

TOWN OF DELBARTON  
SEWER REVENUE BONDS, SERIES 2011 A  
(WEST VIRGINIA CWSRF PROGRAM),  
SEWER REVENUE BONDS, SERIES 2011 B  
(WEST VIRGINIA CWSRF PROGRAM)

Closing Date: November 3, 2011

TRANSCRIPT OF PROCEEDINGS

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**State of West Virginia**  
**WATER DEVELOPMENT AUTHORITY**  
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Date 11/2/2011 Time 1:30 PM LGA Town of Delbarton Program CWSRF

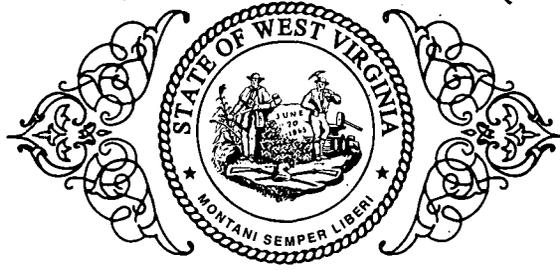
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The Authority requests that the following information concerning the individual who will be responsible for sending Debt Service Payments to the Municipal Bond Commission be provided. (If that individual is in attendance, he/she should also sign above.) Please Print:

Name John W. Preece Telephone 304 475-3359 E-Mail Mayorjwp@hotmail.com  
 Address PO BOX 730 Delbarton, WV 25670

REMINDER: As a participant in this program, the Local Governmental Agency (LGA) agrees and is required to submit annually to the WDA a copy of its audited financial statements and a copy of its adopted budget. Also, pursuant to the Loan Agreement and the NonArbitrage Certificate (both of which are contained in the bond transcript) you are to provide annually to the WDA a rebate calculation certificate or an exception opinion showing whether a rebate amount is due to the US Government under arbitrage requirements in Section 148(f) of the US Internal Revenue Code, 1986, as amended.

# State of West Virginia



## Certificate

*I, Natalie E. Tennant, Secretary of State of the  
State of West Virginia, hereby certify that*

THIS IS A TRUE COPY OF CHAPTER 16, ARTICLE 13 OF THE WEST VIRGINIA CODE, AND CHAPTER 16, ARTICLE 13 OF THE 2011 SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.



*Given under my hand and the  
Great Seal of the State of  
West Virginia on  
October 31, 2011*

*Natalie E. Tennant*

*Secretary of State*

## ARTICLE 13

### SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS

#### Section

- 16-13-1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds.
- 16-13-2. Sanitary board to supervise and control construction, etc., of works; appointment of board; definitions.
- 16-13-3. Powers of sanitary board; contracts; employees; compensation thereof; extensions and improvements; replacement of damaged public works.
- 16-13-4. Payment of preliminary expenses of surveys, etc.
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- 16-13-17. Government units subject to established rates.
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- 16-13-18a. Publication of financial statement.
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- 16-13-20. Discharge of lien on property acquired.
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- 16-13-23a. Additional powers of municipality upon receipt of order to cease pollution.
- 16-13-24. Article to be construed liberally.

§ 16-13-1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds

(a) Any municipal corporation and/or sanitary district in the state of West Virginia is hereby authorized and empowered to own, acquire, construct, equip, operate and maintain within and/or without the corporate limits of such municipal corporation:

(1) A sewage collection system and/or a sewage treatment plant or plants, intercepting sewers, outfall sewers, force mains, pumping stations, ejector stations, and all other appurtenances necessary or useful and convenient for the collection and/or treatment, purification and disposal, in a sanitary manner, of the liquid and solid waste, sewage, night soil and industrial waste of such municipal corporation and/or sanitary district, including acquisition of the municipal sewerage system resulting from the severance of a combined system pursuant to section one-b, article twenty, chapter eight of this code; and

(2) A stormwater collection system and control system, including all lines, pumping stations and all other facilities and appurtenances necessary or useful and convenient for the collection and control of stormwater, and an associated stormwater management program.

(b) Any municipal corporation and/or sanitary district in the state of West Virginia is hereby authorized and empowered to acquire by gift, grant, purchase, condemnation, or otherwise, all necessary lands, rights-of-way and property therefor, within and/or without the corporate limits of such municipal corporation and/or sanitary district, and to issue revenue bonds to pay the cost of such works and property.

(c) Any municipality may serve and supply the facilities of such sewerage system and a stormwater system and associated stormwater management program within the corporate limits of the municipality and within the area extending twenty miles beyond the corporate limits of such municipality: Provided, however, That the municipality may not serve or supply the facilities of such sewerage system or stormwater system within the corporate limits of any other municipality without the consent of the governing body thereof: 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) No obligations shall be incurred by any municipality and/or sanitary district in construction or acquisition except such as is payable solely from the funds provided under the authority of this article.

(e) No municipal corporation or sanitary district 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.

Acts 1933, Ex. Sess., c. 25, § 1; Acts 1955, c. 132; Acts 1986, c. 118; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Municipal Corporations ¶270, 708, 711, 950. C.J.S. Municipal Corporations §§ 1535, 1708 Westlaw Topic No. 268. to 1709.

Notes of Decisions

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- Power to incur indebtedness and expenditures 6
- Public improvements 5
- Regulation of public utilities 2
- Revenue bonds for construction 4

1. Construction and application

Statutes dealing with municipally owned and operated sewer systems should be read and construed together. Code, 8-4-20, 16-13-1, 16-13-2, 16-13-16, 24-1-1 et seq., 24-2-1 et seq., 24-3-1 et seq. Delardas v. Morgantown Water Commission, 1964, 137 S.E.2d 426, 148 W.Va. 776. Statutes ¶ 223.2(21)

Statutes relating to supervision and regulation of public utilities by Public Service Commission and statute dealing with municipally owned sewer systems relate to the same subject and should be read and construed together. Code, 16-13-1 et seq., 24-1-1 et seq. State ex rel. City of Wheeling v. Renick, 1960, 116 S.E.2d 763, 145 W.Va. 640. Statutes ¶ 223.2(27)

2. Regulation of public utilities

Under West Virginia Act authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay cost thereof, money used in preliminary engineering work prior to actual beginning of construction of sewage disposal system is not required to be handled by sanitary board, but board is merely required to supervise and control the construction and maintenance of the project. Code W.Va. 16-13-16, 16-13-18, 16-13-32. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Health ¶ 369

Under statute declaring that words "public utility" shall include any person or persons, or association of persons including municipalities, engaged in any business which is a public service, sewer system owned and operated by city was a "public utility" and Public Service Commission was vested with jurisdiction to supervise or regulate municipal sewer system and to hear proceeding seeking extension of sewer ser-

vice, and power of Commission to supervise and regulate sewer system was not withdrawn or impaired by statutes authorizing municipal corporation to own, construct and maintain sewer system under control of a Sanitary Board and authorizing Board to operate and control such systems and to order and complete any extensions that Board might deem expedient. Code, 16-13-1 et seq., 16-13-2, 16-13-3, 16-13-5, 16-13-16, 16-13-18, 16-13-23, 24-1-1, 24-2-1, 24-3-1. State ex rel. City of Wheeling v. Renick, 1960, 116 S.E.2d 763, 145 W.Va. 640. Public Utilities ¶ 113

Public Service Commission has statutory power and authority to control facilities, charges and services of all public utilities, and to hear complaints of persons entitled to services which such utilities afford, subject only to limitation that the requirements shall not be contrary to law and that they be just and fair, just and reasonable, and just and proper. Code, 16-13-1 et seq., 24-1-1 et seq. State ex rel. City of Wheeling v. Renick, 1960, 116 S.E.2d 763, 145 W.Va. 640. Public Utilities ¶ 114; Public Utilities ¶ 119.

3. Police power

Statute delegating to municipal corporation power by ordinance to create sanitary boards and authorizing such sanitary boards to enter into contracts for construction of sewerage systems is a valid exercise of police power of state. Code, 16-13-1 et seq. West Virginia Water Service Co. v. Cunningham, 1957, 98 S.E.2d 891, 143 W.Va. 1. Constitutional Law ¶ 2437; Health ¶ 358.

Legislature may delegate police power to cities or counties, as it sees fit. Brewer v. City of Point Pleasant, 1934, 172 S.E. 717, 114 W.Va. 572. Constitutional Law ¶ 2437; Constitutional Law ¶ 2438.

4. Revenue bonds for construction

Plan of preparation expense in construction of municipal sewage treatment and disposal system constituted one of first items of expense incurred and constituted a liability, according to agreements between municipality and Federal Works Agency which advanced money to meet such expense, from moment construction be-

gan, and, therefore, repayment of such advancements from proceeds of future revenue bond issues could not be held unlawful on ground that such payment would impair bondholders' security. Code W.Va. 16-13-16, 16-13-18, 16-13-22, 16-13-32; War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇨ 950(15)

In action to cancel certain sewer revenue bonds issued by West Virginia City and to enjoin collection of sewerage service charges assessed for the purpose of liquidating such bonds, District Court was bound by decisions of Supreme Court of Appeals of West Virginia upholding the constitutionality of statute permitting municipalities to issue bonds for self-liquidating municipal projects. Laws W.Va. 1933, 1st Ex.Sess., c. 25, as amended by Laws W.Va. 1933, 2nd Ex.Sess., c. 48. Stevenson v. City of Bluefield, 1941, 39 F.Supp. 462. Federal Courts ⇨ 433

City located on or near state boundary and confronted with necessity of purchasing property and erecting sewage disposal plant in adjoining state held authorized under statute to issue revenue bonds payable solely from revenues of such plant. Acts 1933, 1st Ex.Sess., c. 25, as amended by Acts 1933, 2d Ex.Sess., c. 48. Bernard v. City of Bluefield, 1936, 186 S.E. 298, 117 W.Va. 556. Municipal Corporations ⇨ 919

#### 5. Public Improvements

Under contract between municipal sanitary board and contractor requiring contractor to bear cost and expense of damage to surface, overhead or subsurface structures in construction of sanitary sewer system, contractor was

liable to water company for expense of removal of all water and other pipes under streets which interfered with construction of sewer system. Code, 16-13-1 et seq., 16-13-17, 16-13-24. West Virginia Water Service Co. v. Cunningham, 1957, 98 S.E.2d 891, 143 W.Va. 1. Municipal Corporations ⇨ 400

#### 6. Power to incur indebtedness and expenditures

Obligations incurred by city under authority of West Virginia statute authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay the cost thereof are not "debts" within provision of West Virginia Constitution containing limitations on power of a municipality to incur debts. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇨ 864(3)

#### 7. Jurisdiction

Taxpayers of a city seeking to enjoin collection by city of sewerage service charges assessed for purpose of liquidating bonds issued for construction of sewerage system could not invoke jurisdiction of federal court on ground that by reason of prior decisions of state court upholding validity of statute, under which bonds were issued and rates assessed, plaintiffs did not have a plain, speedy and efficient remedy in state court within meaning of Judicial Code. Laws W.Va. 1933, 1st Ex.Sess., c. 25, as amended by Laws W.Va. 1933, 2nd Ex.Sess., c. 48; Jud.Code, § 24(1), 28 U.S.C.A. § 1312. Stevenson v. City of Bluefield, 1941, 39 F.Supp. 462. Federal Courts ⇨ 7; Federal Courts ⇨ 26.1

### § 16-13-2. Sanitary board to supervise and control construction, etc., of works; appointment of board; definitions

(a) The construction, acquisition, improvement, equipment, custody, operation and maintenance of any works for the collection, treatment or disposal of sewage and, in addition, for the collection and control of stormwater and the collection of revenues therefrom for the service rendered thereby, shall be under the supervision and control of a sanitary board appointed by the governing body as set forth in section eighteen of this article.

(b) As used in this article, the following terms shall have the following meanings unless the text clearly indicates otherwise.

(1) "Board" means the sanitary board as set up in section eighteen of this article.

(2) "Governing body" means the mayor and council or other legally constituted governing body of any municipality.

(3) "Municipality" means any municipal corporation, incorporated city, town, village or sanitary district in the state of West Virginia.

(4) "Sewage works" means a works for the collection and/or treatment, purification and disposal of sewage, in its entirety, or any integral part thereof.

(5) "Stormwater system" or "stormwater works" 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, corals, outlets, channels, ponds, drainage easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, syphons, retention or detention basins, dams, floodwalls, levies, pipes, flood control systems and pumping stations, and associated stormwater management program. The term "stormwater system" and "stormwater works" shall not include highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

(6) "Stormwater management program" means those activities associated with the management, operation, maintenance and control of stormwater and stormwater works, including, but not 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. Provided, That, as used in this article, "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.

(7) "Works" means sewage works and stormwater works either separately or collectively.

Acts 1933, Ex. Sess., c. 25, § 2; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

**Library References**

- Health § 369, C.J.S. Health and Environment §§ 7 to 9, 16
- Municipal Corporations § 711, C.J.S. Municipal Corporations §§ 17, 26 to 27, 44 to 45, 98 to 100.
- Westlaw Topic Nos. 198H, 268, C.J.S. Municipal Corporations § 1535.

**Notes of Decisions**

- Construction and application** 1, Commission, 1964, 137 S.E.2d 426, 148 W.Va.
- Construction of sewer systems** 3, 1776, Statutes § 223:2(21)
- Public utilities** 2, **Public utilities**

**1. Construction and application** All contracts made by a utility relating to the public service must be deemed to be entered into in contemplation of the exercise by the state of its regulatory power whenever the public interest may make it necessary. Berkeley 24-3-1 et seq. Delardas v. Morgantown Water County Public Service Sewer Dist. v. West Vir-

ginia Public Service Com'n, 1998, 512 S.E.2d 201, 204 W.Va. 279. Public Utilities ⇨ 115

Under statute declaring that words "public utility" shall include any person or persons, or association of persons including municipalities, engaged in any business which is a public service, sewer system owned and operated by city was a "public utility" and Public Service Commission was vested with jurisdiction to supervise or regulate municipal sewer system and to hear proceeding seeking extension of sewer services, and power of Commission to supervise and regulate sewer system was not withdrawn or impaired by statutes authorizing municipal corporation to own, construct and maintain sewer system under control of a Sanitary Board and authorizing Board to operate and control such systems and to order and complete any extensions that Board might deem expedient. Code, 16-13-1 et seq., 16-13-2, 16-13-3, 16-13-5, 16-13-16, 16-13-18, 16-13-23, 24-1-1, 24-2-1, 24-3-1. State ex rel. City of Wheeling v. Renick, 1960, 116 S.E.2d 763, 145 W.Va. 640. Public Utilities ⇨ 113

**3. Construction of sewer systems**

Obligations incurred by city under authority of West Virginia statute authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay the cost thereof are not "debts" within provision of West Virginia Constitution containing limitations on power of a municipality to incur debts. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇨ 864(3).

