereof, there are no other obligations of the Issuer which (a) are to be issued at substantially the same time as the Series 2009 B Bond, (b) are to be sold pursuant to a common plan of financing together with the Series 2009 B Bond, 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 Series 2009 B Bond.

24. To the best of my knowledge, information and belief, there are no other facts, estimates and circumstances that would materially change the expectations herein expressed.

25. The Issuer will comply with instructions as may be provided by the Authority, at any time, regarding use and investment of proceeds of the Series 2009 B Bond, rebates and rebate calculations.

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

WITNESS my signature as of this 16th day of October, 2009.

TOWN OF CLAY

By: Wallace J. Brown
Mayor



United States Department of Agriculture
Rural Development
West Virginia State Office

**TOWN OF CLAY
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS
SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)**

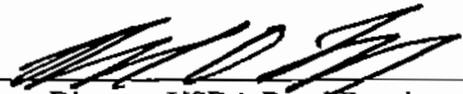
CONSENT TO ISSUANCE OF PARITY BOND AND PARITY LIEN

United States of America, Rural Development (the "Government") represents that it is the sole and only registered owner of the outstanding Combined Waterworks and Sewerage System Revenue Bond, Series 1998 A (United States Department of Agriculture), dated March 23, 1998 (the "Series 1998 A Bond"), of the Town of Clay, Clay County, West Virginia (the "Town"). The Government does hereby consent to the issuance by the Town of its Combined Waterworks and Sewerage System Revenue Bond, Series 2009 A (United States Department of Agriculture), in the amount of \$830,000 (the "Series 2009 A Bond") to be sold to the Government, and the Town of Clay, Combined Waterworks and Sewerage System Revenue Bond, Series 2009 B (West Virginia Infrastructure Fund), in the amount of \$550,000 (the "Series 2009 B Bond") to be sold to the West Virginia Water Development Authority, for the benefit of the West Virginia Infrastructure and Jobs Development Council. The Government hereby further consents that the Series 2009 A and Series 2009 B Bonds may be payable from the revenues of the combined waterworks and sewerage system of the Town and otherwise secured on a parity basis with the Series 1998 A Bond.

By the execution of this consent, the undersigned hereby certifies that he/she is fully empowered and authorized to execute this consent on behalf of the Government.

WITNESS my signature as of the 16th day of October, 2009.

UNITED STATE OF AMERICA,
RURAL DEVELOPMENT

By: 
State Director, USDA-Rural Development

1550 Earl Core Road • Suite 101 • Morgantown, WV 26505
Phone: 304.284.4860 • 1.800.295.8228 • Fax: 304.284.4893 • TTY/TDD: 304.284.4836 • Web: <http://www.rurdev.usda.gov/wv>

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Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD).



WEST VIRGINIA

Water Development Authority

Celebrating 35 Years of Service 1974 - 2009

TOWN OF CLAY

**COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS
SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)**

CONSENT TO ISSUANCE OF PARITY BOND AND PARITY LIEN

In reliance upon a certificate of Smith, Cochran & Hicks, P.L.L.C., the Town of Clay's independent certified public accountant, and the opinion of Goodwin & Goodwin, LLP, the Town of Clay's bond counsel, stating that the coverage and parity requirements have been met, the undersigned duly authorized representative of the West Virginia Water Development Authority, for and on behalf of the West Virginia Infrastructure and Jobs Development Council, the registered owner of the Town of Clay, Combined Waterworks and Sewerage System Revenue Bond, Series 1998 B (West Virginia Infrastructure Fund) (the "Series 1998 B Bond"), hereby consents to the issuance of the Town of Clay, Combined Waterworks and Sewerage System Revenue Bond, Series 2009 A (United States Department of Agriculture) (the "Series 2009 A Bond"), issued in the original aggregate principal amount of \$830,000, and the Town of Clay, Combined Waterworks and Sewerage System Revenue Bond, Series 2009 B (West Virginia Infrastructure Fund) (the "Series 2009 B Bond"), issued in the original aggregate principal amount of \$550,000, under the terms of the Bond Ordinance authorizing the Series 2009 A and Series 2009 B Bonds, on a parity with respect to liens, pledge and source of and security for payment with the Series 1998 B Bond.

WITNESS my signature as of the 16th day of October, 2009.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY,
for and on behalf of the West Virginia
Infrastructure and Jobs Development Council

By: Carol A. Cummings
Authorized Representative

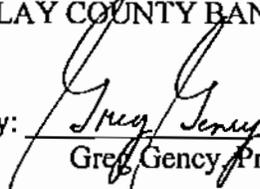
TOWN OF CLAY, WEST VIRGINIA
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS
SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)

ACCEPTANCE OF DUTIES AS DEPOSITORY BANK

Clay County Bank, Inc., a state banking corporation, at its office located in Clay, Clay County, West Virginia, hereby accepts appointment as Depository Bank in connection with an Ordinance of the Town of Clay (the "Town") duly enacted by the Town Council of the Town and effective on October 13, 2009 (the "Ordinance"), authorizing issuance by the Town of its Combined Waterworks and Sewerage System Revenue Bond, Series 2009 A (United States Department of Agriculture) and Series 2009 B (West Virginia Infrastructure Fund), dated October 16, 2009, in the aggregate principal amounts of \$830,000 and \$550,000, respectively, and agrees to perform all duties of Depository Bank as set forth in the Ordinance.

Witness my signature as of the 16th day of October, 2009.

CLAY COUNTY BANK INC.

By: 
Greg Gency, President

\$550,000
TOWN OF CLAY
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BOND
SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)

ACCEPTANCE OF APPOINTMENT OF REGISTRAR

Clay County Bank, Inc., at its office located in Clay, Clay County, West Virginia, hereby accepts appointment as Registrar in connection with an Ordinance of Town of Clay (the "Town") duly enacted by the Town Council of the Town (the "Council") on October 13, 2009 (the "Ordinance"), authorizing the issuance of Town of Clay, Combined Waterworks and Sewerage System Revenue Bond, Series 2009 B (West Virginia Infrastructure Fund), dated October 16, 2009, in the principal amount of \$550,000, and agrees to perform all duties of Registrar as set forth in the Ordinance.

Witness my signature as of the 16th day of October, 2009.

CLAY COUNTY BANK, INC.

By: _____

President

\$550,000
TOWN OF CLAY
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BOND
SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 16th day of October, 2009, by and between TOWN OF CLAY, a municipality, public corporation and political subdivision duly created under the laws of the State of West Virginia (the "Issuer"), and CLAY COUNTY BANK, INC., at its office located in Clay, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$550,000 aggregate principal amount of Combined Waterworks and Sewerage System Revenue Bond, Series 2009 B (West Virginia Infrastructure Fund) in fully registered form (the "Bond") pursuant to a Bond Ordinance enacted by the Issuer on October 13, 2009 (the "Ordinance");

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 Ordinance, a copy of which is attached as Exhibit A hereto and incorporated herein by reference;

WHEREAS, the Ordinance provides for the appointment by the Issuer of a Registrar for the Bond; and

WHEREAS, the Issuer desires to appoint, and by the Ordinance and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Ordinance 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 the Registrar, all as set forth in the Ordinance, such duties including, among other things, the duties to authenticate, register and deliver the Bond upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exemption of interest on the Bond 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 heretofore agreed by the parties and set forth in the attached invoice.

5. It is intended that this Registrar's Agreement shall carry out and implement the provisions of the Ordinance with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Ordinance, the terms of the Ordinance 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 Ordinance 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 sixty (60) days' written notice sent by registered or certified mail to the other party, at the following respective addresses:

ISSUER: Town of Clay
 Attention: Recorder
 P.O. Box 55
 Clay, WV 25043-0055

REGISTRAR: Clay County Bank, Inc.
 Attention: Greg Gency
 150 Main Street
 Clay, WV 25043-0239

8. The Registrar is hereby requested and authorized to register, authenticate and deliver the Bond in accordance with the Ordinance and instructions provided by the Issuer.

IN WITNESS WHEREOF, the TOWN OF CLAY and CLAY COUNTY BANK, INC. have caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the day, month and year first above-written.

TOWN OF CLAY

By: Wallace J Brown
Mayor

CLAY COUNTY BANK, INC.

By: Greg Jency
President

(Bond Ordinance)

\$550,000
TOWN OF CLAY
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BOND
SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)

CERTIFICATE OF REGISTRATION

I, Greg Gency, as President, of Clay County Bank, Inc., as Registrar (the "Registrar"), under a Registrar's Agreement between the Registrar and the Town of Clay (the "Town") dated as of the date hereof, hereby certify that on the 16th day of October, 2009, the Bond of the Town in the principal amount of \$550,000, designated "Town of Clay, Combined Waterworks and Sewerage System Revenue Bond, Series 2009 B (West Virginia Infrastructure Fund)" and numbered BR-1, dated as of the date hereof, was registered as to principal only in the name of the "West Virginia Water Development Authority", on the books of the Registrar kept for that purpose at our office, by a duly authorized officer on behalf of the Registrar.

WITNESS my signature as of the 16th day of October, 2009.

CLAY COUNTY BANK, INC., as Registrar

By: _____

Greg Gency
President

BOND REGISTRY

TOWN OF CLAY, WEST VIRGINIA
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS
SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)

| <u>BOND NO.</u> | <u>AMOUNT</u> | <u>HOLDER</u> | <u>DATE ACQUIRED</u> |
|-----------------|---------------|--|----------------------|
| AR-1 | \$830,000 | United States of America United States Dept. of Agriculture, Rural Utilities Service 1550 Earl Core Road, Suite 101 Morgantown, WV 26505 | October 16, 2009 |
| BR-1 | \$550,000 | West Virginia Water Development Authority 180 Association Drive Charleston, WV 25311-1571 | October 16, 2009 |

ALL ASSIGNMENTS OR CHANGES OF OWNERSHIP OF THIS BOND MUST BE REPORTED ON THIS REGISTRY PURSUANT TO SECTION 3.05 OF THE BOND ORDINANCE.

TOWN OF CLAY, WEST VIRGINIA
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS
SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND
SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)

CROSS-RECEIPT FOR BONDS AND BOND PROCEEDS

The undersigned Teresa Miller, Rural Development Specialist for the United States Department of Agriculture, Rural Utilities Service ("RUS"), the undersigned authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), and Wallace Brown, Mayor of the Town of Clay, Clay County, West Virginia (the "Issuer"), hereby certify as follows:

1. On the 16th day of October, 2009, RUS received the entire original issue in aggregate principal amount of \$830,000 of the Issuer's Combined Waterworks and Sewerage System Revenue Bond, Series 2009 A (United States Department of Agriculture), of the Issuer (the "Series 2009 A Bond"). The Series 2009 A Bond, as so received on original issuance, is dated October 16, 2009, and is issued as Bond Number AR-1, in the denomination of \$830,000.

2. On the 16th day of October, 2009, the Authority, for and on behalf of the Council, received the entire original issue in aggregate principal amount of \$550,000 of the Issuer's Combined Waterworks and Sewerage System Revenue Bond, Series 2009 B (West Virginia Infrastructure Fund), of the Issuer (the "Series 2009 B Bond"). The Series 2009 B Bond, as so received on original issuance, is dated October 16, 2009, and is issued as Bond Number BR-1, in the denomination of \$550,000.

3. At the time of such receipt of the Bond, Wallace J. Brown, as Mayor of the Issuer, had executed the Series 2009 Bonds by his manual signature, and by Dwana Murphy, as Recorder of the Issuer, by her manual signature, and the official seal of the Issuer had been imprinted upon the Series 2009 Bonds.

4. The Issuer has received and hereby acknowledges receipt from RUS, as the original purchaser of the Series 2009 A Bond, of \$149,049.75, being more than a de minimus portion of the proceeds of the Series 2009 A Bond. The balance will be advanced from time to time to pay costs of the Project.

5. The Issuer has received and hereby acknowledges receipt from the Authority, for and on behalf of the Council, as the original purchaser of the Series 2009 B Bond, of \$12,460.00, being more than a de minimus portion of the proceeds of the Series 2009 B Bond. The balance will be advanced from time to time to pay costs of the Project.

IN WITNESS WHEREOF, this receipt has been signed and delivered on behalf of the United States Department of Agriculture, Rural Utilities Service, the West Virginia Water Development Authority, for and on behalf of the West Virginia Infrastructure and Jobs Development Council, and the Town of Clay, Clay County, West Virginia, as of the 16th day of October, 2009.

UNITED STATES DEPARTMENT OF AGRICULTURE,
Rural Utilities Service

By: Jessy A. Miller
Rural Development Specialist

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY,
for and on behalf of the West Virginia Infrastructure and Jobs Development Council

By: Carol A. Cummings
Authorized Representative

TOWN OF CLAY

By: Wallace J. Brown
Mayor

200938211182

10 20 2009 12:03PM

WV SECRETARY OF STATE

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

| | |
|---|--|
| A. NAME & PHONE OF CONTACT AT FILER (optional) William K. Bragg, Jr. (304) 346-7000 | |
| B. SEND ACKNOWLEDGMENT TO: (Name and Address) William K. Bragg, Jr. Goodwin & Goodwin, LLP 300 Summers Street, Suite 1500 Charleston, WV 25301-1678 | |

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

| | | | | | |
|---|------------------------------------|--|---|--|----------------------|
| 1a. ORGANIZATION'S NAME Town of Clay | | | | | |
| O R | 1b. INDIVIDUAL'S LAST NAME | | FIRST NAME | MIDDLE NAME | SUFFIX |
| | 1c. MAILING ADDRESS P.O. Box 55 | | CITY Clay | STATE WV | POSTAL CODE 25043 |
| 1d. TAX ID #: SSN OR EIN | ADD'L INFO RE ORGANIZATION DEBTOR | 1e. TYPE OF ORGANIZATION Municipality | 1f. JURISDICTION OF ORGANIZATION West Virginia | 1g. ORGANIZATIONAL ID #, if any <input checked="" type="checkbox"/> NONE | |

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

| | | | | | |
|--------------------------|-----------------------------------|--------------------------|----------------------------------|---|-------------|
| 2a. ORGANIZATION'S NAME | | | | | |
| O R | 2b. INDIVIDUAL'S LAST NAME | | FIRST NAME | MIDDLE NAME | SUFFIX |
| | 2c. MAILING ADDRESS | | CITY | STATE | POSTAL CODE |
| 2d. TAX ID #: SSN OR EIN | ADD'L INFO RE ORGANIZATION DEBTOR | 2e. TYPE OF ORGANIZATION | 2f. JURISDICTION OF ORGANIZATION | 2g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE | |

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

| | | | | | |
|---|---|--|-----------------|-------------|----------------------|
| 3a. ORGANIZATION'S NAME United States Department of Agriculture, Rural Utilities Service | | | | | |
| O R | 3b. INDIVIDUAL'S LAST NAME | | FIRST NAME | MIDDLE NAME | SUFFIX |
| | 3c. MAILING ADDRESS 481 Ragland Road | | CITY Beckley | STATE WV | POSTAL CODE 25801 |

4. This FINANCING STATEMENT covers the following collateral:

Statutory mortgage lien on accounts, revenues, combined waterworks and sewerage system and other property as provided by Bond Ordinance authorizing the issuance of Town of Clay, Combined Waterworks and Sewerage System Revenue Bond, Series 2009 A (United States Department of Agriculture), and by Chapter 8, Article 20 of the Code of West Virginia of 1931, as amended.

This Financing Statement is filed in connection with a public-finance transaction of the Town of Clay, Clay County, West Virginia. Pursuant to the provisions of Section 46-9-515(b) of the Code of West Virginia of 1931, as amended, this financing statement shall be effective for a period of forty (40) years from its date of filing, unless the underlying debt is repaid sooner.

5. ALTERNATIVE DESIGNATION (if applicable): LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG. LIEN NON-UCC FILING

6. This FINANCING STATEMENT is to be filed (for record)(or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional) All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

200938211194

10 20 2009 12:04PM

WV SECRETARY OF STATE

| | |
|---|--|
| A. NAME & PHONE OF CONTACT AT FILER (optional) William K. Bragg, Jr. (304) 346-7000 | |
| B. SEND ACKNOWLEDGMENT TO: (Name and Address) William K. Bragg, Jr. Goodwin & Goodwin, LLP 300 Summers Street, Suite 1500 Charleston, WV 25301-1678 | |

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

| | | | | | |
|---|------------------------------------|--|---|--|----------------------|
| 1a. ORGANIZATION'S NAME Town of Clay | | | | | |
| O R | 1b. INDIVIDUAL'S LAST NAME | | FIRST NAME | MIDDLE NAME | SUFFIX |
| | 1c. MAILING ADDRESS P.O. Box 55 | | CITY Clay | STATE WV | POSTAL CODE 25043 |
| 1d. TAX ID #: SSN OR EIN | ADD'L INFO RE ORGANIZATION DEBTOR | 1e. TYPE OF ORGANIZATION Municipality | 1f. JURISDICTION OF ORGANIZATION West Virginia | 1g. ORGANIZATIONAL ID #, if any <input checked="" type="checkbox"/> NONE | |

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

| | | | | | |
|--------------------------|-----------------------------------|--------------------------|----------------------------------|---|-------------|
| 2a. ORGANIZATION'S NAME | | | | | |
| O R | 2b. INDIVIDUAL'S LAST NAME | | FIRST NAME | MIDDLE NAME | SUFFIX |
| | 2c. MAILING ADDRESS | | CITY | STATE | POSTAL CODE |
| 2d. TAX ID #: SSN OR EIN | ADD'L INFO RE ORGANIZATION DEBTOR | 2e. TYPE OF ORGANIZATION | 2f. JURISDICTION OF ORGANIZATION | 2g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE | |

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

| | | | | | |
|---|--|--|--------------------|-------------|----------------------|
| 3a. ORGANIZATION'S NAME West Virginia Water Development Authority, for the West Virginia Infrastructure and Jobs Development Council | | | | | |
| O R | 3b. INDIVIDUAL'S LAST NAME | | FIRST NAME | MIDDLE NAME | SUFFIX |
| | 3c. MAILING ADDRESS 180 Association Drive | | CITY Charleston | STATE WV | POSTAL CODE 25311 |

4. This FINANCING STATEMENT covers the following collateral:

Statutory mortgage lien on accounts, revenues, combined waterworks and sewerage system and other property as provided by Bond Ordinance authorizing the issuance of Town of Clay, Combined Waterworks and Sewerage System Revenue Bond, Series 2009 B (West Virginia Infrastructure Fund), and by Chapter 8, Article 20 of the Code of West Virginia of 1931, as amended.

This Financing Statement is filed in connection with a public-finance transaction of the Town of Clay, Clay County, West Virginia. Pursuant to the provisions of Section 46-9-515(b) of the Code of West Virginia of 1931, as amended, this financing statement shall be effective for a period of forty (40) years from its date of filing, unless the underlying debt is repaid sooner.

| | | | | |
|--|--|---|--|--|
| 5. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> LESSEE/LESSOR <input type="checkbox"/> CONSIGNEE/CONSIGNOR <input type="checkbox"/> BAILEE/BAILOB <input type="checkbox"/> SELLER/BUYER <input type="checkbox"/> AG. LIEN <input type="checkbox"/> NON-UCC FILING | | | | |
| 6. <input type="checkbox"/> This FINANCING STATEMENT is to be filed (for record)(or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) | | 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (ADDITIONAL FEE) (optional) | | <input type="checkbox"/> All Debtors <input type="checkbox"/> Debtor 1 <input type="checkbox"/> Debtor 2 |
| 8. OPTIONAL FILER REFERENCE DATA | | | | |

LAW OFFICES

GOODWIN & GOODWIN, LLP

300 SUMMERS STREET, SUITE 1500
CHARLESTON, WEST VIRGINIA 25301-1678

P. O. Box 2107
CHARLESTON, WEST VIRGINIA 25328-2107

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PARKERSBURG, WEST VIRGINIA 26101
(304) 485-2345

P.O. Box 349
500 CHURCH STREET
RIPLEY, WEST VIRGINIA 25271
(304) 372-2651

October 16, 2009

United States of America
United States Department of Agriculture,
Rural Utilities Service
481 Ragland Road
Beckley, WV 25801

West Virginia Infrastructure and Jobs Development Council
180 Association Drive
Charleston, WV 25311-1571

West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311-1571

Re: Town of Clay, Combined Waterworks and Sewerage System Revenue
Bonds, Series 2009 A (United States Department of Agriculture) and
Series 2009 B (West Virginia Infrastructure Fund)

Gentlemen:

We are bond counsel to the Town of Clay, West Virginia (the "Town"), a municipal corporation located in Clay County, West Virginia.

We have examined a certified copy of proceedings and other papers relating to (i) the issuance of the Letter of Conditions dated June 28, 1996, as amended by Amendment No. 1 to Letter of Conditions dated June 16, 2004, including all schedules and exhibits attached thereto (the "Letter of Conditions"), from the United States Department of Agriculture, Rural Utilities Service ("RUS") to the Town, (ii) a loan agreement for the Series 2009 B Bond, dated October 16, 2009, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Town and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), and (iii) the issuance of Combined Waterworks and Sewerage System Revenue Bond, Series 2009 A (United States

GOODWIN & GOODWIN, LLP

October 16, 2009

Page 2

Department of Agriculture) and Series 2009 B (West Virginia Infrastructure Fund) of the Town, dated October 16, 2009, respectively (collectively, the "Series 2009 Bonds"), to be purchased by RUS in accordance with the provisions of the Letter of Conditions and by the Authority in accordance with the Loan Agreement.

The Series 2009 A Bond is in the principal amount of \$830,000 and is issued in the form of one bond registered as to principal and interest to the United States of America. The Series 2009 B Bond is in the principal amount of \$550,000 and is issued in the form of one bond registered as to principal only to the Authority, for the benefit of the Council.

Interest on the Series 2009 A Bond shall be paid on the unpaid principal balance of the Series 2009 A Bond at four and 25/100 percent (4.25%) per annum for the first twenty-four (24) months of the term. Principal and interest on the Series 2009 A Bond is payable in monthly installments of \$3,677.00 commencing October 16, 2011. The final installment of principal and interest on the Series 2009 A Bond shall be paid at the end of thirty-eight (38) years from the date principal first becomes due and payable on the Series 2009 A Bond.

The Series 2009 B Bond is issued in the principal amount of \$550,000, in the form of one bond, registered as to principal only to the Authority, bearing no interest, with principal payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 2011, all as set forth in the Schedule Y attached to the Loan Agreement and incorporated in and made a part of the Series 2009 B Bond.

The Series 2009 Bonds are issued for the purpose of financing a portion of the costs of constructing certain additions, betterments and improvements for an existing combined waterworks and sewerage system, and paying certain issuance and other costs in connection therewith (the "Project").

We have also examined the applicable provisions of Chapter 8, Article 20 and Chapter 31, Article 15A of the Code of West Virginia of 1931, as amended (collectively, the "Act"), and the Series 2009 Bonds have been substantially authorized by a Bond Ordinance enacted by the Council of the Town ("Council") effective on October 13, 2009 (the "Ordinance"), pursuant to and under which Act and Ordinance the Series 2009 Bonds are authorized and issued, and the Letter of Conditions and Loan Agreement have been undertaken. The Series 2009 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 Ordinance.

In rendering this opinion, we have relied, in part, upon the opinion of Jeffery A. Davis, as the Town's Counsel, for the proper enactment of the Bond Ordinance and the Rate Ordinances, utility rates, matters related to the valid existence of the Town and other issues.

GOODWIN & GOODWIN, LLP

October 16, 2009

Page 3

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 Letter of Conditions has been duly accepted by and on behalf of the Town.
2. The Loan Agreement has been duly accepted and executed by and on behalf of the Town.
3. The Town is a duly organized and presently existing municipal corporation of the State of West Virginia, with full power and authority to construct the Project and to operate and maintain the System referred to in the Ordinance and to issue and sell the Series 2009 Bonds, all under the Act and other applicable provisions of law. The Town has taken all legal action necessary to operate a combined waterworks and sewerage system.
4. The Town has substantially enacted the Ordinance legally and effectively and has satisfied all other necessary requirements in connection with the issuance and sale of the Series 2009 Bonds on parity with the Prior Bonds, as described in the Ordinance.
5. The Series 2009 Bonds are valid and legally enforceable special obligations of the Town, payable from the Gross Revenues of the System referred to in the Ordinance and secured by a parity lien on and pledge of the Gross Revenues of said System on parity with the lien of the Prior Bonds, all in accordance with the terms of the Series 2009 Bonds, the Ordinance, the Water Rate Ordinance adopted on May 20, 2008, and the Sewer Rate Ordinance adopted on June 23, 2009, and have been duly issued and delivered to RUS and the Authority. The Town has reserved the right to issue additional bonds ranking on parity basis with the Series 2009 Bonds and the Prior Bonds, as provided in the Ordinance. The Town has certified, and an independent certified public accountant has verified, that the rates and charges generated by the Rate Ordinances are sufficient to pay the principal of and interest on the Series 2009 Bonds and the Prior Bonds, when due. The Ordinance requires that such schedules of rates and charges be changed and readjusted whenever necessary so that the aggregate of such rates and charges will be sufficient for such purposes.
6. The Series 2009 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 Series 2009 Bonds.
7. The Series 2009 Bonds and the interest thereon, if any, are, under the Act, exempt from taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

GOODWIN & GOODWIN, LLP

October 16, 2009

Page 4

We express no opinion herein regarding other tax consequences arising with respect to the Series 2009 Bonds.

No opinion is given herein as to the effect upon enforceability of the Series 2009 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 an executed and authenticated Bond numbered AR-1 and Bond numbered BR-1, and in our opinion, the forms of the Series 2009 Bonds and their execution and authentication are regular and proper.

Respectfully submitted,

Goodwin + Goodwin, LLP
GOODWIN & GOODWIN, LLP

JEFF DAVIS, ESQ.

P.O. Box 65

CLAY, WV 25043

PHONE: 304-587-2209

FAX: 304-587-2279

October 16, 2009

United States Department of Agriculture
Rural Utilities Service
481 Ragland Road
Beckley, WV 25801

Goodwin & Goodwin, LLP
P.O. Box 2107
Charleston, WV 25328

West Virginia Infrastructure and Jobs
Development Council
180 Association Drive
Charleston, WV 25311-1571

West Virginia Water Development
Authority
180 Association Drive
Charleston, WV 25311-1571

Re: Town of Clay, Combined Waterworks and Sewerage System Revenue
Bonds, Series 2009 A (United States Department of Agriculture) and
Series 2009 B (West Virginia Infrastructure Fund)

Ladies and Gentlemen:

As attorney for the Town of Clay, Clay County, West Virginia (the "Town"), I have examined the record of proceedings relating to the issue of the Town of Clay, Combined Waterworks and Sewerage System Revenue Bonds, Series 2009 A (United States Department of Agriculture) and Series 2009 B (West Virginia Infrastructure Fund) (collectively, the "Bonds") and have considered the validity of the bond issue. In this connection, I have examined and am familiar with the constitution and statutes of the State of West Virginia, including Chapter 8, Article 20 and Chapter 31, Article 15A of the Code of West Virginia of 1931, as amended (collectively, the "Act"), the Town's Charter, related minutes and a certified copy of the Ordinance enacted by the Town (the "Ordinance"), a copy of the certificate of convenience and public necessity issued by the West Virginia Public Service Commission, the water and sewer rates necessary to pay for the Bonds as described in the Ordinance, copies of contracts and other documents relating to the funding and approval for the project by the Town, including, but not limited, to the construction contract, plans and specifications, and other documents relating to the project, the Letter of Conditions from RUS dated June 28, 1996, as amended by Amendment No. 1 to Letter of Conditions dated June 16, 2004 to the Town (collectively, the "Letter of Conditions"), the Loan Agreement dated October 16, 2009, by and between the Town and the West Virginia Water Development Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Loan Agreement"), the existing 1998 Bonds and Ordinances and other documents incidental and material to the issuance by the Town of the Bonds. From such familiarity and examination, I am of the opinion as follows:

1. The Town is a duly created and presently existing municipality and political subdivision of the State of West Virginia with full power and authority to construct and acquire and to operate and maintain the combined waterworks and sewerage system and to issue and sell the Bonds, all under the provisions of the Act and other applicable provisions of law.

2. The Town, through Town Council (the "Council"), has legally and effectively enacted the Ordinance and has duly authorized the issuance and delivery of the Bonds to the Rural Utilities Service and the West Virginia Water Development Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council, and the Mayor of the Town is duly and lawfully entitled to and authorized to execute the Bonds.

3. The Mayor, Recorder and members of the Council have been duly elected or appointed and have fulfilled all requirements necessary to carry on their duties as provided under the Act.

4. The Bonds constitute valid and legally enforceable special obligation of the Town secured by and payable solely from a parity lien on and pledge of the gross revenue of the System as described in the Ordinance, all in accordance with the terms of the Bonds and the Ordinance, subject to and on a parity with the 1998 Bonds as such Bonds are described in the Bond Ordinance. The holders of the 1998 Bonds have consented to the issuance of the parity 2009 Bonds.

5. The Town, through its Council, has legally and effectively enacted the water and sewer rates necessary to make the payments on the Bonds from the rates described in the Ordinance, and it has lawfully enacted and has filed tariffs which have been approved by the West Virginia Public Service Commission for the water and sewer rates that are described within the Ordinance, which rates are not subject to appeal or protest.

6. The Town has obtained from the West Virginia Public Service Commission a valid, final and non-appealable certificate of convenience and necessity in Case No. 08-0586-W-CN which lawfully authorizes the Town to proceed with the expansion, construction and maintenance of the Town's combined waterworks and sewerage system and approves the issuance of the Bonds.

7. The Town, through its Council, has legally and effectively enacted all other ordinances, contracts and agreements that are necessary to comply with the Letter of Conditions and the Loan Agreement and has complied with all necessary provisions of the Ordinance necessary before the Bonds may be issued and delivered and so that the Bonds can, in fact, be lawfully issued and delivered.

8. The execution and delivery of the Bonds and the enactment of the Ordinance and compliance with the provisions of them will not conflict with nor constitute a breach of or default under any agreement or other instrument known to me to which the Town is a party, or any court order or consent decree known to me to which the Town is subject, or any law or administrative regulation to which the Town is subject.

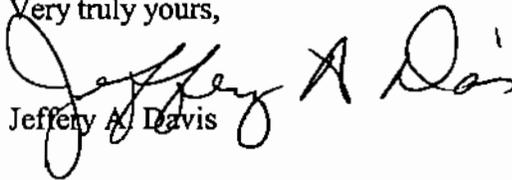
9. All authorization, consents, approvals and reviews by governmental bodies or regulatory authorities then required for the Town's adoption, execution or performance of the Bonds and the Ordinance have been obtained or affected, and I have no reason to believe that the Town will be unable to obtain or affect any additional such authorizations, consents or approvals that may be required in the future for performances of any of them by the Town.

10. To my knowledge, there is no action, suit, proceeding or investigation at law or in equity by any court, public board or body, pending or threatened against or affecting the Town or any member of the Council, and no facts exist relating to the composition of the Council or the exercise of their duties, wherein an unfavorable decision, ruling or finding would have a materially adverse effect upon the validity of the Bonds or the Ordinance.

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

The foregoing opinion is qualified to the extent that the enforceability of the liens, pledges and terms set forth in the Bonds and in the Bond Ordinance may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally.

Very truly yours,


Jeffery A. Davis

JEFF DAVIS, ESQ.