If sewer project is undertaken by municipality, whatever loans may have been made on faith of the revenue bonds as authorized under West Virginia law would or should be included in cost of the works and repaid out of proceeds of the bonds. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇨ 950(15)

**§ 16-13-3. Powers of sanitary board; contracts; employees; compensation thereof; extensions and improvements; replacement of damaged public works**

The board shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this article: Provided, That any contract relating to the financing of the acquisition or construction of any works, or any trust indenture as provided for, shall be approved by the governing body of the municipality before the same shall be effective.

The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys, and other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do the work as the board shall direct. All compensation and all expenses incurred in carrying out the provisions of this article shall be paid solely from funds provided under the authority of this article, and the board shall not exercise or carry out any authority or power herein given it so as to bind said board of said municipality beyond the extent to which money shall have been or may be provided under the authority of this article.

No contract or agreement with any contractor or contractors for labor and/or material, exceeding in amount the sum of ten thousand dollars, shall be made without advertising for bids, which bids shall be publicly opened and award made to the best bidder, with power in the board to reject any or all bids.

After the construction, installation, and completion of the works, or the acquisition thereof, the board shall operate, manage and control the same and may order and complete any extensions, betterments and improvements of and to the works that the board may consider expedient, if funds therefor be

available or are made available as provided in this article, and shall establish rules and regulations for the use and operation of the works, and of other sewers, stormwater conduits, and drains connected therewith so far as they may affect the operation of such works, and do all things necessary or expedient for the successful operation thereof, including, but not limited to, those activities necessary to comply with all federal and state requirements, including stormwater and surface runoff water quality improvement activities.

The sanitary board may declare an emergency situation in the event of collector line breaks or vital treatment plant equipment failure and shall be exempted from competitive bidding requirements and enter into direct purchase agreements or contracts for the expenses. All public ways or public works damaged or destroyed by the board in carrying out its authority under this article shall be restored or repaired by the board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds provided by this article.

Acts 1933, Ex. Sess., c. 25, § 3; Acts 1989, c. 133; Acts 2001, c. 143, eff. 90 days after April 11, 2001; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

**Historical and Statutory Notes**

Acts 2001, c. 143, also amended this section to read:

"The board shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this article. Provided, That any contract relating to the financing of the acquisition or construction of any such works, or any trust indenture as hereinafter provided for, shall be approved by the governing body of such municipality before the same shall be effective. The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys, and such other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the board shall direct. All such compensation and all expenses incurred in carrying out the provisions of this article shall be paid solely from funds provided under the authority of this article, and the board shall not exercise or carry out any authority or power herein given it so as to bind said board of said municipality beyond the extent to which money shall have been or may be provided under the authority of this article. No contract or agreement with any contractor or contractors for labor and/or material, exceeding in amount the

sum of ten thousand dollars, shall be made without advertising for bids, which bids shall be publicly opened and award made to the best bidder, with power in the board to reject any or all bids. After the construction, installation, and completion of the works, or the acquisition thereof, the board shall operate, manage and control the same and may order and complete any extensions, betterments and improvements of and to the works that the board may deem expedient, if funds therefor be available or are made available as provided in this article, and shall establish rules and regulations for the use and operation of the works, and of other sewers and drains connected therewith so far as they may affect the operation of such works, and do all things necessary or expedient for the successful operation thereof. The sanitary board may declare an emergency situation in the event of collector line breaks or vital treatment plant equipment failure and shall be exempted from competitive bidding requirements and enter into direct purchase agreements or contracts for such expenses. All public ways or public works damaged or destroyed by the board in carrying out its authority under this article shall be restored or repaired by the board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds provided by this article.

**Library References**

Health 369; Westlaw Topic No. 198H; C.J.S. Health and Environment §§ 7 to 9, 16 to 17, 26 to 27, 44 to 45, 98 to 100.

## Notes of Decisions

Independent contractor 3  
 Police power of local authorities 1  
 Validity of municipal contracts 2

## 1. Police power of local authorities

Under the police power of the State, the Legislature has the power to provide for the protection of the safety, health, morals and general welfare of the public, and may delegate such powers to municipalities created by it. *West Virginia Water Service Co. v. Cunningham*, 1957, 98 S.E.2d 891, 143 W.Va. 1. Constitutional Law ☞ 2437; Constitutional Law ☞ 1066

Under statute delegating to municipal corporations power by ordinance to create sanitary boards and authorizing such boards to enter into contracts for construction of sewerage systems, ordinance creating sanitary board and authorizing such board to enter into contract for construction of sewerage system was valid exercise of police power of state delegated to

city by statute. Code, 16-13-1 et. seq. *West Virginia Water Service Co. v. Cunningham*, 1957, 98 S.E.2d 891, 143 W.Va. 1. Health ☞ 358; Health ☞ 369

## 2. Validity of municipal contracts

Contract between municipal sanitary board and contractor providing for construction of sanitary sewerage system in furtherance of exercise of police power of state and provisions of city ordinance was valid. *West Virginia Water Service Co. v. Cunningham*, 1957, 98 S.E.2d 891, 143 W.Va. 1. Municipal Corporations ☞ 339(1)

## 3. Independent contractor

Where city had no right of control over contractor and sanitary board in construction of sanitary sewer system, contractor was "independent contractor". *West Virginia Water Service Co. v. Cunningham*, 1957, 98 S.E.2d 891, 143 W.Va. 1. Municipal Corporations ☞ 400

## § 16-13-4. Payment of preliminary expenses of surveys, etc.

All necessary preliminary expenses actually incurred by the board of any municipality in the making of surveys, estimates of costs and of revenue, employment of engineers or other employees, the giving of notices, taking of options and all other expenses of whatsoever nature, necessary to be paid prior to the issue and delivery of the revenue bonds pursuant to the provisions of this article, may be met and paid in the following manner. Said board may from time to time certify such items of expense to the clerk or recorder of said municipality, directing him to pay the several amounts thereof, and thereupon said clerk or recorder shall at once draw a warrant or warrants upon the treasurer of said municipality, which warrant or warrants shall be paid out of the general funds of said municipality not otherwise appropriated, without a special appropriation being made therefor by the governing body; or, in case there are no general funds of such municipality not otherwise appropriated, the clerk or recorder shall recommend to the governing body the temporary transfer from other funds of such municipality of a sufficient amount to meet such items of expense, or the making of a temporary loan for such purpose, and such governing body shall thereupon at once make such transfer of funds, or authorize such temporary loan in the same manner that other temporary loans are made by such municipality. Provided, however, That the fund or funds of such municipality from which such payments are made shall be fully reimbursed and repaid by said board out of the first proceeds of the sale of revenue bonds hereinafter provided for, and before any other disbursements are made therefrom, and the amount so advanced to pay such preliminary expenses, shall be a first charge against the proceeds resulting from the sale of such revenue bonds until the same has been repaid as herein provided.

Acts 1933, Ex. Sess., c. 25, § 4.

Library References

Municipal Corporations ¶288.  
Westlaw Topic No. 268.  
C.J.S. Municipal Corporations § 969.

Notes of Decisions

Construction planning expenses 2.  
Power to incur indebtedness and expenditures

1. Power to incur indebtedness and expenditures

West Virginia municipalities are authorized to incur obligations for purpose of defraying preliminary expenses of sewer projects, provided repayment of such obligations is to be made solely from proceeds of revenue bonds, not from tax levies. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ¶ 864(3).

2. Construction planning expenses

Plan of preparation expense in construction of municipal sewage treatment and disposal system constituted one of first items of expense incurred and constituted a liability according to agreements between municipality and Federal Works Agency which advanced money to meet such expense from moment construction began and, therefore, repayment of such advancements from proceeds of future revenue bond issues could not be held unlawful on ground that such payment would impair bondholders security. Code W.Va. 16-13-16, 16-13-18, 16-13-22, 16-13-32; War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ¶ 950(15).

Under West Virginia Act authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue

bonds to pay cost thereof, money used in preliminary engineering work prior to actual beginning of construction of sewage disposal system is not required to be handled by sanitary board, but board is merely required to supervise and control the construction and maintenance of the project. Code W.Va. 16-13-16, 16-13-18, 16-13-32. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Health ¶ 369.

United States, which was entitled to reimbursement for advances made to West Virginia city by Federal Works Agency for purpose of plan preparation for construction of proposed sewage treatment and disposal system, would not be entitled to general judgment against city but would be entitled to an order requiring repayment from existing or future revenue bond proceeds and to four percent interest. War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785; Code W.Va. 38-4-5, 38-4-6, 53-1-1. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ¶ 1037.

In agreement between West Virginia city and Federal Works Administrator for advances to be used for purpose of plan preparation for construction of proposed sewage treatment and disposal system, parties would be presumed to know extent of city's authority to make a binding contract in such respect, and, therefore, limitation imposed by West Virginia law on city would be read into the agreement. War Mobilization and Reconversion Act of 1944, §§ 101 et seq., 501, 58 Stat. 785, 791; Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. W.Va. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ¶ 250.

§ 16-13-5. Ordinance necessary before acquisition or construction of works

Before any municipality shall construct or acquire any works under this article, the governing body shall upon petition of the board, enact an ordinance or ordinances which shall: (a) Set forth a brief and general description of the works and, if the same are to be constructed, a reference to the preliminary report which shall heretofore have been prepared and filed by an engineer chosen by the board as aforesaid; (b) set forth the cost thereof estimated by the engineer chosen as aforesaid; (c) order the construction or acquisition of such works; (d) direct that revenue bonds of the municipality shall be issued pursuant to this article in such an amount as may be found necessary to pay the

cost of the works; and (e) contain such other provisions as may be necessary in the premises.

Acts 1933, Ex. Sess., c. 25, § 5.

#### Library References

Municipal Corporations Ⓒ 293.

Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 977 to 978.

#### Notes of Decisions

##### Power to incur indebtedness and expenditures

1

##### 1. Power to incur indebtedness and expenditures

West Virginia municipalities are authorized to incur obligations for purpose of defraying preliminary expenses of sewer projects, provided repayment of such obligations is to be made solely from proceeds of revenue bonds, not from tax levies. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations Ⓒ 864(3).

United States, which was entitled to reimbursement for advances made to West Virginia city by Federal Works Agency for purpose of plan preparation for construction of proposed

sewer treatment and disposal system, would not be entitled to general judgment against city but would be entitled to an order requiring repayment from existing or future revenue bond proceeds and to four percent interest. War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785; Code W.Va. 38-4-5, 38-4-6, 53-1-1. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations Ⓒ 1037.

If sewer project is undertaken by municipality, whatever loans may have been made on faith of the revenue bonds as authorized under West Virginia law would or should be included in cost of the works and repaid out of proceeds of the bonds. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations Ⓒ 950(15).

#### § 16-13-6. Publication and hearing upon ordinance

After such ordinance shall have 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 the municipality. The notice shall state that said ordinance has been adopted, and that the municipality contemplates the issuance of the bonds described in the ordinance, and 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 first date of publication of such abstract and notice which shall not be prior to the last date of publication of such abstract and notice, and present protests. 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: Provided, however, That if at such a hearing written protest is filed by thirty percent or more of the owners of real estate situate in said municipality, then the governing body of said municipality shall not take further action unless four fifths of the qualified members of the said governing body assent thereto.

Acts 1933, Ex. Sess., c. 25, § 6; Acts 1967, c. 105; Acts 1981, 1st Ex. Sess., c. 2.

**Library References**  
 Municipal Corporations §§ 294 to 300. C.J.S. Municipal Corporations §§ 979 to 985,  
 Westlaw Topic No. 268. 988 to 1001.

**§ 16-13-7. Acquisition by condemnation or purchase**

Every such municipality shall have power to condemn any such works to be acquired and any land, rights, easements, franchises and other property, real or personal, deemed necessary or convenient for the construction of any such works, or for extensions, improvements, or additions thereto, and in connection therewith may have and exercise all the rights, powers and privileges of eminent domain granted to municipal corporations under the laws relating thereto. Title to property condemned shall be taken in the name of the municipality. Proceedings for such appropriation of property shall be under and pursuant to the provisions of chapter fifty-four, of the Code of West Virginia; one thousand nine hundred thirty-one, and acts amendatory and supplemental thereto. Provided, That the municipality shall be under no obligation to accept and pay for any property condemned, and shall in no event pay for any property condemned or purchased, except from the funds provided pursuant to this article; and in any proceedings to condemn, such orders may be made as may be just to the municipality and to the owners of the property to be condemned, and an undertaking or other security may be required securing such owners against any loss or damage to be sustained by reason of the failure of the municipality to accept and pay for the property, but such undertaking or security shall impose no liability upon the municipality except such as may be paid from the funds provided under the authority of this article. In event of the acquisition by purchase the board may obtain and exercise an option from the owner or owners of said property for the purchase thereof, or may enter into a contract for the purchase thereof, and such purchase may be made upon such terms and conditions, and in such manner as the board may deem proper. In event of the acquisition of any works already constructed by purchase or condemnation, the board at or before the time of the adoption of the ordinance described in section five hereof, shall cause to be determined what repairs, replacements, additions, and betterments will be necessary in order that such works may be effective for their purpose, and an estimate of the cost of such improvements shall be included in the estimate of the cost required by section five hereof, and such improvement shall be made upon the acquisition of the works and as a part of the cost thereof.

Acts 1933, Ex. Sess., c. 25, § 7.

**Library References**  
 Municipal Corporations §§ 287.  
 Westlaw Topic No. 268.

**§ 16-13-8. Cost of works**

The cost of the works shall be deemed to include the cost of acquisition or construction thereof, the cost of all property, rights, easements, and franchises deemed necessary or convenient therefor and for the improvements determined

upon as provided in this article; interest upon bonds prior to and during construction or acquisition and for six months after completion of construction or of acquisition of the improvement last mentioned; engineering and legal expenses; expense for estimates of cost and of revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized and the construction or acquisition of the works and the placing of the works in operation and the performance of the things herein required or permitted in connection with any thereof.

Acts 1933, Ex. Sess., c. 25, § 8.

**Library References**

Municipal Corporations ⇨ 288.

Westlaw Topic No. 268.

C.J.S. Municipal Corporations § 969.