P.O. Box 65

CLAY, WV 25043

PHONE: 304-587-2209

FAX: 304-587-2279

October 16, 2009

Town of Clay
Clay, West Virginia

Goodwin & Goodwin, LLP
Charleston, West Virginia

United States Department of Agriculture
Rural Utilities Service
Morgantown, West Virginia

West Virginia Infrastructure and Jobs
Development Council
Charleston, WV

Re: Final Title Opinion for Town of Clay

Ladies and Gentlemen:

I am counsel to Town of Clay (the "Issuer") in connection with a proposed project to construct certain improvements to the existing public combined waterworks and sewerage system facilities of the Issuer (the "Project"). I provide this final title opinion on behalf of the Issuer to satisfy the requirements of the United States Department of Agriculture and the West Virginia Infrastructure and Jobs Development Council for the Project. Please be advised of the following:

1. I am of the opinion that the Issuer is a duly created and validly existing municipal corporation possessed with all the powers and authority granted to municipal corporations under the laws of the State of West Virginia to construct, operate and maintain the Project as approved by the West Virginia Department of Environmental Protection, the West Virginia Public Service Commission and the West Virginia Bureau of Public Health.

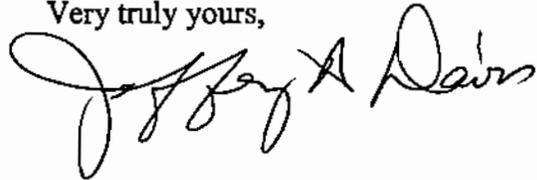
2. The Issuer has obtained all necessary permits and approvals for the construction and operation of the Project.

3. I have investigated and ascertained the location of, and I 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 Boyles and Hildreth.

4. I have examined the records on file in the Office of the Clerk of the County Commission of Clay County, West Virginia, the county in which the Project is to be located, and, in my opinion, the Issuer has acquired legal title or such other estate or interest in all of the necessary site components for the Project, including all easements and/or rights of way,

5. All deeds, easements and rights of way that have been acquired to date by the Issuer have been duly recorded in the Office of the Clerk of the County Commission of Clay County to protect the legal title to and interest of the Issuer. -

Very truly yours,

A handwritten signature in cursive script, reading "Jeffrey A. Davis". The signature is written in black ink and is positioned to the right of the typed phrase "Very truly yours,".

COPY

LAW OFFICES

GOODWIN & GOODWIN, LLP

300 SUMMERS STREET, SUITE 1500
CHARLESTON, WEST VIRGINIA 25301-1678

P. O. Box 2107
CHARLESTON, WEST VIRGINIA 25328-2107

TELEPHONE (304) 346-7000
TELECOPIER (304) 344-9692

www.goodwin-goodwin.com

201 THIRD STREET
PARKERSBURG, WEST VIRGINIA 26101
(304) 485-2345

P.O. Box 349
500 CHURCH STREET
RIPLEY, WEST VIRGINIA 25271
(304) 372-2651

October 15, 2009

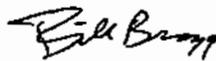
Ms. Sara Boardman, Executive Director
West Virginia Municipal Bond Commission
1207 Quarrier Street, Suite 401
Charleston, WV 25301

Re: Town of Clay
Combined Waterworks and Sewerage System Revenue Bonds
Series 2009 A (United States Department of Agriculture) and
Series 2009 B (West Virginia Infrastructure Fund)

Dear Sara:

Enclosed please find the New Issue Report Form prepared in connection with the above-referenced transaction and sent to you for filing in your office in regard to the same. Upon completion of the transcript, I will deliver a copy to you for your reference. In the meantime, if you have any questions concerning this transaction, please feel free to contact me.

Sincerely yours,



William K. Bragg, Jr.

WKB/aks
Enclosure

WV MUNICIPAL BOND COMMISSION
1207 Quarrier Street, Suite 401
Charleston, WV 25301
(304) 558-3971

NEW ISSUE REPORT FORM
Date of Report: October 16, 2009
(See Reverse for Instructions)

ISSUES: Town of Clay, Combined Waterworks and Sewerage System Revenue Bonds
Series 2009 A (United States Department of Agriculture) and
Series 2009 B (West Virginia Infrastructure Fund)
ADDRESS: P.O. Box 55
Clay, WV 25043-0055 COUNTY: Clay
PURPOSE: New Money
OF ISSUE: Refunding Refunds issue dated: N/A
ISSUE DATE: October 16, 2009 CLOSING DATE: October 16, 2009
ISSUE AMOUNTS: \$830,000 and \$550,000 RATES: 4.25% and 0%
1ST DEBT SERVICE DUE: November 16, 2009 and June 1, 2011
1ST PRINCIPAL DUE: November 16, 2011 and June 1, 2011
1ST DEBT SERVICE AMT.: \$3,677.00* and \$3,572.00
PAYING AGENT: Municipal Bond Comm.**

BOND COUNSEL: Goodwin & Goodwin, LLP
Contact Person: W.K. Bragg, Jr.
Phone (304) 346-7000

LENDER A: US Dep't. of Agriculture
Contact Person: Teresa Miller
Phone: (304) 252-8644

KNOWLEDGEABLE ISSUER CONTACT:
Contact Person: Wallace J. Brown
Position: Mayor
Phone: (304) 587-4233

LENDER B: West Virginia Infrastructure and
Jobs Development Council
Contact Person: Angela Chestnut
Position: Executive Secretary
Phone: (304) 558-4607

-----DEPOSITS TO MBC AT CLOSE:-----

By Wire
 Check
Accrued Interest: \$ 0
Capitalized Interest: \$ 0
 Reserve Account: \$ _____
Other: _____ \$ _____

-----REFUNDS & TRANSFERS BY MBC AT CLOSE:-----

By Wire
 Check
 IGT
To Escrow Trustee: \$ N/A
To Issuer: \$ N/A
To Cons. Invest. Fund: \$ N/A
Other: _____ \$ _____

Notes: * Subject to actual amount advanced at closing.
** Only if Lender A no longer owns the Series 2009 A Bond.

Notes: _____

FOR MUNICIPAL BOND COMMISSION USE ONLY:

DOCUMENTS REQUIRED: _____

TRANSFERS REQUIRED: _____

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

Issued: October 8, 2008

FINAL

10/28/2008

CASE NO. 08-0586-W-CN

TOWN OF CLAY

Application for a certificate of convenience and necessity to construct water treatment plant improvements consisting of modifying the existing treatment works to produce 800 gpm of potable water including site work; plant piping; new flocculator tankage; membrane filtration units and building; new clearwell tankage; and miscellaneous appurtenances; as well as water distribution improvements consisting of the installation of approximately 3,300 linear feet of 10-inch water line and miscellaneous appurtenances.

RECOMMENDED DECISION

On April 18, 2008, the Town of Clay ("Town"), by counsel Jeff Davis, filed with the Public Service Commission ("Commission") an application for a certificate of convenience and necessity to construct water treatment plant improvements and water distribution improvements. Supporting documentation was filed.

Also April 18, 2008, the Commission directed the Town to publish a Notice of Filing, which provided that, if no protest was filed within thirty days after the date of publication, the Commission might waive formal hearing and grant the application based upon its review of the evidence submitted with the application.

On May 28, 2008, the Commission, by Order, referred this matter to the Division of Administrative Law Judges for decision no later than November 14, 2008.

On July 14, 2008, Mr. Toon filed the Final Joint Staff Memorandum, recommending that the application be granted and the project and its funding be approved.

On July 30, 2008, the undersigned issued a Procedural Order requiring the Town to file the affidavit of publication of the Notice of Filing no later than August 29, 2008, and, on September 10, 2008, the undersigned ALJ issued a Procedural Order again requiring the Town to file the affidavit.

On September 24, 2008, the Town filed an affidavit establishing that the Notice of Filing had been published on August 13, 2008, in the Clay County Press.

FINDINGS OF FACT

1. On April 18, 2008, the Town of Clay, filed with the Commission an application for a certificate of convenience and necessity to construct water treatment plant improvements, consisting of modifying the existing treatment works to produce 800 gpm of potable water, including site work, plant piping, new flocculator tankage, membrane filtration units, new clearwell tankage and miscellaneous appurtenances; and to make water distribution improvements consisting of the installation of approximately 3,300 linear feet of 10-inch water-line and miscellaneous appurtenances. (See application).
2. The Notice of Filing was published on August 13, 2008, in the Clay County Press, and no protest was filed. (See filing of September 24, 2008; case file generally).
3. The Town has had to run the treatment plant for excessively long periods each day in order to produce the amount of water needed by its customers and the plant is outdated. The expansion of the plant's capacity and the other improvements should resolve this problem. (See Final Joint Staff Memorandum filed July 15, 2008).
4. With respect to the distribution system, the mains are in disrepair, resulting in an excessive unaccounted-for water loss of 34%, for the reporting period of 2006-2007. (See Final Joint Staff Memorandum).
5. On November 13, 2007, the State of West Virginia Office of Environmental Health Services issued a permit for the project, Permit No. 17,772. The Town has secured most of the needed permits. (See application; Final Joint Staff Memorandum).
6. The project is estimated to cost \$3,000,000, including a total construction cost of \$2,475,000. (See application; Final Joint Staff Memorandum).
7. The project will be funded by \$677,000 and \$1,493,000 Rural Utilities Service grants and an \$830,000 RUS loan, payable at 4.5% over 40 years. (See application; Final Joint Staff Memorandum).

8. On May 20, 2008, the Town adopted an ordinance increasing its rates. With the rate increase, the Town's pro forma surplus and debt coverage will be approximately \$2,391 and 182.21%, respectively. (See Final Joint Staff Memorandum).

9. Commission Staff recommended that the application be granted and the certificate and its funding be approved. (See Final Joint Staff Memorandum).

CONCLUSIONS OF LAW

1. It is appropriate to grant the application, pursuant to W.Va. Code §24-2-11, and to approve the project, contingent upon receipt of any outstanding permits, because the public convenience and necessity require it and no protest to it was filed.

2. It is appropriate to approve the project's financing.

ORDER

IT IS, THEREFORE, ORDERED that the application filed on April 18, 2008, by the Town of Clay for a certificate of convenience and necessity to upgrade and to expand the Town's water treatment plant and to make improvements on its water distribution system is granted and the project is approved, contingent upon the Town's receipt and filing of any outstanding permits.

IT IS FURTHER ORDERED that the funding for the project, consisting of \$677,000 and \$1,493,000 Rural Utilities Service grants and an \$830,000 RUS loan, payable at 4.5% over 40 years, is approved.

IT IS FURTHER ORDERED that, if there is any change in the cost of the project, estimated at \$3,000,000, which affects rates, or in the scope, design or funding of the project, the Town of Clay file a petition with the Commission for approval of such revisions.

IT IS FURTHER ORDERED that the Town of Clay comply with all rules and regulations of the Division of Highways regarding the use of its rights-of-way.

IT IS FURTHER ORDERED that, if there are any changes in the project costs that do not affect rates, the Town of Clay file herein an affidavit duly executed by its accountant verifying that the Town's rates and charges are not affected.

IT IS FURTHER ORDERED that the Town of Clay submit a copy of the bids to the Commission, making the bids a part of the Commission's file in this case, as soon as the bids are tabulated.

IT IS FURTHER ORDERED that the Town of Clay notify the Commission when its engineer has performed the substantial completion inspection and file the certificate of substantial completion as soon as it is received.

IT IS FURTHER ORDERED that this matter be removed from the Commission's docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this order upon the Commission by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

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

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

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

A handwritten signature in black ink, appearing to read 'SA', with a long horizontal line extending to the right.

Sunya Anderson
Administrative Law Judge

SA:s:bam
080586ab.wpd

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

Case No.: 08-0586-W-CN

TOWN OF CLAY

Application for a Certificate of Convenience and Necessity to construct water treatment plant improvements at Clay, Clay County,

RECEIVED
09 OCT - 8 PM 12: 04
W VA PUBLIC SERVICE
COMMISSION
ADMINISTRATIVE OFFICE

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, TO-WIT:

AFFIDAVIT

I, Todd Dingess, 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. 08-0586-W-CN, which became final on October 28, 2008 approving \$677,000 and \$1,493,000 Rural Utilities Service grants and an \$830,000 Rural Utilities Service loan, payable at 4.25% annual interest over 40 years. Based upon all the information that has been provided to me, to date, I am of the opinion that the rates and charges for the Town (i) are not affected by the revised funding consisting of \$677,000 and \$1,493,000 Rural Utilities Service grants, an \$830,000 Rural Utilities Service loan, payable at 4.25% annual interest over 40 years, a \$550,000 grant from the West Virginia Infrastructure and Jobs Development Council, a \$550,000 West Virginia Infrastructure and Jobs Development loan payable at 0% annual interest over 40 years, and a \$1,000,000 grant from the U.S. Army Corps of Engineers' Section 571 Environmental Infrastructure Program; 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 Bonds.

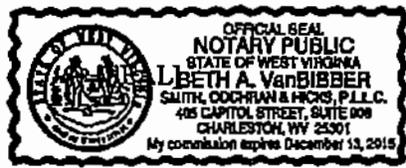
This Affidavit is executed on the 7th day of October, 2009.

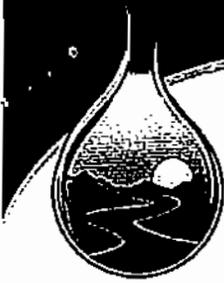
Todd Dingess CPA
Todd Dingess, CPA and Member
Smith Cochran & Hicks

Taken, subscribed and sworn to before me this 7th day of October, 2009.

My commission expires 12/13/15.

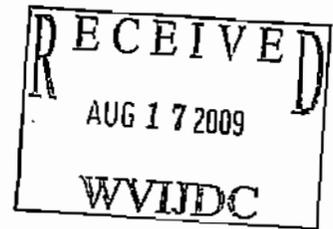
Beth A. VanBibber
Notary Public





WEST VIRGINIA

Infrastructure & Jobs Development Council



Gov. Joe Manchin, III
Chairman

August 10, 2009

Kenneth Lowe, Jr.
Public Member

The Honorable Wallace Brown
Mayor, Town of Clay
P.O. Box 55
Clay, WV 25043

Dwight Calhoun
Public Member

David "Bones" McComas
Public Member

Re: Town of Clay
2009W-1115 Binding Commitment
(Action Required by August 31, 2009)

Ron Justice
Public Member

Angela K. Chestnut, P.E.
Executive Director

Dear Mayor Brown:

Barbara J. Pauley
Administrative Secretary

The West Virginia Infrastructure and Jobs Development Council (Infrastructure Council) provides this binding offer of an Infrastructure Fund loan of approximately \$550,000 (Loan) and an Infrastructure Fund grant of approximately \$550,000 (Grant) to the Town of Clay (Town) for the above referenced water project (Project). The Loan and Grant will be subject to the terms set forth on Schedule A attached hereto and incorporated herein by reference. The final Loan and Grant amounts will be established after the Town has received acceptable bids for the Project. The Infrastructure Council will set aside a portion of the Infrastructure Fund to make the Loan and Grant upon the Town's compliance with the program requirements.

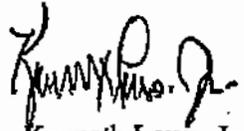
The Infrastructure Council will enter into the Loan and Grant agreements with the Town following receipt of the completed Schedule B, a final, nonappealable order from the Public Service Commission authorizing construction of the Project, evidence of binding commitments for other funding; evidence of all permits; evidence of acceptable bids; evidence of compliance with the WV Jobs Act; and any other documents requested by the Infrastructure Council.

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

The Honorable Wallace Brown
August 10, 2009
Page 2 of 3

If the Town has any questions regarding this commitment, please contact the Angela Chestnut at 304-558-4607.

Sincerely,


Kenneth Lowe, Jr.

Attachment

cc: Bob Decrease, P.E., BPH (*via e-mail*)
J. B. Hildreth, P.E., Boyles and Hildreth
Region III – Regional Intergovernmental Council

NOTE: This letter is sent in triplicate. Please acknowledge receipt and immediately return two copies to the Infrastructure Council.

Town of Clay

By: Wallace J. Brown

Its: Mayor

Date: 8-14-2009

WEST VIRGINIA INFRASTRUCTURE & JOBS DEVELOPMENT COUNCIL

Town of Clay
Water Project 2009W-1115
August 10, 2009

SCHEDULE A

A. Approximate Amount: \$ 550,000 Loan
 550,000 Grant
 \$1,100,000 Total

B. Loan: \$ 550,000

1. Maturity Date: 40 years from date of closing.
2. Interest Rate: 0%
3. Loan Advancement Date(s): Monthly, upon receipt of proper requisition.
4. Debt Service Commencement: The first quarter following completion of construction, which date must be identified prior to closing.

NOTICE: The terms set forth above are subject to change following the receipt of construction bids.

C. Grant: \$550,000

5. Grant Advancement Date(s): **Monthly, upon receipt of proper requisition and after advancement of all Loan funding.**
6. Special Conditions: None

NOTICE: The terms set forth above are subject to change following the receipt of construction bids.

D. Other Funding: RUS grant \$2,170,000
 RUS loan 830,000
 COE grant 1,000,000

E. Total Project Cost: \$5,100,000

F. Proposed User Rates: Approximately \$23.12 / 4000 gallons

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
TOWN OF CLAY
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BOND
SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE)

No. AR-1

\$830,000

Date: October 16, 2009

KNOW ALL MEN BY THESE PRESENTS: That TOWN OF CLAY, a municipality, public corporation and political subdivision of the State of West Virginia in Clay 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 order of the United States of America (the "Government"), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the sum of Eight Hundred Thirty Thousand and 00/100 Dollars (\$830,000.00), or such lesser amount as set forth on the Record of Advances attached as Exhibit A hereto and incorporated herein by reference, plus interest on the unpaid principal balance at the rate of four and 25/100 percent (4.25%) per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing on the 30th day following delivery of the Bond and continuing on the corresponding day of each month for the first twenty-four (24) months after the date hereof, and \$3,677.00 covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of forty (40) years from the date of this Bond, and except that prepayments may be made as provided hereinbelow. The consideration hereof shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Issuer as requested by Issuer and approved by the Government, and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto and made a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to the principal. Payments shall be made at the office of the Municipal Bond Commission, Charleston, West Virginia, and shall be mailed to the registered owner hereof at the address as it appears on the books of the Issuer in its Town as Registrar. Provided, however, for so long as the Government remains the owner of this Bond, the Issuer shall remit payments directly to the Government or any agency or department thereof.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Issuer. Refunds and extra payments, as defined in the regulations of the Rural Utilities Service, according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Issuer to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Issuer shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Issuer may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Issuer, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Issuer, and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Issuer to the Government without demand. Issuer agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

The Issuer hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond is issued (i) to pay a portion of the costs of acquisition, construction and equipping of certain additions, betterments and improvements to the combined waterworks and sewerage system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The combined waterworks and sewerage system of the Issuer, together with the Project, and any further extensions, additions, betterments or improvements thereto is 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 8, Article 20 of the West Virginia Code of 1931, as amended (the "Act"), and an Ordinance duly enacted by the Issuer and effective October 13, 2009 (the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance 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 Bond under the Ordinance.

THIS BOND IS ON PARITY AS TO LIEN, PLEDGE AND SOURCE OF SECURITY FOR PAYMENT, AND IN ALL RESPECTS WITH THE ISSUER'S COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED MARCH 27, 1998, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$532,000, COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED MARCH 27, 1998, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$185,000, AND COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED OCTOBER 16, 2009, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$550,000 COLLECTIVELY, THE "PRIOR BONDS").

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, from moneys in the Reserve Account created under the Ordinance for the Bonds (the "Series 2009 Bond Reserve Account") and unexpended proceeds of the Bond, on parity with the Prior Bonds. Such Gross Revenues shall be sufficient to pay 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 Gross Revenues, the moneys in the Series 2009 Bond Reserve Account and unexpended proceeds of the Bond. Pursuant to the Ordinance, 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 one hundred fifteen percent (115%) of the maximum amount payable in any year for principal of and interest on the Bond and the Prior Bonds, and all other obligations secured by a lien on or payable from such net revenues prior to or on parity with the Bond, provided however, that so long as there exists in the Series 2009 Bond Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bond in the then current or any succeeding year and in the reserve account established for any other obligations outstanding prior to or on parity with the Bond, an amount at least equal to the requirement therefor, such percentage may be reduced to one hundred ten percent (110%).

The Issuer has entered into certain further covenants with the registered owner of the Bond for the terms of which reference is made to the Ordinance. Remedies provided the registered owner of the Bond are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of the Issuer, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the herein defined Bond Resolution, and upon surrender and

cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions 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, but may only be transferred by transfer of registration hereof with the Bond Registrar.

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

If at any time it shall appear to the Government that Issuer may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Issuer will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government,

This Bond is given as evidence of a loan to Issuer made or insured by the Government pursuant to the Consolidated Farmers Home Rural Development Act, as amended. This Bond shall be subject to the present regulations of the Rural Development Authority and to its future regulations not inconsistent with the express provisions hereof.

The initial address of Government for purposes of bond registration is 1550 Earl Core Road, Suite 101, Morgantown, WV 26505.

This Bond will be in default should any proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as set forth in Exhibit M of subpart G of Part 1940 of Title 7 of the Code of Federal Regulations, as amended.

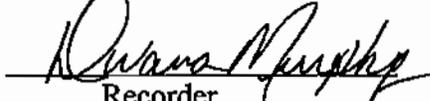
IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law and that the amount of this Bond, 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 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.

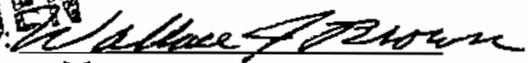
All provisions of the Ordinance, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, TOWN OF CLAY has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder and has caused this Bond to be dated October 16, 2009.

[SEAL]

ATTEST:


Recorder

TOWN OF CLAY
SPECIMEN
By: 
Mayor
P.O. Box 55
Clay, WV 25043-0055

ASSIGNMENT

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

Dated: _____, 200_.

SPECIMEN

(Assignor)

Witnessed in the presence of:

RECORD OF ADVANCES

| <u>AMOUNT</u> <u>DATE</u> | <u>DATE</u> | <u>AMOUNT</u> |
|------------------------------|-------------|---------------|
| (1) \$149,049.75 | 10/16/09 | (6) \$ |
| (2) \$ | | (7) \$ |
| (3) \$ | | (8) \$ |
| (4) \$ | | (9) \$ |
| (5) \$ | | (10) \$ |

SPECIMEN

TOTAL \$

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
TOWN OF CLAY
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BOND
SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)

No. BR-1

\$550,000

Date: October 16, 2009

KNOW ALL MEN BY THESE PRESENTS: That TOWN OF CLAY, a municipality, public corporation and political subdivision of the State of West Virginia in Clay 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 order of the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns, or at such other place as the Authority may hereafter designate in writing, the sum of Five Hundred Fifty Thousand and 00/100 Dollars (\$550,000.00), or such lesser amount as set forth on 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 June 1, 2011, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference.

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 Infrastructure and Jobs Development Council (the "Council"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority, on behalf of the Council, dated October 16, 2009.

This Bond is issued (i) to pay a portion of the costs of acquisition, construction and equipping of certain additions, betterments and improvements to the combined waterworks and sewerage system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The combined waterworks and sewerage system of the Issuer, together with the Project, and any further extensions, additions, betterments or improvements thereto is 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 8, Article 20 of the West Virginia Code of 1931, as amended (the "Act"), and an Ordinance duly enacted by the Issuer and effective October 13, 2009 (the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance 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 Bond under the Ordinance.

THIS BOND IS ON PARITY AS TO LIEN, PLEDGE AND SOURCE OF SECURITY FOR PAYMENT, AND IN ALL RESPECTS WITH THE ISSUER'S COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED MARCH 27, 1998, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$532,000, COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED MARCH 27, 1998, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$185,000, AND COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED OCTOBER 16, 2009, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$830,000 (COLLECTIVELY, THE "PRIOR BONDS").

SPECIMEN

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Ordinance) to be derived from the operation of the System, from moneys in the Reserve Account created under the Ordinance for the Bonds (the "Series 2009 Bond Reserve Account") and unexpended proceeds of the Bond, on parity with the Prior Bonds. Such Gross Revenues shall be sufficient to pay 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 Gross Revenues, the moneys in the Series 2009 Bond Reserve Account and unexpended proceeds of the Bond. Pursuant to the Ordinance, 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 one hundred fifteen percent (115%) of the maximum amount payable in any year for principal of and interest on the Bond and the Prior Bonds, and all other obligations secured by a lien on or payable from such net revenues prior to or on parity with the Bond, provided however, that so long as there exists in the Series 2009 Bond Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bond in the then current or any succeeding year and in the reserve account established for any other obligations outstanding prior to or on parity with the Bond, an amount at least equal to the requirement therefor, such percentage may be reduced to one hundred ten percent (110%).

SPECIMEN

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 the costs of the Project and the costs of issuance hereof as described in the Bond Legislation, 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.

SPECIMEN

In accordance with the requirements of the United States Department of Agriculture for the issuance of parity obligations, this Bond will be in default should any proceeds of this Bond be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Gross 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, TOWN OF CLAY has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder and has caused this Bond to be dated October 16, 2009.

SPECIMEN

TOWN OF CLAY

[SEAL]

By: Wallace J. Brown

Mayor
P.O. Box 55
Clay, WV 25043-0055

ATTEST:

Dulana Murphy
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is the Series 2009 B Bond 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 16, 2009

SPECIMEN

CLAY COUNTY BANK, INC., as Registrar

By: Greg Gentry
Authorized Officer

EXHIBIT B

DEBT SERVICE SCHEDULE

SPECIMEN

BOND DEBT SERVICE
Town of Clay
0% Interest Rate
40 Years from Closing Date

Dated Date 10/16/09
Delivery
Date 10/16/09

| Period Ending | Principal | Interest | Debt Service |
|---------------|-----------|----------|--------------|
| 10/16/09 | | | |
| 06/01/11 | 3,572 | | 3,572 |
| 09/01/11 | 3,572 | | 3,572 |
| 12/01/11 | 3,572 | | 3,572 |
| 03/01/12 | 3,572 | | 3,572 |
| 06/01/12 | 3,572 | | 3,572 |
| 09/01/12 | 3,572 | | 3,572 |
| 12/01/12 | 3,572 | | 3,572 |
| 03/01/13 | 3,572 | | 3,572 |
| 06/01/13 | 3,572 | | 3,572 |
| 09/01/13 | 3,572 | | 3,572 |
| 12/01/13 | 3,572 | | 3,572 |
| 03/01/14 | 3,572 | | 3,572 |
| 06/01/14 | 3,572 | | 3,572 |
| 09/01/14 | 3,572 | | 3,572 |
| 12/01/14 | 3,572 | | 3,572 |
| 03/01/15 | 3,572 | | 3,572 |
| 06/01/15 | 3,572 | | 3,572 |
| 09/01/15 | 3,572 | | 3,572 |
| 12/01/15 | 3,572 | | 3,572 |
| 03/01/16 | 3,572 | | 3,572 |
| 06/01/16 | 3,572 | | 3,572 |
| 09/01/16 | 3,572 | | 3,572 |
| 12/01/16 | 3,572 | | 3,572 |
| 03/01/17 | 3,572 | | 3,572 |
| 06/01/17 | 3,572 | | 3,572 |
| 09/01/17 | 3,572 | | 3,572 |
| 12/01/17 | 3,572 | | 3,572 |
| 03/01/18 | 3,572 | | 3,572 |
| 06/01/18 | 3,572 | | 3,572 |
| 09/01/18 | 3,572 | | 3,572 |
| 12/01/18 | 3,572 | | 3,572 |
| 03/01/19 | 3,572 | | 3,572 |
| 06/01/19 | 3,572 | | 3,572 |
| 09/01/19 | 3,572 | | 3,572 |
| 12/01/19 | 3,572 | | 3,572 |
| 03/01/20 | 3,572 | | 3,572 |
| 06/01/20 | 3,572 | | 3,572 |
| 09/01/20 | 3,572 | | 3,572 |
| 12/01/20 | 3,572 | | 3,572 |
| 03/01/21 | 3,572 | | 3,572 |
| 06/01/21 | 3,572 | | 3,572 |
| 09/01/21 | 3,572 | | 3,572 |
| 12/01/21 | 3,572 | | 3,572 |
| 03/01/22 | 3,572 | | 3,572 |

SPECIMEN

SPECIMEN

BOND DEBT SERVICE
Town of Clay
0% Interest Rate
40 Years from Closing Date

| Period Ending | Principal | Interest | Debt Service |
|------------------|-----------|----------|--------------|
| 06/01/22 | 3,572 | | 3,572 |
| 09/01/22 | 3,572 | | 3,572 |
| 12/01/22 | 3,572 | | 3,572 |
| 03/01/23 | 3,572 | | 3,572 |
| 06/01/23 | 3,572 | | 3,572 |
| 09/01/23 | 3,572 | | 3,572 |
| 12/01/23 | 3,572 | | 3,572 |
| 03/01/24 | 3,572 | | 3,572 |
| 06/01/24 | 3,572 | | 3,572 |
| 09/01/24 | 3,572 | | 3,572 |
| 12/01/24 | 3,572 | | 3,572 |
| 03/01/25 | 3,572 | | 3,572 |
| 06/01/25 | 3,572 | | 3,572 |
| 09/01/25 | 3,572 | | 3,572 |
| 12/01/25 | 3,572 | | 3,572 |
| 03/01/26 | 3,572 | | 3,572 |
| 06/01/26 | 3,572 | | 3,572 |
| 09/01/26 | 3,572 | | 3,572 |
| 12/01/26 | 3,572 | | 3,572 |
| 03/01/27 | 3,572 | | 3,572 |
| 06/01/27 | 3,572 | | 3,572 |
| 09/01/27 | 3,571 | | 3,571 |
| 12/01/27 | 3,571 | | 3,571 |
| 03/01/28 | 3,571 | | 3,571 |
| 06/01/28 | 3,571 | | 3,571 |
| 09/01/28 | 3,571 | | 3,571 |
| 12/01/28 | 3,571 | | 3,571 |
| 03/01/29 | 3,571 | | 3,571 |
| 06/01/29 | 3,571 | | 3,571 |
| 09/01/29 | 3,571 | | 3,571 |
| 12/01/29 | 3,571 | | 3,571 |
| 03/01/30 | 3,571 | | 3,571 |
| 06/01/30 | 3,571 | | 3,571 |
| 09/01/30 | 3,571 | | 3,571 |
| 12/01/30 | 3,571 | | 3,571 |
| 03/01/31 | 3,571 | | 3,571 |
| 06/01/31 | 3,571 | | 3,571 |
| 09/01/31 | 3,571 | | 3,571 |
| 12/01/31 | 3,571 | | 3,571 |
| 03/01/32 | 3,571 | | 3,571 |
| 06/01/32 | 3,571 | | 3,571 |
| 09/01/32 | 3,571 | | 3,571 |
| 12/01/32 | 3,571 | | 3,571 |
| 03/01/33 | 3,571 | | 3,571 |
| 06/01/33 | 3,571 | | 3,571 |
| 09/01/33 | 3,571 | | 3,571 |
| 12/01/33 | 3,571 | | 3,571 |
| 03/01/34 | 3,571 | | 3,571 |
| 06/01/34 | 3,571 | | 3,571 |

SPECIMEN

SPECIMEN

BOND DEBT SERVICE
Town of Clay
0% Interest Rate
40 Years from Closing Date.

| Period Ending | Principal | Interest Debt Service |
|------------------|-----------|-----------------------|
| 09/01/34 | 3,571 | 3,571 |
| 12/01/34 | 3,571 | 3,571 |
| 03/01/35 | 3,571 | 3,571 |
| 06/01/35 | 3,571 | 3,571 |
| 09/01/35 | 3,571 | 3,571 |
| 12/01/35 | 3,571 | 3,571 |
| 03/01/36 | 3,571 | 3,571 |
| 06/01/36 | 3,571 | 3,571 |
| 09/01/36 | 3,571 | 3,571 |
| 12/01/36 | 3,571 | 3,571 |
| 03/01/37 | 3,571 | 3,571 |
| 06/01/37 | 3,571 | 3,571 |
| 09/01/37 | 3,571 | 3,571 |
| 12/01/37 | 3,571 | 3,571 |
| 03/01/38 | 3,571 | 3,571 |
| 06/01/38 | 3,571 | 3,571 |
| 09/01/38 | 3,571 | 3,571 |
| 12/01/38 | 3,571 | 3,571 |
| 03/01/39 | 3,571 | 3,571 |
| 06/01/39 | 3,571 | 3,571 |
| 09/01/39 | 3,571 | 3,571 |
| 12/01/39 | 3,571 | 3,571 |
| 03/01/40 | 3,571 | 3,571 |
| 06/01/40 | 3,571 | 3,571 |
| 09/01/40 | 3,571 | 3,571 |
| 12/01/40 | 3,571 | 3,571 |
| 03/01/41 | 3,571 | 3,571 |
| 06/01/41 | 3,571 | 3,571 |
| 09/01/41 | 3,571 | 3,571 |
| 12/01/41 | 3,571 | 3,571 |
| 03/01/42 | 3,571 | 3,571 |
| 06/01/42 | 3,571 | 3,571 |
| 09/01/42 | 3,571 | 3,571 |
| 12/01/42 | 3,571 | 3,571 |
| 03/01/43 | 3,571 | 3,571 |
| 06/01/43 | 3,571 | 3,571 |
| 09/01/43 | 3,571 | 3,571 |
| 12/01/43 | 3,571 | 3,571 |
| 03/01/44 | 3,571 | 3,571 |
| 06/01/44 | 3,571 | 3,571 |
| 09/01/44 | 3,571 | 3,571 |
| 12/01/44 | 3,571 | 3,571 |
| 03/01/45 | 3,571 | 3,571 |
| 06/01/45 | 3,571 | 3,571 |
| 09/01/45 | 3,571 | 3,571 |
| 12/01/45 | 3,571 | 3,571 |
| 03/01/46 | 3,571 | 3,571 |
| 06/01/46 | 3,571 | 3,571 |
| 09/01/46 | 3,571 | 3,571 |

SPECIMEN

SPECIMEN

BOND DEBT SERVICE
Town of Clay
0% Interest Rate
40 Years from Closing Date

| Period | | |
|---------------|------------------|------------------------------|
| Ending | Principal | Interest Debt Service |
| 12/01/46 | 3,571 | 3,571 |
| 03/01/47 | 3,571 | 3,571 |
| 06/01/47 | 3,571 | 3,571 |
| 09/01/47 | 3,571 | 3,571 |
| 12/01/47 | 3,571 | 3,571 |
| 03/01/48 | 3,571 | 3,571 |
| 06/01/48 | 3,571 | 3,571 |
| 09/01/48 | 3,571 | 3,571 |
| 12/01/48 | 3,571 | 3,571 |
| 03/01/49 | 3,571 | 3,571 |
| 06/01/49 | 3,571 | 3,571 |
| 09/01/49 | 3,572 | 3,572 |
| | 550,000 | 550,000 |

SPECIMEN

ASSIGNMENT

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

Dated: _____, 200

SPECIMEN

(Assignor)

Witnessed in the presence of:

RECORD OF ADVANCES
SPECIMEN

| <u>AMOUNT</u> <u>DATE</u> | <u>DATE</u> | <u>AMOUNT</u> |
|------------------------------|-------------|---------------|
| (1) \$12,460.00 | 10/16/09 | (6) \$ |
| (2) \$ | | (7) \$ |
| (3) \$ | | (8) \$ |
| (4) \$ | | (9) \$ |
| (5) \$ | | (10) \$ |
| | | TOTAL \$ |

BOND REGISTER

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
TOWN OF CLAY
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BOND
SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)

| <u>Bond Number</u> | <u>Principal Amount</u> | <u>Date of Bond</u> |
|--------------------|-------------------------|---------------------|
| No. BR-1 | \$550,000 | October 16, 2009 |

SPECIMEN

NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

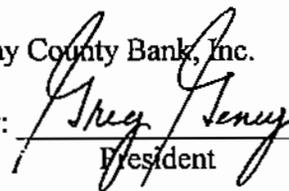
Name of Registered Owner:

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

Signature of Registrar:

Clay County Bank, Inc.

By: _____


President

TOWN OF CLAY

**COMBINED WATERWORKS AND SEWERAGE
SYSTEM REVENUE BONDS
SERIES 1998 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)
AND SERIES 1998 B
(WEST VIRGINIA INFRASTRUCTURE FUND)**

BOND ORDINANCE

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TOWN OF CLAY

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE SEWERAGE PORTION OF THE EXISTING PUBLIC COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE TOWN OF CLAY AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE TOWN OF NOT MORE THAN \$532,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A (UNITED STATES DEPARTMENT OF AGRICULTURE), AND NOT MORE THAN \$185,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 B (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE TOWN OF CLAY:

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 8, Article 20 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

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

A. The Town of Clay (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Clay County of said State.

B. The Issuer presently owns and operates a public combined waterworks and 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 sewerage portion of the existing public combined waterworks and sewerage system of the Issuer, consisting of a new wastewater treatment plant, collection lines, force mains, lift stations and grinder stations and upgrading portions of its existing collection system and lift stations, together with all appurtenant facilities (collectively, the "Project") (the existing public combined waterworks and 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 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 Bonds (as hereinafter defined) and payments into all funds and accounts and other payments provided for herein.

D. It is deemed necessary for the Issuer to issue its revenue bonds in the total aggregate principal amount of not more than \$717,000 in two series, being the Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 A (United States Department of Agriculture), in the aggregate principal amount of not more than \$532,000 (the "Series 1998 A Bonds"), and the Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 B (West Virginia Infrastructure Fund), in the aggregate principal amount of not more than \$185,000 (the "Series 1998 B Bonds"), to permanently finance a portion of the costs of acquisition and construction of the Project. The remaining costs of the Project shall be funded from the sources set forth in Section 2.01 hereof. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest upon the Bonds prior to and during acquisition and construction of the Project and for a period not exceeding 6 months after completion of acquisition and construction of the Project; amounts which may be deposited in any Reserve Account (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, fees and expenses of the Authority (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 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 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 1998 A Bonds be sold to the Purchaser (as hereinafter defined) pursuant to the terms and provisions of the Letter of Conditions (as hereinafter defined) and its Series 1998 B Bonds be sold to the Authority (as hereinafter defined) pursuant to the terms and provisions of a loan agreement by and between the Issuer and the Authority, on behalf of the Council (as hereinafter defined), in form satisfactory to the Issuer and the Authority, to be approved hereby if not previously approved by resolution of the Issuer.

G. There are no outstanding bonds, obligations or other indebtedness of the Issuer which will rank prior to or on a parity with or junior to the Bonds as to liens, pledge, source of and security for payment. The Series 1998 A Bonds and the Series 1998 B Bonds shall be issued on a parity with each other.

H. The Issuer has complied with all requirements of West Virginia law, the Letter of Conditions and the Loan Agreement relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Bonds, or will have so complied prior to issuance of any thereof, including, if necessary, the obtaining of a certificate of 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 Bonds or such final order will not be subject to appeal.

I. Pursuant to the Act, the Council (as hereinafter defined) has approved the Project and has authorized the Authority (as hereinafter defined) to make a loan to the Issuer from the West Virginia Infrastructure Fund.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Bonds by the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Bondholders of any and all of such Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

"Act" means, collectively, Chapter 8, Article 20 and Chapter 31, Article 15A 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 1998 B 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 Council 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.

"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 1998 A Bonds, the Series 1998 B 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.

"Closing Date" means the date upon which there is an exchange of the Bonds for the proceeds or at least a de minimis portion thereof representing the purchase price of the Bonds.

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

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

"Consulting Engineers" means Chapman Technical Group, St. Albans, 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 cost of acquisition and construction of the Project.

"Council" means the West Virginia Infrastructure and Jobs Development Council or any successor thereto.

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

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

"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 or any other governing body of the Issuer that succeeds to the functions of the council as presently 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.

"Grant" means all moneys received by the Issuer on account of any Grant.

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

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

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

"Investment Property" means 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 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 Town of Clay, a municipal corporation and political subdivision of the State of West Virginia, in Clay County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Letter of Conditions" means, collectively, the Letter of Conditions of the Purchaser dated February 17, 1995, and all amendments thereto.

"Loan Agreement" means the Loan Agreement heretofore entered, or to be entered, into between the Issuer and the Authority, on behalf of the Council, providing for the purchase of the Series 1998 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.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the any Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the 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 Bonds and is not acquired in order to carry out the governmental purpose of the Bonds.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the costs, fees and expenses of the Authority, fiscal agents, the Depository Bank, the Registrar and the Paying Agent (all as herein defined), other than those capitalized as part of the costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included

under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Outstanding," when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being authenticated and delivered, except (i) any Bond cancelled by the Bond Registrar at or prior to said date; (ii) any Bond 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; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any Bonds registered to the Issuer.

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

"Paying Agent" means the Commission or such other entity or authority as may be designated as a Paying Agent for the Series 1998 B Bonds by the Issuer in the Supplemental Resolution.

"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 Project as described in Section 1.02B hereof.

"Purchaser" or "Government" means the United States Department of Agriculture and any successor thereof acting for and on behalf of the United States of America, which is expected to be the original purchaser and Registered Owner of the Series 1998 A Bonds.

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

- (a) Government Obligations;

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

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

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

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

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

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

(h) The West Virginia "consolidated fund" managed by the West Virginia Board of Investment Management 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 federal income taxation, and which are rated at least "A" by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

"Recorder" means the Recorder of the Issuer.

"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 created by Section 5.01 hereof.

"Reserve Accounts" means, collectively, the respective reserve accounts established for the Bonds.

"Revenue Fund" means the Revenue Fund created by Section 5.01 hereof.

"Series 1998 A Bonds" means the not more than \$532,000 in aggregate principal amount of Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 A (United States Department of Agriculture), of the Issuer, authorized by this Ordinance.

"Series 1998 A Bonds Construction Trust Fund" means the Series 1998 A Bonds Construction Trust Fund created by Section 5.01 hereof.

"Series 1998 A Bonds Reserve Account" means the Series 1998 A Bonds Reserve Account established in the Series 1998 A Bonds Sinking Fund pursuant to Section 5.02 hereof.

"Series 1998 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 1998 A Bonds in the then current or any succeeding year.

"Series 1998 B Bonds" means the not more than \$185,000 in aggregate principal amount of Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 B (West Virginia Infrastructure Fund), of the Issuer, authorized by this Ordinance.

"Series 1998 B Bonds Construction Trust Fund" means the Series 1998 B Bonds Construction Trust Fund created by Section 5.01 hereof.

"Series 1998 B Bonds Reserve Account" means the Series 1998 B Bonds Reserve Account established in the Series 1998 B Bonds Sinking Fund pursuant to Section 5.02 hereof.

"Series 1998 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 1998 B Bonds in the then current or any succeeding year.

"Series 1998 B Bonds Sinking Fund" means the Series 1998 B Bonds Sinking Fund established by Section 5.02 hereof.

"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 Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Bonds, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds, including any Reserve Accounts and the Renewal and Replacement Fund.

"System" means collectively, the complete existing combined waterworks and sewerage system of the Issuer, as presently existing in its entirety or any integral part thereof, and shall include the Project and any additions, betterments and improvements thereto hereafter acquired or constructed for the System from any sources whatsoever, both within and without the Issuer.

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

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

Additional terms and phrases are defined in this 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 \$3,250,800, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Bonds 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 Purchaser and the Council.

The cost of the Project is estimated not to exceed \$3,250,800, of which approximately \$532,000 will be obtained from proceeds of the Series 1998 A Bonds, approximately \$185,000 will be obtained from proceeds of the Series 1998 B Bonds, approximately \$889,800 will be obtained from proceeds of a grant from the Council, approximately \$894,000 will be obtained from proceeds of a grant from the Purchaser, and approximately \$750,000 will be obtained from proceeds of a grant from the Appalachian Regional Commission.

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 Bonds, funding a reserve account for the Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the negotiable Series 1998 A Bonds and Series 1998 B Bonds of the Issuer. The Series 1998 A Bonds shall be issued as a single bond, designated "Combined Waterworks and Sewerage System Revenue Bond, Series 1998 A (United States Department of Agriculture)", in the principal amount of not more than \$532,000, and the Series 1998 B Bonds shall be issued as a single bond, designated "Combined Waterworks and Sewerage System Revenue Bond, Series 1998 B (West Virginia Infrastructure Fund)", in the principal amount of not more than \$185,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Bonds remaining after funding of the Reserve Accounts (if funded from Bond proceeds) and capitalizing interest on the Bonds, if any, shall be deposited in or credited to the respective Bond Construction Trust Funds established by Section 5.01 hereof.

Section 3.02. Terms of Bonds. A. The Series 1998 A Bonds shall be issued in such principal amounts; shall bear interest at such rate or rates, not exceeding the then legal maximum rate, payable monthly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in the Supplemental Resolution or as specifically provided in the Series 1998 A Bond.

B. The Series 1998 B Bonds shall be issued in such principal amounts; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum rate, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in the Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 1998 B Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 1998 B Bonds shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 1998 A Bonds shall initially be issued in the form of a single bond, fully registered to the Purchaser, with a record of advances attached representing the aggregate principal amount of the

Series 1998 A Bonds, and the Series 1998 B Bonds shall initially be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 1998 B Bonds, all as provided in the Supplemental Resolution. The 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 neither the Purchaser nor the Authority shall 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 the date so specified therein.

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

Section 3.04. Bond Registrar; Authentication and Registration. A. The Issuer shall be the Bond Registrar with respect to the Series 1998 A Bonds and will keep or cause to be kept at its office by its agent, sufficient books for the registration and transfer of the Series 1998 A Bonds, and, upon presentation for such purpose, the Bond Registrar shall, under such reasonable regulations as it may prescribe, register the Series 1998 A Bonds initially issued pursuant hereto and register the transfer, or cause to be registered by its agent, on such books, the transfer of the Series 1998 A Bonds as hereinbefore provided.

The Bond Registrar shall accept the Series 1998 A Bonds for registration or transfer only if ownership thereof is to be registered in the name of the Purchaser, an individual (including joint ownership), a corporation, a partnership or a trust, and only upon receipt of the social security number of each individual, the federal employer identification number of each corporation or partnership or the social security numbers of the settlor and beneficiaries of each trust and the federal employer identification number and date of each trust and the name of the trustee of each trust, and/or such other identifying number and information as may be required by law. The Series 1998 A Bonds shall initially be fully registered as to both principal and interest in the name of the United States of America. So

long as the Series 1998 A Bonds shall be registered in the name of the United States of America, the address of the United States of America for registration purposes shall be National Finance Office, St. Louis, Missouri 63103, or such other address as shall be stated in writing to the Issuer by the United States of America.

B. The Bond Registrar with respect to the Series 1998 B Bonds shall be the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns. No Series 1998 B Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Series 1998 B Bonds shall be conclusive evidence that such Series 1998 B Bonds has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 1998 B Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Series 1998 B Bonds issued hereunder. The provisions of this Section 3.04 relating to authentication shall not apply to the Series 1998 A Bonds, notwithstanding anything herein to the contrary.

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

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

In all cases in which the privilege of exchanging Bonds or transferring the registered Bonds are exercised, all Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the

cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Bonds or, in the case of any proposed redemption of Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any 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 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 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Bonds or the interest, if any, thereon.

Section 3.08. Bonds Secured by Pledge of Gross Revenues. The payment of the debt service of all Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Gross Revenues derived from the System, on a parity with each other. Such Gross 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 provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as they become due.

Section 3.09. Delivery of Bonds. A. With respect to the Series 1998 A Bonds, the Mayor is hereby authorized and directed to cause the Series 1998 A Bonds, hereby awarded to the Purchaser pursuant to prior agreement, to be delivered to the Purchaser as soon as the Purchaser will accept such delivery.

B. The Issuer shall execute and deliver the Series 1998 B Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 1998 B Bonds to the original purchasers upon receipt of the documents set forth below:

(1) If other than the Authority, a list of the names in which the Series 1998 B Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;

(2) A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 1998 B Bonds to the original purchasers;

(3) An executed and certified copy of the Bond Legislation;

(4) An executed copy of the Loan Agreement; and

(5) The unqualified approving opinion of bond counsel on the Series 1998 B Bonds.

Section 3.10. Form of Bonds. The text of the Series 1998 A Bonds and the Series 1998 B 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 1998 A BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
TOWN OF CLAY
COMBINED WATERWORKS AND SEWERAGE
SYSTEM REVENUE BOND, SERIES 1998 A
(UNITED STATES DEPARTMENT OF AGRICULTURE)

No. AR-1

Date: _____

FOR VALUE RECEIVED, the TOWN OF CLAY (the "Borrower") promises to pay to the order of the United States of America (the "Government"); or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of _____ DOLLARS (\$ _____), plus interest on the unpaid principal balance at the rate of ____% per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing 30 days following delivery of the Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof, and \$ _____, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto as a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Government according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of additions, betterments and improvements to the combined waterworks and sewerage system (the "System") of Borrower, is payable solely from the gross revenues to be derived from the operation of the System in the manner provided in the hereinafter defined Ordinance. This Bond does not in any manner constitute an indebtedness of Borrower within the meaning of any constitutional or statutory provision or limitation.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of Borrower, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the Ordinance and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions 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, but may only be transferred by transfer of registration hereof with the Bond Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 8, Article 20 of the West Virginia Code, as amended (the "Act"), and an Ordinance of the Borrower duly adopted and enacted on _____, 199__, authorizing issuance of this Bond (the "Ordinance").

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farmers Home Rural Development Act. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 B (WEST VIRGINIA INFRASTRUCTURE FUND), DATED _____, 1998, ISSUED CONCURRENTLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$_____ (THE "SERIES 1998 B BONDS").

IN WITNESS WHEREOF, the Town of Clay has caused this Bond to be executed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Recorder, all as of the date hereinabove written.

TOWN OF CLAY
(Name of Borrower)

[CORPORATE SEAL]

(Signature of Executive Official)

Mayor
(Title of Executive Official)

Post Office Box 55
(P.O. Box No. or Street Address)

Clay, West Virginia 25043
(City, State and Zip Code)

ATTEST:

(Signature of Attesting Official)

Recorder
(Title of Attesting Official)

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 \$ _____

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers to____

_____ 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 Borrower with full power of substitution in the premises.

Dated: _____, _____

In presence of:

(FORM OF SERIES 1998 B BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
TOWN OF CLAY
COMBINED WATERWORKS AND SEWERAGE SYSTEM
SEWER REVENUE BOND, SERIES 1998 B
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. BR-_____

\$ _____

KNOW ALL MEN BY THESE PRESENTS: That the TOWN OF CLAY, a municipal corporation and political subdivision of the State of West Virginia in Clay 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 _____ (\$ _____), 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 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 Infrastructure and Jobs Development Council (the "Council"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority, on behalf of the Council, dated _____, 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 sewerage portion of the existing public combined waterworks and 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 combined waterworks and 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 8, Article 20 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, 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 RESPECTS, WITH THE ISSUER'S COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED _____, 199____, ISSUED CONCURRENTLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$ _____ (THE "SERIES 1998 A BONDS").

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Gross Revenues in favor of the Holders of the Series 1998 A Bonds, and from moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 1998 B Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Gross 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, if any, hereon, except from said special fund provided from the Gross Revenues, the moneys in the Series 1998 B Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest, if any, on the Bonds, and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with or junior to the Bonds, including the Series 1998 A Bonds; provided however, that so long as there exists in the Series 1998 B Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest, if any, 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 or junior to the Bonds, including the Series 1998 A Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

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

In accordance with the requirements of the United States Department of Agriculture for the issuance of parity obligations, the Bonds will be in default should any proceeds of the Bonds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Gross 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, if any, 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 TOWN OF CLAY has caused this Bond to be signed by its Mayor, and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated _____, 199__.

[SEAL]

Mayor

ATTEST:

Recorder

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1998 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: _____, 199__.

ONE VALLEY BANK,
NATIONAL ASSOCIATION,
as Registrar

Authorized Officer

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. A. The Series 1998 A Bonds shall be sold to the Purchaser, pursuant to the terms and conditions of the Letter of Conditions.

B. The Series 1998 B 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 is specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "Exhibit A" and made a part hereof, and the Recorder 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 B" Filing. Upon completion of the acquisition and construction of the Project, the Issuer will file with the Authority a schedule in substantially the form of the "Amended Schedule B" to the Loan Agreement, 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 and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank and the Issuer and from each other:

- (1) Revenue Fund;
- (2) Renewal and Replacement Fund;
- (3) Series 1998 A Bonds Reserve Account;
- (4) Series 1998 A Bonds Construction Trust Fund; and
- (5) Series 1998 B Bonds Construction Trust Fund.

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

- (1) Series 1998 B Bonds Sinking Fund; and
- (2) Within the Series 1998 B Bonds Sinking Fund, the Series 1998 B Bonds Reserve Account.

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

- (1) The Issuer shall first, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) remit to the National Finance Office designated in the Series 1998 A Bonds the amount required to pay interest on the Series 1998 A Bonds, and to amortize the principal of the Series 1998 A Bonds over the life of such bond issue; and (ii) commencing 3 months prior to the first date of

payment of principal of the Series 1998 B Bonds, remit to the Commission for deposit in the Series 1998 B Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 1998 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 1998 B Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously (i) commencing 3 months prior to the first date of payment of principal of the Series 1998 A Bonds, if not fully funded upon issuance of the Series 1998 A Bonds, remit to the Depository Bank for deposit in the Series 1998 A Bonds Reserve Account, an amount equal to 1/120 of the Series 1998 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 1998 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 1998 A Bonds Reserve Requirement; and (ii) commencing 3 months prior to the first date of payment of principal of the Series 1998 B Bonds, if not fully funded upon issuance of the Series 1998 B Bonds, remit to the Commission for deposit in the Series 1998 B Bonds Reserve Account, an amount equal to 1/120 of the Series 1998 B Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 1998 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 1998 B Bonds Reserve Requirement.

(3) The Issuer shall next, each month, pay from the moneys in the Revenue Fund all current Operating Expenses of the System.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund, an amount equal to 2 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 moneys from the Renewal and Replacement Fund.

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

Moneys in the Series 1998 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 1998 A Bonds as the same shall come due, when other moneys are insufficient therefor, and for no other purpose. Whenever the moneys in the Series 1998 A Bonds Reserve Account shall be sufficient to prepay the Series 1998 A Bonds in full, it shall be the mandatory duty of the Issuer, anything to the contrary herein notwithstanding, to prepay, at the earliest practical date and in accordance with applicable provisions hereof, the Series 1998 A Bonds and accrued interest thereon to such prepayment date.

Moneys in the Series 1998 B Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 1998 B Bonds as the same shall become due. Moneys in the Series 1998 B Bonds Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the Series 1998 B Bonds as the same shall come due, when other moneys in the Series 1998 B Bonds Sinking Fund are insufficient therefor, and for no other purpose. Whenever the moneys in the Series 1998 B Bonds Reserve Account shall be sufficient to prepay the Series 1998 B Bonds in full, it shall be the mandatory duty of the Issuer, anything to the contrary herein notwithstanding, to prepay, at the earliest practical date and in accordance with applicable provisions hereof, the Series 1998 B Bonds and accrued interest thereon to such prepayment date.

All investment earnings on moneys in the Series 1998 B Bonds Sinking Fund and the Series 1998 B Bonds Reserve Account (if fully funded) 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 1998 B Bonds 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, if any, due on the Series 1998 B Bonds and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 1998 A Bonds Reserve Account or the Series 1998 B Bonds Reserve Account which result in a reduction in the balance of such accounts to below the Series 1998 A Bonds Reserve Requirement and the Series 1998 B Bonds Reserve Requirement, respectively, shall be subsequently restored from the first Net

Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the 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 1998 B Bonds Sinking Fund, the Series 1998 A Bonds Reserve Account or the Series 1998 B Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the respective Bonds issued pursuant to this Bond Legislation then Outstanding and all interest, if any, to accrue until the maturity thereof.

Principal, interest or reserve payments, whether for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Series 1998 A Bonds and the Series 1998 B Bonds in accordance with the respective principal amounts then Outstanding.

The Depository Bank is hereby designated as the Fiscal Agent for the administration of the Series 1998 A Bonds Reserve Account and the Renewal and Replacement Fund as herein provided, and all amounts required for the Series 1998 A Bonds Reserve Account and the Renewal and Replacement Fund will be deposited therein by the Issuer upon transfers of funds from the Revenue Fund at the times provided herein, together with written directions stating the amount remitted for deposit into each such fund.

The Issuer may designate another bank or trust company insured by FDIC as Depository Bank if the Depository Bank should cease for any reason to serve or if the Governing Body determines by resolution that the Depository Bank or its successor should no longer serve as Depository Bank. Upon any such change, the Governing Body will cause notice of the change to be sent by registered or certified mail to the Purchaser, the Council and the Authority.

The Commission is hereby designated as the fiscal agent for the administration of the Series 1998 B Bonds Sinking Fund and the Series 1998 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. If required by either the Authority or the Council at any time, the Issuer shall make the necessary arrangements whereby required payments into the Series 1998 B Bonds Sinking Fund and the Series 1998 B Bonds Reserve Account shall be automatically deducted from the Revenue Fund and transferred to the Commission on the dates required hereunder.

Moneys in the Series 1998 B Bonds Sinking Fund and the Series 1998 B Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 1998 B Bonds Sinking Fund, including the Series 1998 B Bonds Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 1998 B 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 principal, interest and reserve payments with respect to the Series 1998 B Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

C. 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, fees and expenses then due. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by either the Authority or the Council at any time, make the necessary arrangements whereby such required payments shall be automatically deducted from the Revenue Fund and transferred to the Commission on the dates required.

D. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in any fund or account 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.

E. 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.

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

G. 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 any or all of the Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 1998 B Bonds, there shall first be deposited with the Commission in the Series 1998 B Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 1998 B Bonds for the period commencing on the date of issuance of the Series 1998 B Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. Next, from the proceeds of the Series 1998 A Bonds, there shall be deposited with the Depository Bank in the Series 1998 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding the Series 1998 A Bonds Reserve Account, and from the proceeds of the Series 1998 B Bonds, there shall be deposited with the Commission in the Series 1998 B Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 1998 B Bonds Reserve Account.

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

Section 6.02. Disbursements From the Bond Construction Trust Fund.

A. Moneys in the Series 1998 A Bonds Construction Trust Fund shall be used solely to pay the cost of acquisition and construction of the Project upon vouchers and other documentation approved by the Purchaser.

Until completion of acquisition and construction of the Project, the Issuer will transfer from the Series 1998 A Bonds Construction Trust Fund and pay to the Purchaser on or before the due date, such sums as shall be from time to time required to make the monthly installment payments on the Series 1998 A Bonds if there are not sufficient Gross Revenues to make such monthly payment.

When construction of the Project has been completed and all costs thereof have been paid or provision for such payment has been made, any balance remaining in the

Series 1998 A Bonds Construction Trust Fund shall be disposed of in accordance with the regulations of the Purchaser.

B. With respect to the Series 1998 B Bonds Construction Trust Fund, the Issuer shall on or about the 15th day of each month provide the Council with a requisition for the costs incurred for the Project, together with such documentation as the Council shall require. Payments for costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Series 1998 B Bonds Construction Trust Fund (except for the costs of issuance of the Bonds hereby authorized, which shall be made upon request of the Issuer) shall be made only after submission to the Council of a certificate, signed by an Authorized Officer and the Consulting Engineers, stating:

- (i) That none of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;
- (ii) 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;
- (iii) That each of such costs has been otherwise properly incurred; and
- (iv) That payment for each of the items proposed is then due and owing.

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 1998 B Bonds shall be used as directed in writing by the Council and the Authority.

Pending such application, moneys in the respective Bond 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 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 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 Bonds or the interest, if any, thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The 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 any Bonds, shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Bonds or the interest, if any, thereon.

Section 7.03. Bonds Secured by Pledge of Gross Revenues. The payment of the debt service of the Series 1998 A Bonds and the Series 1998 B Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Gross Revenues derived from the System, on a parity with each other. The Gross Revenues in an amount sufficient to pay the principal of and interest on the 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 July 1, 1997, which rates are incorporated herein by reference as a part hereof.

Section 7.05. Sale of the System. So long as the Bonds are outstanding and except as otherwise required by law or with the written consent of the Purchaser, the Authority and the Council, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Bonds Outstanding, or to effectively defease the pledge created by this Bond Legislation in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 1998 A Bonds, immediately be remitted to the National Finance Office designated in the Series 1998 A Bonds, and with respect to the Series 1998 B Bonds,

immediately be remitted to the Commission for deposit in the Series 1998 B Bonds Sinking Fund, and, with the written consent of the Purchaser, the Authority and the Council, the Issuer shall direct the National Finance Office and the Commission to apply such proceeds to the payment of principal of and interest, if any, on the Bonds. Any balance remaining after the payment of all 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 \$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 may then provide for the sale of such property. The proceeds derived from 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, 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 but not in excess of \$200,000, the Issuer shall first, in writing, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and the Governing Body may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding in accordance with the laws of the State. The proceeds derived from any such sale shall be deposited in 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, 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 \$200,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided for in Section 7.06 and Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Bonds. All obligations issued by the Issuer after the issuance of the Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior

and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein have been made and are current at the time of the issuance of such subordinate obligations.

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

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

Section 7.07. Parity Bonds. No Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of any Bonds pursuant to this Bond Legislation, except under the conditions and in the manner herein provided.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Bonds, and must have the prior written consent of the Authority and the Council.

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

No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Recorder a written statement by the Independent Certified Public Accountants, based upon the necessary investigation and certification by the Consulting Engineers, 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 to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

- (1) The Bonds then Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and

(3) The 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 any improvements to be financed by such additional 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 Recorder prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive month period hereinabove 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 filed with the Recorder, on account of increased rates, rentals, fees and charges for the System adopted by the Issuer, the time for appeal of which has expired (without successful appeal) prior to issuance of such Parity Bonds.

All covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds 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 Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior liens of the 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 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 Bond Legislation with respect to the Bonds then Outstanding, and any other payments provided for in this Bond Legislation, shall have been made in full as required to the date of delivery of such Parity Bonds, and the Issuer

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

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

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

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

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the 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 Purchaser, the Council and the Authority, or any other original purchaser of the Bonds, and shall mail in each year to any Holder or Holders of the Bonds, requesting the same, an annual report containing the following:

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

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

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

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants in compliance with OMB Circular 128 or any successor thereto and the Single Audit Act 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 Bonds and shall submit said report to the Purchaser, the Authority and the Council, or any other original purchaser of the Bonds. Such audit report submitted to the Purchaser, the Authority and the Council shall include a statement that the Issuer is in compliance with the terms and provisions of the Act, the Loan Agreement and this Bond Legislation and that the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service requirements.

The Issuer shall permit the Purchaser, the Authority and the Council, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction of the Project, the Issuer shall also provide the Purchaser, the Authority and the Council, or their agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority 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 Recorder, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest, if any, 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; provided that, in the event amounts equal to or in excess of the reserve requirements are on deposit in the respective Reserve Accounts and any reserve accounts for obligations prior to or on a parity with the 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, if any, 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. In any event, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinance described in Section 7.04.