**Notes of Decisions**

**Monetary advances 2**

**Preliminary expenditures 1**

**1. Preliminary expenditures**

Under West Virginia Act authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay cost thereof, money used in preliminary engineering work prior to actual beginning of construction of sewage disposal system is not required to be handled by sanitary board, but board is merely required to supervise and control the construction and maintenance of the project. Code W.Va. 16-13-16, 16-13-18, 16-13-32. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Health ⇨ 369.

**2. Monetary advances**

United States, which was entitled to reimbursement for advances made to West Virginia city by Federal Works Agency for purpose of plan preparation for construction of proposed sewage treatment and disposal system, would not be entitled to general judgment against city

but would be entitled to an order requiring repayment from existing or future revenue bond proceeds and to four percent interest. War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785; Code W.Va. 38-4-5, 38-4-6, 53-1-1. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇨ 1037.

Plan of preparation expense in construction of municipal sewage treatment and disposal system constituted one of first items of expense incurred and constituted a liability, according to agreements between municipality and Federal Works Agency which advanced money to meet such expense, from moment construction began, and, therefore, repayment of such advancements from proceeds of future revenue bond issues could not be held unlawful on ground that such payment would impair bondholders' security. Code W.Va. 16-13-16, 16-13-18, 16-13-22, 16-13-32; War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇨ 950(15).

**§ 16-13-9. Contracts and obligations incurred to be paid for solely by revenue bonds**

Nothing in this article contained shall be so construed as to authorize or permit any municipality to make any contract or to incur any obligation of any kind or nature except such as shall be payable solely from the funds provided under this article. Funds for the payment of the entire cost of any of the works referred to in this article, exclusive of any portions of the cost that may be defrayed out of any grant or contribution, shall be provided by the issuance of revenue bonds of the municipality, the principal and interest of which shall be

payable solely from the fund herein provided for the payment, and the bonds may not, in any respect, be a corporate indebtedness of the municipality, within the meaning of any statutory or constitutional limitations thereon. All the details of the bonds shall be determined by ordinance or ordinances of the municipality.

Acts 1933, Ex. Sess., c. 25, § 9; Acts 1949, c. 93; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

**Library References**

Municipal Corporations ¶870, 911, 950(15). C.J.S. Municipal Corporations §§ 1573 to 1579, 1581, 1647 to 1649, 1708 to 1709. Westlaw Topic No. 268.

**Notes of Decisions**

- Power of municipal corporations to contract** 2
- Power to incur indebtedness and expenditures** 3
- Preliminary expenditures** 4
- Preliminary proceedings and ordinances** 5
- Validity** 1

**1. Validity**

Statute authorizing municipalities to construct and finance self-liquidating sewer systems held constitutional (Acts 1933 [1st Ex.Sess.] c. 25). *Brewer v. City of Point Pleasant*, 1934, 172 S.E. 717, 114 W.Va. 572. Municipal Corporations ¶ 266

**2. Power of municipal corporations to contract**

Under provisions of statute relating to contract with other municipalities for service of sewage works, city which ordered construction of sewage disposal plant was authorized to contract with town to provide that town would have the right to use part of the capacity of the plant in return for contributing to its cost and town was authorized to enter into such contracts with city for the use of the plant, and fact that town was unable to sell revenue bonds because it was not allowed to have part ownership in the plant or in the interceptor sewers did not mean that town was not liable for payments agreed to under the contracts, where city offered to buy the revenue bonds issued by the town. Code, 16-13-9, 16-13-19, 16-13-23a. *City of Morgantown v. Town of Star City*, 1973, 195 S.E.2d 166, 156 W.Va. 529. Municipal Corporations ¶ 277

**3. Power to incur indebtedness and expenditures**

Obligations incurred by city under authority of West Virginia statute authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay the cost thereof are not debts within provision of West Virginia Constitution

containing limitations on power of a municipality to incur debts. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. *U.S. v. City of Charleston*, 1957, 149 F.Supp. 866. Municipal Corporations ¶ 864(3)

West Virginia municipalities are authorized to incur obligations for purpose of defraying preliminary expenses of sewer projects, provided repayment of such obligations is to be made solely from proceeds of revenue bonds, not from tax levies. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. *U.S. v. City of Charleston*, 1957, 149 F.Supp. 866. Municipal Corporations ¶ 864(3)

If sewer project is undertaken by municipality, whatever loans may have been made on faith of the revenue bonds as authorized under West Virginia law would or should be included in cost of the works and repaid out of proceeds of the bonds. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. *U.S. v. City of Charleston*, 1957, 149 F.Supp. 866. Municipal Corporations ¶ 950(15)

Where statute authorizing municipalities to issue bonds for self-liquidating municipal project, provided that bonds should not be corporate indebtedness, bonds held not to create debts within constitutional inhibition (Acts 1933 [1st Ex.Sess.] c. 25, §§ 9, 10, 16, 21). *Brewer v. City of Point Pleasant*, 1934, 172 S.E. 717, 114 W.Va. 572. Municipal Corporations ¶ 907

Provisions of statute relating to issuance of municipal bonds constitute integral parts of bonds regardless of whether included therein (Acts 1933 [1st Ex.Sess.] c. 25, §§ 9, 10, 16, 21). *Brewer v. City of Point Pleasant*, 1934, 172 S.E. 717, 114 W.Va. 572. Municipal Corporations ¶ 923

Statute permitting municipalities to issue bonds for self-liquidating municipal projects held legitimate delegation of legislative power.

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Acts 1933, 1st Ex.Sess., c. 25. Brewer v. City of Point Pleasant, 1934, 172 S.E. 717, 114 W.Va. 572. Constitutional Law 2437; Municipal Corporations 907

### 4. Preliminary expenditures

Under West Virginia Act authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay cost thereof, money used in preliminary engineering work prior to actual beginning of construction of sewage disposal system is not required to be handled by sanitary board, but board is merely required to supervise and control the construction and maintenance

of the project. Code W.Va. 16-13-16, 16-13-18, 16-13-32. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Health 369

### 5. Preliminary proceedings and ordinances

Provision of sewer ordinance declaring that statutory mortgage lien should exist in favor of bondholders violated statute permitting municipalities to construct self-liquidating sewer systems, but declaration could be regarded as surplusage and did not affect validity of remainder of ordinance (Acts 1933 [1st Ex.Sess.], c. 25). Brewer v. City of Point Pleasant, 1934, 172 S.E. 717, 114 W.Va. 572. Municipal Corporations 303(4)

## § 16-13-10. Interest on and redemption of bonds; form; statement on face of bond; negotiability; exemption from taxation; registration; execution; sale; disposition of surplus proceeds; additional and temporary bonds

Such revenue bonds shall bear interest at not more than twelve percent per annum, payable at such times, and shall mature at such time or times as may be determined by ordinance. Such bonds may be made redeemable before maturity at the option of the municipality, to be exercised by said board, at not more than the par value thereof and a premium of five percent, under such terms and conditions as may be fixed by the ordinance authorizing the issuance of the bonds. The principal and interest of the bonds may be made payable in any lawful medium. Said ordinance shall determine the form of the bonds, either coupon or registered, shall set forth any registration and conversion privileges, and shall fix the denomination or denominations of such bonds and the place or places of payment of the principal and interest thereof, which may be at any bank or trust company within or without the State. The bonds shall contain a statement on their face that the municipality shall not be obligated to pay the same or the interest thereon except from the special fund provided from the net revenues of the works. All such bonds shall be, and shall have and are hereby declared to have all the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State. Said bonds shall be exempt from all taxation, state, county and municipal. Such bonds shall be executed by the proper legally constituted authorities of the municipality, and be sealed with the corporate seal of the municipality, and in case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers, before delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. Such bonds shall be sold at a price not lower than a price, which when computed upon standard tables of bond values, will show a net return of not more than thirteen percent per annum to the purchaser upon the amount paid therefor, and the proceeds derived therefrom shall be used exclusively for the purposes for which said bonds are issued and same may be sold at one time or in parcels as funds are needed. Any surplus of bond proceeds over and above the cost of the works shall be paid into the sinking fund hereinafter provided. If the proceeds of the bonds, by error of calculation

or otherwise, shall be less than the cost of the works, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in said ordinance authorizing the issuance of the bonds first issued or in the trust indenture hereinafter authorized, shall be deemed to be of the same issue and shall be entitled to payment without preference or priority of the bonds first issued. Prior to the preparation of the definitive bonds, temporary bonds may under like restrictions be issued with or without coupons, exchangeable for definitive bonds upon the issuance of the latter.

Acts 1933, Ex. Sess., c. 25, § 10; Acts 1970, c. 41; Acts 1980, c. 33; Acts 1981, 1st Ex. Sess., c. 2.

**Library References**

Municipal Corporations § 922, 950(15). C.J.S. Municipal Corporations §§ 1684 to 1686, 1697, 1708 to 1709.  
Westlaw Topic No. 268.

**§ 16-13-11. Additional bonds to extend or improve works**

The governing body may provide by said ordinance authorizing the issuance of the bonds or in the trust indenture hereinafter referred to, that additional bonds may thereafter be authorized and issued, at one time or from time to time under such limitations and restrictions as may be set forth in said ordinance and/or trust indenture, for the purpose of extending, improving or bettering the works when deemed necessary in the public interest, such additional bonds to be secured and be payable from the revenues of the works equally with all other bonds issued pursuant to said ordinance without preference or distinction between any one bond and any other definite bonds upon the issuance of the latter.

Acts 1933, Ex. Sess., c. 25, § 11.

**Library References**

Municipal Corporations § 911; 950(15). C.J.S. Municipal Corporations §§ 1647 to 1649, 1708 to 1709.  
Westlaw Topic No. 268.

**§ 16-13-12. Additional bonds for extension, etc., of works to have equal priority with original bonds**

The governing body may provide by said ordinance authorizing the issuance of the bonds or in the trust indenture hereinafter referred to, that additional bonds may thereafter be authorized and issued, at one time or from time to time, under such limitations and restrictions as may be set forth in said ordinance and/or trust indenture, for the purpose of extending, improving or bettering the works when deemed necessary in the public interest, such additional bonds to be secured and be payable from the revenues of the works equally with all other bonds issued pursuant to said ordinance without preference or distinction between any one bond and any other bond by reason of priority of issuance or otherwise.

Acts 1933, Ex. Sess., c. 25, § 12.

**Library References**

Municipal Corporations § 911, 950(15). C.J.S. Municipal Corporations §§ 1647 to 1649, 1708 to 1709. Westlaw Topic No. 268.

**§ 16-13-13. Application of revenue from bonds; lien**

All moneys received from any bonds issued pursuant to this article, after reimbursements and repayment to said municipality of all amounts advanced for preliminary expenses as provided in section four of this article, shall be applied solely to the payment of the cost of the work, extensions, improvements or betterments, or to the appurtenant sinking fund and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the holders of the bonds or the trustees hereinafter provided for.

**Library References**

Municipal Corporations § 911, 950(15). C.J.S. Municipal Corporations §§ 1647 to 1649, 1708 to 1709. Westlaw Topic No. 268.

**Notes of Decisions**

**Preliminary expenditures 1  
Repayment of loans 2**

**1. Preliminary expenditures**

Under West Virginia Act authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay cost thereof, money used in preliminary engineering work prior to actual beginning of construction of sewage disposal system is not required to be handled by sanitary board, but board is merely required to supervise and control the construction and maintenance of the project. Code W.Va. 16-13-16, 16-13-18, 16-13-32. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Health § 369

**2. Repayment of loans**

If sewer project is undertaken by municipality, whatever loans may have been made on faith of the revenue bonds as authorized under West

Virginia law would or should be included in cost of the works and repaid out of proceeds of the bonds. Code W.Va. 11-8-26(14); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27; 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations § 950(15)

United States, which was entitled to reimbursement for advances made to West Virginia city by Federal Works Agency for purpose of plan preparation for construction of proposed sewage treatment and disposal system, would not be entitled to general judgment against city but would be entitled to an order requiring repayment from existing or future revenue bond proceeds and to four percent interest. War Mobilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785; Code W.Va. 38-4-5, 38-4-6, 53-1-1. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations § 1037

**§ 16-13-14. Securing bonds by trust indenture**

In the discretion of the governing body such bonds may be secured by a trust indenture by and between the municipality and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the State of West Virginia but no such trust indenture shall convey or mortgage the works or any part thereof. The ordinance authorizing the revenue bonds and fixing the details thereof may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the municipality and the board in relation to the construction or acquisition of the works and the improvement,

operation, repair, maintenance and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that the works shall be contracted for, constructed and paid for under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, successors, assigns or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or revenues of the works or other moneys pertaining thereto be satisfactory to such purchasers, successors, assigns or nominees. Such indenture may set forth the rights and remedies of the bondholders and/or such trustee, restricting the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. Except as in this article otherwise provided, the governing body may provide by ordinance or in such trust indenture for the payment of the proceeds of the sale of the bonds and the revenues of the works to such officer, board or depository as it may determine for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine.

Acts 1933, Ex. Sess., c. 25, § 14.

**Library References**

Municipal Corporations § 911, 950(15).  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1647 to 1649, 1708 to 1709.

**United States Code Annotated**

Trust Indenture Act of 1939, see 15 U.S.C.A. § 77aaa et seq.

**§ 16-13-15. Sinking fund; transfer of balance of net revenues**

At or before the issuance of any such bonds the governing body shall by said ordinance create a sinking fund, to be remitted to and administered by the West Virginia municipal bond commission, for the payment of the bonds and the interest thereon and the payment of the charges of banks or trust companies for making payment of such bonds or interest, and shall set aside and pledge a sufficient amount of the net revenues of the works, hereby defined to mean the revenues of the works remaining after the payment of the reasonable expense of operation, repair and maintenance, such amount to be paid by the board into said sinking fund at intervals to be determined by ordinance prior to issuance of the bonds, for: (a) The interest upon such bonds as such interest shall fall due; (b) the necessary fiscal agency charges for paying bonds and interest; (c) the payment of the bonds as they fall due, or, if all bonds mature at one time, the proper maintenance of a sinking fund in such amounts as are necessary and sufficient for the payment thereof at such time; (d) a margin for safety and for the payment of premiums upon bonds retired by call or purchase as herein provided, which margin, together with any unused surplus of such margin carried forward from the preceding year, shall equal ten percent of all other amounts so required to be paid into the sinking fund. Such required payments shall constitute a first charge upon all the net revenue of the works. Prior to the issuance of the bonds the board may by ordinance be given the right to use

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or direct the West Virginia municipal bond commission to use such sinking fund or any part thereof in the purchase of any of the outstanding bonds payable therefrom at the market price thereof, but not exceeding the price, if any, at which the same shall in the same year be payable or redeemable, and all bonds redeemed or purchased shall forthwith be cancelled and shall not again be issued. After the payments into such fund as herein required, the board may at any time in its discretion transfer all or any part of the balance of the net revenues, after reserving an amount deemed by the board sufficient for operation, repair and maintenance for an ensuing period of not less than twelve months and for depreciation, into the sinking fund or into a fund for extensions, betterments and additions to the works. The amounts of the balance of the net revenue as and when so set apart 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 with the ordinance pursuant to which such bonds have been issued. The West Virginia municipal bond commission is hereby authorized to act as fiscal agent for the administration of such sinking fund, under any ordinance passed pursuant to the provisions of this article, and shall invest all such sinking funds as provided by general law. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States of America or any agency or department thereof may be made by the governing body directly thereto.