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 Purchaser, the Authority and the Council within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a registered professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a registered professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Purchaser, the Authority and the Council, or to any Holder of the Bonds, who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to 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 2 years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreement as Exhibit C, and forward a copy of such report to the Authority and the Council by the 15th day of each month.

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

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

The Issuer shall employ qualified operating personnel properly certified by the State to operate the System during the entire term of the Loan Agreement.

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, if so owned by the Issuer, 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 waterworks facilities are not owned by the Issuer, the Issuer will, to the extent allowed by law, use diligent efforts to enter into a similar termination agreement with the 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 shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

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

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Purchaser, 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 Purchaser, 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 construction contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

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

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

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

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 Division 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 Division of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30-day notice of the availability of the System, pay the rates and charges established therefor.

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

Section 7.17. **Completion of Project; Permits and Orders.** The Issuer will complete the 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 and all orders and approvals from the West Virginia Public Service Commission, if 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 agrees to comply with all the terms and conditions of the Loan Agreement and the Act and shall by Supplemental Resolution approve such additional terms and conditions set forth in the Loan Agreement. The Issuer also agrees to comply with all applicable laws, rules and regulations issued by the Purchaser, the Authority and the Council, or other state, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System. The Issuer shall provide the Council with copies of all documents submitted to the Purchaser and the Authority.

Section 7.19. **[Reserved]**

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

Section 7.21. **Statutory Mortgage Lien.** For the further protection of the Holders of the 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 Bonds and shall be on a parity with each other.

Section 7.22. **Contracts.** A. The Issuer shall, simultaneously with the delivery of the Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

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

ARTICLE VIII

INVESTMENT OF FUNDS

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 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 shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

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

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 Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest, if any, on any 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 Bonds set forth in this Bond Legislation, any supplemental resolution or in the 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.

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

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Series 1998 A Bonds and the Series 1998 B Bonds shall be on a parity with each other.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project and after

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

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

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

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

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

court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

ARTICLE X

PAYMENT OF BONDS

Section 10.01. Payment of Bonds. A. If the Issuer shall pay or there shall otherwise be paid to the Holder of the Series 1998 A Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series 1998 A Bonds only, the pledge of Gross Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owner of the Series 1998 A Bonds, shall thereupon cease, terminate and become void and be discharged and satisfied.

B. If the Issuer shall pay or there shall otherwise be paid to the Holder of the Series 1998 B Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series 1998 B Bonds only, the pledge of Gross Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owner of the Series 1998 B Bonds, shall thereupon cease, terminate and become void and be discharged and satisfied.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the 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 Bonds, shall be made without the consent in writing of the Registered Owners of the Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of the Bonds or the rate of interest, if any, thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludability of interest on the 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 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 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. 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, this Section shall not be applicable to the Loan Agreement or the Loan Resolution (Form FmHA 442-47).

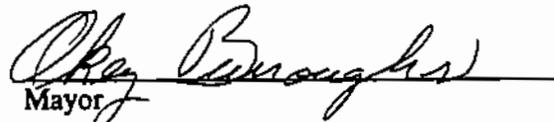
Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or

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 Recorder 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 the public hearing and final reading hereof.

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 Clay County Free Press, a newspaper published and of general circulation in the Town of Clay, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the 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: - January 6, 1998
Passed on Second Reading: - January 13, 1998
Passed on Final Reading
Following Public
Hearing: - March 23, 1998


Mayor

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of the TOWN OF CLAY on the 23rd day of March, 1998.

Dated: March 27, 1998.

[SEAL]

Betty D. Murphy
Recorder

03/11/98
162800/95001

TOWN OF CLAY

**Combined Waterworks and Sewerage System Revenue Bonds,
Series 1998 A (United States Department of Agriculture)
and Series 1998 B (West Virginia Infrastructure Fund)**

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNTS, DATES, MATURITY DATES, INTEREST RATES, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICES AND OTHER TERMS OF THE COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND SERIES 1998 B (WEST VIRGINIA INFRASTRUCTURE FUND), OF THE TOWN OF CLAY; RATIFYING AND APPROVING A LOAN AGREEMENT RELATING TO THE SERIES 1998 B BONDS; AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF THE SERIES 1998 A BONDS TO THE UNITED STATES DEPARTMENT OF AGRICULTURE AND THE SERIES 1998 B 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 town council (the "Governing Body") of the Town of Clay (the "Issuer"), has duly and officially adopted and enacted a bond ordinance, effective March 23, 1998 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE SEWERAGE PORTION OF THE EXISTING PUBLIC COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE TOWN OF CLAY AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE TOWN OF NOT MORE THAN \$532,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 A (UNITED STATES DEPARTMENT OF

AGRICULTURE), AND NOT MORE THAN \$185,000 IN AGGREGATE PRINCIPAL AMOUNT OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 1998 B (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

WHEREAS, the Bond Ordinance provides for the issuance of Combined Waterworks and Sewerage System Revenue Bonds of the Issuer (collectively, the "Bonds"), to be issued in two series, being the Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 A (United States Department of Agriculture), in an aggregate principal amount of not more than \$532,000 (the "Series 1998 A Bonds"), and the Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 B (West Virginia Infrastructure Fund), in an aggregate principal amount of not more than \$185,000 (the "Series 1998 B Bonds"), and has authorized the execution and delivery of a loan agreement relating to the Series 1998 B Bonds (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), all in accordance with Chapter 8, Article 20 and Chapter 31, Article 15A 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 amounts, dates, maturity dates, interest rates, interest and principal payment dates, sale prices and other terms of the Bonds should be established by a supplemental resolution pertaining to the Bonds; and that other matters relating to the Bonds be herein provided for;

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

WHEREAS, the Series 1998 A Bonds are proposed to be purchased by the United States Department of Agriculture, acting for and on behalf of the United States of

America (the "Purchaser") pursuant to a Letter of Conditions, as amended, and the Series 1998 B Bonds are proposed to be purchased by the Authority pursuant to the Loan Agreement; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the Loan Agreement be approved and entered into by the Issuer, that the exact principal amounts, the dates, the maturity dates, the interest rates and the interest and principal payment dates 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 TOWN OF CLAY:

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:

(A) Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 A (United States Department of Agriculture), of the Issuer, originally represented by a single Bond, numbered AR-1 in the principal amount of \$532,000. The Series 1998 A Bonds shall be dated the date of delivery thereof, shall bear interest at the rate of 4.5% per annum, interest only payable in monthly installments for the first 24 months, commencing 30 days following delivery of the Series 1998 A Bonds and continuing on the corresponding day of each month and, thereafter, principal and interest are payable in monthly installments of \$2,442 on the corresponding day of each month, except that the final installment shall be paid at the end of forty years from the date of the Series 1998 A Bonds, in the sum of the unpaid principal and interest due on the date thereof, except that prepayments may be made as hereinafter provided and as provided in the Series 1998 A Bonds, all such payments to be made at the National Finance Office, St. Louis, Missouri 63103, or at such other place as the Purchaser may designate after issuance of the Series 1998 A Bonds. Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the Issuer.

(B) Combined Waterworks and Sewerage System Revenue Bonds, Series 1998 B (West Virginia Infrastructure Fund), of the Issuer, originally represented by a single Bond, numbered BR-1, in the principal amount of \$185,000. The Series 1998 B Bonds shall be dated the date of delivery thereof, shall finally mature December 1, 2037, and shall bear no interest. The principal of the Series 1998 B Bonds shall be

payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing June 1, 1999, and ending December 1, 2037, and in the amounts as set forth in "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Series 1998 B Bonds. The Series 1998 B Bonds shall be subject to redemption upon the written consent of the Authority and the Council, and upon payment of a redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the registered owner of the Series 1998 B Bonds.

Section 2. All other provisions relating to the Series 1998 A Bonds and the text of the Series 1998 A Bonds shall be in substantially the form provided in the Bond Ordinance.

Section 3. All other provisions relating to the Series 1998 B Bonds and the text of the Series 1998 B Bonds shall be in substantially the form set forth in Exhibit A attached hereto.

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 and approved. The Issuer hereby affirms all covenants and representations made in the Loan Agreement and in the Application to the Council and the Authority. The Issuer does hereby authorize, approve and accept the Letter of Conditions, and all amendments thereto, and the performance of the obligations contained therein, on behalf of the Issuer are hereby authorized, directed and approved. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Bonds will 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, as Registrar (the "Registrar") for the Series 1998 B 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 designate the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Commission"), to serve as Paying Agent for the Series 1998 B Bonds under the Bond Ordinance.

Section 7. The Issuer does hereby appoint and designate Clay County Bank of Clay, West Virginia, to serve as Depository Bank under the Bond Ordinance.

Section 8. All proceeds of the Series 1998 A Bonds shall be deposited in or credited to the Series 1998 A Bonds Construction Trust Fund as received from the Purchaser from time to time for payment of costs of the Project, including, without limitation, costs of issuance of the Series 1998 A Bonds. All proceeds of the Series 1998 B Bonds shall be deposited in or credited to the Series 1998 B Bonds Construction Trust Fund as received from the Council from time to time for payment of costs of the Project, including, without limitation, costs of issuance of the Series 1998 B Bonds. Proceeds in the respective Bond Construction Trust Funds shall be kept separate and apart from each other.

Section 9. The Mayor and Recorder 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 Series 1998 A Bonds may be delivered on or about March 27, 1998, to the Purchaser pursuant to the Letter of Conditions, and the Series 1998 B Bonds may be delivered on or about March 27, 1998, to the Authority pursuant to the Loan Agreement.

Section 10. 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 11. The Issuer hereby determines that it is in the best interest of the Issuer to invest all moneys in the funds and accounts established by the Bond Ordinance held by the Depository Bank, subject to any limitations of the Purchaser with respect of the proceeds of the Series 1998 A Bonds, in 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 time accounts until further directed in writing by the Issuer. Moneys in the Series 1998 B Bonds Sinking Fund, including the Series 1998 B Bonds Reserve Account therein, shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 12. 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 the temporary and permanent 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 or to be promulgated thereunder.

Section 13. The Issuer is a governmental unit with general taxing powers to finance operations of or facilities of the nature of the Project and the System; no part of the Bonds are private activity bonds; 95% or more of the net proceeds of the Bonds are to be used for local governmental activities of the Issuer; and the Issuer reasonably expects to issue less than \$5,000,000 aggregate principal face amount of tax-exempt obligations (other than

private activity bonds) during the calendar year 1998, being the calendar year in which the Bonds are to be issued. For purposes of this Section and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this Section and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this Section and Section 148(f)(4)(D) of the Code, to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefiting thereby shall be treated as one issuer.

Section 14. Section 5.03A(2)(ii) of the Bond Ordinance shall be amended to read as follows:

(ii) commencing 1 month after the date of delivery of the Series 1998 B Bonds, if not fully funded upon issuance of the Series 1998 B Bonds, remit to the Commission for deposit in the Series 1998 B Bonds Reserve Account, an amount equal to 1/120 of the Series 1998 B Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 1998 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 1998 B Bonds Reserve Requirement.

Section 15. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 23rd day of March, 1998.


Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of the TOWN OF CLAY on the 23rd day of March, 1998.

Dated: March 27, 1998

[SEAL]


Recorder

03/11/98
162800/95001

PWSID#: WV3300801

State of West Virginia

OFFICE OF ENVIRONMENTAL HEALTH SERVICES

CAPITOL and WASHINGTON STREETS | DAVIS SQUARE, SUITE 200 | CHARLESTON, WEST VIRGINIA 25301
TELEPHONE 304-558-2981

(Water) **PERMIT**
PROJECT: Clay Water Treatment Plant Upgrade PERMIT NO.: 17,772
LOCATION: Clay COUNTY: Clay DATE: 11-13-2007

THIS IS TO CERTIFY that after reviewing plans, specifications, application forms, and other essential information that

Town of Clay
P. O. Box 55
Clay, West Virginia 25043

is hereby granted approval to: install approximately 3,300 LF of 10" water line and all necessary valves and appurtenances. To expand and upgrade the existing 400 G.P.M. conventional Clay Water Treatment Plant to an 800 G.P.M. membrane water treatment plant. Major new components will consist of upgrading the existing raw water pump station to an 800 G.P.M. duplex pump station; in-line static mixer; two (2) 81,885 gallon circular clarifiers with incorporated static flocculation units; an 800 G.P.M. duplex transfer pump station; two (2) 400 G.P.M. Pall microfiltration membrane filter units with all necessary piping, valves, controls, electrical facilities, chemicals and appurtenances; a 72,000 gallon clearwell; two (2) 800 G.P.M. high service pumps; two (2) 41,860 gallon solids waste decant basins; chemical feed equipment for chlorine gas, polyaluminum chloride, sodium hydroxide, hydrofluosilicic acid; a building addition that will house the membrane filter units and new chlorine room; a trailer mounted 300KW diesel generator and all necessary piping valves controls, electrical facilities, mechanical facilities and appurtenances.

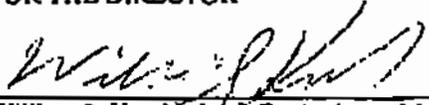
Facilities are to serve the Town of Clay, Clay County PSD, Clay-Roane PSD and Queen Shoals PSD.

NOTE: This permit is contingent upon all new water line being disinfected, flushed and bacteriologically tested, prior to use.

The Environmental Engineering Division of the OEHS St. Albans District Office (304-722-0611) is to be notified when construction begins.

Validity of this permit is contingent upon conformity with plans, specifications, application forms, and other information submitted to the West Virginia Bureau for Public Health.

FOR THE DIRECTOR


William S. Herold, Jr., P.E., Assistant Manager
Infrastructure and Capacity Development
Environmental Engineering Division

WSH:emt

pc: , Boyles & Hildreth
James W. Ellars, P.E., PSC-Engineering Division
Amy Swann, PSC
Clay County Health Department
OEHS-EED St. Albans District Office

**DIVISION OF ENVIRONMENTAL PROTECTION**CECIL H. UNDERWOOD
GOVERNOR1201 Greenbrier Street
Charleston, WV 25311-1088JOHN E. CAFFREY
DIRECTOR

February 6, 1998

Honorable Okey Burroughs
Mayor, Town of Clay
Sanitation Department
P. O. Box 55
Clay, WV 25043-0055**CERTIFIED RETURN RECEIPT REQUESTED**Re: WV/NPDES Permit No. WV0022055
Modification No. 1

Dear Mayor Burroughs:

This correspondence serves as Modification No. 1 of your existing WV/NPDES Water Pollution Control Permit No. WV0022055, issued the 26th day of January 1996.

After review and consideration of the information submitted on, and with, Permit Modification Application No. WV0022055-A, dated the 16th day of October 1996, the plans and specifications, additional information, dated the 8th day of May 1997, additional information, dated the 2nd day of October 1997, and other relevant information, the subject Permit is hereby modified to incorporate, and effectuate, the following data, and changes, respectively.

To acquire, construct, install, operate and maintain a 0.2 million gallons per day counter current extended aeration wastewater treatment plant to be comprised of a mechanical bar screen, a manual bar screen, two(2) integral aeration-clarification units with each unit having an aeration chamber with a volume of 112,300 gallons and a clarifier with a volume of 30,500 gallons and a surface area of 314 square feet, three(3) blowers, a dual chlorine contact chamber with a total volume of 5,700 gallons, chlorination facilities, dechlorination facilities, a plant lift station to handle activated sludge return and sludge wasting, an aerobic digester with a volume of 51,800 gallons, a sludge mixing tank with a volume of 4,000 gallons, a 12 bag sludge dewatering unit, a liquid sludge application truck, a control building, flow measurement facilities, and all requisite appurtenances. Upon completion of construction of this wastewater treatment plant, the Upper Clay - Two Run wastewater treatment plant and the Lower Clay - Pisgah wastewater treatment plant shall be abandoned.

Honorable Okey Burroughs
Mayor, Town of Clay
Page 2
February 6, 1998

To acquire, construct, install, operate and maintain a wastewater collection system extension, and improvements to the existing wastewater collection system, to be comprised of approximately 1,000 linear feet of six(6) inch diameter gravity sewer service line, 3,300 linear feet of six(6) inch diameter gravity sewer line, 1,500 linear feet of eight(8) inch diameter gravity sewer line, 1,500 linear feet of 10 inch diameter gravity sewer line, 40 manholes, five(5) cleanouts, five(5) lift stations, two(2) simplex grinder pump stations, 180 linear feet of one and one half(1½) diameter force main, 7,000 linear feet of three(3) inch diameter force main, 1,600 linear feet of six(6) inch diameter force main, 900 linear feet of eight(8) inch diameter force main, four(4) force main cleanouts, abandonment of three(3) existing lift stations, and all requisite appurtenances. These wastewater collection system improvements shall become an integral part of the existing wastewater collection system facilities.

These facilities are to serve a population equivalent of approximately 1,665 persons in the Town of Clay, the Clay County High School, and environs, and discharge treated wastewater to the Elk River, approximately 57.4 miles from its mouth, of Kanawha River, at a latitude of 38°26'54" north and a longitude of 81°05'24" west.

The wastewater treatment plant and wastewater collection system improvements project shall be constructed in accordance with the plans and specifications, approved the 24th day of March 1997, revisions to the plans and specification, approved the 3rd day of October 1997, and approved addenda, thereto, prepared by Chapman Technical Group, 200 Sixth Avenue, St. Albans, WV 25177, and entitled "Town of Clay; Two Run and Lower Clay; Wastewater System Improvements; Contract 1 - Wastewater Treatment Plant, Contract 2 - Collection System, Contract 3 - Lift Stations."

Enclosed are incorporated page 4A of 12, incorporated page 4B of 12, and revised page 11 of 12, along with a Discharge Monitoring Report. The effluent discharge limitations presented in Section A.3, herein, on incorporated page 4A of 12, shall, upon the initiation of the startup of the new wastewater treatment plant, supersede the effluent discharge limitations presented in Section A.1, on page 3 of 12, and Section A.2, on page 4 of 12, of the Permit. Further, Section G has been revised to integrate revisions in the numerical sequencing of the requirements that were previously misstated, and to incorporate the requirements relative to the permitting procedures being implemented herein. These documents shall be incorporated, as appropriate, into your existing Permit.

Honorable Okey Burroughs
Mayor, Town of Clay
Page 3
February 6, 1998

Authorization, in part, under this Permit Modification, shall be contingent upon the Town becoming registered under the WV/NPDES Storm Water General Water Pollution Control Permit, or obtaining approval of a Sediment Control Plan, as deemed appropriate, prior to the initiation of the construction activities. Submission of the site registration application form, and acceptance, thereof, or approval of a Sediment Control Plan, as deemed appropriate, shall expressly require compliance, thereunder, by the Town, as terms and conditions of this WV/NPDES Water Pollution Control Permit Modification, for the construction activities relative to these facilities.

This Permit Modification shall, further, be subject to the terms and conditions of the Bureau for Public Health, Office of Environmental Health Services, Permit No. 13,405, dated the 24th day of March 1997, and Permit No. 13439, dated the 3rd day of October 1997.

All other terms and conditions of the subject WV/NPDES Water Pollution Control Permit shall remain in effect and unchanged.

Sincerely,

OFFICE OF WATER RESOURCES


Barbara S. Taylor
Chief

BST:jdm

Enclosures

A.3. DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS

During the period beginning with initiation of startup, and lasting through midnight, January 26, 2001, the permittee is authorized to discharge from outlet number(s) 001 - Discharge from the sewage treatment facilities.

Such discharges shall be limited and monitored by the permittee as specified below:

| <u>Effluent Characteristic</u> | <u>Discharge Limitations</u> | | | <u>Monitoring Requirements</u> | | |
|-----------------------------------|------------------------------|---|--|--------------------------------|------------------------------|--------------------|
| | <u>Avg. Monthly</u> | <u>(Quantity)lbs/day</u> <u>Max. Daily</u> | <u>Other Units(Specify)</u> <u>Avg. Monthly</u> | <u>Max. Daily</u> | <u>Measurement Frequency</u> | <u>Sample Type</u> |
| Flow | N/A | N/A | 0.2 MGD | N/A | Continuous | Measured |
| Biochemical Oxygen Demand (5 Day) | 50.0 | 100.1 | 30.0 mg/l | 60.0 mg/l | Once/Month | 8 Hour Composite |
| Total Suspended Solids | 50.0 | 100.1 | 30.0 mg/l | 60.0 mg/l | Once/Month | 8 Hour Composite |
| Total Kjeldahl Nitrogen | 30.0 | 60.0 | 18.0 mg/l | 36.0 mg/l | Once/Month | 8 Hour Composite |
| Fecal Coliform | N/A | N/A | 200 <u>counts</u> 100 ml | 400 <u>counts</u> 100 ml | Once/Month | Grab |
| Total Residual Chlorine | N/A | N/A | 0.028 mg/l | 0.057 mg/l | Once/Month | Grab |

The pH shall not be less than 6.0 standard units and not greater than 9.0 standard units and shall be monitored monthly by grab sampling.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): Effluent BOD₅ samples shall be collected at a location immediately preceding disinfection. Other effluent samples shall be collected at or as near as possible to the point of discharge.

This discharge shall not cause violation of Series 1, Section 3, Title 46 of the West Virginia Legislative Rules issued pursuant to Chapter 22, Article 11.

A.4. SANITARY SEWER OVERFLOWS

- a) Outlet Numbers 002, 003, and 004, listed below, could bypass raw and/or partially treated sewage directly into the receiving stream.

| <u>Outlet Number</u> | <u>Name and Location</u> | <u>Receiving Stream</u> |
|----------------------|---|---|
| 002 | Lift Station No. 3 Latitude 38°27'32"N Longitude 81°05'22"W | Elk River (Mile Point 283) of the Kanawha River |
| 003 | Pisgah Bridge Lift Station Latitude 38°27'37"N Longitude 81°05'13"W | Elk River (Mile Point 283) of the Kanawha River |
| 004 | Elk Lift Station Latitude 38°27'50"N Longitude 81°04'32"W | Elk River (Mile Point 292) of the Kanawha River |

- b) This documentation is for purposes of identification only. It is not to be interpreted as formal authorization to discharge from these outlets. Any discharge from these outlets shall be subject to the requirements of Section D.3 on Page 7 of 12 of this Permit. Bypass reports will be reviewed and the intentional use, or misuse, of the overflow will be subject to, further consequential, remedial and/or enforcement action.
- c) The documentation provided herein shall not constitute an affirmative defense in any enforcement action brought against the permittee for violations resultant to the discharges from these outlets.
- d) The sanitary sewer overflow outlet identification, in Section A.4.a), for Outlet No. 002, shall become applicable upon the completion of construction of the wastewater facilities improvements. Outlet No. 003 and Outlet No. 004 shall be abandoned, and eliminated, upon the completion of construction of the wastewater facilities improvements project.

G. OTHER REQUIREMENTS (CONTINUED)

11. The permittee shall implement a program to identify and eliminate sources of infiltration and inflow. A written report shall be provided on a quarterly basis, as an attachment to the Discharge Monitoring Reports, detailing what has been performed in relation to the implementation and accomplishments of the infiltration and inflow elimination program. Failure of the permittee to comply with this requirement shall result in subsequent administrative and/or legal action, as may be necessary, in order to obtain the compliance sought herein.
12. Compliance shall be attained in accordance with Order No. 3373, entered the 12th day of May 1993, and any Amendments, thereto.

STATE OF WEST VIRGINIA
 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
 DISCHARGE MONITORING REPORT

FACILITY NAME Clay, Town of; Sanitation Department
 LOCATION OF FACILITY Clay, Clay County
 PERMIT NUMBER WV0022055 OUTLET NO. 001
 WASTELOAD FOR MONTH OF 19

COMMERCIAL LABORATORY NAME
 COMMERCIAL LABORATORY ADDRESS
 INDIVIDUAL PERFORMING ANALYSES

| Parameter | Minimum | | Quantity | | Units | | Other Units | | Measurement Frequency | Sample Type |
|--|----------|------------|--------------|------------|--------------|------------|--------------|------------|-----------------------|-------------|
| | Reported | Limitation | Avg. Monthly | Max. Daily | Min. Monthly | Max. Daily | Min. Monthly | Max. Daily | | |
| Flow, in Conduit or thru trmt. plant 50050 | ***** | ***** | ***** | ***** | *** | ***** | ***** | ***** | MGD | ** |
| BOD, 5 day (20 Deg. C) 00310 | ***** | ***** | N/A | N/A | *** | N/A | 0.2 | N/A | mg/l | ** |
| Solids, Total 00530 | ***** | ***** | 50.0 | 100.1 | lbs day | ***** | 30.0 | 60.0 | mg/l | ** |
| Nitrogen, Total 00625 | ***** | ***** | 50.0 | 100.1 | lbs day | ***** | 30.0 | 60.0 | mg/l | ** |
| pH 00400 | ***** | ***** | 30.0 | 60.0 | lbs day | ***** | 18.0 | 36.0 | mg/l | ** |
| Coliform, Fecal General 74055 | ***** | ***** | ----- | MPN | *** | ***** | N/A | 9.0 | std. Units | ** |
| Chlorine, Total Residual 50060 | ***** | ***** | Method | Used | *** | ***** | 200 | 400 | Count per 100ml | ** |
| Signature of Principal Executive Officer | ***** | ***** | N/A | N/A | *** | ***** | 0.028 | 0.057 | mg/l | ** |

I certify under penalty of law that this document and all attachments were prepared under my directions or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fines and imprisonment for knowing violations.

Signature of Principal Executive Officer
 Title of Officer
 Date Completed

| | | | |
|---|--|---|--|
| ACORD CERTIFICATE OF LIABILITY INSURANCE | | INSURED COPY | DATE (MM/DD/YY) 10/01/09 |
| PRODUCER WV BOARD OF RISK & INSURANCE MGT. 90 MACCORKLE AVE. 6W, SUITE 203 SOUTH CHARLESTON, WV 26303 | | 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 Town of Clay PO Box 55 Clay, WV 25043 | | INSURERS AFFORDING COVERAGE | |
| | | INSURER A: | NATIONAL UNION FIRE CO OF PITTSBURGH, PA |
| | | INSURER B: | |
| | | INSURER C: | |
| | | INSURER D: | |
| | | INSURER E: | |

COVERAGES
 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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| CLASS | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS |
|-------|--|---------------|----------------------------------|-----------------------------------|---|
| A | GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> WRONGFUL ACT <input checked="" type="checkbox"/> PROFESSIONAL GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC | L0535 | 07/01/2009 | 07/01/2010 | EACH OCCURRENCE \$ 1,000,000 |
| | <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS | | | | FIRE DAMAGE (Any one fire) \$ 500,000 MED EXP (Any one person) \$ 0 PERSONAL & ADV INJURY \$ INCLUDED GENERAL AGGREGATE \$ N/A PRODUCTS - COMP/OP AGG \$ N/A |
| A | AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS | L0535 | 07/01/2009 | 07/01/2010 | COMBINED SINGLE LIMIT (EA accident) \$ 1,000,000 |
| | DAMAGE LIABILITY <input type="checkbox"/> ANY AUTO | | | | BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$ |
| | EXCESS LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$ | | | | EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ |
| A | WORKING COMPENSATION AND EMPLOYERS' LIABILITY STOPGAP | L0535 | 07/01/2009 | 07/01/2010 | <input checked="" type="checkbox"/> WE STAY (LIMIT) <input type="checkbox"/> OTHER EA E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$ |
| B | OTHER | | | | |

DESCRIPTION OF OPERATIONS/LOCATION/VEHICLES/EXCLUSIONS ADDED BY AGREEMENT/SPECIAL PROVISIONS
 SUBJECT TO THE PROVISIONS, CONDITIONS AND EXCLUSIONS OF THE POLICIES LISTED ABOVE, IT IS AGREED THAT THE CERTIFICATE HOLDER IS AN 'ADDITIONAL INSURED' WITH RESPECTS TO:
 REVENUE BONDS SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND SERIES B (WEST VIRGINIA INFRASTRUCTURE FUND)

| | | |
|---|--|---|
| CERTIFICATE HOLDER | ADDITIONAL INSURED, INSURER LETTER: | CANCELLATION |
| WV INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL 180 ASSOCIATION DRIVE CHARLESTON, WV 25311 | | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE: <i>[Signature]</i> |

ACORD CERTIFICATE OF PROPERTY INSURANCE

DATE (MM/DD/YY)
10/01/09

FACTORSHIP

WV BOARD OF RISK & INSURANCE MANAGEMENT
80 MACCORKLE AVE. SW. SUITE 203
SOUTH CHARLESTON, WV 25303

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.

COMPANIES AFFORDING COVERAGE

- COMPANY A WESTCHESTER FIRE INSURANCE COMPANY
- COMPANY B THE HARTFORD STEAM BOILER INSPECTION AND INSURANCE COMPANY
- COMPANY C
- COMPANY D

INSURED

Town of Clay
PO Box 55
Clay, WV 25043

COVERAGE

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 LTA | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | COVERED PROPERTY | LIMITS |
|--------|---|---------------|----------------------------------|-----------------------------------|---|-----------------|
| A | <input checked="" type="checkbox"/> PROPERTY CAUSES OF LOSS <input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input checked="" type="checkbox"/> SPECIAL Manuscript <input type="checkbox"/> EARTHQUAKE <input type="checkbox"/> FLOOD | P0535 | 07/01/2009 | 07/01/2010 | BUILDING | \$ |
| | | | | | PERSONAL PROPERTY | \$ |
| | | | | | <input checked="" type="checkbox"/> BUSINESS INCOME | \$ 12 MONTHS |
| | | | | | <input checked="" type="checkbox"/> EXTRA EXPENSE | \$ 12 MONTHS |
| | | | | | <input type="checkbox"/> BLANKET DUALING | \$ |
| | | | | | <input type="checkbox"/> BLANKET PERS PROP | \$ |
| | | | | | <input checked="" type="checkbox"/> BLANKET SING & PP | \$ |
| | <input type="checkbox"/> INLAND MARINE TYPE OF POLICY CAUSES OF LOSS <input type="checkbox"/> NAMED PERILS <input type="checkbox"/> OTHER | P0535 | 07/01/2009 | 07/01/2010 | | \$ |
| | | | | | | \$ |
| | | | | | | \$ |
| | | | | | | \$ |
| A | <input checked="" type="checkbox"/> CRIME TYPE OF POLICY | P0535 | 07/01/2009 | 07/01/2010 | | \$ 2,000,000.00 |
| | | | | | | \$ |
| B | <input checked="" type="checkbox"/> BOILER & MACHINERY OTHER | P0535 | 07/01/2009 | 07/01/2010 | | \$ 1,000,000.00 |
| | | | | | | \$ |

LOCATION OF PREMISES/DESCRIPTION OF PROPERTY

SPECIAL CONDITIONS/OTHER COVERAGES

REFERENCE : REVENUE BONDS SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)

CERTIFICATE HOLDER

WV INFRASTRUCTURE AND JOBS DEVELOPMENT
COUNCIL
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 10 DATE 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

Jerry L. Stowell

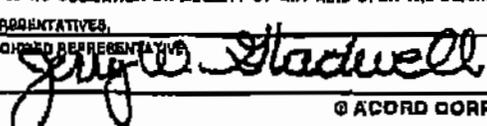
ACORD CORPORATION 1996

| | | | |
|---|--|---|-----------------------------|
| ACORD CERTIFICATE OF LIABILITY INSURANCE | | INSURED COPY | DATE (MM/DD/YY) 10/01/09 |
| PRODUCER WV BOARD OF RISK & INSURANCE MGT. 90 MACCORKLE AVE. SW, SUITE 203 SOUTH CHARLESTON, WV 26303 | | 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 Town of Clay PO Box 33 Clay, WV 25043 | | INSURERS AFFORDING COVERAGE INSURER A: NATIONAL UNION FIRE CO OF PITTSBURGH, PA INSURER B: INSURER C: INSURER D: INSURER E: | |

COVERAGES
 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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS |
|------|---|---------------|----------------------------------|-----------------------------------|---|
| A | GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> WRONGFUL ACT <input checked="" type="checkbox"/> PROFESSIONAL GENT. AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO. <input type="checkbox"/> LOG | L0535 | 07/01/2009 | 07/01/2010 | EACH OCCURRENCE \$ 1,000,000 PROP. DAMAGE (Any one acc.) \$ 100,000 MED EXP (Any one person) \$ 0 PERSONAL & ADV INJURY \$ INCLUDED GENERAL AGGREGATE \$ N/A PRODUCTS - COMP/OP AGG \$ N/A |
| A | AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS | L0535 | 07/01/2009 | 07/01/2010 | COMBINED SINGLE LIMIT (EO accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per Medical) \$ PROPERTY DAMAGE (Per accident) \$ |
| | GARAGE LIABILITY <input type="checkbox"/> ANY AUTO | | | | AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$ |
| | EXCESS LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$ | | | | EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ |
| A | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY STOPGAP | L0535 | 07/01/2009 | 07/01/2010 | VOLUNTARY LIMITS OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$ |
| B | OTHER | | | | |

DESCRIPTION OF OPERATION/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENTS/SPECIAL PROVISIONS
 SUBJECT TO THE PROVISIONS, CONDITIONS AND EXCLUSIONS OF THE POLICIES LISTED ABOVE, IT IS AGREED THAT THE CERTIFICATE HOLDER IS AN 'ADDITIONAL INSURED' WITH RESPECTS TO:
 REVENUE BONDS SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND SERIES B (WEST VIRGINIA INFRASTRUCTURE FUND)

| | | |
|--|--|--|
| CERTIFICATE HOLDER | ADDITIONAL INSURED; INSURER'S LETTER: | CANCELLATION |
| WEST VIRGINIA WATER DEVELOPMENT AUTHORITY 180 ASSOCIATION DRIVE CHARLESTON, WV 25311 | | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL endeavor to MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE  |

ACORD CERTIFICATE OF PROPERTY INSURANCE

DATE (MM/DD/YY)
10/01/09

PRODUCER
WV BOARD OF RISK & INSURANCE MANAGEMENT
90 MACCORKLE AVE. SW, SUITE 203
SOUTH CHARLESTON, WV 25303

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.