Acts 1933, Ex. Sess., c. 25, § 15; Acts 1933, 2nd Ex. Sess., c. 48; Acts 1986, c. 118.

### Library References

Municipal Corporations §951.  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1704 to 1705.

### § 16-13-16. Rates for service; deposit required for new customers; forfeiture of deposit; reconnecting deposit; tenant's deposit; change or readjustment; hearing; lien and recovery; discontinuance of services

The governing body shall have power, and it shall be its duty, by ordinance, to establish and maintain just and equitable rates, fees or charges for the use of and the service rendered by:

(a) Sewerage works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses such works by or through any part of the sewerage system of the municipality, or that in any way uses or is served by such works.

(b) Stormwater works, to be paid by the owner of each and every lot, parcel of real estate, or building that in any way uses or is served by such stormwater works or whose property is improved or protected by the stormwater works or any user of such stormwater works.

(c) The governing body may change and readjust such rates, fees or charges from time to time. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements and/or storm-

water facilities constructed, owned and/or operated by the West Virginia division of highways.

(d) All new applicants for service shall indicate to the governing body whether they are an owner or tenant with respect to the service location.

(e) The governing body may collect from all new applicants for service a deposit of fifty dollars or two twelfths of the average annual usage of the applicant's specific customer class, whichever is greater, to secure the payment of 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 at the time of disconnection or termination of service, no reconnecting or reinstatement of service may be made by the governing body until another deposit equal to fifty 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 governing body. After twelve months of prompt payment history, the 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 governing body is not required to return the deposit until the time the tenant discontinues service with the 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 governing body may, under reasonable rules promulgated by the public service commission, shut off and discontinue water services to a delinquent user of sewer facilities ten days after the sewer services become delinquent regardless of whether the governing body utilizes the security deposit to satisfy any delinquent payments.

(f) Such rates, fees or charges shall be sufficient in each year for the payment of the proper and reasonable expense of operation, repair, replacements and maintenance of the works and for the payment of the sums herein required to be paid into the sinking fund. Revenues collected pursuant to this section shall be considered the revenues of the works.

(g) No such rates, fees or charges shall be established until after a public hearing, at which all the users of the works and owners of property served or to be served thereby and others interested shall have an opportunity to be heard concerning the proposed rates, fees or charges.

(h) After introduction of the ordinance fixing such rates, fees or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of such rates, fees or charges, shall be given by publication as a Class II-0 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 the municipality. The first publication shall be made at least ten days before the date fixed in such notice for the hearing.

(i) After such hearing, which may be adjourned from time to time, the ordinance establishing rates, fees or charges, either as originally introduced or

## MUNICIPAL & SANITARY DISTRICT SEWAGE WORKS § 16-13-16

as modified and amended, shall be passed and put into effect. A copy of the schedule of such rates, fees and charges so established shall be kept on file in the office of the board having charge of the operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates, fees or charges so established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice.

(j) Any change or readjustment of such rates, fees or charges may be made in the same manner as such rates, fees or charges were originally established as hereinbefore provided: *Provided*, That if such change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice shall be required. The aggregate of the rates, fees or charges shall always be sufficient for such expense of operation, repair and maintenance and for such sinking fund payments.

(k) All rates, fees or charges, if not paid when due, shall constitute a lien upon the premises served by such works. If any service rate, fees or charge so established is not paid within twenty days after the same is due, the amount thereof, together with a penalty of ten percent, and a reasonable attorney's fee, may be recovered by the board in a civil action in the name of the municipality, and in connection with such action said lien may be foreclosed against such lot, parcel of land or building, in accordance with the laws relating thereto: *Provided*, That where both water and sewer services are furnished by any municipality to any premises the schedule of charges may be billed as a single amount or individually itemized and billed for the aggregate thereof.

(l) Whenever any rates, rentals, fees or charges for services or facilities furnished shall remain unpaid for a period of twenty 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 rates, fees and charges are fully paid. When any payment for rates, rentals, fees or charges becomes delinquent, the governing body may use the security deposit to satisfy the delinquent payment.

(m) The board collecting such rates, fees or charges shall be obligated under reasonable rules to shut off and discontinue both water and sewer services to all delinquent users of either water facilities, or sewer facilities or both, and shall not restore either water facilities or sewer facilities, to any delinquent user of either until all delinquent rates, fees or charges for both water facilities, and sewer facilities, including reasonable interest and penalty charges, have been paid in full.

Acts 1933, Ex. Sess., c. 25, § 16; Acts 1933, 2nd Ex. Sess., c. 48; Acts 1959, c. 125; Acts 1967, c. 105; Acts 2001, c. 212, eff. 90 days after April 14, 2001; Acts 2004, c. 185, eff. 90 days after March 12, 2004.

### Library References

Municipal Corporations ¶712.

Westlaw Topic No. 268.

C.J.S. Municipal Corporations § 1535.

**Notes of Decisions**

**Construction and application of Public utilities 3**  
**Rates and charges for service 2**  
**Summary judgment 5**  
**Water service termination 4**

to advise or regulate municipal sewer system and to hear proceeding seeking extension of sewer services, and power of Commission to supervise and regulate sewer system was not withdrawn or impaired by statutes authorizing municipal corporation to own, construct and maintain sewer system under control of a Sanitary Board and authorizing Board to operate and control such systems and to order and complete any extensions that Board might deem expedient. Code 16-13-1 et seq., 16-13-2, 16-13-3, 16-13-5, 16-13-16, 16-13-18, 16-13-23, 24-1-1, 24-2-1, 24-3-1. State ex rel. City of Wheeling v. Renick, 1960, 116 S.E.2d 763, 145 W.Va. 640. Public Utilities 113

**1. Construction and application**

Statutes dealing with municipally owned and operated sewer systems should be read and construed together. Code 8-4-20, 16-13-1, 16-13-2, 16-13-16, 24-1-1 et seq., 24-2-1 et seq., 24-3-1 et seq. Delardas v. Morgantown Water Commission, 1964, 137 S.E.2d 426, 148 W.Va. 776. Statutes 223.2(21).

**2. Rates and charges for service**

If rates and charges set forth in ordinance and established by public service commission by its order should be considered improper for any valid reason, they may be challenged by any user of sewer services by complaint in proper proceeding before public service commission. Code 8-4-20, 16-13-1, 16-13-2, 16-13-16, 24-1-1 et seq. Delardas v. Morgantown Water Commission, 1964, 137 S.E.2d 426, 148 W.Va. 776. Municipal Corporations 712(8).

Where charges for use of sewer by sanitary board of city of Beckley were assessed to property owners according to quantity of water supplied subject to deduction of amount of water retained on premises to be determined by a meter installed by consumers and allowing deduction of costs thereof from amounts due on bills, such charges were not discriminatory, notwithstanding some users were financially unable to install meters. Code 16-13-30. Houchins v. City of Beckley, 1944, 32 S.E.2d 286, 127 W.Va. 306. Municipal Corporations 712(7).

Party aggrieved by rates established for use of sewer could not resort to courts for relief where he failed to exercise statutory remedy of appearing before governing body of municipality at public hearing (Acts 1933 [1st Ex.Sess.] c. 25). Brewer v. City of Point Pleasant, 1934, 172 S.E. 717, 114 W.Va. 572. Municipal Corporations 712(8).

**3. Public utilities**

Under statute declaring that words "public utility" shall include any person or persons, or association of persons including municipalities, engaged in any business which is a public service, sewer system owned and operated by city was a "public utility" and Public Service Commission was vested with jurisdiction to super-

**4. Water service termination**

Any impairment of sewer revenue bonds issued by cities providing for imposition of liens against property for unpaid sewer charges, by statutory amendment precluding cities from attaching lien to landlord's property for tenant's failure to pay sewer charges, was not substantial impairment and thus, amendment did not violate constitutional prohibition against impairment of contracts, where bond contracts acknowledged that parties' rights were subject to legislative regulation, contracts were merely modified, abridged right was not central to parties' undertaking, and prior legislation provided utilities with far more effective remedy of water service termination for unpaid sewer charges. U.S.C.A. Const. Art. 1, § 10, cl. 1; W.Va. Code, §§ 8-18-23, 16-13-16. City of Charleston v. Public Service Com'n of West Virginia, 1995, 57 F.3d 385, certiorari denied 116 S.Ct. 474, 516 U.S. 1974, 133 L.Ed.2d 404. Constitutional Law 2704; Municipal Corporations 712(7).

**5. Summary judgment**

Allegation, in city's notice of motion for judgment, that claim was for services of city sewage system and penalty for nonpayment to sanitary board for a specified period of time and that defendant was owner of property served and a specified sum was due by reason of a specified ordinance, when read in connection with verified itemized statement accompanying notice, was insufficient to state a claim based upon contract in absence of showing of relationship of sanitary board to sewage system, method of service and right of sanitary board to charge for service, and demurrer to notice was properly sustained. Code 1937, 16-13-15 et seq. City of Beckley v. Craighead, 1943, 24 S.E.2d 908, 125 W.Va. 484. Judgment 184.

**§ 16-13-17. Government units subject to established rates**

The municipality and any county government, state government and federal government served by the services of the works shall be subject to the same

**MUNICIPAL & SANITARY DISTRICT SEWAGE WORKS § 16-13-18**

fees, charges and rates established as provided in this article, or to fees, charges and rates established in harmony therewith, for service rendered the municipality, county, state or federal government and shall pay such rates, fees or charges when due from corporate funds and the same shall be considered to be a part of the revenues of the works as herein defined, and be applied as herein provided for the application of the revenues. However, no rates, fees or charges for 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 1933, Ex. Sess., c. 25, § 17; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

**Library References**

Municipal Corporations § 712.  
Westlaw Topic No. 268.  
C.J.S. Municipal Corporations § 1535.

**Notes of Decisions**

**In general - 1**

**1. In general**

Under contract between municipal sanitary board and contractor requiring contractor to bear cost and expense of damage to surface, overhead or subsurface structures in construc-

tion of sanitary sewer system, contractor was liable to water company for expense of removal of all water and other pipes under streets which interfered with construction of sewer system. Code, 16-13-1 et seq., 16-13-17, 16-13-24, West Virginia Water Service Co. v. Cunningham, 1957, 98 S.E.2d 891, 143 W.Va. 1. Municipal Corporations § 400

**§ 16-13-18. Supervision of works by sanitary board; organization of board; qualifications, terms and compensation of members**

The governing body shall provide by ordinance the organization of the board, and that the custody, administration, operation and maintenance of such works shall be under the supervision and control of a sanitary board, created as herein provided.

Such sanitary board shall be composed of either the mayor of the municipality, or the city manager thereof, if said municipality shall have a city manager form of government, and two persons appointed by the governing body: Provided, That, in the event of an acquisition or merger of an existing works, the governing body may increase the membership to a maximum of four members in addition to the mayor or city manager of the municipality served by the board.

During the construction period, one of the members must be a registered professional engineer. The engineer member of the board need not be a resident of said municipality. After the construction of the plant has been completed, the engineer member may be succeeded by a person not an engineer. No officer or employee of the municipality, whether holding a paid or unpaid office, shall be eligible to appointment on said sanitary board until at least one year after the expiration of the term of his or her public office. The appointees shall originally be appointed for terms of two and three years respectively, and upon the expiration of each term and each succeeding term,

an appointment of a successor shall be made in like manner for a term of three years. Vacancies shall be filled for an unexpired term in the same manner as the original appointment. Each member shall give such bond, if any, as may be required by ordinance. The mayor or city manager shall act as chairman of the sanitary board, which shall elect a vice chairman from its members and shall designate a secretary and treasurer (but the secretary and the treasurer may be one and the same), who need not be a member or members of the sanitary board. The vice chairman, secretary and treasurer shall hold office as such at the will of the sanitary board.

The members of the sanitary board shall receive compensation for their services, either as a salary or as payments for meetings attended, as the governing body may determine, and shall be entitled to payment for their reasonable expenses incurred in the performance of their duties. The governing body shall fix the reasonable compensation of the secretary and treasurer in its discretion, and shall fix the amounts of bond to be given by the treasurer. All compensation, together with the expenses in this section referred to, shall be paid solely from funds provided under the authority of this article. The sanitary board shall have power to establish bylaws, rules and regulations for its own government.

Acts 1933, Ex. Sess., c. 25, § 18; Acts 1939, c. 96; Acts 1953, c. 146; Acts 1957, c. 137; Acts 1992, c. 95; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

**Library References**

- Health ☞ 369.
- Municipal Corporations ☞ 711.
- Westlaw Topic Nos. 198H, 268.
- C.J.S. Health and Environment §§ 7 to 9, 16 to 17; 26 to 27; 44 to 45, 98 to 100.
- C.J.S. Municipal Corporations § 1535.

**Notes of Decisions**

- Funds 4**
- Membership of sanitary boards 2**
- Powers and duties of sanitary boards 1**
- Public utilities 3**

**1. Powers and duties of sanitary boards**

Under West Virginia Act authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay cost thereof, money used in preliminary engineering work prior to actual beginning of construction of sewage disposal system is not required to be handled by sanitary board, but board is merely required to supervise and control the construction and maintenance of the project. Code W.Va. 16-13-16, 16-13-18, 16-13-32. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Health ☞ 369.

City which created sanitary board for purpose of erecting sewage disposal plant held authorized to incorporate such sanitary board as a nonstock corporation for purpose of being domesticated in Virginia as a sewage purification company under Virginia law, where no other way was pointed out by which city or sanitary

board could under law of Virginia acquire property in that state and carry out contemplated plan of erecting sewage disposal plant. Acts 1933, 1st Ex.Sess., c. 25, as amended by Acts 1933, 2d Ex.Sess., c. 48. Bernard v. City of Bluefield, 1936, 186 S.E. 298, 117 W.Va. 556. Municipal Corporations ☞ 277.

**2. Membership of sanitary boards**

Where sanitary board created by municipality optional for either mayor or city manager, (but not both) to be appointed to board. 52 W.Va. Op.Atty.Gen. 217 (February 9, 1967) 1967 WL 93382.

**3. Public utilities**

Under statute declaring that words "public utility" shall include any person or persons, or association of persons including municipalities, engaged in any business which is a public service, sewer system owned and operated by city was a "public utility" and Public Service Commission was vested with jurisdiction to supervise or regulate municipal sewer system and to hear proceeding seeking extension of sewer services, and power of Commission to supervise

## MUNICIPAL & SANITARY DISTRICT SEWAGE WORKS § 16-13-19

and regulate sewer system was not withdrawn or impaired by statutes authorizing municipal corporation to own, construct and maintain sewer system under control of a Sanitary Board and authorizing Board to operate and control such systems and to order and complete any extensions that Board might deem expedient. Code, 16-13-1 et seq., 16-13-2, 16-13-3, 16-13-5, 16-13-16, 16-13-18, 16-13-23,

24-1-1, 24-2-1, 24-3-1. State ex rel. City of Wheeling v. Renick, 1960, 116 S.E.2d 763, 145 W.Va. 640. Public Utilities ☞ 113

### 4. Funds

Charleston Sanitary Board treasurer must deliver funds collected from sewer system users to Charleston city treasurer. 52 W.Va. Op. Atty. Gen. 497 (October 6, 1967) 1967 WL 93425.

### § 16-13-18a. Publication of financial statement

Every sanitary board shall prepare a financial statement and cause the same to be published as a Class I 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 the sanitary district. Such statement shall contain an itemized account of the receipts and expenditures of the board during the previous fiscal year, showing the source from which all money was derived, and the name of the person to whom an order was issued, together with the amount of such order, and why such order was issued, arranging the same under distinct heads, and including all money received and expended from the sale of bonds, and also a specific statement of the debts of such board, showing the purpose for which any debt was contracted, the amount of money in all funds at the end of the preceding year, and the amount of uncollected service charges. Such statement shall be prepared and published by the board as soon as practicable after the close of the fiscal year: Provided, That such statement for the fiscal year ending June thirtieth, one thousand nine hundred fifty-six, may be published any time during the year one thousand nine hundred fifty-seven. The statement shall be sworn to by the chairman and secretary and treasurer of the board. If a board fails or refuses to perform the duties hereinbefore named, every member of the board concurring in such failure or refusal shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than five hundred dollars and the circuit court or criminal court and justices of the peace, of the county where the offense was committed, shall have concurrent jurisdiction to try such offense.

Acts 1957, c. 138; Acts 1967, c. 105.

*Acts 1976, c. 33, provided that all references to "justice of the peace" in the code of West Virginia mean "magistrate." See § 50-1-17.*

### Library References

Health ☞ 369.

Municipal Corporations ☞ 885.

Westlaw Topic Nos. 198H, 268.

C.J.S. Health and Environment §§ 7 to 9, 16 to 17, 26 to 27, 44 to 45, 98 to 100.

C.J.S. Municipal Corporations § 1628.

### § 16-13-19. Contract with other municipalities for service of works; powers of lessee as to rates; intercepting sewers

Any municipality operating a sewage collecting system and/or a sewage disposal plant or plants or stormwater works as defined in this article, or which

as herein provided has ordered the construction or acquisition of such works (in this section called the owner), is hereby authorized to contract with one or more other municipal corporations or political subdivisions within the state (in this section called the lessee), and such lessees are hereby authorized to enter into contracts with the owners, for the service of such works to such lessees and their inhabitants, but only to the extent of the capacity of the works without impairing the usefulness thereof to the owners; upon such terms and conditions as may be fixed by the boards and approved by ordinances of the respective contracting parties: Provided, That no contract shall be made for a period of more than forty years or in violation of the provisions of said ordinance authorizing bonds hereunder or in violation of the provisions of said trust indenture.

The lessee shall by ordinance have power to establish, change and adjust rates, fees and charges for the service rendered therein by the works against the owners of the premises served, in the manner hereinbefore provided for establishing, changing and adjusting rates, fees and charges for the service rendered in the municipality where the works are owned and operated, and such rates, fees or charges shall be collectible and shall be a lien as herein provided for rates, fees and charges made by the owner.

The necessary intercepting sewers and appurtenant works for connecting the works of the owner with the sewerage system of the lessee shall be constructed by the owner and/or the lessee upon such terms and conditions as may be set forth in said contract, and the cost or that part of the cost thereof which is to be borne by the owner may be paid as a part of the cost of the works from the proceeds of bonds issued under this article unless otherwise provided by said ordinance or trust indenture prior to the issuance of the bonds. The income received by the owner under any contract shall, if so provided in said ordinance or trust indenture, be considered to be a part of the revenues of the works as in this article defined and be applied as herein provided for the application of the revenues.

Acts 1933, Ex. Sess., c. 25, § 19; Acts 1981, 1st Ex. Sess., c. 2; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

**Library References**

Municipal Corporations ¶328. C.J.S. Municipal Corporations §§ 1027 to Westlaw Topic No. 268. 1029.

**Notes of Decisions**

**In general 1**

**1. In general**

Under provisions of statute relating to contract with other municipalities for service of sewage works, city which ordered construction of sewage disposal plant was authorized to contract with town to provide that town would have the right to use part of the capacity of the plant in return for contributing to its cost and town was authorized to enter into such con-

tracts with city for the use of the plant, and fact that town was unable to sell revenue bonds because it was not allowed to have part ownership in the plant or in the interceptor sewers did not mean that town was not liable for payments agreed to under the contracts, where city offered to buy the revenue bonds issued by the town. Code, 16-13-9, 16-13-19, 16-13-23a. City of Morgantown v. Town of Star City, 1973, 195 S.E.2d 166, 156 W.Va. 529. Municipal Corporations ¶ 277.

**§ 16-13-20. Discharge of lien on property acquired**

No property shall be acquired under this article upon which any lien or other encumbrance exists, unless at the time such property is acquired a sufficient sum of money be deposited in trust to pay and redeem such lien or encumbrance in full.

Acts 1933, Ex. Sess., c. 25, § 20.

**Library References**

Municipal Corporations § 288(2).

Westlaw Topic No. 268.

C.J.S. Municipal Corporations § 969.

**§ 16-13-21. Action on certificates or attached coupons; receivers**

Any holder of any such certificates or any of the coupons attached thereto, and the trustee, if any, except to the extent the rights herein given may be restricted by said ordinance authorizing issuance of the bonds or by the trust indenture, may either at law or in equity, by suit, action, mandamus or other proceeding protect and enforce any and all rights granted hereunder or under such ordinance or trust indenture, and may enforce and compel performance of all duties required by this article or by such ordinance or trust indenture to be performed by the municipality issuing the bonds or by the board or any officer, including the making and collecting of reasonable and sufficient charges and rates for service rendered by the works. If there be any failure to pay the principal or interest of any of the bonds on the date therein named for such payment, any court having jurisdiction of the action may appoint a receiver to administer the works on behalf of the municipality and the bondholders and/or trustee, except as so restricted, with power to charge and collect rates sufficient to provide for the payment of the expenses of operation, repair and maintenance and also to pay any bonds and interest outstanding and to apply the revenues in conformity with this article and the said ordinance and/or trust indenture.

Acts 1933, Ex. Sess., c. 25, § 21.

**Library References**

Municipal Corporations § 937, 955.

Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1707, 1711.

**§ 16-13-22. Powers conferred in addition to existing powers; jurisdiction outside corporate limits**

The authority herein given shall be in addition to, and not in derogation of any power existing in any municipality under any statutory or charter provisions which it may now have or hereafter adopt. For all purposes of this article, all municipal corporations shall have jurisdiction for twenty miles outside the corporate limits thereof: 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.

The jurisdiction and authority provided by this section does not extend to highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

Acts 1933, Ex. Sess., c. 25, § 22; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

#### Library References

Municipal Corporations § 711.

Westlaw Topic No. 268.

C.J.S. Municipal Corporations § 1535.

#### § 16-13-22a. Grants, loans and advances

Any municipality is authorized and empowered 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 or construction of said sewage works and the construction of 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 sewage works 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 to the contrary notwithstanding, interest on any such loans or temporary advances may be paid from the proceeds thereof until the maturity of such notes or other negotiable instrument.

In no event shall any such loan or temporary advance be a general obligation of the municipality and such loans or temporary advances, including the interest thereon, shall be paid solely from the sources specified in this section.

Acts 1949, c. 93; Acts 1961, c. 107; Acts 1980, c. 59; Acts 1981, 1st Ex. Sess., c. 2; Acts 1986, c. 118.

#### Library References

Municipal Corporations § 864(3).

Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1583 to

1585, 1587.

# MUNICIPAL & SANITARY DISTRICT SEWAGE WORKS § 16-13-22c

## Notes of Decisions

### Power to incur indebtedness and expenditures 1

### Repayment of loans and advances 2

#### 1. Power to incur indebtedness and expenditures

Obligations incurred by city under authority of West Virginia statute authorizing municipalities to construct sewage collection systems and sewage treatment plants and to issue revenue bonds to pay the cost thereof are not "debts" within provision of West Virginia Constitution containing limitations on power of a municipality to incur debts. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇨ 864(3).

#### 2. Repayment of loans and advances

United States, which was entitled to reimbursement for advances made to West Virginia city by Federal Works Agency for purpose of plan preparation for construction of proposed sewage treatment and disposal system, would not be entitled to general judgment against city but would be entitled to an order requiring repayment from existing or future revenue bond proceeds and to four percent interest. War Mo-

bilization and Reconversion Act of 1944, § 101 et seq., 58 Stat. 785; Code W.Va. 38-4-5, 38-4-6, 53-1-1. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇨ 1037

If sewer project is undertaken by municipality, whatever loans may have been made on faith of the revenue bonds as authorized under West Virginia law would or should be included in cost of the works and repaid out of proceeds of the bonds. Code W.Va. 11-8-26(1-4); 16-13-15, 16-13-16, 16-13-18, 16-13-19, 16-13-22, 16-13-27, 16-13-32; Const. art. 10, § 8. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. Municipal Corporations ⇨ 950(15)

Under agreement between West Virginia city and Federal Works Administrator, in accordance with the War Mobilization and Reconversion Act of 1944, West Virginia city incurred obligation to repay advances made for purpose of plan preparation for construction of proposed sewage treatment and disposal system if and when construction of the sewage treatment plant should be started and would not be obligated to repay the advances if the construction were not undertaken. War Mobilization and Reconversion Act of 1944, §§ 101 et seq., 501, 58 Stat. 785, 791. U.S. v. City of Charleston, 1957, 149 F.Supp. 866. United States ⇨ 82(1)

## § 16-13-22b. Contracts for abatement of pollution

When determined by its legislative body to be in the public interest and necessary for the protection of the public health, any municipality is authorized to enter into and perform contracts, whether long-term or short-term, with any industrial establishment for the provision and operation by the municipality of sewerage facilities to abate or reduce the pollution of waters caused by discharges of industrial wastes by the industrial establishment and the payment periodically by the industrial establishment to the municipality of amounts at least sufficient, in the determination of such legislative body, to compensate the municipality for the cost of providing (including payment of principal and interest charges, if any), and of operating and maintaining the sewerage facilities serving such industrial establishment.

Acts 1949, c. 93.

## Library References

Municipal Corporations ⇨ 328.  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1027 to 1029.

## § 16-13-22c. Refunding bonds

Any municipality is authorized to issue refunding revenue bonds to refund, pay or discharge all or any part of its outstanding revenue bonds, including interest thereon, if any, in arrears or about to become due. The relevant provisions in this article pertaining to revenue bonds shall be equally applicable

in the authorization and issuance of refunding revenue bonds, including their terms and security, the ordinance, the trust indenture, rates, or other aspects of the bonds.

Acts 1949, c. 93.

**Library References**

Municipal Corporations §913.  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1647 to 1648, 1651.

**§ 16-13-22d. Subordination of bonds**

Notwithstanding any other provisions to the contrary in this article, any municipality authorizing the issuance of bonds under this article in an effort to aid in the abatement or reduction of the pollution of any waters or streams may provide in the ordinance authorizing the issuance of the bonds and in any trust indenture pertaining thereto that such bonds, or any additional bonds that may thereafter be issued to extend or improve the works, shall, to the extent and in the manner prescribed, be subordinated and be junior in standing, with respect to the payment of principal and interest and the security thereof, to such other bonds as are designated in the ordinance.

Acts 1949, c. 93.

**Library References**

Municipal Corporations §950(15).  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1708 to 1709.

**§ 16-13-22e. Operating contract**

Any such municipality may enter into contracts or agreements with any persons, firms or corporations for the operation and management of the facilities and properties of said sewerage system, or any part thereof, for such period of time and under such terms and conditions as shall be agreed upon between such municipality and such persons, firms or corporations. Such municipality shall have power to provide in the resolution authorizing the issuance of bonds hereunder, or in any trust indenture, securing such bonds, that such contracts or agreements shall be valid and binding upon the municipality as long as any of said bonds, or interest thereon, are outstanding and unpaid.

Acts 1955, c. 132.

**Library References**

Municipal Corporations §328.  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1027, to 1029.

**§ 16-13-22f. Exemption of bonds from taxation**

Said bonds and the interest thereon, together with all properties and facilities of said municipality owned or used in connection with the works, and all the moneys, revenues and other income of such municipality derived from such

**MUNICIPAL & SANITARY DISTRICT SEWAGE WORKS § 16-13-22g**

works shall be exempt from all taxation by the state of West Virginia or any county, municipality, political subdivision or agency thereof.