COMPANIES AFFORDING COVERAGE

INSURED
Town of Clay
PO Box 55
Clay, WV 25043

- COMPANY A WESTCHESTER FIRE INSURANCE COMPANY
- COMPANY B THE HARTFORD STEAM BOILER INSPECTION AND INSURANCE COMPANY
- 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 LTH | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | COVERED PROPERTY | LIMITS |
|--------|---|---------------|----------------------------------|-----------------------------------|---|--|
| A | <input checked="" type="checkbox"/> PROPERTY CAUSES OF LOSS <input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input checked="" type="checkbox"/> SPECIAL MODIFICATION <input type="checkbox"/> EARTHQUAKE <input type="checkbox"/> FLOOD | P0535 | 07/01/2009 | 07/01/2010 | <input type="checkbox"/> BUILDING <input type="checkbox"/> PERSONAL PROPERTY <input checked="" type="checkbox"/> BUSINESS INCOME <input checked="" type="checkbox"/> EXTRA EXPENSE <input type="checkbox"/> BLANKET BUILDING <input type="checkbox"/> BLANKET PERS PROP <input checked="" type="checkbox"/> BLANKET BLDG & PP | \$ \$ \$ 12 MONTHS \$ 12 MONTHS \$ \$ \$ |
| | <input type="checkbox"/> INLAND MARINE TYPE OF POLICY | P0535 | 07/01/2009 | 07/01/2010 | | \$ \$ \$ \$ \$ |
| A | <input checked="" type="checkbox"/> CRIME TYPE OF POLICY | P0535 | 07/01/2009 | 07/01/2010 | | \$ 2,000,000.00 \$ \$ |
| B | <input checked="" type="checkbox"/> BOILER & MACHINERY TYPE OF POLICY | P0535 | 07/01/2009 | 07/01/2010 | | \$ \$ 1,000,000.00 |
| | <input type="checkbox"/> OTHER | | | | | |

LOCATION OF PREMISES/DESCRIPTION OF PROPERTY

SPECIAL CONDITIONS/OTHER COVERAGES

REFERENCE : REVENUE BONDS SERIES 2009 A (UNITED STATES DEPARTMENT OF AGRICULTURE) AND SERIES 2009 B (WEST VIRGINIA INFRASTRUCTURE FUND)

CERTIFICATE HOLDER

WV 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 10 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

Jerry D. Gladwell

CLOSING MEMORANDUM

To: Carol Cummings
B.J. Pauley
Dwana Murphy
Samme Gee

From: Bill Bragg

Date: October 16, 2009

Re: Town of Clay, Combined Waterworks and Sewerage System Revenue Bond,
Series 2009 B (West Virginia Infrastructure Fund)

1. DISBURSEMENT TO TOWN

Payor: West Virginia Infrastructure and Jobs Development Council
Source: Series 2009 B Bond Proceeds
Amount: \$12,460.00
Date: October 16, 2009
Form: Wire Transfer
Payee: Town of Clay
Bank: Clay County Bank, Inc.
Routing No.: 051502641
Account No.: 177512
Account: Clay Municipal Water Improvement Projects

**ACH VENDOR/MISCELLANEOUS PAYMENT
ENROLLMENT FORM**

OMB No. 1510-0058

This form is used for Automated Clearing House (ACH) payments with an addendum record that contains payment-related information processed through the Vendor Express Program. Recipients of these payments should bring this information to the attention of their financial institution when presenting this form for completion. See reverse for additional instructions.

PRIVACY ACT STATEMENT

The following information is provided to comply with the Privacy Act of 1974 (P.L. 93-579). All information collected on this form is required under the provisions of 31 U.S.C. 3322 and 31 CFR 210. This information will be used by the Treasury Department to transmit payment data, by electronic means to vendor's financial institution. Failure to provide the requested information may delay or prevent the receipt of payments through the Automated Clearing House Payment System.

AGENCY INFORMATION

| | | |
|--|-----------------------------|--|
| FEDERAL PROGRAM AGENCY USDA Rural Development | | |
| AGENCY IDENTIFIER: | AGENCY LOCATION CODE (ALC): | ACH FORMAT: <input checked="" type="checkbox"/> CCD+ <input type="checkbox"/> CTX |
| ADDRESS: 481 Ragland Road | | |
| Beckley, WV 25801 | | |
| CONTACT PERSON NAME: TERESA A. MILLER | | TELEPHONE NUMBER: (304) 253-9597 |
| ADDITIONAL INFORMATION: FAX Number: (304) 929-2025 | | |

PAYEE/COMPANY INFORMATION

| | |
|-------------------------------|---|
| NAME Town of Clay | SSN NO. OR TAXPAYER ID NO. 556 000165 |
| ADDRESS P.O. Box 55 | |
| Clay, WV 25043 | |
| CONTACT PERSON NAME: | TELEPHONE NUMBER: (304) 587-4233 |

FINANCIAL INSTITUTION INFORMATION

| | |
|--|--|
| NAME: CLAY COUNTY BANK | |
| ADDRESS: P O BOX 239 | |
| CLAY, WV 25043 | |
| ACH COORDINATOR NAME: JUDY GRAY | TELEPHONE NUMBER: (304) 587-4221 |
| NINE-DIGIT ROUTING TRANSIT NUMBER: 0 5 1 5 0 2 6 4 1 | |
| DEPOSITOR ACCOUNT TITLE: CLAY MUNICIPAL WATER IMPROVEMENT PROJECTS | |
| DEPOSITOR ACCOUNT NUMBER: 177512 | LOCKBOX NUMBER: |
| TYPE OF ACCOUNT: <input checked="" type="checkbox"/> CHECKING <input type="checkbox"/> SAVINGS <input type="checkbox"/> LOCKBOX | |
| SIGNATURE AND TITLE OF AUTHORIZED OFFICIAL: (Could be the same as ACH Coordinator) <i>Deane L. Cate assistant Cashier</i> | TELEPHONE NUMBER: 304 587 4221 |

AUTHORIZED FOR LOCAL REPRODUCTION

ARTICLE 20

COMBINED WATERWORKS AND SEWERAGE SYSTEMS

Part I—Combined Waterworks and Sewerage Systems Authorized; Definitions.

Section

- 8-20-1. Acquisition and operation of combined waterworks and sewerage system; extension beyond corporate limits; definitions.
- 8-20-1a. Acquisition and operation of combined systems; extension beyond corporate limits; definitions.
- 8-20-1b. Cooperation with other governmental units.
- 8-20-1c. Severance of combined system.

Part II—Right of Eminent Domain.

- 8-20-2. Right of eminent domain; limitations.

Part III—Revenue Bond Financing.

- 8-20-3. Ordinance describing project; contents.
- 8-20-4. Publication of abstract of ordinance and notice; hearing.
- 8-20-5. Amount, negotiability and execution of bonds; refund of outstanding obligations or securities by sale or exchange of bonds.
- 8-20-6. Bonds payable solely from revenues; not to constitute municipal indebtedness.
- 8-20-7. Lien of bondholders.
- 8-20-8. Covenants with bondholders.
- 8-20-9. Operating contract.
- 8-20-10. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates, fees or charges; change in rates, fees or charges; failure to cure delinquency; delinquent rates, fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.
- 8-20-11. Discontinuance of water service for nonpayment of rates or charges.
- 8-20-11a. Governmental entities subject to established rates.
- 8-20-12. Use of revenues; sinking fund.
- 8-20-13. System of accounts; audit.
- 8-20-14. Repair and maintenance of municipal sewerage system outside corporate limits.
- 8-20-15. Protection and enforcement of rights of bondholders, etc.; receivership.

Part IV—Grants, Loans and Advances; Cumulative Authority.

- 8-20-16. Grants, loans and advances.
- 8-20-17. Additional and alternative method for constructing, etc., and financing combined system; cumulative authority.

Part V—Operation by Board; Construction.

- 8-20-18. Alternative procedure for acquisition, construction, etc., of combined system.
- 8-20-19. Article to be liberally construed.

PART I—COMBINED WATERWORKS AND SEWERAGE SYSTEMS AUTHORIZED; DEFINITIONS**§ 8-20-1. Acquisition and operation of combined waterworks and sewerage systems; extension beyond corporate limits; definitions**

Any municipality may acquire, construct, establish and equip and thereafter repair, maintain and operate a combined waterworks and sewerage system either wholly within or partly within and partly without the corporate limits thereof, under the provisions of this article, and any municipality owning and operating either a waterworks or a sewerage system, but not both, may acquire, construct, establish and equip the waterworks or sewerage system which it does not then own and operate, and in either of such cases such municipality may provide by ordinance that when such waterworks or sewerage system, or both, shall have been acquired, constructed, established and equipped, the same shall thereafter be owned, repaired, maintained and operated as a combined undertaking under the provisions of this article, and any municipality already owning and operating an existing waterworks system and an existing sewerage system may by ordinance combine the same into a single undertaking under the provisions of this article.

Any municipality which has combined its waterworks and sewerage system under the provisions of this article, or pursuant to provisions of any other law, may hereafter construct extensions, additions, betterments and improvements to either the waterworks system or the sewerage system of said combined waterworks and sewerage system, or both, and may finance the acquisition, construction, establishment and equipment of any such waterworks or sewerage system, or both, or the construction of extensions, additions, betterments and improvements to either the waterworks system or the sewerage system of such combined waterworks and sewerage system, or both, by the issuance of revenue bonds under the provisions of this article.

Notwithstanding the provisions of any other law or charter to the contrary, any such municipality may serve and supply the area included within twenty miles outside its corporate limits with the water or sewer services and facilities, or both, of its combined waterworks and sewerage system: Provided, That such water or sewer services and facilities shall not be served or supplied within the corporate limits of any other municipality without the consent of the governing body of such other municipality.

When used in this article, the term "waterworks system" shall be construed to mean and include a waterworks system in its entirety or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus, and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system; the term "sewerage system" shall be construed to mean and include any or all of the following: A sewage treatment plant or plants, collecting, intercepting and outlet sewers, lateral sewers, drains, force mains, conduits, pumping stations, ejector stations and all other appurtenances, extensions, additions and improvements necessary, appropriate, useful, conve-

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MUNICIPAL CORPORATIONS

nient or incidental for the collection, treatment and disposal in a sanitary manner of sewage and industrial wastes; and the term "combined waterworks and sewerage system" shall be construed to mean and include a waterworks and sewerage system, which a municipality determines by ordinance to operate in combination.

Acts 1939, c. 98, §§ 1, 2; Acts 1947, c. 112; Acts 1955, c. 131; Acts 1969, c. 86.

Cross References

Creation by charter provision of certain independent city boards, home rule powers for cities, see § 8-12-3.
General powers of every municipality and its governing body, see § 8-12-5.

Library References

Key Numbers

Municipal Corporations Ⓒ708.
Waters and Water Courses Ⓒ183.
Westlaw Key Number Searches: 268k708;
405k183.

Encyclopedias

C.J.S. Municipal Corporations §§ 1535 to
1536.
C.J.S. Waters §§ 228, 235.

Notes of Decisions

New and annexed tracts 1

1. New and annexed tracts

City, rather than sewer and water districts, was entitled to provide sewer and water services to newly developed tract that was within districts' boundaries, but was annexed to city, where such services were not previously furnished to tract. Code, 16-13A-8. Berkeley County Public Service Sewer Dist. v. West Virginia Public Service Com'n, 1998, 512 S.E.2d 201, 204 W.Va. 279. Municipal Corporations Ⓒ 712(1)

If a tract of real estate located within a public service district has been annexed into a municipality, then, as between the municipality and the public service district, the municipality has the superior right to extend water and/or sewer service which were not being previously fur-

nished to the tract by the public service district, and under those circumstances, a public service district would need the consent of the municipality and the Public Service Commission (PSC) in order to provide such service. Code, 16-13A-8. Berkeley County Public Service Sewer Dist. v. West Virginia Public Service Com'n, 1998, 512 S.E.2d 201, 204 W.Va. 279. Municipal Corporations Ⓒ 712(1)

Awarding sewer and water service rights in newly developed tract to city, rather than to sewer and water districts, could reasonably be expected to provide appropriate protection to the relevant public interests, both existing and foreseeable. Berkeley County Public Service Sewer Dist. v. West Virginia Public Service Com'n, 1998, 512 S.E.2d 201, 204 W.Va. 279. Municipal Corporations Ⓒ 712(1)

§ 8-20-1a. Acquisition and operation of combined systems; extension beyond corporate limits; definitions

(a) Any municipality may acquire, construct, establish and equip and thereafter repair, maintain and operate a combined waterworks, sewerage and stormwater system either wholly within or partly within and partly without the corporate limits thereof under the provisions of this article, and any municipality owning and operating a waterworks and sewerage system, but not a stormwater system, may acquire, construct, establish and equip the stormwater system which it does not then own and operate, and such municipality may provide by ordinance that when such stormwater system shall have been acquired, constructed, established and equipped, the same shall thereafter be owned, repaired, maintained and operated as a combined undertaking under the provisions of this article, and any municipality already owning and operat-

ing an existing waterworks system, sewerage system, and stormwater system, may by ordinance combine the same into a single undertaking under the provisions of this article. However, no municipality may acquire, construct, establish and equip or thereafter repair, maintain and operate a combined waterworks, sewerage and stormwater system which includes highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways.

(b) Any municipality which has combined its waterworks, sewerage system and stormwater systems under the provisions of this article, or pursuant to the provisions of any other law, may hereafter construct extensions, additions, betterments and improvements to any of the systems, any combination thereof, or all of the waterworks, sewerage and stormwater systems of said combined waterworks, sewerage and stormwater system, and may finance the acquisition, construction, establishment and equipment thereof, or the construction or extensions, additions, betterments and improvements thereof by the issuance of revenue bonds under the provisions of this article.

(c) Notwithstanding the provisions of any other law or charter to the contrary, any such municipality may serve and supply the area included within twenty miles outside its corporate limits with either the water, sewer or stormwater services, any combination of such services or all such services, of its combined waterworks, sewerage and stormwater system; provided that such water, sewer or stormwater services and facilities shall not be served or supplied within the corporate limits of any municipality without the consent of the governing body of such municipality: Provided, That for stormwater systems, within the twenty miles beyond the municipality's corporate limits the only areas the municipality may serve and supply shall be those areas from which stormwater affects or drains into the municipality.

(d) As used in this article, the following terms shall have the following meanings unless the text clearly indicates otherwise.

(1) "Stormwater system" means a stormwater system in its entirety or any integral part thereof used to collect and dispose of stormwater and an associated stormwater management program. It includes all facilities, structures and natural water courses used for collecting and conducting stormwater to, through and from drainage areas to the points of final outlet, including, but not limited to, any and all of the following: Inlets, conduits, outlets, channels, ponds, drainage ways, easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, siphons, retention or detention basins, dams, floodwalls, pipes, flood control systems, levies and pumping stations. The term "stormwater system" shall not include highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

(2) "Combined waterworks, sewerage and stormwater system" means a waterworks, sewerage and stormwater system which a municipality determines by ordinance to operate in combination.

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(3) "Combined system" means either a combined waterworks, sewerage and stormwater system, or a combined waterworks and sewerage system.

(4) "Stormwater management program" means those activities associated with the management, operation and maintenance and control of stormwater and stormwater systems, and shall include and not be limited to public education, stormwater and surface runoff water quality improvement, mapping, planning, flood control, inspection, enforcement and any other activities required by state and federal law. The term "stormwater management program" shall not include those activities associated with the management, operation, maintenance and control of highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways.

Acts 1976, c. 83; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Key Numbers

Municipal Corporations Ⓔ708.
Waters and Water Courses Ⓔ183.
Westlaw Key Number Searches: 268k708;
405k183.

Encyclopedias

C.J.S. Municipal Corporations §§ 1535 to
1536.
C.J.S. Waters §§ 228, 235.

§ 8-20-1b. Cooperation with other governmental units

In carrying out any lawful purpose prescribed by this article, any municipality may, in the exercise of its powers, duties and responsibilities, cooperate or join with the state of West Virginia or any political subdivision, agency, board, commission, office or department thereof, however designated, or with the United States of America or any agency or department thereof.

Acts 1986, c. 118; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

§ 8-20-1c. Severance of combined system

Any municipality which has combined its waterworks and sewerage systems or waterworks, sewerage and stormwater systems, under the provisions of this article, or pursuant to provisions of any other law, may hereafter sever said combined system if the following conditions are met:

(a) An ordinance is enacted by the governing body of the municipality severing the combined system into separate systems.

(b) If revenue bonds or notes or other obligations with a lien on or pledge of the revenues of said combined system, or any part thereof, are outstanding, then the municipality must provide in said ordinance that the severance of the combined system is not effective until all such outstanding revenue bonds or notes or other obligations with a lien on or pledge of the revenues of the system, or any part thereof, are paid and the method for paying said outstanding revenue bonds or notes or other obligations. For the purposes of this section, said municipality may provide for payment of said outstanding revenue bonds or notes or other obligations by:

(1) Depositing moneys and funds with the West Virginia municipal bond commission or in escrow with a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the state of West Virginia selected by the issuer to pay interest when due and to pay principal when due, whether at maturity or earlier redemption;

(2) Depositing securities with the municipal bond commission or said escrow trustee, the principal of and earnings on which will provide moneys sufficient to pay interest when due and to pay principal when due, whether at maturity or earlier redemption; or

(3) Depositing with the municipal bond commission or said escrow trustee any combination of the foregoing sufficient to pay interest when due and to pay principal when due, whether at maturity or earlier redemption.

(c) If the combined system is under the supervision and control of a separate committee, board or commission, then the governing body of the municipality must provide for the dissolution of the committee, board or commission, and the creation of other committees, boards or commissions as may be required by law.

Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Key Numbers

Municipal Corporations ☞708.
Waters and Water Courses ☞183.
Westlaw Key Number Searches: 268k708;
405k183.

Encyclopedias

C.J.S. Municipal Corporations §§ 1535 to
1536.
C.J.S. Waters §§ 228, 235.

PART II—RIGHT OF EMINENT DOMAIN

§ 8-20-2. Right of eminent domain; limitations

For the purpose of acquiring, constructing, establishing or extending any system within a combined system, or a combined system, or for the purpose of constructing any additions, betterments or improvements to any system within a combined system, or a combined system, or for the purpose of acquiring any property necessary, appropriate, useful, convenient or incidental for or to any system within a combined system, or combined system, under the provisions of this article, the municipality shall have the right of eminent domain as provided in chapter fifty-four of this code: Provided, That such right of eminent domain for the acquisition of a complete privately owned waterworks system may not be exercised without prior approval of the public service commission, and in no event shall any municipality construct, establish or extend beyond the corporate limits of the municipality a municipal waterworks system or a combined system under the provisions of this article to supply service in competition with an existing privately or municipally owned waterworks system or combined system in the municipality or within the proposed extension of the system, unless, except in the case of a stormwater system, a certificate of public convenience and necessity therefor shall have been issued by the public service commission:

§ 8-20-2

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Provided, however, that the power of eminent domain provided in this section shall not extend to highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways. Acts 1947, c. 112; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Key Numbers

Eminent Domain § 28, 32.
Westlaw Key Number Searches: 148k28;
148k32.

Encyclopedias

C.J.S. Eminent Domain §§ 38 to 39, 44 to 45.

PART III—REVENUE BOND FINANCING

§ 8-20-3. Ordinance describing project; contents

The governing body of any municipality availing itself of the provisions of this article shall adopt an ordinance describing in a general way the contemplated project. If it is intended to include in the combined system any existing waterworks system or any existing sewerage system, or both, or if applicable, any existing stormwater system, or any of them, or all of them, the ordinance shall provide that it or they be so included in the combined system and shall describe in a general way such existing waterworks or sewerage system or both, or, if applicable, any existing stormwater system, or any of them, or all of them, to be included in the combined system. The ordinance shall state the means provided for refunding any obligations unpaid and outstanding payable solely from the revenues of any such waterworks or sewerage system, or both, or if applicable, any existing stormwater system, or any of them, or all of them. The ordinance shall determine the period of usefulness of the contemplated project.

If it is intended to acquire, construct, establish and equip a combined system or any part thereof, or to construct extensions, additions, betterments and improvements to either the waterworks system or the sewerage system of the combined system, or both, or if applicable, any existing stormwater system, or any of them, or all of them, the ordinance shall describe in a general way the works or property or system to be acquired, constructed, established or equipped or the extensions, additions, betterments and improvements to be constructed.

The ordinance shall fix the amount of revenue bonds proposed to be issued, the interest rate or rates, and any other details in connection with the bonds considered advisable. The ordinance may state that the bonds, or such ones thereof as may be specified, shall, to the extent and in the manner prescribed, be subordinated and be junior in standing, with respect to principal and interest and the security thereof, to such other bonds as are designated in the ordinance.

Acts 1939, c. 98, § 4; Acts 1947, c. 112; Acts 1949, c. 91; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Key Numbers

Municipal Corporations Ⓒ300.
Westlaw Key Number Search: 268k300.

Encyclopedias

C.J.S. Municipal Corporations § 991.

§ 8-20-4. Publication of abstract of ordinance and notice; hearing

After the ordinance for any project under the provisions of this article has been adopted, an abstract of the ordinance, determined by the governing body to contain sufficient information as to give notice of the contents of such ordinance, together with the following described notice, shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such municipality. The notice to be published with said abstract of the ordinance shall state that said ordinance has been adopted, that the municipality contemplates the issuance of the bonds described in the ordinance, that any person interested may appear before the governing body upon a certain date, which shall not be less than ten days subsequent to the date of the first publication of such abstract and notice and which shall not be prior to the date of the last publication of such abstract and notice, and present protests and that a certified copy of the ordinance is on file with the governing body for review by interested parties during the office hours of the governing body. At such hearing all protests and suggestions shall be heard and the governing body shall take such action as it shall deem proper in the premises: Provided, That if at such hearing written protest is filed by thirty percent or more of the freeholders of the municipality, then the governing body of said municipality shall not take further action unless four fifths of the qualified members of said governing body assent thereto.

Acts 1939, c. 98, § 5; Acts 1947, c. 112; Acts 1967, c. 105; Acts 1969, c. 86; Acts 1971, c. 103; Acts 1981, 1st Ex. Sess., c. 2.

Library References

Key Numbers

Municipal Corporations Ⓒ294(7).
Westlaw Key Number Search: 268k294(7).

Encyclopedias

C.J.S. Municipal Corporations § 981.

§ 8-20-5. Amount, negotiability and execution of bonds; refund of outstanding obligations or securities by sale or exchange of bonds

For the purpose of defraying the cost of acquisition, construction, establishment or equipment of any system within a combined system, or a combined system, and for the purpose of paying the cost of constructing any extensions, additions, betterments or improvements to any of the systems of said combined system, or all of them, any such municipality may issue revenue bonds under the provisions of this article.

All such bonds may be authorized, issued and sold pursuant to ordinance in installments at different times or an entire issue or series may be sold at one time. Such bonds shall bear interest at a rate not to exceed twelve percent per annum, payable at such times, and shall mature within the period of usefulness

of the project involved, to be determined by the governing body and in any event within a period of not more than forty years. The bonds may be in denomination or denominations, may be in such form, either coupon or registered, may carry registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to terms of redemption, with or without a premium, may be declared to become due before the maturity date thereof, may provide for the replacement of mutilated, destroyed, stolen or lost bonds, may be authenticated in such manner and upon compliance with such conditions, and may contain other terms and covenants, as may be provided by ordinance of the governing body of the municipality. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all bonds shall at all times be, and shall be treated as, negotiable instruments for all purposes.

The bonds and the interest thereon, together with all properties and facilities of the municipality owned or used in connection with the combined system, and all the moneys, revenues and other income of such municipality derived from the combined system shall be exempt from all taxation by this state or any county, municipality, political subdivision or agency thereof. Bonds may be sold in such manner as the governing body shall determine. If any bonds shall be issued to bear interest at a rate of twelve percent per annum, the price at which they may be sold shall be such that the interest cost to the municipality of the proceeds of the bonds may not exceed thirteen percent per annum computed to maturity according to the standard table of bond values.

If the governing body of the municipality determines to sell any revenue bonds of such combined system for refunding purposes, the proceeds of the bonds shall be deposited at the place of payment of the bonds, obligations or securities being refunded thereby.

In case any officer whose signature appears on the bonds or coupons attached thereto shall cease to be such officer before the delivery of the bonds to the purchaser, such signature shall nevertheless be valid and sufficient for all purposes, with the same effect as if he or she had remained in office until the delivery of the bonds. All signatures on the bonds or coupons and the corporate seal may be mechanically reproduced if authorized in the ordinance authorizing the issuance of the bonds. The bonds shall have all the qualities of negotiable instruments under the laws of this state.

Whenever a waterworks and sewerage system or stormwater system, if applicable, is included in a combined system under the provisions of this article and there are unpaid and outstanding revenue bonds or any other obligations or securities previously issued which are payable solely from the revenues of the waterworks or the sewerage system or stormwater system, if applicable, or any part thereof, such outstanding bonds, obligations or securities may be refunded by the issuance and sale or exchange therefor of revenue bonds to be issued under the provisions of this article.

Whenever any outstanding bonds, obligations or securities previously issued which are payable solely from the revenues of any waterworks or sewerage system, or stormwater system, if applicable, included in a combined system under the provisions of this article are refunded and the refunding is to be accomplished by exchange, such outstanding bonds, obligations or securities shall be surrendered and exchanged for revenue bonds of such combined system of a total principal amount which shall not be more and may be less than the principal amount of the bonds, obligations or securities surrendered and exchanged plus the interest to accrue thereon to the date of surrender and exchange, and if the refunding is to be accomplished through the sale of revenue bonds of such combined system the total principal amount of such revenue bonds which may be sold for refunding purposes shall not exceed the principal amount of the bonds, obligations or securities being refunded plus the interest to accrue thereon to the retirement date or the next succeeding interest payment date, whichever date may be earlier.

Provision may be made that each bond to be exchanged for refunding bonds shall be kept intact and shall not be canceled or destroyed until the refunding bonds, and interest thereon, have been finally paid and discharged, but each bond shall be stamped with a legend to the effect that the same has been refunded pursuant to the provisions of this article.

Acts 1939, c. 98, § 3; Acts 1947, c. 112; Acts 1957, c. 123; Acts 1969, c. 86; Acts 1970, c. 7; Acts 1980, c. 33; Acts 1981, 1st Ex. Sess., c. 2; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Key Numbers

Municipal Corporations ¶911, 922.
Taxation ¶218.
Westlaw Key Number Searches: 268k911;
268k922; 371k218.

Encyclopedias

C.J.S. Municipal Corporations § 1649.
C.J.S. Taxation § 260.

§ 8-20-6. Bonds payable solely from revenues; not to constitute municipal indebtedness

Bonds issued under the provisions of this article shall be payable solely from the revenues derived from the combined system, and the bonds may not in any event constitute an indebtedness of such municipality within the meaning of any constitutional or statutory provision or limitation and it shall be plainly stated on the face of each bond that the same has been issued under the provisions of this article, and that it does not constitute an indebtedness of the municipality within any constitutional or statutory provision or limitation. The ordinance authorizing the issuance of the bonds may contain such covenants and restrictions upon the issuance of additional revenue bonds thereafter as may be considered necessary or advisable for the assurance of payment of the bonds thereby authorized and as may thereafter be issued.

Acts 1939, c. 98, § 6; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

§ 8-20-6

MUNICIPAL CORPORATIONS

Library References

Key Numbers

Municipal Corporations §950(15).
Westlaw Key Number Search: 268k950(15).

Encyclopedias

C.J.S. Municipal Corporations §§ 1708 to 1709.

§ 8-20-7. Lien of bondholders

There shall be and there is hereby created and granted a statutory mortgage lien upon such combined system which shall exist in favor of the holder of bonds hereby authorized to be issued, and each of them, and to and in favor of the holder of the coupons attached to said bonds, and such combined system shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest upon said bonds. However, no lien may attach to any portion of any highways, road or drainage easements or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways.

Any municipality in acquiring an existing waterworks system may provide that payment therefor shall be made by issuing revenue bonds and delivering the same at such prices as may be agreed upon within the limitations prescribed in section five hereof. Any revenue bonds so issued in payment for an existing waterworks system shall for all purposes be regarded as partaking of the nature of and as being secured by a purchase money mortgage upon the property so acquired; and the holders thereof shall have, in addition to any other remedies and rights prescribed by this article, remedies and rights as may now or hereafter exist in law in the case of purchase money mortgages.

Acts 1939, c. 98, § 8; Acts 1947, c. 112; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Key Numbers

Municipal Corporations §950(15).
Westlaw Key Number Search: 268k950(15).

Encyclopedias

C.J.S. Municipal Corporations §§ 1708 to 1709.