Acts 1955, c. 132; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

**Library References**

Taxation 2316, 3519  
Westlaw Topic No. 371

**§ 16-13-22g. Covenants with bondholders**

Any resolution authorizing the issuance of bonds hereunder, or any trust indenture with any bank or trust company within or without the state, for the security of the bonds, may contain covenants with the holders of such bonds as to:

(a) The purpose or purposes to which the proceeds of sale of such bonds, or the revenues derived from the sewerage system or stormwater 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 such funds;

(b) The pledging of all or any part of the revenues derived from the ownership, operation or control of such sewerage systems or stormwater system, including any part thereof heretofore or hereafter constructed or acquired or derived from any other sources, to the payment of the principal of or interest thereon of bonds issued hereunder and for such reserve or other funds as may be considered necessary or desirable;

(c) The fixing, establishing and collecting of such fees, rentals or other charges for the use of the services and facilities of such sewerage system or stormwater system, including the parts thereof heretofore or hereafter constructed or acquired and the revision of same from time to time, as will always provide revenues at least sufficient to provide for all expenses of operation, maintenance and repair of such sewerage system or stormwater system, the payment of the principal of and interest on all bonds or other obligations payable from the revenues of such sewerage system or stormwater system, and all reserve and other funds required by the terms of the ordinance authorizing the issuance of such bonds;

(d) The transfer from the general funds of the municipality to the account or accounts of such sewerage system or stormwater 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 sewerage system or stormwater system;

(e) Limitations or restrictions upon the issuance of additional bonds or other obligations payable from the revenue of such sewerage system or stormwater system, and the rank or priority, as to lien and source and security for payment from the revenues of the sewerage system or stormwater 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 such bonds rescinded and repealed;

(g) Budgets for the annual operation, maintenance and repair of such sewerage system or stormwater system and restrictions and limitations upon expenditures for such purposes, and the manner of adoption, modification, repeal or amendment thereof, including the approval of such budgets by consulting engineers designated by holders of bonds issued hereunder;

(h) The amounts of insurance to be maintained upon such sewerage system or stormwater system, or any part thereof, and the use and disposition of the proceeds of any insurance;

(i) The keeping of books of account, relating to such undertakings 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;

(j) Such other additional covenants as shall be considered necessary or desirable for the security of the holders of bonds issued hereunder, notwithstanding that other covenants are not expressly enumerated hereunder, it being the intention hereof to grant to the municipalities the power 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 such covenants or agreements could be made by a private corporation rendering similar services and facilities and to grant such municipalities full and complete power to enter into any contracts, covenants or agreements with holder of bonds issued hereunder not inconsistent with the constitution of the state of West Virginia. Acts 1955, c. 132; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Municipal Corporations §922. C.J.S. Municipal Corporations §§ 1684 to Westlaw Topic No. 268. 1686, 1697.

§ 16-13-23. Article deemed full authority for construction, etc., of works and issue of bonds; alternative method; powers of state department of health unaffected

This article, shall, without reference to any other statute, be deemed full authority for the construction, acquisition, improvement, equipment, maintenance, operation and repair of the works herein provided for and for the issuance and sale of the bonds by this article authorized, and shall be construed as an additional and alternative method therefor and for the financing thereof, and no petition or election or other or further proceeding in respect to the construction or acquisition of the works or to the issuance or sale of bonds under this article and no publication of any resolution, ordinance, notice or proceeding relating to such construction or acquisition or to the issuance or sale of such bonds shall be required except such as are prescribed by this

**MUNICIPAL & SANITARY DISTRICT SEWAGE WORKS § 16-13-23a**

article, any provisions of other statutes of the State to the contrary notwithstanding: Provided, however, That all functions, powers and duties of the state department of health shall remain unaffected by this article.

Acts 1933, Ex. Sess., c. 25, § 23

**Library References**

Municipal Corporations ¶270, 906.  
Westlaw Topic No. 268.

C.J.S. Municipal Corporations §§ 1645, to 1646, 1702.

**Notes of Decisions**

**Public utilities**

**1. Public utilities**

Under statute declaring that words "public utility" shall include any person or persons, or association of persons including municipalities, engaged in any business which is a public service; sewer system owned and operated by city was a "public utility" and Public Service Commission was vested with jurisdiction to supervise or regulate municipal sewer system and to hear proceeding seeking extension of sewer ser-

VICES; and power of Commission to supervise and regulate sewer system was not withdrawn or impaired by statutes authorizing municipal corporation to own, construct and maintain sewer system under control of a Sanitary Board and authorizing Board to operate and control such systems and to order and complete any extensions that Board might deem expedient: Code, 16-13-1, et. seq., 16-13-2, 16-13-3, 16-13-5, 16-13-16, 16-13-18, 16-13-23, 24-1-1, 24-2-1, 24-3-1. State ex rel. City of Wheeling v. Renick, 1960; 116 S.E.2d 763, 145 W.Va. 640. Public Utilities ¶ 113.

**§ 16-13-23a. Additional powers of municipality upon receipt of order to cease pollution**

Notwithstanding any other provision contained in this article, and in addition thereto, the governing body of any municipal corporation which has received or which, hereafter, receives an order issued by the director of the division of environmental protection or the environmental quality board requiring such municipal corporation to cease the pollution of any stream or waters, is hereby authorized and empowered to fix, establish and maintain, by ordinance, just and equitable rates, fees or charges for the use of the services and facilities of the existing sewer system and/or stormwater system of such municipal corporation, and/or for the use of the services and facilities to be rendered upon completion of any works and system necessary by virtue of said order, to be paid by the owner, tenant or occupant of each and every lot or parcel of real estate or building that is connected with and uses any part of such sewer system or stormwater system, or that in any way uses or is served thereby, and may change and readjust such rates, fees or charges from time to time.

Such rates, fees or charges shall be sufficient for the payment of all the proper and reasonable costs and expenses of the acquisition and construction of plants, machinery and works for the collection and/or treatment, purification and disposal of sewage or stormwater, and the repair, alteration and extension of existing sewer facilities or stormwater facilities, as may be necessary to comply with such order of the director of the division of environmental protection or the environmental quality board, and for the operation, maintenance and repair of the entire works and system.

The governing body shall create, by ordinance, a sinking fund to accumulate and hold any part or all of the proceeds derived from rates or charges until

completion of the construction, to be remitted to and administered by the municipal bond commission by expending and paying the costs and expenses of construction and operation in the manner as provided by said ordinance.

After the completion of the construction such rates, fees or charges shall be sufficient in each year for the payment of the proper and reasonable costs and expenses of operation, maintenance, repair, replacement and extension from time to time, of the entire sewer and works or entire stormwater works.

No such rates, fees or charges shall be established until after a public hearing, at which all the potential users of the works and owners of property served or to be served thereby and others shall have had an opportunity to be heard concerning the proposed rates or charges.

After introduction of the ordinance, fixing rates, fees or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of rates, fees or charges, shall be given by publication of notice as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication is the municipality. The first publication shall be made at least ten days before the date fixed therein for the hearing.

After such hearing, which may be adjourned from time to time, the ordinance establishing the rates, fees or charges, either as originally introduced or as modified and amended, may be passed and put into effect. A copy of the schedule of the rates, fees and charges so established shall be kept on file in the office of the sanitary board having charge of the construction and operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates, fees or charges so established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice.

Any change or readjustment of rates, fees or charges may be made in the same manner as rates, fees or charges were originally established as hereinbefore provided. Provided, That if such change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice is required.

If any rate, fees or charge so established is not paid within thirty days after the same is due, the amount thereof, together with a penalty of ten percent, and a reasonable attorney's fee, may be recovered by the sanitary board of such municipal corporation in a civil action in the name of the municipality.

Any municipal corporation exercising the powers given herein has authority to construct, acquire, improve, equip, operate, repair and maintain any plants, machinery, or works necessary to comply with the order of the director of the division of environmental protection or the environmental quality board, and the authority provided herein to establish, maintain and collect rates, fees or charges is an additional and alternative method of financing such works and matters, and is independent of any other provision of this article insofar as the article provides for or requires the issuance of revenue bonds or the imposition of rates, fees and charges in connection with the bonds: Provided, That except

# MUNICIPAL & SANITARY DISTRICT SEWAGE WORKS §16-13-24

Note 1

for the method of financing such works and matters, the construction, acquisition, improvement, equipment, custody, operation, repair and maintenance of any plants, machinery or works in compliance with an order of the director of the division of environmental protection or the environmental quality board, and the rights, powers, and duties of the municipal corporation and the respective officers and departments thereof, including the sanitary board, are governed by the provisions of this article: Provided, however, That the jurisdiction and authority provided by this section does not extend to highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways and no rates, fees or charges for stormwater services or costs of compliance 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 1955, c. 135; Acts 1967, c. 105; Acts 1994, c. 61; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

## Library References

Municipal Corporations Ⓒ712.  
Westlaw Topic No. 268.  
C.J.S. Municipal Corporations § 1535.

## Notes of Decisions

### In general 1

#### 1. In general

Under provisions of statute relating to contract with other municipalities for service of sewage works, city which ordered construction of sewage disposal plant was authorized to contract with town to provide that town would have the right to use part of the capacity of the plant in return for contributing to its cost and town was authorized to enter into such con-

tracts with city for the use of the plant, and fact that town was unable to sell revenue bonds because it was not allowed to have part ownership in the plant or in the interceptor sewers did not mean that town was not liable for payments agreed to under the contracts, where city offered to buy the revenue bonds issued by the town. Code, 16-13-9, 16-13-19, 16-13-23a. City of Morgantown v. Town of Star City, 1973, 195 S.E.2d 166, 156 W.Va. 529. Municipal Corporations Ⓒ 277

## § 16-13-24. Article to be construed liberally

This article being necessary for the public health, safety and welfare, it shall be liberally construed to effectuate the purpose thereof.

Acts 1933, Ex. Sess., c. 25, § 24.

## Library References

Statutes Ⓒ235.  
Westlaw Topic No. 361.  
C.J.S. Statutes § 376.

## Notes of Decisions

### In general 1

#### 1. In general

Under contract between municipal sanitary board and contractor requiring contractor to

bear cost and expense of damage to surface, overhead or subsurface structures in construction of sanitary sewer system, contractor was liable to water company for expense of removal of all water and other pipes under streets which interfered with construction of sewer system.



*West's*  
**Annotated Code  
of West Virginia**



*Using the Classification and  
Numbering System of the  
1931 Code of West Virginia,  
as Amended*

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Chapter 16

2011  
Cumulative Annual Pocket Part

Replacing 2010 Pocket Part supplementing 2008 Main Volume

Includes laws through the 2011 Regular Session

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ARTICLE 10  
UNIFORM DETERMINATION OF DEATH ACT

UNIFORM DETERMINATION OF DEATH ACT 1980

Table of Jurisdictions Wherein Act Has Been Adopted

For text of Uniform Act, and variation notes and annotation materials for adopting jurisdictions, see Uniform Laws Annotated, Master Edition, Volume 12A.

Jurisdiction	Laws	Effective Date	Statutory Citation
Alabama	2000 Act No. 710	7-1-2000	Code 1975, §§ 22-31-1, 22-31-2.
Arkansas	1985, No. 386		A.C.A. § 20-17-101.
California	L.1982, c. 810	9-7-1982 *	West's Ann.Cal.Health & Safety Code, § 7180.
Colorado	1981, p. 778, § 1		West's C.R.S.A. § 12-36-136.
Delaware	65 Del.Laws, c. 237	2-5-1986	24 Del.C. § 1760.
District of Columbia	1982, D.C.Law 4-68	2-25-1982 *	D.C. Official Code, 2001 Ed. § 7-601.
Georgia	1982, pp. 723, 749		O.C.G.A. § 31-10-16.
Idaho	1981, c. 258		I.C. § 54-1819.
Indiana	1986, S.B.282	3-3-1986	West's A.I.C. 1-1-4-3.
Kansas	1984, c. 345	7-1-1984	K.S.A. 77-204 to 77-206.
Maine	1983, c. 33	3-7-1983 *	22 M.R.S.A. §§ 2811 to 2813.
Maryland	1982, c. 327	7-1-1982	Code, Health-General, § 5-202.
Michigan	1992, P.A. 90	6-4-1992 *	M.C.L.A. §§ 333.1031 to 333.1034.
Minnesota	1989, c. 93	5-9-1989 *	M.S.A. § 145.135.
Mississippi	1981, c. 410	3-24-1981	Code 1972, §§ 41-36-1, 41-36-3.
Missouri	1982, H.B. 1223	8-13-1982	V.A.M.S. § 194.005.
Montana	L.1983, c. 86		MCA § 50-22-101.
Nebraska	1992, LB 906	7-15-1992	R.R.S. 1943, §§ 71-7201 to 71-7203.
Nevada	1985, c. 62	3-30-1985 *	N.R.S. 451.007.
New Hampshire	1986, c. 191:1	7-1-1987	RSA 141-D:1 to 141-D:2.
New Mexico	1993, c. 174	7-1-1993	NMSA 1978 § 12-2-4.
North Dakota	1989, c. 308	7-12-1989	NDCC 23-06.3-01, 23-06.3-02.
Ohio	1982, S. 98	3-15-1982	R.C. § 2108.40.
Oklahoma	1986, c. 262	9-11-1986	63 Okl.St. Ann. §§ 3121 to 3123.
Oregon	1987, c. 517	7-8-1987 *	ORS 432.300.
Pennsylvania	Act 1982, No. 323	2-15-1983	35 P.S. §§ 10201 to 10203.
Rhode Island	1982, c. 411		Gen.Laws 1956, § 23-4-16.
South Carolina	1984, No. 339		Code 1976, §§ 44-43-450, 44-43-460.
South Dakota	1990, c. 273		SDCL 34-25-18.1.
Utah	1989, c. 276	4-24-1989	U.C.A.1953, 26-34-1, 26-34-2.
Vermont	1981, No. 62	4-30-1981	18 V.S.A. § 5218.
Virgin Islands	1993, Act No. 5894, § 2	10-13-1993	19 V.I.C. § 869.
West Virginia	1989, c. 206		Code, 16-10-1 to 16-10-4.
Wyoming	1985, c. 223	5-23-1985	Wyo.Stat. Ann. §§ 35-19-101 to 35-19-103.

\* Date of approval.

ARTICLE 13

SEWAGE WORKS AND STORMWATER WORKS

Section

16-13-16.

Rates for service; deposit required for new customers; forfeiture of

Section

deposit; reconnecting deposit; ten-

§ 16-13-

Trust  
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ment; hearing; lien and recovery; discontinuance of services.

16-13-23a. Additional powers of municipality to cease pollution.

§ 16-13-14. Securing bonds by trust indenture

United States Code Annotated

Trust Indenture Act of 1939, see 15 U.S.C.A. § 77aaa et seq.

§ 16-13-16. Rates for service; deposit required for new customers; forfeiture of deposit; reconnecting deposit; tenant's deposit; change or readjustment; hearing; lien and recovery; discontinuance of services

A governing body has the power and duty, by ordinance, to establish and maintain just and equitable rates, fees or charges for the use of and the service rendered by:

(a) Sewerage works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses such works by or through any part of the sewerage system of the municipality or that in any way uses or is served by such works; and

(b) Stormwater works, to be paid by the owner of each and every lot, parcel of real estate or building that in any way uses or is served by such stormwater works or whose property is improved or protected by the stormwater works or any user of such stormwater works.

(c) The governing body may change and readjust such rates, fees or charges from time to time. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways.

(d) All new applicants for service shall indicate to the governing body whether they are an owner or tenant with respect to the service location. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

(e) The governing body may collect from all new applicants for service a deposit of \$50 or two twelfths of the average annual usage of the applicant's specific customer class, whichever is greater, to secure the payment of 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 at the time of disconnection or termination of service, service may not be reconnected or reinstated by the governing body until another deposit equal to \$50 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 governing body. After twelve months of prompt payment history, the 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 governing body is not required to return the deposit until the time the tenant discontinues service with the governing body. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after they become due, the user of the services and facilities provided is delinquent. The user is liable until all rates, fees and charges are fully paid. The governing body may, under reasonable rules promulgated by the Public Service Commission, shut off and discontinue water services to a delinquent user of sewer facilities ten days after the sewer services become delinquent regardless of whether the governing body utilizes the security deposit to satisfy any delinquent payments: *Provided, however*, That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the governing body to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

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(f) Such rates, fees or charges shall be sufficient in each year for the payment of the proper and reasonable expense of operation, repair, replacements and maintenance of the works and for the payment of the sums herein required to be paid into the sinking fund. Revenues collected pursuant to this section shall be considered the revenues of the works.

(g) No such rates, fees or charges shall be established until after a public hearing, at which all the users of the works and owners of property served or to be served thereby and others interested shall have an opportunity to be heard concerning the proposed rates, fees or charges.

(h) After introduction of the ordinance fixing such rates, fees or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of rates, fees or charges, shall be given by publication as a Class II-0 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 the municipality. The first publication shall be made at least ten days before the date fixed in the notice for the hearing.

(i) After the hearing, which may be adjourned, from time to time, the ordinance establishing rates, fees or charges, either as originally introduced or as modified and amended, shall be passed and put into effect. A copy of the schedule of the rates, fees and charges shall be kept on file in the office of the board having charge of the operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates, fees or charges established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice.

(j) Any change or readjustment of such rates, fees or charges may be made in the same manner as the rates, fees or charges were originally established as hereinbefore provided: *Provided*, That if a change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice shall be required. The aggregate of the rates, fees or charges shall always be sufficient for the expense of operation, repair and maintenance and for the sinking fund payments.

(k) All rates, fees or charges, if not paid when due, shall constitute a lien upon the premises served by such works. If any service rate, fees or charge is not paid within twenty days after it is due, the amount thereof, together with a penalty of ten percent and a reasonable attorney's fee, may be recovered by the board in a civil action in the name of the municipality. The lien may be foreclosed against such lot, parcel of land or building in accordance with the laws relating thereto. Where both water and sewer services are furnished by any municipality to any premises, the schedule of charges may be billed as a single amount or individually itemized and billed for the aggregate thereof.

(l) Whenever any rates, rentals, fees or charges for services or facilities furnished shall remain unpaid for a period of twenty days after they become due, the property and the owner thereof, as well as the user of the services and facilities shall be delinquent until such time as all rates, fees and charges are fully paid. When any payment for rates, rentals, fees or charges becomes delinquent, the governing body may use the security deposit to satisfy the delinquent payment.

(m) The board collecting the rates, fees or charges shall be obligated under reasonable rules to shut off and discontinue both water and sewer services to all delinquent users of water, sewer or stormwater facilities and shall not restore either water facilities or sewer facilities to any delinquent user of any such facilities until all delinquent rates, fees or charges for water, sewer and stormwater facilities, including reasonable interest and penalty charges, have been paid in full, as long as such actions are not contrary to any rules or orders of the Public Service Commission: *Provided*, That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the municipality or governing body to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

Acts 1933, Ex. Sess., c. 25, § 16; Acts 1933, 2nd Ex. Sess., c. 48; Acts 1959, c. 125; Acts 1967, c. 105; Acts 2001, c. 212, eff. 90 days after April 14, 2001; Acts 2004, c. 185, eff. 90 days after March 12, 2004; Acts 2008, c. 202, eff. March 8, 2008; Acts 2010, c. 201, eff. June 11, 2010.

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12, 2004;

§ 16-13-23a. Additional powers of municipality to cease pollution

(a) Notwithstanding any other provision contained in this article, and in addition thereto, the governing body of any municipality which has received or which hereafter receives an order issued by the Secretary of the Department of Environmental Protection or the Environmental Quality Board requiring the municipality to cease the pollution of any stream or waters is hereby authorized to establish and maintain, by ordinance, just and equitable rates, fees or charges for the use of the services and facilities of the existing municipal sewer system and/or stormwater system, or for the use of the services and facilities to be rendered upon completion of any works and system necessary by virtue of said order, to be paid by the owner, tenant or occupant of each and every lot or parcel of real estate or building that is connected with and uses any part of such sewer system or stormwater system, or that in any way uses or is served thereby, and may change and readjust such rates, fees or charges from time to time.

(b) The rates, fees or charges shall be sufficient to all the proper and reasonable costs and expenses of the acquisition and construction of plants, machinery and works for the collection, treatment, purification and disposal of sewage or stormwater and the repair, alteration and extension of existing sewer facilities or stormwater facilities, as may be necessary to comply with such order of the Secretary of the Department of Environmental Protection or the Environmental Quality Board, and for the operation, maintenance and repair of the entire works and system.

(c) The governing body shall create, by ordinance, a sinking fund to accumulate and hold any part or all of the proceeds derived from rates or charges until completion of the construction, to be remitted to and administered by the Municipal Bond Commission by expending and paying the costs and expenses of construction and operation in the manner as provided by said ordinance.

(d) After the completion of the construction, the rates, fees or charges shall be sufficient in each year for the payment of the proper and reasonable costs and expenses of operation, maintenance, repair, replacement and extension, from time to time, of the entire sewer and works or entire stormwater works.

(e) No such rates, fees or charges shall be established until after a public hearing, at which all the potential users of the works and owners of property served or to be served thereby and others shall have had an opportunity to be heard concerning the proposed rates or charges.

(f) After introduction of the ordinance fixing rates, fees or charges, and before the same is finally enacted, notice of such hearing setting forth the proposed schedule of rates, fees or charges shall be given by publication of notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area for such publication is the municipality. The first publication shall be made at least ten days before the date fixed therein for the hearing.

(g) After such hearing, which may be adjourned from time to time, the ordinance establishing the rates, fees or charges, either as originally introduced or as modified and amended, may be passed and put into effect. A copy of the schedule of the rates, fees and charges so established shall be kept on file in the office of the sanitary board having charge of the construction and operation of such works and in the office of the clerk of the municipality. The schedule of rates, fees and charges shall be open to inspection by all parties interested. The rates, fees or charges established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice.

(h) Any change or readjustment of rates, fees or charges may be made in the same manner as rates, fees or charges were originally established as hereinbefore provided: *Provided*, That if such change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice is required.

(i) If any rate, fee or charge is not paid within thirty days after it is due, the amount thereof, together with a penalty of ten percent and a reasonable attorney's fee, may be

recovered by the sanitary board of the municipality in a civil action in the name of the municipality.

(j) Any municipality exercising the powers given herein has the authority to construct, acquire, improve, equip, operate, repair and maintain any plants, machinery or works necessary to comply with the order of the Secretary of the Department of Environmental Protection or the Environmental Quality Board and the authority provided herein to establish, maintain and collect rates, fees or charges is an additional and alternative method of financing such works and matters, and is independent of any other provision of this article insofar as the article provides for or requires the issuance of revenue bonds or the imposition of rates, fees and charges in connection with the bonds: *Provided*, That except for the method of financing such works and matters, the construction, acquisition, improvement, equipment, custody, operation, repair and maintenance of any plants, machinery or works in compliance with an order of the Secretary of the Department of Environmental Protection or the Environmental Quality Board and the rights, powers and duties of the municipality and the respective officers and departments thereof, including the sanitary board, are governed by the provisions of this article.

(k) The jurisdiction and authority provided by this section does not extend to highways, road and drainage easements and stormwater facilities constructed, owned or operated by the West Virginia Division of Highways and no rates, fees or charges for stormwater services or costs of compliance 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.

(l) A municipality which has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community, as defined in 40 C.F.R. § 122.26, has the authority to enact ordinances or regulations which allow for the issuance of orders, the right to enter properties and the right to impose reasonable fines and penalties regarding correction of violations of municipal stormwater ordinances or regulations within the municipal watershed served by the municipal stormwater system, as long as such rules, regulations, fines or actions are not contrary to any rules or orders of the Public Service Commission.

(m) Notice of a violation of a municipal stormwater ordinance or regulation shall be served in person to the alleged violator or by certified mail, return receipt requested. The notice shall state the nature of the violation, the potential penalty, the action required to correct the violation and the time limit for making the correction. Should a person, after receipt of proper notice, fail to correct the violation of the municipal stormwater ordinance or regulation, the municipality may make or have made the corrections of the violation and bring the party into compliance with the applicable stormwater ordinance or regulation. The municipality may collect the costs of correcting the violation from the person by instituting a civil action, as long as such actions are not contrary to any rules or orders of the Public Service Commission.

(n) A municipality which has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community shall prepare an annual report detailing the collection and expenditure of rates, fees or charges and make it available for public review at the place of business of the governing body and the stormwater utility main office.

Acts 1955, c. 135; Acts 1967, c. 105; Acts 1994, c. 61; Acts 2001, c. 212, eff. 90 days after April 14, 2001; Acts 2008, c. 202, eff. March 8, 2008.

ARTICLE 13A  
PUBLIC SERVICE DISTRICTS

<p>Section 16-13A-7. Acquisition and operation of district properties.</p> <p>16-13A-9. Rules; service rates and charges; discontinuance of service; required</p>	<p>Section</p> <p>water and sewer connections; lien for delinquent fees.</p>
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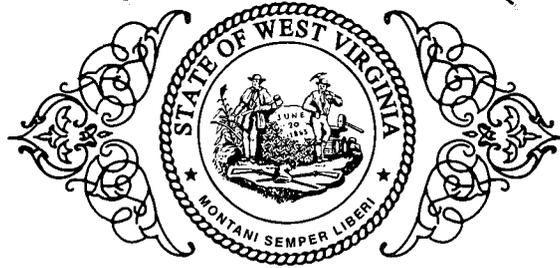
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# State of West Virginia



## Certificate

*I, Natalie E. Tennant, Secretary of State of the  
State of West Virginia, hereby certify that*

THIS IS A TRUE COPY OF CHAPTER 22C, ARTICLE 2 OF THE WEST VIRGINIA CODE, AND CHAPTER 22C, ARTICLE 2 OF THE 2011 SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE RECORDS OF THIS OFFICE.



*Given under my hand and the  
Great Seal of the State of  
West Virginia on  
October 31, 2011*

*Natalie E. Tennant*  
Secretary of State

## ARTICLE 2

### WATER POLLUTION CONTROL REVOLVING FUND ACT

#### Section

- 22C-2-1. Definitions.
- 22C-2-2. Designation of division of environmental protection as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency.
- 22C-2-3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund.
- 22C-2-4. Annual audit.
- 22C-2-5. Collection of money due to the fund.
- 22C-2-6. State construction grants program established; special fund.
- 22C-2-7. Environmental review of funded projects.
- 22C-2-8. Conflicting provisions.

#### § 22C-2-1. Definitions

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "Authority" means the water development authority provided for in section four, article one of this chapter.

(b) "Cost" as applied to any project financed under the provisions of this article means the total of all costs incurred by a local entity that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project including:

(1) Developmental, planning and feasibility studies, surveys, plans and specifications;

(2) Architectural, engineering, financial, legal or other special services;

(3) Acquisition of land and any buildings and improvements on the land or buildings, including the discharge of any obligations of the sellers of the land, buildings or improvements;

(4) Site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment;

(5) The reasonable costs of financing incurred by the local entity in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, and the funding of accounts and reserves which the authority may require; and

(6) Other items that the division of environmental protection determines to be reasonable and necessary.

(c) "Fund" means the state water pollution control revolving fund provided for in this article as it may be expanded or modified from time to time pursuant

to the clean water act, as amended, the federal safe drinking water act, as amended or by the executive order of the governor issued to comply with federal laws relating to the acts.

(d) "Instrumentality" means the division of environmental protection or the agency designated by an order of the governor as having the primary responsibility for administering the fund pursuant to the federal clean water act, as amended, and the federal safe drinking water act, as amended, or other federal laws.

(e) "Local entity" means any county, city, town, municipal corporation; authority, district, public service district, commission, banking institution or political subdivision in West Virginia.

(f) "Project" means any public water or wastewater treatment facility located or to be located in or outside this state by a local entity and includes:

- (1) Sewage and wastewater collection, treatment and disposal facilities;
- (2) Public water transportation, treatment and distribution facilities;
- (3) Drainage facilities and projects;
- (4) Administrative, maintenance, storage and laboratory facilities related to the facilities delineated in subdivisions (1), (2) and (3) of this subsection;
- (5) Interests in land related to the facilities delineated in subdivisions (1), (2), (3) and (4) of this subsection; and
- (6) Other projects allowable under federal law.

Acts 1994, c. 61; Acts 1996, c. 257, eff. 90 days after March 8, 1996.

**United States Code Annotated**

Water Pollution Prevention and Control,  
 Generally, see 33 U.S.C.A. § 1251 et seq.  
 Effluent limitations, see 33 U.S.C.A. § 1311 et seq.  
 Water Pollution, Waste Treatment Management, grants, see 33 U.S.C.A. § 1281 et seq.

**§ 22C-2-2. Designation of division of environmental protection as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency**

The division of environmental protection shall act as the instrumentality that is empowered to enter into capitalization agreements with the United States environmental protection agency, to accept capitalization grant awards made under the federal clean water act, as amended, the safe drinking water act, as amended, and other federal laws and to otherwise manage the fund provided for in this article in accordance with the requirements of said federal laws.

Acts 1994, c. 61.

**Library References**

Environmental Law ¶216.  
 Westlaw Topic No. 149E.  
 C.J.S. Health and Environment §§ 130, 172.

**§ 22C-2-3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund**

(a) Under the direction of the division of environmental protection, the water development authority shall establish, administer and manage a permanent and perpetual fund, to be known as the "West Virginia Water Pollution Control Revolving Fund." The fund shall be comprised of moneys appropriated to the fund by the Legislature, moneys allocated to the state by the federal government expressly for the purposes of establishing and maintaining a state water pollution control revolving fund, all receipts from loans made from the fund to local entities, all income from the investment of moneys held in the fund, and all other sums designated for deposits to the fund from any source, public or private. Moneys in the fund shall be used solely to make loans to local entities to finance or refinance the costs of a project: Provided, That moneys in the fund shall be utilized to defray the costs incurred by the authority and the division of environmental protection in administering the provisions of this article: Provided, however, That moneys in the fund shall be used to make grants for projects to the extent allowed or authorized by federal law.