§ 8-20-8. Covenants with bondholders

Any ordinance authorizing the issuance of bonds hereunder, or any trust indenture with any banking institution or trust company, within or without the state, for the security of said bonds, which any municipality is hereby empowered and authorized to enter into and execute, may contain covenants with the holders of the bonds as to:

(a) The purpose or purposes to which the proceeds of sale of bonds or the revenues derived from said combined system may be applied and the securing, use and disposition thereof, including, if considered desirable, the appointment of a trustee or depository for any of the funds;

(b) The pledging of all or any part of the revenues derived from the ownership, control or operation of such combined system, including any part thereof heretofore or hereafter acquired, constructed, established, extended, equipped, added to, bettered or improved or derived from any other sources, to the payment of the principal of or interest thereon of bonds issued hereunder and for reserve or other funds as may be considered necessary or desirable;

(c) The fixing, establishing and collecting of rates, fees or charges for the use of the services and facilities of the combined system, including the parts thereof heretofore or hereafter acquired, constructed, established, extended, equipped, added to, bettered or improved and the revision of same from time to time, as will always provide revenues at least sufficient to provide for all expenses of repair, maintenance and operation of such combined system, the payment of the principal of and interest upon all bonds or other obligations payable from the revenues of such combined system, and all reserve and other funds required by the terms of the ordinance authorizing the issuance of bonds;

(d) The transfer from the general funds of the municipality to the account or accounts of the combined system of an amount equal to the cost of furnishing the municipality or any of its departments, boards or agencies with the services and facilities of such combined system;

(e) Limitations or restrictions upon the issuance of additional bonds or other obligations payable from the revenues of such combined system, and the rank or priority, as to lien and source and security for payment from the revenues of such combined system, between bonds payable from the revenues;

(f) The manner and terms upon which all bonds and other obligations issued hereunder may be declared immediately due and payable upon the happening of a default in the payment of the principal of or interest thereon, or in the performance of any covenant or agreement with bondholders, and the manner and terms upon which defaults may be declared cured and the acceleration of the maturity of the bonds rescinded and repealed;

(g) Budgets for the annual repair, maintenance and operation of such combined system and restrictions and limitations upon expenditures for the purposes, and the manner of adoption, modification, repeal or amendment thereof, including the approval of the budgets by consulting engineers designated by holders of bonds issued hereunder;

(h) The amounts of insurance to be maintained upon the combined system, or any part thereof, and the use and disposition of the proceeds of any insurance; and

(i) The keeping of books of account, relating to such undertaking and the audit and inspection thereof, and the furnishing to the holders of bonds issued hereunder or their representatives, reports prepared, certified or approved by accountants designated or approved by the holders of bonds issued hereunder.

Any ordinance or trust indenture may also contain other additional covenants as shall be considered necessary or desirable for the security of the holders of bonds issued under the provisions of this article, notwithstanding that other covenants are not expressly enumerated above, it being the intention hereof to grant to municipalities plenary power and authority to make any and all covenants or agreements necessary in order to secure greater marketability for bonds issued hereunder as fully and to the same extent as covenants or agreements could be made by a private corporation rendering similar services and facilities and to grant to municipalities full and complete power and

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authority to enter into any contracts, covenants or agreements with holders of bonds issued hereunder not inconsistent with the constitution of this state. Acts 1955, c. 131; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Key Numbers

Municipal Corporations Ⓒ950(15).
Westlaw Key Number Search: 268k950(15).

Encyclopedias

C.J.S. Municipal Corporations §§ 1708 to 1709.

§ 8-20-9. Operating contract

Any municipality may enter into contracts or agreements with any persons for: (1) The repair, maintenance and operation and management of the facilities and properties of the combined system, or any part thereof; or (2) the collection and disbursement of the income and revenues thereof, or for both (1) and (2), for the period of time and under terms and conditions as shall be agreed upon between the municipality and such persons. Any municipality shall have plenary power and authority to provide in the ordinance authorizing the issuance of bonds hereunder, or in any trust indenture securing the bonds, that the contracts or agreements shall be valid and binding upon the municipality as long as any of the bonds, or interest thereon, is outstanding and unpaid. Acts 1955, c. 131; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Key Numbers

Municipal Corporations Ⓒ708.
Waters and Water Courses Ⓒ183.
Westlaw Key Number Searches: 268k708;
405k183.

Encyclopedias

C.J.S. Municipal Corporations §§ 1535 to 1536.
C.I.S. Waters §§ 228, 235.

§ 8-20-10. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates, fees or charges; change in rates, fees or charges; failure to cure delinquency; delinquent rates, fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure

(a) The governing body of any municipality availing itself of the provisions of this article shall have plenary power and authority to make, enact and enforce all needful rules and regulations for the repair, maintenance and operation and management of the combined system of such municipality and for the use thereof, and shall also have plenary power and authority to make, enact and enforce all needful rules and regulations and ordinances for the care and protection of any such system, which may be conducive to the preservation of the public health, comfort and convenience and to rendering the water supply of such municipality pure, the sewerage harmless insofar as it is reasonably possible so to do, and if applicable properly collecting and controlling the stormwater as is reasonably possible so to do: Provided, That no municipality may make, enact or enforce any rule, regulation or ordinance regulating any highways, road or drainage easements or stormwater facilities constructed,

owned or operated by the West Virginia Division of Highways except in accordance with chapter twenty-nine-a of this code.

Any municipality shall have plenary power and authority to charge the users for the use and service of combined system and to establish rates, fees or charges for such purpose. Separate rates, fees or charges may be fixed for the water and sewer services respectively, and, if applicable, the stormwater services, or combined rates, fees or charges for the combined water and sewer services, and, if applicable, the stormwater services. Such rates, fees or charges, whether separate or combined, shall be sufficient at all times to pay the cost of repair, maintenance and operation of the combined system, provide an adequate reserve fund and adequate depreciation fund and pay the principal of and interest upon all revenue bonds issued under this article. Rates, fees or charges shall be established, revised and maintained by ordinance and become payable as the governing body may determine by ordinance, and such rates, fees or charges shall be changed from time to time as needful, consistent with the provisions of this article.

(b) Whenever any rates, fees or charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the user of the services and facilities provided shall be delinquent and the user shall be held liable at law until such time as all rates, fees and charges are fully paid.

(c) All rates, fees or charges for water service, sewer service, and, if applicable, stormwater service, whenever delinquent, as provided by ordinance of the municipality, shall be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served, and the municipality shall have plenary power and authority from time to time to enforce such lien in a civil action to recover the money due for services rendered plus court fees and costs and a reasonable attorney's fee: Provided, That an owner of real property may not be held liable for the delinquent rates, fees or charges for services or facilities of a tenant, nor shall any lien attach to real property for the reason of delinquent rates, fees or charges for services or facilities of a tenant of the real property, unless the owner has contracted directly with the municipality to purchase such services or facilities.

(d) Municipalities are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of the delinquent rates and charges. If the municipality collects the delinquent account, plus fees and costs, from its customer or other responsible party, the municipality shall pay to the magistrate court the filing fees or other fees and costs which were previously deferred.

(e) No municipality may foreclose upon the premises served by it for delinquent rates, fees or charges for which a lien is authorized by this section except through the bringing and maintenance of a civil action for the purpose brought in the circuit court of the county wherein the municipality lies. In every such action, the court shall be required to make a finding based upon the

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evidence and facts presented that the municipality had exhausted all other remedies for the collection of debts with respect to such delinquencies prior to the bringing of the action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless the delinquency had been in existence or continued for a period of two years from the date of the first delinquency for which foreclosure is being sought.

Acts 1939, c. 98, § 7; Acts 1947, c. 112; Acts 1969, c. 86; Acts 1989, c. 133; Acts 1990, c. 140; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Key Numbers

Municipal Corporations Ⓒ708.
Waters and Water Courses Ⓒ183.
Westlaw Key Number Searches: 268k708;
405k183.

Encyclopedias

C.J.S. Municipal Corporations §§ 1535 to
1536.
C.J.S. Waters §§ 228, 235.

Notes of Decisions

Tort liability 1

1. Tort liability

A municipal ordinance that is enacted pursuant to the statutory power granted to municipalities to construct, operate, maintain, care for, and protect a sewer system, and that purports

to limit, modify, or eliminate tort liabilities and immunities related to that sewer system in a fashion that conflicts with the general law of the state, is unenforceable and void, to the extent of such conflict. Code, 8-20-10, 29-12A-5(a)(16). *Calabrese v. City of Charleston*, 1999, 515 S.E.2d 814, 204 W.Va. 650. Municipal Corporations Ⓒ 70

§ 8-20-11. Discontinuance of water service for nonpayment of rates or charges

Any municipality shall also have plenary power and authority, and may covenant with the holders of any bonds issued hereunder, to shut off and discontinue the supplying of the water service of the combined system for the nonpayment of the rates, fees or charges for said water service or sewer service, or both, or, if applicable, stormwater service, or any combination thereof, or all of them.

Acts 1955, c. 133; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Key Numbers

Waters and Water Courses Ⓒ203(13).
Westlaw Key Number Search: 405k203(13).

Encyclopedias

C.J.S. Waters § 305.

§ 8-20-11a. Governmental entities subject to established rates

The municipality and any county government, state government and federal government served by the services of the combined system shall be subject to the same rates, fees or charges established in this article or to rates, fees or charges established in harmony therewith, for service rendered to the governmental entity, and shall pay such rates, fees or charges when due from corporate funds and the same shall be considered to be part of the revenue of the combined system as defined in this article, and be applied as provided in this article, for the application of such revenues. However, no rates, fees or

charges for combined services or stormwater services may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

Acts 2001, c. 212, eff. 90 days after April 14, 2001.

§ 8-20-12. Use of revenues; sinking fund

All revenues derived from the operation of any combined system under the provisions of this article shall be set aside as collected and used only for the purpose of paying the cost of repairing, maintaining and operating such system, providing an adequate reserve fund, an adequate depreciation fund, and paying the principal of and interest upon the revenue bonds issued by the municipality under the provisions of this article. The ordinance pursuant to which any bonds are issued shall pledge the revenues derived from the combined system to the purposes aforesaid and shall definitely fix and determine the amount of revenues which shall be necessary and set apart in a special fund for the bond requirements. The amounts so set apart into said special fund for the bond requirements shall be remitted to the West Virginia municipal bond commission to be retained and paid out by said commission consistent with the provisions of this article and the ordinance pursuant to which the bonds have been issued: Provided, That payments of principal of and interest on any bonds owned by the United States of America or any agency or department thereof may be made by the municipality directly to the United States of America or said agency or department thereof.

Acts 1939, c. 98, § 9; Acts 1969, c. 86; Acts 1986, c. 118; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Key Numbers

Municipal Corporations ☞951.
Westlaw Key Number Search: 268k951.

Encyclopedias

C.J.S. Municipal Corporations §§ 1704 to 1705.

§ 8-20-13. System of accounts; audit

Any municipality operating a combined system under the provisions of this article shall set up and maintain a proper system of accounts in accordance with the requirements of the public service commission, showing the amount of revenues received from the combined system and the application of the same. At least once each year the municipality shall cause the accounts to be properly audited, and a report of the audit shall be open to the public for inspection at all reasonable times.

Acts 1939, c. 98, § 10; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Key Numbers

Municipal Corporations ☞885.
Westlaw Key Number Search: 268k885.

Encyclopedias

C.J.S. Municipal Corporations § 1629.

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§ 8-20-14. Repair and maintenance of municipal sewerage system outside corporate limits

Whenever a municipality collects rates or charges from users of any part of a sewerage system located outside the corporate limits of such municipality for sewerage service rendered to such users, pursuant to the provisions of this article or other act or law, such municipality shall be responsible for the repair and maintenance of such sewerage system and the county court of the county or counties in which such sewerage system is located shall not be liable or responsible for the repair and maintenance of such sewerage system.

Acts 1957, c. 127; Acts 1969, c. 86.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

Library References

Key Numbers

Municipal Corporations Ⓒ708.
Westlaw Key Number Search: 268k708.

Encyclopedias

C.J.S. Municipal Corporations §§ 1535 to 1536.

§ 8-20-15. Protection and enforcement of rights of bondholders, etc.; receivership

Any holder of any bonds issued under the provisions of this article or of any coupons representing interest accrued thereon may by civil action, mandamus or other proper proceeding enforce the statutory mortgage lien created and granted in section seven of this article, protect and enforce any and all rights granted hereunder or under any such ordinance or trust indenture, and may enforce and compel performance of all duties required by the provisions of this article or by any ordinance or trust indenture to be performed by the municipality or by the governing body or any officer, including the making and collecting of reasonable and sufficient rates, fees or charges for services rendered by the combined system.

If there be default in the payment of the principal of or interest upon any of bonds, or of both principal and interest, any court having jurisdiction shall appoint a receiver to administer said combined system on behalf of the municipality, and the bondholders or trustee, or both, with power to charge and collect rates, fees or charges sufficient to provide for the retirement of the bonds and pay the interest thereon, and for the payment of the repair, maintenance and operation expenses, and the receiver shall apply the revenues in conformity with the provisions of this article and the ordinance pursuant to which the bonds have been issued or trust indenture, or both.

Acts 1939, c. 98, § 8; Acts 1947, c. 112; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Key Numbers

Municipal Corporations Ⓒ955(1).
Westlaw Key Number Search: 268k955(1).

PART IV—GRANTS, LOANS AND ADVANCES; CUMULATIVE AUTHORITY

§ 8-20-16. Grants, loans and advances

Any municipality is hereby empowered and authorized to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of acquisition, construction, establishment, extension or equipment of combined systems and the construction of additions, betterments and improvements thereto, and for the other purposes herein authorized, from any authorized agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article, the revenues of the said combined system or grants to the municipality from any agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any agency of the state, the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article notwithstanding, interest on any loans or temporary advances may be paid from the proceeds thereof until the maturity of the notes or other negotiable instrument.

In no event shall any loan or temporary advance be a general obligation of the municipality and the loans or temporary advances, including the interest thereon, shall be paid solely from the sources specified in this section.

Acts 1961, c. 106; Acts 1969, c. 86; Acts 1981, 1st Ex. Sess., c. 2; Acts 1986, c. 118; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Key Numbers

United States § 82(2).

Westlaw Key Number Search: 393k82(2).

Encyclopedias

C.J.S. United States § 155.

§ 8-20-17. Additional and alternative method for constructing, etc., and financing combined system; cumulative authority

This article is, without reference to any other statute or charter provision, full authority for the acquisition, construction, establishment, extension, equipment, additions, betterment, improvement, repair, maintenance and operation of or to the combined system herein provided for and for the issuance and sale of the bonds by this article authorized, and is an additional and alternative method therefor and for the financing thereof, and no petition, referendum or election or other or further proceeding with respect to any undertaking or to the

issuance or sale of bonds under this article and no publication of any resolution, ordinance, notice or proceeding relating to any undertaking or to the issuance or sale of such bonds is required, except as prescribed by this article, any provisions of other statutes of the state to the contrary notwithstanding: Provided, That all functions, powers and duties of the bureau of public health and the division of environmental protection remain unaffected by this article: Provided, however, that no municipality may acquire, construct, establish, extend, repair or equip or thereafter repair, maintain and operate a combined waterworks, sewerage or stormwater system which includes highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways.

This article is cumulative authority for any undertaking herein authorized, and does not repeal any existing laws with respect thereto.

Acts 1933, Ex. Sess., c. 26, § 13; Acts 1969, c. 86; Acts 1994, c. 61; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

PART V—OPERATION BY BOARD; CONSTRUCTION

§ 8-20-18. Alternative procedure for acquisition, construction, etc., of combined system

(a) As an alternative to the procedure provided in this article, any municipality is hereby empowered and authorized to acquire, construct, establish, extend, equip, repair, maintain and operate a combined system or to construct, maintain and operate additions, betterments and improvements thereto, whether acquired, constructed, established, extended or equipped under the provisions of this article or not, and to collect the revenues therefrom for the services rendered thereby, through the supervision and control of a committee, by whatever name called, composed of all or of a portion of the governing body, or of a board or commission appointed by the governing body, as may be provided by the governing body, and if such alternative is followed, said committee, board or commission shall have and be limited to all the powers, authority and duties granted to and imposed upon a board as provided in article sixteen of this chapter.

However, no municipality may acquire, construct, establish, extend, repair or equip or thereafter repair, maintain and operate a combined waterworks, sewerage or stormwater system, which includes highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways.

(b) In the event that the waterworks or sewerage system or both, or if applicable, stormwater services, are in existence prior to the creation of the combined system, and the waterworks or sewerage system or both, and if applicable, stormwater services, are supervised and controlled by a committee, board or commission, and the alternative provided for in subsection (a) of this

section is to be followed with respect to the supervision and control of the combined system, the governing body may by ordinance, after the creation of the combined system, provide:

- (1) The manner of and procedure for transferring supervision and control from each separate committee, board or commission to the committee, board or commission which is supervising and controlling the combined system; or
- (2) The manner of and procedure for combining each separate committee, board or commission into one committee, board or commission and transferring thereto supervision and control as aforesaid.

Acts 1961, c. 104; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Key Numbers

Municipal Corporations ☞708.
Waters and Water Courses ☞183.
Westlaw Key Number Searches: 268k708;
405k183.

Encyclopedias

C.J.S. Municipal Corporations §§ 1535 to
1536.
C.J.S. Waters §§ 228, 235.

§ 8-20-19. Article to be liberally construed

This article is necessary for the public health, safety and welfare and shall be liberally construed to effectuate its purposes.

Acts 1933, Ex. Sess., c. 26, § 14; Acts 1969, c. 86.

(d) No municipality may foreclose upon the premises served by it for delinquent rates or charges for which a lien is authorized by this section except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county wherein the municipality lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the municipality had exhausted all other remedies for the collection of debts with respect to such delinquencies prior to the bringing of such action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless such delinquency had been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being sought.

Acts 1989, c. 133; Acts 1990, c. 140; Acts 1990, c. 141; Acts 2004, c. 185, eff. 90 days after March 12, 2004.

PART VI—OPERATION BY BOARD; CONSTRUCTION

§ 8-19-21. Specifications for water mains and water service pipes

Considering the importance of public fire protection, any state or local government, public service district, public or private utility which installs or constructs water mains, shall ensure that all new mains specifically intended to provide fire protection are not less than six inches in diameter. Effective the first day of July, two thousand seven, when any state or local government, public service district, public or private utility installs or constructs water mains along a platted roadway or a public highway, using a six inch or greater line, that is specifically designed to provide fire protection, the state or local government, public service district, public or private utility shall install fire hydrants at intervals of not more than two thousand feet, unless there are no dwellings or businesses located one thousand feet from such proposed hydrant. *Provided*, That the Legislature shall study the effect, cost and feasibility of the internal hydrant valve and report the findings of that study to the regular session of the Legislature in the year two thousand and eight. A permit or other written approval shall be obtained from the Department of Health and Human Resources for each hydrant or group of hydrants installed in compliance with section nine, article one, chapter sixteen of the West Virginia code as amended. *Provided, however*, That all newly constructed water distribution systems transferred to a public or private utility shall have mains at least six inches in diameter where fire flows are required by the public or private utility. *Provided further*, That the utility providing service has sufficient hydraulic capacity as determined by the Department of Health and Human Resources.

Acts 1994, c. 31; Acts 2007, c. 187, eff. June 16, 2007.

ARTICLE 20

COMBINED WATERWORKS AND SEWERAGE SYSTEMS

Part III—Revenue Bond Financing.

| Section | Section |
|--|---|
| 8-20-10. Power and authority of municipality to enact ordinances and make rules and fix rates, fees or charges; deposit required for new customers; change in rates, fees or charges; failure to | cure delinquency; delinquent rates, discontinuance of service; reconnecting deposit; return of deposit; fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure. |

PART III—REVENUE BOND FINANCING

§ 8-20-10. Power and authority of municipality to enact ordinances and make rules and fix rates, fees or charges; deposit required for new customers; change in rates, fees or charges; failure to cure delinquency; delinquent rates, discontinuance of service; reconnecting deposit; return of deposit; fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure

(a)(1) The governing body of any municipality availing itself of the provisions of this article shall have plenary power and authority to make, enact and enforce all needful rules for the repair, maintenance and operation and management of the combined system of such municipality and for the use thereof, and shall also have plenary power and authority to make, enact and enforce all needful rules and ordinances for the care and protection of any such system, which may be conducive to the preservation of the public health, comfort and convenience and to rendering the water supply of such municipality pure, the sewerage harmless insofar as it is reasonably possible so to do, and if applicable properly collecting and controlling the stormwater as is reasonably possible so to do: *Provided*, That no municipality may make, enact or enforce any rule, regulation or ordinance regulating any highways, road or drainage easements or storm water facilities constructed, owned or operated by the West Virginia division of highways except in accordance with chapter twenty-nine-a of this code.

(2) Any municipality shall have plenary power and authority to charge the users for the use and service of combined system and to establish required deposits, rates, fees or charges for such purpose. Separate deposits, rates, fees or charges may be fixed for the water and sewer services respectively, and, if applicable, the stormwater services, or combined rates, fees or for the combined water and sewer services, and, if applicable, the storm water services. Such deposits, rates, fees or charges, whether separate or combined, shall be sufficient at all times to pay the cost of repair, maintenance and operation of the combined system, provide an adequate reserve fund and adequate depreciation fund and pay the principal of and interest upon all revenue bonds issued under this article. Deposits, rates, fees or charges shall be established, revised and maintained by ordinance and become payable as the governing body may determine by ordinance, and such rates, fees or charges shall be changed from time to time as needful, consistent with the provisions of this article.

(3) All new applicants for service shall indicate to the municipality or governing body whether they are an owner or tenant with respect to the service location.

(4) The municipality or governing body, but only one of them, may collect from all new applicants for service a deposit of one hundred dollars or two twelfths of the average annual usage of the applicant's specific customer class, whichever is greater, to secure the payment of water and sewage service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent and the user's service is disconnected or terminated, no reconnecting or reinstatement of service may be made by the municipality or governing body until another deposit equal to one hundred dollars or a sum equal to two twelfths of the average usage for the applicant's specific customer class, whichever is greater, is remitted to the municipality or governing body. After twelve months of prompt payment history, the municipality or governing body shall return the deposit to the customer or credit the customer's account with interest at a rate as the public service commission may prescribe: *Provided*, That where the customer is a tenant, the municipality or governing body is not required to return the deposit until the time the tenant discontinues service with the municipality or governing body. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The municipality or governing body may, under reasonable rules promulgated by the public service commission, shut off and discontinue water services to a delinquent user of either water or sewage facilities, or both, ten days after the water or sewage services become delinquent regardless of whether the governing body utilizes the security deposit to satisfy any delinquent payments.

(b) Whenever any rates, fees or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided shall be delinquent and the municipality or governing body may apply any deposit against any delinquent fee and the user shall be held liable at law until such time as all rates, fees and charges are fully paid.

(c) All rates, fees or charges for water service, sewer service, and, if applicable, stormwater service, whenever delinquent, as provided by ordinance of the municipality, shall be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served, and the municipality shall have plenary power and authority from time to time to enforce such lien in a civil action to recover the money due for services rendered plus court fees and costs and a reasonable attorney's fee: *Provided*, That an owner of real property may not be held liable for the delinquent rates, fees or charges for services or facilities of a tenant, nor shall any lien attach to real property for the reason of delinquent rates, fees or charges for services or facilities of a tenant of the real property, unless the owner has contracted directly with the municipality to purchase such services or facilities.

(d) Municipalities are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of the delinquent rates and charges. If the municipality collects the delinquent account, plus fees and costs, from its customer or other responsible party, the municipality shall pay to the magistrate court the filing fees or other fees and costs which were previously deferred.

(e) No municipality may foreclose upon the premises served by it for delinquent rates, fees or charges for which a lien is authorized by this section except through the bringing and maintenance of a civil action for the purpose brought in the circuit court of the county wherein the municipality lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the municipality had exhausted all other remedies for the collection of debts with respect to such delinquencies prior to the bringing of the action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless the delinquency had been in existence or continued for a period of two years from the date of the first delinquency for which foreclosure is being sought.

Acts 1939, c. 98, § 7; Acts 1947, c. 112; Acts 1969, c. 86; Acts 1989, c. 133; Acts 1990, c. 140; Acts 2001, c. 212, eff. 90 days after April 14, 2001; Acts 2004, c. 185, eff. 90 days after March 12, 2004.

ARTICLE 21

BOARD OF PARK AND RECREATION COMMISSIONERS

Part I—Establishment; Organization.

Section

8-21-3. Members; quorum; qualifications; election or appointment; terms; disqualification.

PART I—ESTABLISHMENT; ORGANIZATION

§ 8-21-2. Board a public corporate body; perpetual existence; seal; name; powers

Notes of Decisions

2. Powers and duties of boards, generally

It is unnecessary for a public corporate body to obtain a corporate charter from the office of the Secretary of State; a private corporation cannot

exercise the powers of a public corporate body. 55 W.Va. Op. Atty. Gen. 214 (February 13, 1974) 1974 WL 174275.

ARTICLE 15A

WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL

| Section | |
|------------|---|
| 31-15A-1. | Short title. |
| 31-15A-2. | Definitions. |
| 31-15A-3. | West Virginia infrastructure and jobs development council continued; members of council; staff of council. |
| 31-15A-4. | Development of guidelines and preliminary application for funding assistance. |
| 31-15A-5. | Requirements for project funding assistance; review of project preliminary applications by council. |
| 31-15A-6. | Powers, duties and responsibilities of the council generally; comprehensive assessment. |
| 31-15A-7. | Current and prospective planning; roads and highways; report to division of highways. |
| 31-15A-8. | Exemption of certain emergency projects from certificate of public convenience and necessity requirements; review of certain emergency projects by public service commission; and exemption for North Fork Hughes River watershed project. |
| 31-15A-9. | Infrastructure fund; deposits in fund; disbursements to provide loans, loan guarantees, grants and other assistance; loans, loan guarantees, grants and other assistance shall be subject to assistance agreements. |
| 31-15A-10. | Recommendations by council for expenditures of funds by loan, grant or for engineering assistance. |
| 31-15A-11. | Reservation of funds for projects and infrastructure projects. |
| 31-15A-12. | Additional powers of water development authority. |
| 31-15A-13. | Prohibition on funds inuring to the benefit of or being distributable to water development board; transactions between the water development board and officers having certain interests in such transactions. |
| 31-15A-14. | Termination or dissolution. |
| 31-15A-15. | Projects not to be considered public improvements; competitive bid requirements. |
| 31-15A-16. | Dedication of severance tax proceeds. |
| 31-15A-17. | Water development authority empowered to issue infrastructure revenue bonds and refunding bonds; creation of infrastructure revenue debt service fund; funding of infrastructure revenue debt service fund; requirements and manner of such issuance. |
| 31-15A-18. | Trustee for holders of infrastructure revenue bonds; contents of trust agreement. |
| 31-15A-19. | Legal remedies of infrastructure revenue bondholders or noteholders and trustees. |
| 31-15A-20. | Infrastructure revenue bonds lawful investments. |
| 31-15A-21. | Purchase and cancellation of infrastructure revenue bonds. |
| 31-15A-22. | Refunding revenue bonds. |
| 31-15A-23. | Infrastructure revenue bonds not debt of state, county, municipality or any political subdivision. |
| 31-15A-24. | Infrastructure revenue bonds exempt from taxation. |

§ 31-15A-1. Short title

This article shall be known and may be cited as the "West Virginia Infrastructure and Jobs Development Act."

Acts 1994, 1st Ex. Sess., c. 26.

§ 31-15A-2. Definitions

For purposes of this article:

(a) "Bond" or "infrastructure revenue bond" means a revenue bond, note, or other obligation issued by the water development authority pursuant to this article, including bonds to refund such bonds and notes to renew such notes, and notes in anticipation of and payable from the proceeds of such bonds.

(b) "Code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended;

(c) "Cost" means, as applied to any project to be financed, in whole or in part, with infrastructure revenues or funds otherwise provided pursuant to this article, the cost of planning, acquisition, improvement and construction of the project; the cost of preliminary design and analysis, surveys, borings; the cost of environmental, financial, market and engineering feasibility studies, assessments, applications, approvals, submissions or clearances; the cost of preparation of plans and specifications and other engineering services; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and any other interests required for the acquisition, repair, improvement or construction of the project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which buildings or structures may be moved; the cost of excavation, grading, shaping or treatment of earth, demolishing or removing any buildings or structures; the cost of constructing any buildings or other improvements; the cost of all pumps, tanks, vehicles, apparatus and other machinery, furnishings and equipment; loan or origination fees and all finance charges and interest incurred prior to and during the construction and for no more than six months after completion of construction; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring, repairing, improving or constructing any project; the cost of placing any project in operation; and all other costs and expenses of any kind or nature incurred or to be incurred by the project sponsor developing the project that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project: Provided, That costs shall not include any amounts related to the ongoing operations of the owner or operator, depreciation thereof or any other cost which the council or the water development authority has not determined to be consistent with the purposes and objectives of this article;

(d) "Council" means the West Virginia infrastructure and jobs development council created in section three of this article;

(e) "Division of environmental protection" means the division of environmental protection established under article one, chapter twenty-two of this code, or any successor to all or any substantial part of its powers and duties;

(f) "Division of health" means the division of health created in article one, chapter sixteen of this code, or any successor to all or any substantial part of its powers and duties;

(g) "Economic development authority" means the economic development authority established under article fifteen, chapter thirty-one of the code, or any successor to all or any substantial part of its powers and duties;

(h) "Emergency project" means a project which the council has determined:
(1) Is essential to the immediate economic development of an area of the state; and

(2) will not likely be developed in that area if construction of the project is not commenced immediately;

(i) "Governmental agency" means any county; municipality; watershed improvement district; assessment district; soil conservation district; sanitary district; public service district; drainage district; regional governmental authority and any other state governmental agency, entity, political subdivision or public corporation or agency authorized to acquire, construct or operate water or wastewater facilities or infrastructure projects;

(j) "Housing development fund" means the West Virginia housing development fund established under article eighteen of this chapter, or any successor to all or any substantial part of its powers and duties;

(k) "Infrastructure fund" means the West Virginia infrastructure fund created and established in section nine of this article;

(l) "infrastructure project" means a project in the state which the council determines is likely to foster and enhance economic growth and development in the area of the state in which the project is developed, for commercial, industrial, community improvement or preservation or other proper purposes, including, without limitation, tourism and recreational housing, land, air or water transportation facilities and bridges, industrial or commercial projects and facilities, mail order, warehouses, wholesale and retail sales facilities and other real and personal properties, including facilities owned or leased by this state or any other project sponsor, and includes, without limitation:

(1) the process of acquiring, holding, operating, planning, financing, demolition, construction, improving, expanding, renovation, leasing or otherwise disposing of the project or any part thereof or interest therein; and

(2) preparing land for construction and making, installing or constructing improvements on the land, including water or wastewater facilities or any part thereof, steam, gas, telephone and telecommunications and electric lines and installations, roads, bridges, railroad spurs, buildings, docking and shipping facilities, curbs, gutters, sidewalks, and drainage and flood control facilities, whether on or off the site;

(m) "Infrastructure revenue" means all amounts appropriated by the Legislature; all amounts deposited into the infrastructure fund; any amounts received, directly or indirectly, from any source for the use of all or any part of any project completed pursuant to this article; and any other amounts received by the state treasurer, council or the water development authority for the purposes of this article;

(n) "Need of the project sponsors" means there is a public need for a project. The council shall construe a population increase evidenced by the last two decennial censuses in a county in which a project is proposed, as a factor supporting the conclusion that a need exists for projects in that county.

(o) "Project" means any wastewater facility, water facility project or any combination thereof, constructed or operated or to be constructed or operated by a project sponsor;

(p) "Project sponsor" means any governmental agency or person, or any combination thereof, including, but not limited to, any public utility, which intends to plan, acquire, construct, improve or otherwise develop a project;

(q) "Public service commission" means the public service commission of West Virginia created and established under section three, article one, chapter twenty-four of this code, or any successor to all or any substantial part of its powers and duties;

(r) "Person" means any individual, corporation, partnership, association, limited liability company or any other form of business organization;

(s) "Public utility" means any person or persons, or association of persons, however associated, whether incorporated or not, including, without limitation, any governmental agency, operating a wastewater facility or water facility as a public service, which is regulated by the public service commission as a public utility under chapter twenty-four of this code or which is required to file its tariff with the public service commission;

(t) "State development office" means the West Virginia development office established under article two, chapter five-b of this code, or any successor to all or any substantial part of its powers and duties;

(u) "State infrastructure agency" means the division of health, division of environmental protection, housing development fund, public service commission, state development office, water development authority, economic development authority and any other state agency, division, body, authority, commission, instrumentality or entity which now or in the future receives applications for the funding of, and provides funding or technical assistance to, the planning, acquisition, construction or improvement of a project;

(v) "Waste water facility" means all facilities, land and equipment used for or in connection with treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding waste water, including, without limitation, facilities for the treatment and disposal of sewage, industrial wastes or other wastes, wastewater, and the residue thereof; facilities for the temporary or permanent impoundment of wastewater, both surface and underground; and sanitary sewers or other collection systems, whether on the surface or underground, designed to transport wastewater together with the equipment and furnishings therefor or thereof and their appurtenances and systems, whether on the surface or underground including force mains and pumping facilities therefor;

(w) "Water development authority" means the West Virginia water development authority continued pursuant to the provisions of article one, chapter

twenty-two (22) of the powers and duties; and

(x) "Water facility" means all facilities, land and equipment used for or in connection with the collection and/or storage of water, both surface and underground, transportation of water, storage of water, treatment of water and distribution of water all for the purpose of providing potable, sanitary water suitable for human consumption and use.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31-15A-3. West Virginia infrastructure and jobs development council continued; members of council; staff of council

(a) The West Virginia infrastructure and jobs development council is hereby continued. The council is a governmental instrumentality of the state. The exercise by the council of the powers conferred by this article and the carrying out of its purpose and duties shall be considered and held to be, and are hereby determined to be, essential governmental functions and for a public purpose.

(b) The council shall consist of eleven members, including the executive director of the housing development fund or his or her designee, the director of the division of environmental protection or his or her designee, the director of the economic development authority or his or her designee, the director of the water development authority or his or her designee, the executive director of the state development office or his or her designee, the director of the division of health or his or her designee, the chairman of the public service commission or his or her designee, and four members representing the general public: Provided, That there shall be at least one member representing the general public from each congressional district: Provided, however, That after the expiration of the term of office of the members first appointed as representatives of the general public, no more than one member representing the general public may be a resident of the same county. The governor shall appoint the public members of the council who shall serve three-year staggered terms. The commissioner of the division of highways, the executive director of the state rail authority, two members of the West Virginia Senate, two members of the West Virginia House of Delegates, one representative of the board of directors of the state college system and one representative of the board of trustees of the university of West Virginia shall serve as advisory members of the council. The governor shall appoint the legislative members of the council: Provided, further That no more than three of the legislative members may be of the same political party. The governor shall appoint the representatives of the governing boards from a list of three names submitted by each governing board. The advisory members shall be ex officio, nonvoting members of the council.

(c) The council shall annually elect one of its members as chairman, and shall appoint a secretary, who need not be a member of the council and who shall keep records of its proceedings. Six members of the council shall constitute a quorum and the affirmative vote of at least the majority of those members present shall be necessary for any action taken by vote of the council.

No vacancy in the membership of the council impairs the rights of a quorum by such vote to exercise all the rights and perform all the duties of the council.

(d) No member of the council who serves by virtue of his or her office shall receive any compensation or reimbursement of expenses for serving as a member. The members of the council who represent the general public shall receive reimbursement for actual expenses incurred in the service of the council.

(e) The council shall meet at least monthly to review projects and infrastructure projects requesting funding assistance and otherwise to conduct its business, and shall meet more frequently if necessary. Notwithstanding any other provision of this article to the contrary, the economic development authority shall not be subject to council review with regard to any action taken pursuant to the authority established in article fifteen, chapter thirty-one of this code nor shall the governor's civil contingent fund be subject to council review with regard to projects or infrastructure projects funded through the governor's civil contingent fund.

(f) The water development authority shall provide office space for the council, and each governmental agency represented on the council shall provide staff support for the council in the manner determined by the council from time to time.

(g) The council shall invite to all its meetings one or more representatives of the United States department of agriculture, rural economic community development, the United States economic development agency and the United States army corps of engineers or any successors thereto. The council shall also invite such other appropriate parties as may be necessary to effectuate the purposes of this article.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1995, c. 130, eff. March 10, 1995.

§ 31-15A-4. Development of guidelines and preliminary application for funding assistance

(a) To implement and carry out the intent of this article, the council shall promulgate legislative rules in accordance with article three, chapter twenty-nine-a of this code to develop comprehensive, uniform guidelines for use by the council and other state infrastructure agencies in evaluating any request by a project sponsor for funding assistance to plan, acquire, construct, improve or otherwise develop a project or infrastructure project. The guidelines shall include the following factors: (1) the public health benefits of the project or infrastructure project; (2) the economic development benefits of the project or infrastructure project; (3) the degree to which the project or infrastructure project will correct deficiencies in the compliance of water supply or sewage treatment facilities with state or federal laws, regulations or standards; (4) the degree to which the project or infrastructure project encourages effective and efficient consolidation of water or sewage treatment systems consistent with the comprehensive plan developed pursuant to section six of this article; (5) the cost effectiveness of the project or infrastructure project as compared with

alternatives which achieve substantially the same public health or economic development benefits, including the consideration of providing maximum feasible fire protection; (6) the availability of alternative sources of funding which could finance all or a part of the project and infrastructure project, and the need for the assistance of the council to finance the project or infrastructure project or attract other sources of funding; (7) the applicant's ability to operate and maintain the system if the project or infrastructure project is approved; (8) the degree to which the project or infrastructure project achieves other state or regional planning goals; (9) the estimated date upon which the project or infrastructure project could commence if funding were available and the estimated completion date of the project or infrastructure project; and (10) such other considerations as the council may consider necessary or appropriate to accomplish the purpose and intent of this article.

(b) The council shall create a preliminary application form which shall be used by all project sponsors requesting funding assistance from state infrastructure agencies to plan, acquire, construct, improve or otherwise develop an infrastructure project or project. The preliminary application form shall contain all information required by all state infrastructure agencies that will be required to issue permits and/or certificates regarding the project or infrastructure project. The preliminary application shall require the project sponsor to set forth the type and proposed location of the infrastructure project or project; the estimated total cost of the project; the amount of funding assistance required and the specific uses of the funding; other sources of funding available or potentially available for the infrastructure project or project; information demonstrating the need for the infrastructure project or project and that the proposed funding of the project is the most economically feasible and viable alternative to completing the project or infrastructure project; and such other information as the council considers necessary to enable it to recommend the type of project or infrastructure project financing, in terms of the kind, amount and source of funding, which the project sponsor should pursue and which the state infrastructure agency or agencies should consider an appropriate investment of public funds, and to otherwise carry out the intent of this article.

Acts 1994, 1st Ex. Sess., c. 26.

§ 31-15A-5. Requirements for project funding assistance; review of project preliminary applications by council

(a) No project sponsor may apply for or receive any loan, loan guarantee, grant or other funding assistance for a project or infrastructure project from any state infrastructure agency (i) unless the project sponsor requiring the funding assistance first submits a completed preliminary application to the council on the form prepared for such purpose by the council pursuant to section four of this article, and (ii) except as may be recommended by the council after consideration of the preliminary application: Provided, That any project sponsor which has an infrastructure project or project with either

acceptable bids or all funding in place on the effective date of this act is not required to comply with the provisions of this section.

(b) The council shall, within thirty days of receipt of each completed preliminary application submitted to it, review the preliminary application and either (i) make a written recommendation as to the infrastructure project or project financing, in terms of the kind, amount and source of funding, which the project sponsor submitting the application should pursue and which the state infrastructure agency or agencies should consider an appropriate investment of public funds, or (ii) if the council determines that (1) the proposed project or infrastructure project is not eligible for funding assistance from any state infrastructure agency, or (2) the proposed project or infrastructure project is not otherwise an appropriate or prudent investment of state funds, the council shall recommend that the project sponsor not seek funding from any state infrastructure agency. A project sponsor shall include the preliminary application and the council's recommendations in any application to a state infrastructure agency.

(c) The council shall provide a copy of its recommendation with respect to each preliminary application, together with a copy of the preliminary application, to all appropriate state infrastructure agencies, which shall take into account the council's recommendations with respect to a project or infrastructure project before taking any action with respect to the project. No state infrastructure agency shall take any action inconsistent with the recommendation of the council unless the governing body of the agency, or the head of the agency if it has no governing body, expressly finds and determines that the recommendation is not in the best interest of the state or the area in which the proposed infrastructure project or project is to be located.

(d) In reviewing each preliminary application, the council shall use the engineering, financial and technical expertise of the respective staffs of the state infrastructure agencies represented on the council so as to recommend for funding those projects or infrastructure projects which are consistent with the purposes and intent of this article and with the policies and priorities of this state generally. The council may include in its findings a recommendation that a state infrastructure agency consider technical reports on the project prepared by other infrastructure agencies or by any federal agency.

Acts 1994, 1st Ex. Sess., c. 26.

§ 31-15A-6. Powers, duties and responsibilities of the council generally; comprehensive assessment

(a) In addition to the powers set forth elsewhere in this article, the council is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate the purposes and intent of this article. The council shall have the power and capacity to:

(1) Provide consultation services to project sponsors in connection with the planning, acquisition, improvement, construction or development of any infrastructure project or project;

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(2) Periodically prepare a list of infrastructure projects or projects which cannot meet the established funding guidelines of the various state infrastructure agencies, other than the housing development fund, but which are consistent with the mandates of this article and recommend to the water development authority that it make a grant or loan to the project sponsors from the infrastructure fund to finance the cost of one or more such projects or infrastructure projects;

(3) Do all other acts necessary and proper to carry out the powers expressly granted to the authority in this article; and

(4) To make and execute contracts, commitments and obligations and other instruments necessary or convenient for the exercise of its powers.

(b) The council shall develop a comprehensive statewide inventory of water supply systems and sewage treatment systems and an assessment of current and future needs by the first day of July, one thousand nine hundred ninety-six. The assessment shall identify the areas of the state which do not have adequate public water or sewage systems and offer recommendations for the construction of new facilities or the extension or expansion of existing facilities to meet the identified needs. The council shall include in the assessment an identification of the obstacles, issues and problems which prevent or inhibit development of adequate infrastructure throughout the state, including financial, governmental, physical, or geographical factors and make recommendation as the council considers appropriate regarding the obstacles, issues or problems identified. This comprehensive inventory and assessment shall be updated at least once in every three year period after the initial assessment and inventory is completed.

(c) The council shall study the viability of the consolidation of public service districts throughout the state: Provided, That the study shall encompass not only public service districts but also any and all entities which provide or supply water and sewer service to the general public: Provided, however, That the council shall, in the preparation of the study, consult with the public service district division of the public service commission and representatives of the West Virginia rural water association and the West Virginia association of public service districts, as needed. The council shall report their findings and conclusions on or before the sixteenth of January of the year one thousand nine hundred ninety-five to the governor, speaker of the house of delegates and president of the senate.

Acts 1994, 1st Ex. Sess., c. 26.

§ 31-15A-7. Current and prospective planning; roads and highways; report to division of highways

(a) The council shall take into account the current and prospective infrastructure needs in relation to plans of the division of highways for the development and building of new roads. Upon completion of an environmental impact study, the commissioner of highways shall provide the council with plans for any and all new roads. In a timely manner, the council shall advise the

commissioner of the division of highways on the feasibility of the expansion of new or existing water and sewer lines concomitant to the construction of the new roads.

(b) The council has the authority to appoint local infrastructure planning teams. The local infrastructure planning teams may consist of the following: A designee of the division of highways from the region where the new road is being built; a designee of the division of highways from the central state office; a designee from the environmental engineers division of the department of health and human resources; a designee from the local developmental authority where the new road is being built; a designee from the regional developmental authority in the area where the new road is being built; a designee from the public service commission; a designee from the division of environmental protection; a designee from the county commission where the new road is being built who shall serve as chairperson of the planning team; a citizen of the county where the new road is being built to be chosen by the county commission; and the elected state delegates and senators from the area where the new road is being built. In order to avoid delay of any highway project, immediately upon appointment of a local infrastructure planning team, the director of the division of highways shall submit to the council a time frame within which the planning team must act and within which the planning team must submit any plans, maps, recommendations or reports developed pursuant to this subsection. The local infrastructure planning team shall meet prior to the development and building of a new road. Members of the local infrastructure planning team shall only receive payment for actual expenses incurred. The local infrastructure planning team shall advise the commissioner of the division of highways on the feasibility of an infrastructure plan. The local infrastructure planning team shall meet to develop an infrastructure plan that includes an assessment study of existing water and sewer lines and a feasibility study on future development and laying of water and sewer lines. After these studies are completed, a developmental map shall be drawn of the proposed road route with overlays of the proposed water and sewer lines. These studies and the map shall be presented to the commissioner of the division of highways and shall be used by the commissioner in the planning, developing and building of the road.

(c) The water development authority shall establish a restricted account within the infrastructure fund to be expended for the construction of water and sewage lines as may be recommended by the council in accordance with this article and specifically, in accordance with the plan developed under subsection (b) of this section. The reserve account shall be known as the "infrastructure road improvement reserve account". The council and the division of highways may enter into agreements to share the cost of financing projects approved in accordance with this section from moneys available in the infrastructure road reserve account and moneys available from the state road fund. Annually, the council may direct the water development authority to transfer funds from the infrastructure fund in an amount not to exceed one million dollars to the

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restricted account: Provided, That at no time may the balance of the restricted account exceed one million dollars.

(d) For the purposes of this section the term "new" means a road right-of-way being built for the first time.

(e) After the construction of water and sewer lines adjacent to the new road, these new lines shall be turned over to existing utilities by expansion of boundaries of public service districts or shall be main extensions from the municipality.

Acts 1994, 1st Ex. Sess., c. 26.

§ 31-15A-8. Exemption of certain emergency projects from certificate of public convenience and necessity requirements; review of certain emergency projects by public service commission; and exemption for North Fork Hughes River watershed project

(a) If the council determines a project to be an emergency and the emergency project will be funded solely with grant money for the extension of an existing certificated water facility or wastewater facility, and if the council finds in its recommendation that the construction and acquisition of the emergency project will have no effect on the public utility's customer rates and will have no significant effect on its operational costs as a result of the project cost, then the emergency project is exempt from the requirement to obtain a certificate of public convenience and necessity under section eleven, article two, chapter twenty-four of this code. If the public utility is a public service district, it is exempt from the approval of the public service commission required under section twenty-five, article thirteen-a, chapter sixteen of this code.

(b) Any public utility, and any other entity that will operate as a public utility, must obtain a certificate of public convenience and necessity pursuant to section eleven, article two, chapter twenty-four of this code for any emergency project that is not exempt under subsection (a) of this section. The public service commission shall render its final decision on any application for a certificate within one hundred twenty days of the filing of the application: Provided, That the thirty-day pre-filing requirement is not required. If the project sponsor is a public service district, then the project will be exempted from the approval requirements of section twenty-five, article thirteen-a, chapter sixteen of this code.

(c) Projects that are not emergency projects are subject to the requirements of section eleven, article two, chapter twenty-four of this code to the extent they would be otherwise.

(d) The North Fork Hughes River watershed project, proposed to enhance economic growth and development through tourism as provided in subsection (l), section two of this article and to include a water facility project as defined in subsection (n), section two of this article, is hereby specifically exempted from any requirement imposed by this article, except that the provisions of subsection (a) of this section are specifically made applicable to the project.

The project is hereby specifically authorized and the public land corporation shall have and may exercise the power of eminent domain and all authority otherwise prescribed by law to acquire necessary land and rights-of-way, to include approximately four hundred seventy-eight acres, in connection with the project. Funding for the project shall be provided by the federal government from the Appalachian regional commission through the United States soil conservation service. Upon completion of the project, the property acquired shall be transferred to the state park system. The commissioner of the division of tourism and parks or the successor to the commissioner's powers and duties is directed to expand the boundaries of North Bend state park to include the project area and to operate the expanded park property, including improved recreational facilities, from funds appropriated for that purpose.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31-15A-9. Infrastructure fund; deposits in fund; disbursements to provide loans, loan guarantees, grants and other assistance; loans, loan guarantees, grants and other assistance shall be subject to assistance agreements

(a) The water development authority shall create and establish a special revolving fund of moneys made available by appropriation, grant, contribution or loan to be known as the "West Virginia Infrastructure Fund". This fund shall be governed, administered and accounted for by the directors, officers and managerial staff of the water development authority as a special purpose account separate and distinct from any other moneys, funds or funds owned and managed by the water development authority. The infrastructure fund shall consist of sub-accounts, as deemed necessary by the council or the water development authority, for the deposit of: (1) Infrastructure revenues; (2) any appropriations, grants, gifts, contributions, loan proceeds or other revenues received by the infrastructure fund from any source, public or private; (3) amounts received as payments on any loans made by the water development authority to pay for the cost of a project or infrastructure project; (4) insurance proceeds payable to the water development authority or the infrastructure fund in connection with any infrastructure project or project; (5) all income earned on moneys held in the infrastructure fund; (6) all funds deposited in accordance with section four of article fifteen-b; and (7) all proceeds derived from the sale of bonds issued pursuant to article fifteen-b of this chapter.

Any money collected pursuant to this section shall be paid into the West Virginia infrastructure fund by the state agent or entity charged with the collection of the same, credited to the infrastructure fund, and used only for purposes set forth in this article or article fifteen-b.

Amounts in the infrastructure fund shall be segregated and administered by the water development authority separate and apart from its other assets and programs. Amounts in the infrastructure fund may not be transferred to any other fund or account or used, other than indirectly, for the purposes of any other program of the water development authority, except that the water development authority may use funds in the infrastructure fund to reimburse

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itself for any administrative costs incurred by it and approved by the council in connection with any loan, loan guarantee, grant or other funding assistance made by the water development authority pursuant to this article.

(b) Notwithstanding any provision of this code to the contrary, amounts in the infrastructure fund shall be deposited by the water development authority in one or more banking institutions: Provided, That any moneys so deposited shall be deposited in a banking institution located in this state. The banking institution shall be selected by the water development authority by competitive bid. Pending the disbursement of any money from the infrastructure fund as authorized under this section, the water development authority shall invest and reinvest the moneys subject to the limitations set forth in article eighteen, chapter thirty-one of this code.

(c) To further accomplish the purposes and intent of this article and article fifteen-b of this chapter, the water development authority may pledge infrastructure revenues and from time to time establish one or more restricted accounts within the infrastructure fund for the purpose of providing funds to guarantee loans for infrastructure projects or projects: Provided, That for any fiscal year the water development authority may not deposit into the restricted accounts more than twenty percent of the aggregate amount of infrastructure revenues deposited into the infrastructure fund during the fiscal year. No loan guarantee shall be made pursuant to this article unless recourse under the loan guarantee is limited solely to amounts in the restricted account or accounts. No person shall have any recourse to any restricted accounts established pursuant to this subsection other than those persons to whom the loan guarantee or guarantees have been made.

(d) Each loan, loan guarantee, grant or other assistance made or provided by the water development authority shall be evidenced by a loan, loan guarantee, grant or assistance agreement between the water development authority and the project sponsor to which the loan, loan guarantee, grant or assistance shall be made or provided, which agreement shall include, without limitation and to the extent applicable, the following provisions:

(1) The estimated cost of the infrastructure project or project, the amount of the loan, loan guarantee or grant or the nature of the assistance, and in the case of a loan or loan guarantee, the terms of repayment and the security therefor, if any;

(2) The specific purposes for which the loan or grant proceeds shall be expended or the benefits to accrue from the loan guarantee or other assistance, and the conditions and procedure for disbursing loan or grant proceeds;

(3) The duties and obligations imposed regarding the acquisition, construction, improvement or operation of the project or infrastructure project; and

(4) The agreement of the governmental agency to comply with all applicable federal and state laws, and all rules and regulations issued or imposed by the water development authority or other state, federal or local bodies regarding the acquisition, construction, improvement or operation of the infrastructure project or project and granting the water development authority the right to

appoint a receiver for the project or infrastructure if the project sponsor should default on any terms of the agreement.

(e) Any resolution of the water development authority approving loan, loan guarantee, grant or other assistance shall include a finding and determination that the requirements of this section have been met.

(f) The interest rate on any loan to governmental, quasi-governmental, or not for profit project sponsors for projects made pursuant to this article shall not exceed three percent per annum. Due to the limited availability of funds available for loans for projects, it is the public policy of this state to prioritize funding needs to first meet the needs of governmental, quasi-governmental and not for profit project sponsors and to require that loans made to for-profit entities shall bear interest at the current market rates. Therefore, no loan may be made by the council to a for-profit entity at an interest rate which is less than the current market rate at the time of the loan agreement.

(g) The water development authority shall cause an annual audit to be made by an independent certified public accountant of its books, accounts and records, with respect to the receipts, disbursements, contracts, leases, assignments, loans, grants and all other matters relating to the financial operation of the infrastructure fund, including the operating of any sub-account within the infrastructure fund. The person performing such audit shall furnish copies of the audit report to the commissioner of finance and administration, where they shall be placed on file and made available for inspection by the general public. The person performing such audit shall also furnish copies of the audit report to the Legislature's joint committee on government and finance.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1995, c. 130, eff. March 10, 1995.

Acts 1990, c. 2, abolished the office of commissioner of finance and administration and transferred all duties and powers to the secretary of administration. See § 5A-1-2.

§ 31-15A-10. Recommendations by council for expenditures of funds by loan, grant or for engineering assistance

(a) To further accomplish the purpose and intent of this article, the water development authority shall use the moneys in the infrastructure fund created pursuant to section nine of this article, upon receipt of one or more recommendations from the council pursuant to section five of this article, to make loans, with or without interest, loan guarantees or grants and to provide other assistance, financial, technical or otherwise, to finance all or part of the costs of infrastructure projects or projects to be undertaken by a project sponsor: Provided, That any moneys disbursed from the infrastructure fund in the form of grants shall not exceed twenty percent of the total funds available for the funding of projects. No loan, loan guarantee, grant or other assistance shall be made or provided except upon a determination by the council that the loan, loan guarantee, grant or other assistance and the manner in which it will be provided are necessary or appropriate to accomplish the purposes and intent of this article, based upon an application submitted to the council: Provided,

however, That no grant shall be made to a project sponsor that is not a governmental agency or a not for profit corporation under the provisions of section 501(c) of the Internal Revenue Code of 1986, as amended. Applications for loans, loan guarantees, grants or other assistance may be submitted by a project sponsor for one or more infrastructure projects on preliminary application forms prepared by the council pursuant to section four of this article. Any recommendation of the council approving a loan, loan guarantee, grant or other assistance shall include a finding and determination by the council that the requirements of this section have been met. The council shall base any decisions to loan money for projects to project sponsors pursuant to this article solely on the need of the project sponsors.

(b) The council has the authority in its sole discretion to make grants to project sponsors if it finds that: (1) The level of rates for the users would otherwise be an unreasonable burden given the users' likely ability to pay; or (2) the absence of a sufficient number of users prevents funding of the project except through grants: Provided, That no project sponsor shall receive infrastructure grant money in an amount in excess of fifty percent of the total cost of the project. Therefore, the council may consider the economic or financial conditions of the area to be served. As a condition for receipt of a grant under this subsection, the council may require, in addition to any other conditions, that the applicant pursue other state or federal grant or loan programs. Upon a recommendation by the council, the water development authority shall provide the grant in accordance with the recommendation. The council shall develop criteria to be considered in making grants to project sponsors which shall require consideration of the economic or financial conditions of the area to be served and the availability of other funding sources. The council shall adopt procedural rules regarding the manner in which grants will be awarded in conformity with this section. The procedural rules shall be adopted pursuant to article three, chapter twenty-nine-a of this code.

(c) Notwithstanding any other provision of this article to the contrary, the council shall apply a mandatory minimum end user utility rate that must be met by the project sponsor before funding assistance may be awarded. The mandatory minimum end utility rate shall be based upon a uniform statewide percentage of the median household income in a particular geographic area and said rate shall not exceed six tenths of one percent: Provided, That funding assistance made from the proceeds of any general obligation bonds and revenue bonds issued after the fifteenth day of March, one thousand ninety-eight, after transfers required to make the state match for the water and wastewater revolving loan programs pursuant to article two, chapter twenty-two-c and article thirteen-c, chapter sixteen of this code, shall be provided by the council on a pro rata basis divided equally among the congressional districts of this state as delineated in accordance with section three, article two, chapter one of this code: Provided, however, That infrastructure projects as defined in subsection (1), section two of this article shall be subject to pro rata distribution. When determining median household income of a geographic area of the

project to be served, the council shall consider any surveys of the income of the households that will be served by the project.

(d) No loan or grant funds may be made available for a project if the project to be funded will provide subsidized services to certain users in the service area of the project.

(e) Notwithstanding any other provision of this article to the contrary, engineering studies and requirements imposed by the council for preliminary applications shall not exceed those engineering studies and requirements which are necessary for the council to determine the economic feasibility of the project. If the council determines that the engineering studies and requirements for the preapplication would impose an undue hardship on any project sponsor, the council may provide funding assistance to project sponsors to defray the expenses of the preapplication process from moneys available in the infrastructure fund for making loans: Provided, That the council may only provide funding assistance in an amount equal to five thousand dollars or fifty percent of the total preapplication cost of the project, whichever amount is greater. If the project is ultimately approved for a loan by the council, the amount of funding assistance provided to the project sponsor for the preapplication process shall be included in the total amount of the loan to be repaid by the project sponsor. If the project is not ultimately approved by the council, then the amount of funding assistance provided to the project sponsor will be considered a grant by the council and the total amount of the assistance shall be forgiven. In no event may the amount of funding assistance provided to all project sponsors exceed, in the aggregate, one hundred thousand dollars annually.

(f) The council shall report to the governor, the speaker of the House of Delegates and the president of the Senate during each regular and interim session of the Legislature, on its activities and decisions relating to distribution or planned distribution of grants and loans under the criteria to be developed pursuant to this article.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1995, c. 130, eff. March 10, 1995; Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31-15A-11. Reservation of funds for projects and infrastructure projects

Eighty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for the cost of projects as defined in subsection (n), section two of this article. Twenty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for costs of infrastructure projects as defined in subsection (l), section two of this article. Project sponsors of infrastructure projects shall follow the application process as established by this article: Provided, That notwithstanding any provision of this article to the contrary, all applications for any infrastructure project shall be submitted to the council for

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community and economic development, or its successor, for review, recommendation and approval regarding infrastructure project funding.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31-15A-12. Additional powers of water development authority

To accomplish the purpose and intent of this article, the water development authority is hereby empowered, in addition to all other powers granted to it under this code, upon approval of the council, to (1) enter into agreements or other transactions with any federal or state agency in connection with any infrastructure project or project; (2) receive or administer on behalf of any federal or state agency grants, subsidies or other payments to be applied to the costs of any infrastructure project or project financed in whole or in part or otherwise assisted by the water development authority, including, but not limited to, payments to be applied to operating costs and debt service or obligations of any project sponsor; (3) receive and accept aid or contributions from any source of money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions are made; (4) establish and amend the criteria and qualifications for making loans, loan guarantees or grants, or providing any other assistance, for any infrastructure project or project, and the terms of any loans, loan guarantee, grant or assistance agreement for any project; and (5) do all things which are necessary to further the purposes and intent of this article.

Acts 1994, 1st Ex. Sess., c. 26.

§ 31-15A-13. Prohibition on funds inuring to the benefit of or being distributable to water development board; transactions between the water development board and officers having certain interests in such transactions

No part of the infrastructure fund or the West Virginia infrastructure revenue debt service fund shall inure to the benefit of or be distributable to the water development board directors or officers of the water development authority except that the water development authority is authorized and empowered to pay reasonable compensation, other than to members of the water development board, including the chairman, vice chairman, secretary-treasurer for services rendered and to make loans and exercise its other powers as previously specified in furtherance of its corporate purpose: Provided, That no loans shall be made, and no property shall be purchased or leased from, or sold, leased or otherwise disposed of, to any water development board member or officer of the water development authority.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31-15A-14. Termination or dissolution

Upon the termination or dissolution of the water development authority, all rights and properties of the water development authority with respect to the

infrastructure fund shall pass to and be vested in the state, subject to the rights of lienholders and other creditors.

Acts 1994, 1st Ex. Sess., c. 26.

§ 31-15A-15. Projects not to be considered public improvements; competitive bid requirements

(a) No project or infrastructure project acquired, constructed, maintained or financed, in whole or in part, by the water development authority shall be considered to be a "public improvement" within the meaning of the provisions of article five-a, chapter twenty-one of this code as a result of the financing.

(b) The state and its subdivisions shall, except as provided in subsection (c) of this section, solicit competitive bids and require the payment of prevailing wage rates as provided in article five-a, chapter twenty-one of this code for every project or infrastructure project funded pursuant to this article exceeding twenty-five thousand dollars in total cost.

Following the solicitation of the bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: Provided, That the state and its subdivisions may reject all bids and solicit new bids on the project.

(c) This section does not:

(1) Apply to work performed on construction or repair projects not exceeding a total cost of fifty thousand dollars by regular full-time employees of the state or its subdivisions: Provided, That no more than fifty thousand dollars shall be expended on an individual project in a single location in a twelve-month period;

(2) Prevent students enrolled in vocational educational schools from being used in the construction or repair projects when such use is a part of the students' training program;

(3) Apply to emergency repairs to building components and systems: Provided, That the term "emergency repairs" means repairs that, if not made immediately, will seriously impair the use of the building components and systems or cause danger to those persons using the building components and systems; or

(4) Apply to any situation where the state or a subdivision of the state comes to an agreement with volunteers, or a volunteer group, by which the governmental body will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body: Provided, That the total cost of the construction or repair projects does not exceed fifty thousand dollars.

(d) The provisions of subsection (b) of this section do not apply to privately owned projects or infrastructure projects constructed on lands not owned by the state or a subdivision of the state.

Acts 1994, 1st Ex. Sess., c. 26; Acts 2001, c. 45, eff. 90 days after April 14, 2001.

Historical and Statutory Notes

Acts 2001, c. 45 rewrote this section which as enacted provided:

“(a) No project or infrastructure project acquired, constructed, maintained or financed in whole or in part by the water development authority shall be considered to be a “public improvement” within the meaning of the provisions of article five-a, chapter twenty-one of this code, as a result of such financing.

“(b) The state and its subdivisions shall, except as provided in this subsection, solicit competitive bids and require the payment of prevailing wage rates as provided in article five-a, chapter twenty-one of this code for every project or infrastructure project funded pursuant to this article exceeding twenty-five thousand dollars in total cost. Following the solicitation of the bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: Provided, That the state and its subdivisions may reject all bids and solicit new bids on the project. Nothing in this subsection applies to work performed on construction or repair projects not exceeding a total cost of twenty-five thousand dollars by regular full-time employees of the state or its subdivisions, nor shall anything in this subsection prevent stu-

dents enrolled in vocational educational schools from being utilized in the construction or repair projects when such use is a part of the students’ training program. Nothing in this subsection applies to emergency repairs to building components and systems: Provided, however, That the term “emergency repairs” means repairs that if not made immediately will seriously impair the use of the building components and systems or cause danger to those persons using the building components and systems. This subsection shall not apply to any situation where the state or a subdivision thereof comes to an agreement with volunteers, or a volunteer group, whereby the governmental body will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body: Provided further, That the total cost of the construction or repair projects does not exceed twenty-five thousand dollars.

“(c) The provisions of subsection (b) of this section shall not apply to privately owned projects or infrastructure projects constructed on lands not owned by the state or a subdivision of the state.”

§ 31-15A-16. Dedication of severance tax proceeds

(a) There shall be dedicated an annual amount from the collections of the tax collected pursuant to article thirteen-a, chapter eleven of this code for the construction, extension, expansion, rehabilitation, repair and improvement of water supply and sewage treatment systems and for the acquisition, preparation, construction and improvement of sites for economic development in this state as provided in this article.

(b) Notwithstanding any other provision of this code to the contrary, beginning on the first day of July, one thousand nine hundred ninety-five, the first sixteen million dollars of the tax collected pursuant to article thirteen-a, chapter eleven of this code shall be deposited to the credit of the West Virginia infrastructure general obligation debt service fund created pursuant to section three, article fifteen-b of this chapter: Provided, That beginning on the first day of July, one thousand nine hundred ninety-eight, the first twenty-four million dollars of the tax annually collected pursuant to article thirteen-a of this code shall be deposited to the credit of the West Virginia infrastructure general obligation debt service fund created pursuant to section three, article fifteen-b of this chapter.

(c) Notwithstanding any provision of subsection (b) of this section to the contrary: (1) none of the collections from the tax imposed pursuant to section six, article thirteen-a, chapter eleven of this code shall be so dedicated or deposited; and (2) the portion of the tax imposed by article thirteen-a, chapter eleven and dedicated for purposes of medicaid and the division of forestry

pursuant to section twenty-a of said article thirteen-a shall remain dedicated for the purposes set forth in said section twenty-a.

(d) On or before the first day of May of each year, commencing the first day of May, one thousand nine hundred ninety-five, the council, by resolution, shall certify to the treasurer and the water development authority the principal and interest coverage ratio and amount for the following fiscal year on any infrastructure general obligation bonds issued pursuant to the provisions of article fifteen-b of this chapter.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1995, c. 130, eff. March 10, 1995; Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31-15A-17. Water development authority empowered to issue infrastructure revenue bonds and refunding bonds; creation of infrastructure revenue debt service fund; funding of infrastructure revenue debt service fund; requirements and manner of such issuance

(a) To accomplish the purpose and intent of this article, the water development authority is hereby empowered at the written request of the council to issue from time to time infrastructure revenue bonds of the state in such principal amounts as the council deems necessary to make loans and loan guarantees and other forms of financial assistance to project sponsors for one or more projects or infrastructure projects: Provided, That the water development authority may not issue any such bonds, other than refunding bonds, unless the council by resolution determines that the aggregate cost of the projects or infrastructure projects expected to be constructed during any annual period exceeds (1) the projected annual infrastructure revenues for the same period, and (2) the principal and interest payments not otherwise pledged to the infrastructure revenue debt service fund that are due the water development authority on all outstanding loans previously made by the water development authority pursuant to the provisions of this article.

(b) The proceeds of infrastructure revenue bonds shall be used solely for the purpose of making loans and loan guarantees and other forms of financial assistance to sponsors of one or more projects or infrastructure projects, and shall be deposited in one or more special accounts with the trustee under the trust agreement securing such bonds and disbursed from time to time for projects or infrastructure projects in accordance with this article: Provided, That notwithstanding any provision of this code to the contrary, twenty percent of the funds deposited in the special account shall be dedicated for the purpose of providing funding for costs of infrastructure projects as defined in subsection (l), section two, of this article.

(c) The water development authority may not authorize the disbursement of any proceeds of infrastructure revenue bonds unless it has received documentation from the council pursuant to the provisions of section ten of this article.

(d) There is hereby created in the water development authority a special fund which shall be designated and known as the "West Virginia Infrastructure

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Revenue Debt Service Fund," into which shall be transferred solely from the loan repayments deposited in the infrastructure fund the amounts certified by the director of the water development authority as necessary to pay the principal, premium, if any, and interest on infrastructure revenue bonds and any reserve requirements, subject to the terms of any agreement with the holders of the infrastructure revenue bonds. All amounts deposited in the West Virginia infrastructure revenue debt service fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any infrastructure revenue bonds authorized by this article: Provided, That amounts on deposit in the fund may be used to establish or maintain reserves created for the purposes of securing such infrastructure revenue bonds. The pledge shall be valid and binding from the time the pledge is made, and the West Virginia infrastructure revenue debt service fund so pledged shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the water development authority irrespective of whether the parties have notice thereof.

(e) Except as may otherwise be expressly provided in this article or by resolution of the water development authority, every issue of infrastructure revenue bonds shall be special obligations of the water development authority payable solely from amounts in the West Virginia infrastructure revenue debt service fund, and the reserves created for this purpose by the water development authority, without preference or priority among the bonds regardless of when issued, subject only to any agreements with the holders of any bonds to the contrary. All such bonds are hereby declared to be negotiable instruments.

(f) Infrastructure revenue bonds shall be authorized by resolution of the water development authority. These bonds shall bear such dates and shall mature at such times, in case of any note or renewal thereof not exceeding five years from the date of issue of the original note, and in the case of any bond not exceeding fifty years from the date of issue, as the resolution may provide. Infrastructure revenue bonds shall bear interest at a rate or rates, including variable rates, shall be taxable or tax-exempt, shall be in the denominations, shall be in registered form, shall carry the registration privileges, shall be payable in the medium and place of payment, and shall be subject to the terms of redemption as the water development authority may authorize. Infrastructure revenue bonds may be sold by the water development authority at public or private sale at the price the water development authority determines in consultation with the council. Infrastructure revenue bonds shall be executed by the chairman and the vice chairman of the water development authority, either or both of whom may use a facsimile signature. The official seal of the water development authority or a facsimile thereof shall be affixed thereto or printed thereon and attested by manual or facsimile signature by the secretary-treasurer of the water development authority. If any officer whose signature, or a facsimile of whose signature appears on any infrastructure revenue bond ceases to be such officer before delivery of such bond, such signature or

facsimile is nevertheless sufficient for all purposes to the same extent as if he or she had remained in office until such delivery, and if the seal of the water development authority has been changed after a facsimile has been imprinted on such bond, the facsimile will continue to be sufficient for all purposes.

(g) Any resolution authorizing any infrastructure revenue bonds may contain provisions, subject to any agreement with bondholders or noteholders which may then exist, which agreements shall be part of the contract with the holder thereof, with respect to the pledge of or other use and disposition of amounts in the infrastructure revenue debt service fund; the setting aside of reserve funds; the disposition of any assets of the water development authority; limitations on the purpose to which the proceeds of sale of bonds may be applied; the authorization of notes issued in anticipation of the issuance of bonds; an agreement of the water development authority to do all things necessary for the authorization, issuance and sale of such bonds in such amounts as may be necessary for the timely retirement of such notes; limitations on the issuance of additional bonds; the terms upon which additional bonds may be issued and secured; the refunding of outstanding bonds and the renewal of outstanding notes; the procedures, if any, by which the terms of any contract with bondholders or noteholders may be amended or abrogated; the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given; and any other matter which in any way affects the security for or protection of the bonds.

(h) In the event that the sum of all reserves pledged to the payment of the bonds is less than the minimum reserve requirements established in any resolution or resolutions authorizing the issuance of the bonds, the chairman or the director of the water development authority shall certify, on or before the first day of December of each year, the amount of such deficiency to the governor of the state for inclusion, if the governor shall so elect, of the amount of such deficiency in the budget to be submitted to the next session of the Legislature for appropriation to the water development authority to be pledged for payment of such bonds: Provided, That the Legislature shall not be required to make any appropriations so requested, and the amount of such deficiencies shall not constitute a debt or liability of the state.

(i) Neither the officers or board members of the water development authority, nor any person executing the infrastructure revenue bonds, shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31-15A-18. Trustee for holders of infrastructure revenue bonds; contents of trust agreement

(a) Any infrastructure revenue bonds issued by the water development authority under this article shall be secured by a trust agreement between the water development authority and a corporate trustee, which trustee may be any trust company or banking institution having the powers of a trust company within this state.

INFRASTRUCTURE & JOBS DEVELOPMENT COUNCIL § 31-15A-20

(b) Any trust agreement may pledge or assign the infrastructure revenue debt service fund. Any trust agreement or any resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders or noteholders as are reasonable and proper and not in violation of law, including the provisions contained in section seventeen of this article, and covenants setting forth the duties of the water development authority in respect to the payment of the principal of and interest, charges and fees on loans made to, or bond purchases from, governmental agencies from the proceeds of the bonds, and the custody, safeguarding and application of all moneys. Any banking institution or trust company incorporated under the laws of this state which may act as depository of the proceeds of bonds or of the infrastructure debt service fund shall furnish such indemnifying bonds or pledge securities as are required by the water development authority. The trust agreement may set forth the rights and remedies of the bondholders and noteholders and of the trustee and may restrict individual rights of action by bondholders and noteholders as customarily provided in trust agreements or trust indentures securing similar bonds and notes. The trust agreement may contain such other provisions as the water development authority deems reasonable and proper for the security of the bondholders or noteholders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as part of the cost of the construction, renovation, repair, improvement or acquisition of a project or infrastructure project.

Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31-15A-19. Legal remedies of infrastructure revenue bondholders or noteholders and trustees

Any holder of infrastructure revenue bonds issued pursuant to this article and the trustee under any trust agreement, except to the extent the rights given by this article may be restricted by the applicable resolution or trust agreement, may by civil action, mandamus or other proceedings protect and enforce any rights granted under the laws of this state or granted under this article, by the trust agreement or by the resolution in the issuance of the bonds, and may enforce and compel the performance of all duties required by this article, pursuant to the trust agreement or resolution, to be performed by the water development authority or any officer thereof.

Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31-15A-20. Infrastructure revenue bonds lawful investments

All infrastructure revenue bonds issued pursuant to this article shall be lawful investments for banking institutions, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations, trust companies, and insurance companies, including domestic for life and domestic not for life insurance companies.

Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31-15A-21. Purchase and cancellation of infrastructure revenue bonds

(a) The water development authority; subject to such agreements with note-holders or bondholders as may then exist, shall have the power, from any funds available therefor, to purchase or redeem infrastructure revenue bonds of the water development authority.

(b) If the infrastructure revenue bonds are then redeemable, the price of the purchase shall not exceed the redemption price then applicable, plus accrued interest to the next interest payment date thereon. If the infrastructure revenue bonds are not then redeemable, the price of the purchase shall not exceed the redemption price applicable on the first date after the purchase upon which the bonds become subject to redemption, plus accrued interest to such date. Upon purchase or redemption, the bonds shall be canceled.

Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31-15A-22. Refunding revenue bonds

Any infrastructure revenue bonds issued pursuant to the provisions of this article and at any time outstanding may at any time and from time to time be refunded by the water development authority by the issuance of its refunding revenue bonds in an amount it deems necessary to refund the principal of the bonds to be refunded, together with any unpaid interest thereon, to provide additional funds for the water development authority to accomplish the purpose of this article, and to pay any premiums and commissions necessary to be paid in connection therewith. Any refunding may be effected whether the infrastructure revenue bonds to be refunded shall have then matured or shall thereafter mature: Provided, That the holders of any infrastructure revenue bonds so to be refunded shall not be compelled without their consent to surrender their infrastructure revenue bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding revenue bonds issued pursuant to this article shall be payable from the West Virginia infrastructure revenue debt service fund, and shall be subject to the provisions contained in section seventeen of this article, and shall be secured in accordance with the provisions of sections seventeen and eighteen of this article.

Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31-15A-23. Infrastructure revenue bonds not debt of state, county, municipality or any political subdivision

Infrastructure revenue bonds issued pursuant to the provisions of this article shall not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state. The holders or owners thereof shall have no right to have taxes levied by the Legislature or the taxing authority of any county, municipality or any other political subdivision of this state for the payment of the principal thereof or interest thereon. The bonds shall be payable solely from the

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revenues and funds pledged for their payment as authorized by this article. All such bonds shall contain on the face thereof a statement to the effect that the bonds, as to both principal and interest, are not debts of the state or any county, municipality or political subdivision thereof, but are payable solely from revenues and funds pledged for their payment.

Acts 1998, c. 180, eff. 90 days after March 14, 1998.

§ 31-15A-24. Infrastructure revenue bonds exempt from taxation

The exercise of the powers granted to the water development authority by this article will be in all respects for the benefit of the people of the state, for the improvement of their health, safety, convenience and welfare and for the enhancement of their residential, agricultural, recreational, economic, commercial and industrial opportunities and is for a public purpose. As the construction, acquisition, repair or renovation of projects or infrastructure projects will constitute the performance of essential governmental functions, the water development authority shall not be required to pay any taxes or assessments upon any project or upon any property acquired or used by the water development authority or upon the income therefrom. The infrastructure revenue bonds and all interest and income thereon shall be exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof, except estate taxes.

Acts 1998, c. 180, eff. 90 days after March 14, 1998.

as may be necessary for the protection of the prior rights of the holders of bonds issued at any time under the provisions of this section or section eleven-a, article six, chapter five of this code. The bonds issued pursuant to this section shall be separate from all other bonds which may be or have been issued from time to time under the provisions of section eleven-a, article six, chapter five of this code. The Education, Arts, Sciences and Tourism Debt Service Fund shall be pledged solely for the repayment of bonds issued pursuant to this section and section eleven-a, article six, chapter five of this code. On or prior to May 1 of each year, commencing May 1, 2010, the authority shall certify to the state lottery director the principal and interest and coverage ratio requirements for the following fiscal year on any bonds or refunding revenue bonds issued pursuant to this section, and for which the principal has been deposited in the Education, Arts, Sciences and Tourism Debt Service Fund have been repaid, or will be pledged, for repayment pursuant to this section.

After the authority has issued bonds authorized by this section, and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this section, any balance remaining in the Education, Arts, Sciences and Tourism Debt Service Fund may be used for the redemption of the outstanding bonds issued under this section which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be conclusively canceled and shall not again be issued.

The authority shall expend sixty percent of the bond proceeds, net of issuance costs, interest and refunding costs, for certified capital improvement projects at state institutions of higher education. The Higher Education Policy Commission shall submit a list of projects which will receive funds from the bond proceeds to the Governor on or before January 1, 2010. Thereafter, the Governor shall certify to the authority on or before February 1, 2010, a list of those capital improvement projects at state institutions of higher education which will receive funds from the proceeds of bonds issued pursuant to this section. Once certified, the list may not thereafter be altered or amended other than by subsequent enactment.

The authority shall expend the balance of the bond proceeds for certified projects at state parks, the capitol complex, other state facilities or tourism sites. The secretary of the department of administration, the director of the division of natural resources, the director of the West Virginia development office and a representative of the capitol building commission, and the secretary of the department of administration, who shall be selected by the capitol building commission shall submit a proposed list of projects which will receive funds from the bond proceeds to the Governor on or before January 1, 2010. Thereafter, the Governor shall certify to the authority on or before February 1, 2010, a list of those capital improvement projects at state parks, the state capitol complex, other state facilities or tourism sites which will receive funds from the proceeds of bonds issued pursuant to this section. Once certified, the list may not thereafter be altered or amended other than by subsequent enactment.

As amended by House Bill 2009, 1st Ex. Sess., c. 14, eff. June 2, 2009.

ARTICLE 15A

**WEST VIRGINIA INFRASTRUCTURE AND
JOBS DEVELOPMENT COUNCIL**

| | Section | |
|--|--------------------------|---|
| West Virginia Infrastructure and Jobs Development Council continued; members of council; staff of council. | 31-15A-11. 31-15A-16. | Reservation of funds for projects and infrastructure projects. Dedication of severance tax proceeds. |
| Powers, duties and responsibilities of the council generally; comprehensive assessment. | 31-15A-17a. | Infrastructure revenue bonds payable from A. James Manchin Fund. |

§ 31-15A-3. West Virginia Infrastructure and Jobs Development Council continued; members of council; staff of council

(a) The West Virginia infrastructure and Jobs Development Council is continued. The council is a governmental instrumentality of the state. The exercise by the council of the powers conferred by this article and the carrying out of its purpose and duties shall be considered and held to be, and are determined to be, essential governmental functions and for a public purpose.

(b) The council shall consist of thirteen members, including:

(1) The Governor or designee;

(2) The Executive Director of the Housing Development Fund or his or her designee;

(3) The director of the Division of Environmental Protection or his or her designee;

(4) The director of the Economic Development Authority or his or her designee;

(5) The Director of the Water Development Authority or his or her designee;

(6) The Director of the Division of Health or his or her designee;

(7) The chairman of the Public Service Commission or his or her designee; and

(8) Six members representing the general public: *Provided*, That there shall be at least one member representing the general public from each congressional district. No more than one member representing the general public may be a resident of the same county.

(c) The Governor shall appoint the public members of the Council who shall serve three-year staggered terms.

(d) The Commissioner of the Division of Highways, the Executive Director of the state rail authority, two members of the West Virginia Senate, two members of the West Virginia House of Delegates, the Chancellor of the Higher Education Policy commission and the Chancellor of the West Virginia Council for Community and Technical College Education serve as advisory members of the council. The advisory members shall be *ex officio*, nonvoting members of the Council.

(e) The Governor shall appoint the legislative members of the council: *Provided* That no more than three of the legislative members may be of the same political party.

(f) The Governor shall appoint the representatives of the governing boards from a list of three names submitted by each governing board.

(g) The Governor or designee shall serve as chairman and the council shall annually appoint a vice chairperson and shall appoint a secretary, who need not be a member of the Council and who shall keep records of its proceedings. Seven members of the Council shall constitute a quorum and the affirmative vote of at least the majority of those members present shall be necessary for any action taken by vote of the Council. A vacancy in the membership of the council does not impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the council.

(h) A member of the Council who serves by virtue of his or her office does not receive compensation or reimbursement of expenses for serving as a member. The public members are reimbursed for actual expenses incurred in the service of the Council in a manner consistent with guidelines of the travel management office of the Department of Administration.

(i) The Council meets at least monthly to review projects and infrastructure projects requesting funding assistance and otherwise to conduct its business and may meet more frequently if necessary. Notwithstanding any other provision of this article to the contrary, the Economic Development Authority is not subject to council review with regard to any action taken pursuant to the authority established in article fifteen, chapter thirty-one of this code. The Governor's civil contingent fund is not subject to council review with regard to projects or infrastructure projects funded through the Governor's Civil Contingent Fund.

ater Development Authority shall provide office space for the council and each l agency represented on the council shall provide staff support for the council in letermined appropriate by the council.

ouncil shall invite to each meeting one or more representatives of the United rtment of Agriculture, Rural Economic Community Development, the United omic Development Agency and the United States Army Corps of Engineers or rs thereto. The council shall invite other appropriate parties as is necessary to e purposes of this article.

Ex. Sess., c. 26; Acts 1995, c. 130, eff. March 10, 1995; Acts 2005, 1st Ex. Sess., c. 3, eff. Acts 2009, c. 221, eff. April 10, 2009.

Historical and Statutory Notes

st Ex. Sess., c. 3, rewrote (b); in (c), he governor or designee shall serve nd the council shall annually appoint rson" for "The council shall annually ts members as chairman"; rewrote : nonsubstantive changes throughout Prior to revision, (b) and (d) read: ouncil shall consist of eleven mem- g the executive director of the hous- ant fund or his or her designee, the : division of environmental protection lesignee, the director of the economic authority or his or her designee, the : water development authority or his ae, the executive director of the state office or his or her designee, the re division of health or his or her chairman of the public service com- ; or her designee, and four members the general public: *Provided*, That a at least one member representing blic from each congressional district: ver, That after the expiration of the e of the members first appointed as es of the general public, no more than representing the general public may of the same county. The governor the public members of the council ve three-year staggered terms. The of the division of highways, the exec- of the state rail authority, two mem- West Virginia Senate, two members of ginia House of Delegates, one repre- the board of directors of the state n and one representative of the board the university of West Virginia shall isory members of the council. The ll appoint the legislative members of *Provided further*, That no more than legislative members may be of the J party. The governor shall appoint atives of the governing boards from a names submitted by each governing advisory members shall be ex officio, mbers of the council."

ember of the council who serves by or her office shall receive any compen- sursement of expenses for serving as The members of the council who rep- entral public shall receive reimburse-

ment for actual expenses incurred in the service of the council."

Acts 2009, c. 221, rewrote this section, which formerly read:

"(a) The West Virginia infrastructure and jobs development council is hereby continued. The council is a governmental instrumentality of the state. The exercise by the council of the powers conferred by this article and the carrying out of its purpose and duties shall be considered and held to be, and are hereby determined to be, essential governmental functions and for a public purpose.

"(b) The council shall consist of eleven members, including the governor or designee, the executive director of the housing development fund or his or her designee, the director of the division of environmental protection or his or her designee, the director of the economic development authority or his or her designee, the director of the water development authority or his or her designee, the director of the division of health or his or her designee, the chairman of the public service commission or his or her designee, and four members representing the general public: *Provided*, That there shall be at least one member representing the general public from each congressional district: *Provided, however*, That after the expiration of the term of office of the members first appointed as representatives of the general public, no more than one member representing the general public may be a resident of the same county. The governor shall appoint the public members of the council who shall serve three-year staggered terms. The commissioner of the division of highways, the executive director of the state rail authority, two members of the West Virginia Senate, two members of the West Virginia House of Delegates, the chancellor of the higher education policy commission and the chancellor of the West Virginia council for community and technical college education serve as advisory members of the council. The governor shall appoint the legislative members of the council: *Provided further*, That no more than three of the legislative members may be of the same political party. The governor shall appoint the representatives of the governing boards from a list of three names submitted by each governing board. The advisory members shall be ex officio, nonvoting members of the council.

"(c) The governor or designee shall serve as chairman and the council shall annually appoint a

vice chairperson and shall appoint a secretary, who need not be a member of the council and who shall keep records of its proceedings. Six members of the council shall constitute a quorum and the affirmative vote of at least the majority of those members present shall be necessary for any action taken by vote of the council. A vacancy in the membership of the council does not impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the council.

"(d) A member of the council who serves by virtue of his or her office does not receive compensation or reimbursement of expenses for serving as a member. The public members are reimbursed for actual expenses incurred in the service of the council in a manner consistent with guidelines of the travel management office of the department of administration.

"(e) The council meets at least monthly to review projects and infrastructure projects requesting funding assistance and otherwise to conduct its business and may meet more frequently if necessary. Notwithstanding any other provision of this

article to the contrary, the economic development authority is not subject to council review with regard to any action taken pursuant to the authority established in article fifteen, chapter thirty-one of this code. The governor's civil contingent fund is not subject to council review with regard to projects or infrastructure projects funded through the governor's civil contingent fund.

"(f) The water development authority shall provide office space for the council and each governmental agency represented on the council shall provide staff support for the council in the manner determined appropriate by the council.

"(g) The council shall invite to each meeting one or more representatives of the United States department of agriculture, rural economic community development, the United States economic development agency and the United States army corps of engineers or any successors thereto. The council shall invite such other appropriate parties as is necessary to effectuate the purposes of this article."

§ 31-15A-6. Powers, duties and responsibilities of the council generally; comprehensive assessment

(a) In addition to the powers set forth elsewhere in this article, the council is granted, has and may exercise all powers necessary or appropriate to carry out and effectuate the purposes and intent of this article. The council shall have the power and capacity to:

(1) Provide consultation services to project sponsors in connection with the planning, acquisition, improvement, construction or development of any infrastructure project or project;

(2) Periodically prepare a list of infrastructure projects or projects which cannot meet the established funding guidelines of the various state infrastructure agencies, other than the Housing Development Fund, but which are consistent with the mandates of this article and recommend to the Water Development Authority that it make a grant or loan to the project sponsors from the infrastructure fund to finance the cost of one or more such projects or infrastructure projects;

(3) Do all other acts necessary and proper to carry out the powers expressly granted to the authority in this article; and

(4) Make and execute contracts, commitments and obligations and other instruments necessary or convenient for the exercise of its powers.

(b) The council shall develop a comprehensive statewide inventory of water supply systems and sewage treatment systems and an assessment of current and future needs. The assessment shall identify the areas of the state which do not have adequate public water or sewage systems and offer recommendations for the construction of new facilities or the extension or expansion of existing facilities to meet the identified needs. The council shall include in the assessment an identification of the obstacles, issues and problems which prevent or inhibit development of adequate infrastructure throughout the state, including financial, governmental, physical, or geographical factors and make recommendation as the council considers appropriate regarding the obstacles, issues or problems identified. This comprehensive inventory and assessment shall be updated at least once in every three-year period after the initial assessment and inventory is completed in 1996.

(c) The council shall study the viability of the consolidation of public service districts throughout the state. The council shall report their findings and conclusions on or before January 16, 1995 to the Governor, Speaker of the House of Delegates and President of the Senate.

Acts 1994, 1st Ex. Sess., c. 26; Acts 2009, c. 221, eff. April 10, 2009.

Historical and Statutory Notes

c. 221, rewrote this section, which

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article, the council is hereby granted,
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project sponsors from the infrastruc-
finance the cost of one or more such
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other acts necessary and proper to
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future needs by the first day of July,
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essment shall identify the areas of the state
which do not have adequate public water or sew-
age systems and offer recommendations for the
construction of new facilities or the extension or
expansion of existing facilities to meet the identi-
fied needs. The council shall include in the as-
essment an identification of the obstacles, issues
and problems which prevent or inhibit develop-
ment of adequate infrastructure throughout the
state, including financial, governmental, physical,
or geographical factors and make recommendation
as the council considers appropriate regarding the
obstacles, issues or problems identified. This
comprehensive inventory and assessment shall be
updated at least once in every three-year period
after the initial assessment and inventory is com-
pleted.

“(c) The council shall study the viability of the
consolidation of public service districts throughout
the state: Provided, That the study shall encom-
pass not only public service districts but also any
and all entities which provide or supply water and
sewer service to the general public: Provided,
however, That the council shall, in the preparation
of the study, consult with the public service district
division of the public service commission and rep-
resentatives of the West Virginia rural water asso-
ciation and the West Virginia association of public
service districts, as needed. The council shall
report their findings and conclusions on or before
the sixteenth of January of the year one thousand
nine hundred ninety-five to the governor, speaker
of the house of delegates and president of the
senate.”

-11. Reservation of funds for projects and infrastructure projects

ercent of the funds deposited in the West Virginia infrastructure fund shall be
or the purpose of providing funding for the cost of projects as defined in subsection
two of this article. Twenty percent of the funds deposited in the West Virginia
re fund shall be dedicated for the purpose of providing funding for costs of
re projects as defined in subsection (l), section two of this article. Project
f infrastructure projects shall follow the application process as established by this
rovided, That notwithstanding any provision of this article to the contrary, all
s for any infrastructure project shall be submitted to the executive director of the
nia development office for review, recommendation and approval regarding infra-
project funding.

st Ex. Sess., c. 26; Acts 1998, c. 180, eff. 90 days after March 14, 1998; Acts 2005, 1st Ex.
ff. Jan. 29, 2005.

Historical and Statutory Notes

i, 1st Ex. Sess., c. 3, in the last sen-
ituted "executive director of the West
velopment office" for "council for com-

munity and economic development, or its succes-
sor”.

-16. Dedication of severance tax proceeds

he shall be dedicated an annual amount from the collections of the tax collected
to article thirteen-a, chapter eleven of this code for the construction, extension,
rehabilitation, repair and improvement of water supply and sewage treatment
nd for the acquisition, preparation, construction and improvement of sites for
development in this state as provided in this article.

(b) Notwithstanding any other provision of this code to the contrary, beginning on the first day of July, one thousand nine hundred ninety-five, the first sixteen million dollars of the tax collected pursuant to article thirteen-a, chapter eleven of this code shall be deposited to the credit of the West Virginia Infrastructure General Obligation Debt Service Fund created pursuant to section three, article fifteen-b of this chapter: *Provided*, That beginning on the first day of July, one thousand nine hundred ninety-eight, the first twenty-four million dollars of the tax annually collected pursuant to article thirteen-a of this code shall be deposited to the credit of the West Virginia Infrastructure General Obligation Debt Service Fund created pursuant to section three, article fifteen-b of this chapter.

(c) Notwithstanding any provision of subsection (b) of this section to the contrary: (1) None of the collections from the tax imposed pursuant to section six, article thirteen-a, chapter eleven of this code shall be so dedicated or deposited; and (2) the portion of the tax imposed by article thirteen-a, chapter eleven and dedicated for purposes of medicaid and the Division of Forestry pursuant to section twenty-a of said article thirteen-a shall remain dedicated for the purposes set forth in said section twenty-a.

(d) On or before the first day of May of each year, commencing the first day of May, one thousand nine hundred ninety-five, the council, by resolution, shall certify to the treasurer and the water development authority the principal and interest coverage ratio and amount for the following fiscal year on any infrastructure general obligation bonds issued pursuant to the provisions of article fifteen-b of this chapter.

(e) Notwithstanding any provision of this article to the contrary, the tax on coalbed methane remitted by the Tax Commissioner for deposit in the West Virginia Infrastructure Fund pursuant to section twenty-a, article thirteen-a, chapter eleven of this code shall be distributed as follows: (1) Seventy-five percent of the moneys so deposited shall be distributed for infrastructure projects in the various counties of this state in which the coalbed methane was produced, and (2) the remaining twenty-five percent of the moneys so deposited shall be distributed equally to the various counties of this state in which no coalbed methane was produced for infrastructure projects. Moneys shall be distributed to each coalbed methane producing county in direct proportion to the amount of tax paid by the county using information provided by the Tax Commissioner as required in section twenty-a, article thirteen-a, chapter eleven of this code.

Acts 1994, 1st Ex. Sess., c. 26; Acts 1995, c. 130, eff. March 10, 1995; Acts 1998, c. 180, eff. 90 days after March 14, 1998; Acts 2008, c. 213, eff. June 7, 2008.

Historical and Statutory Notes

Acts 2008, c. 213, added subsec. (e).

§ 31-15A-17a. Infrastructure revenue bonds payable from A. James Manchin Fund

Notwithstanding any other provision of this code to the contrary, the Water Development Authority may issue, in accordance with the provisions of section seventeen of this article, infrastructure revenue bonds payable from the A. James Manchin Fund created by section nine, article fifteen-a, chapter twenty-two of this code and such other sources as may be legally pledged for such purposes other than the West Virginia Infrastructure Revenue Debt Service Fund created by section seventeen of this article.

Acts 2003, c. 251, eff. 90 days after March 8, 2003; Acts 2005, c. 199, eff. 90 days after April 9, 2005.

ARTICLE 15C

BROADBAND DEPLOYMENT

| Section | | Section | |
|-----------|---|-----------|---|
| 31-15C-1. | Legislative findings and purpose. | 31-15C-4. | Powers and duties of the council generally. |
| 31-15C-2. | Definitions. | 31-15C-5. | Creation of the Broadband Deployment Fund. |
| 31-15C-3. | Broadband Deployment Council established; members of council; administrative support. | | |