(b) The director of the division of environmental protection, in consultation with the authority, shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, to:

(1) Govern the disbursement of moneys from the fund; and

(2) Establish a state water pollution control revolving fund program to direct the distribution of grants or loans from the fund to particular local entities and establish the interest rates and repayment terms of the loans.

(c) In order to carry out the administration and management of the fund, the authority is authorized to employ officers, employees, agents, advisers and consultants, including attorneys, financial advisers, engineers, other technical advisers and public accountants and, notwithstanding any provisions of this code to the contrary, to determine their duties and compensation without the approval of any other agency or instrumentality.

(d) The authority shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to govern the pledge of loans to secure bonds of the authority.

(e) All moneys belonging to the fund shall be kept in appropriate depositories and secured in conformance with this code. Disbursements from the fund shall be authorized for payment by the director of the authority or the director's designee. Any depository or officer of the depository to which moneys of the fund are paid shall act as trustee of the moneys and shall hold and apply them solely for the purposes for which the moneys are provided under this article. Moneys in the fund shall not be commingled with other money of the authority. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by the authority in obligations or securities which are considered lawful investments for public funds under this code.

Acts 1994, c. 61; Acts 1996, c. 257, eff. 90 days after March 8, 1996.

**Administrative Code References**

Program rules, see W. Va. Code St. R. § 47-31-1 et seq.

**Library References**

Environmental Law ☞179, 180, 216.	C.J.S. Health and Environment §§ 130, 172.
States ☞127.	C.J.S. States §§ 386 to 387.
Westlaw Topic Nos. 149E, 360.	

**§ 22C-2-4. Annual audit**

The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants, and the cost thereof may be defrayed as a part of the cost of construction of a project or as an administrative expense under the provisions of subsection (a), section three of this article.

Acts 1994, c. 61.

**Library References**

Environmental Law ☞179, 180, 216.	C.J.S. Health and Environment §§ 130, 172.
States ☞121.	C.J.S. States §§ 322 to 323, 372.
Westlaw Topic Nos. 149E, 360.	

**§ 22C-2-5. Collection of money due to the fund**

In order to ensure the timely payment of all sums due and owing to the fund under a revolving fund loan agreement between the state and a local entity, and notwithstanding any provisions of this code to the contrary, the authority has and may, at its option, exercise the following rights and remedies in the event of any default by a local entity under a loan agreement:

(a) The authority may directly impose, in its own name and for its own benefit, service charges upon all users of a project funded by a loan distributed to a local entity pursuant to this article, and may proceed directly to enforce and collect the service charges, together with all necessary costs of the enforcement and collection.

(b) The authority may exercise, in its own name or in the name of and as the agent for a particular local entity, all of the rights, powers and remedies of the local entity with respect to the project or which may be conferred upon the local entity by statute, rule, regulation or judicial decision, including all rights and remedies with respect to users of the project funded by the loan distributed to that local entity pursuant to this article.

(c) The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by a local entity of all of the terms and conditions of the loan agreement between the state and that local entity including:

(1) The adjustment of service charges as required to repay the loan or otherwise satisfy the terms of the loan agreement;

(2) The enforcement and collection of service charges; and

(3) The enforcement by the local entity of all rights and remedies conferred by statute, rule, regulation or judicial decision.

The rights and remedies enumerated in this section are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement.

Acts 1994, c. 61; Acts 1996, c. 257, eff. 90 days after March 8, 1996.

#### Library References

Environmental Law ☞221.  
Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 130, 150,  
172.

### § 22C-2-6. State construction grants program established; special fund

(a) The director of the division of environmental protection shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to establish a state construction grants program that is designed to complement and supplement the state water pollution control revolving fund program established pursuant to subsection (b), section three of this article.

(b) The special fund designated "The West Virginia Construction Grants Fund" established in the state treasury is continued. The special fund shall be comprised of moneys appropriated to said fund by the Legislature, assessments on existing wastewater treatment facilities, and all other sums designated for deposit to the special fund from any source, public or private: Provided, That such assessments shall be made and collected in accordance with fee schedules to be established by legislative rules promulgated by the director of the division of environmental protection, in accordance with chapter twenty-nine-a of this code. Moneys in the special fund shall be used solely for the state construction grants program established under subsection (a) of this section: Provided, however, That moneys in the special fund may be utilized to defray the costs incurred by the division of environmental protection in administering the provisions of this section.

Acts 1994, c. 61.

#### Administrative Code References

Construction grants program rules, see W. Va. Code St. R. § 47-33-1 et seq.

#### Library References

Environmental Law ☞180, 217.  
States ☞127.  
Westlaw Topic Nos. 149E, 360.

C.J.S. Health and Environment §§ 130, 133,  
172.  
C.J.S. States §§ 386 to 387.

### § 22C-2-7. Environmental review of funded projects

(a) The division of environmental protection shall conduct an environmental review on each project funded under this article. The director of the division of environmental protection shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the environmental review of funded projects: Provided, That the rules shall be

consistent with the regulations promulgated by the United States environmental protection agency pursuant to the federal clean water act, as amended.

(b) The director of the division of environmental protection is authorized to direct a local entity, or its agent, to implement all measures that, in the judgment of the director, are necessary in order to mitigate or prevent adverse impacts to the public health, safety or welfare or to the environment that may result from a project funded under this article. The director is further authorized to require all projects to comply with all other appropriate federal laws and regulations that are required of the projects under the federal clean water act, as amended.

Acts 1994, c. 61; Acts 1996, c. 257, eff. 90 days after March 8, 1996.

**Library References**

Environmental Law ¶179, 180, 574, 595(3). C.J.S. Health and Environment §§ 105 to 106, 111, 113 to 114, 116, 125, 172.  
Westlaw Topic No. 149E.

**§ 22C-2-8. Conflicting provisions**

The provisions of this article shall be liberally construed to the end that its beneficial purposes may be effectuated. Insofar as the provisions of this article are inconsistent with the provisions of any other general, special or local law, the provisions of this article are controlling.

Acts 1994, c. 61.

**Library References**

Environmental Law ¶167, 170, 575. C.J.S. Health and Environment §§ 106, 111, 172.  
Westlaw Topic No. 149E.

*West's*  
**Annotated Code  
of West Virginia**



*Using the Classification and  
Numbering System of the  
1931 Code of West Virginia,  
as Amended*

Chapters 22B to 23

2011  
Cumulative Annual Pocket Part

Replacing 2010 Pocket Part supplementing 2006 Main Volume

Includes laws through the 2011 Regular Session

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§ 22C-1-27. Authorized limit on borrowing

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(a) The aggregate principal amount of bonds and notes issued by the authority may not exceed \$500 million outstanding at any one time: *Provided*, That before the authority issues bonds and notes in excess of \$400 million the Legislature must pass a resolution authorizing this action: *Provided, however*, That in computing the total amount of bonds and notes which may at any one time be outstanding, the principal amount of any outstanding bonds or notes refunded or to be refunded either by application of the proceeds of the sale of any refunding bonds or notes of the authority or by exchange for any refunding bonds or notes, shall be excluded.

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(b) In addition to the amounts authorized by subsection (a) of this section, the Water Development Authority may issue, pursuant to section seventeen-b, article fifteen-a, chapter thirty-one of this code, bonds or notes in the aggregate principal amount not to exceed \$180 million. This authorization is for the limited purpose of providing grants for capital improvements for publicly owned wastewater treatment facilities with an authorized permitted flow of four hundred thousand gallons per day or more which are required to maintain compliance with certain standards for discharges into watersheds in accordance with said section seventeen-b.

Acts 1994, c. 61; Acts 1995, c. 252, eff. 90 days after March 3, 1995; Acts 2000, c. 278, eff. March 11, 2000; Acts 2011, c. 179, eff. June 10, 2011.

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ARTICLE 2

WATER POLLUTION CONTROL REVOLVING FUND ACT

Section

- 22C-2-1. Definitions.
- 22C-2-5. Collection of money due to the fund.

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§ 22C-2-1. Definitions

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "Authority" means the Water Development Authority provided for in section four, article one of this chapter.

(b) "Cost" as applied to any project financed under the provisions of this article means the total of all costs incurred by a local entity that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project including:

- (1) Developmental, planning and feasibility studies, surveys, plans and specifications;
- (2) Architectural, engineering, financial, legal or other special services;
- (3) Acquisition of land and any buildings and improvements on the land or buildings, including the discharge of any obligations of the sellers of the land, buildings or improvements;
- (4) Site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment;
- (5) The reasonable costs of financing incurred by the local entity in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service and the funding of accounts and reserves which the authority may require; and

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(2) The authority may exercise, in its own name or in the name of and as the agent for a particular local entity, all of the rights, powers and remedies of the local entity with respect to the project or which may be conferred upon the local entity by statute, rule, regulation or judicial decision, including all rights and remedies with respect to users of the project funded by the loan distributed to that local entity pursuant to this article.

(3) The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by a local entity of all of the terms and conditions of the loan agreement between the state and that local entity including:

(A) The adjustment of service charges as required to repay the loan or otherwise satisfy the terms of the loan agreement;

(B) The enforcement and collection of service charges; and

(b) The enforcement by the local entity of all rights and remedies conferred by statute, rule, regulation or judicial decision. The rights and remedies enumerated in this section are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement.

(c) For loans made for projects defined in subdivision (6), subsection (f), section one of this article, at the direction of the Department of Environmental Protection, the authority shall take a security or other interest in real or personal property with the right to foreclose upon a default to secure loans made from the fund.

Acts 1994, c. 61; Acts 1996, c. 257, eff. 90 days after March 8, 1996; Acts 2007, c. 132, eff. June 8, 2007.

§ 22C-2-7. Environmental review of funded projects

United States Supreme Court

Environmental law,

Clean water, dams, discharge potential, state certification requirement under

Clean Water Act, see S.D. Warren Co. v. Maine Bd. of Environmental Protection, 2006, 126 S.Ct. 1843.

ARTICLE 4

COUNTY AND REGIONAL SOLID WASTE AUTHORITIES

Section

22C-4-10. Mandatory disposal; proof required; penalty imposed; requiring solid

Section

waste management board and the Public Service Commission to file report.

§ 22C-4-10. Mandatory disposal; proof required; penalty imposed; requiring solid waste management board and the Public Service Commission to file report

(a) Each person occupying a residence or operating a business establishment in this state shall either:

(1) Subscribe to and use a solid waste collection service and pay the fees established therefor; or

(2) Provide proper proof that said person properly disposes of solid waste at least once within every thirty-day period at approved solid waste facilities or in any other lawful manner. The Secretary of the Department of Environmental Protection shall promulgate rules pursuant to chapter twenty-nine-a of this code regarding an approved method or methods of supplying such proper proof. A civil penalty of one hundred fifty dollars may be assessed to the person not receiving solid waste collection services in addition to the unpaid fees for every year that a fee is not paid. Any person who violates the provisions of this section by not lawfully disposing of his or her solid waste or failing to provide proper proof that he or she lawfully disposes of his or her solid waste at least once a month is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than fifty dollars nor more than one thousand dollars or sentenced to perform not less than ten nor more than forty



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IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

UPON APPLICATION BY PETITION FOR A CERTIFICATE OF INCORPORATION OF THE  
TOWN OF DELBARTON

This the 6th day of September, 1946, at a Special Term of said Court, came Dr. J. R. Farley, and others, petitioners for a certificate of incorporation of the Town of Delbarton, in Lee District, Mingo County, West Virginia, in person, and by their attorney, O. C. VanCamp; the said petition and exhibits therein referred to having been filed in the office of the Clerk of this Court five ( 5 ) days previous to this hearing; and the petition praying that, since an election had been held, as set up therein, on the question of incorporating the Town of Delbarton, in said District and County as a municipal corporation, and that a majority of the votes cast at the said election having been voted in favor of said incorporation; and it being set forth therein that the provisions of statute, providing for incorporation of such municipalities had been complied with; and evidence having been taken in support of the allegations set forth in said petition; and it appearing from the evidence that those interested in incorporating the said Town of Delbarton had caused a map and survey to be made by a practical surveyor and professional engineer, namely, L. C. Linkous, and the said survey and map being exhibited and captioned "Map Showing Incorporation of the City of Delbarton, West Virginia" and dated June 15, 1946, and filed at petitioners' "Exhibit No. 1", which map and survey were verified, as required by statute; and it further appearing that the petitioners had caused a census to be taken of the population comprehended within said map and survey as of a date not more than sixty (60) days before the application by the petition for incorporation; and that the said census was verified; and the said map, survey, and census were left in the office of Dr. J. R. Farley, a resident within the territory comprehended

R. Linkous

by the said map and survey, for inspection and examination, at any reasonable hour, in accordance with statute provided, and four (4) weeks before the posting of the first notice of the application by petition to this court for a certificate of incorporation; and it appearing further that the notices required by statute, for three (3) successive weeks, when said application by petition would be made, when an election would be held, and the place within the territory it would be held when the qualified voters would meet thereon to vote upon the question of incorporation of the said Town, to-wit at the school house on the 20th day of August, 1946, within the territory comprehended by said map and survey, and satisfactory evidence having been adduced to indicate that the notices had been posted at least three (3) most public places and kept posted, as required by statute; and it further appearing that an election had been held, the supervisors of which had been elected by the majority of the voters present on the ground; that the said election officers held the said election in accordance with statute providing for such cases; and it further appearing that the results of said election were two hundred fifty-seven (257) for incorporation and forty-eight (48) against incorporation, and from the results, as certified to this court by the said supervisors of election, the majority of the votes cast being in favor of the said incorporation, the question carried by an overwhelming majority in favor of incorporation of the said Town of Delbarton; the allegations in the petition having been supported by evidence and by exhibits of map, courses and distances, notices, verification of census, and the certificate of the results of the election by the election officers; and it further appearing that the requirements of law for the incorporation of the Town of Delbarton, as a municipal corporation, having been substantially complied with the court is of the opinion that the prayer of the said petition should be answered in the affirmative with certain alterations in boundary lines deleting and leaving out certain portions comprehended within said map and survey.

There further developed in the proceeding, after said petition was presented, certain petitioners, represented by William Baisden and John B. Adair, informally petitioned the Court that the Town of Delbarton be incorporated by boundary lines and courses and distances as represented by said map and survey, indicated by petitioners' "Exhibit Nos. 1 and 2", which matter was disposed of as hereinafter set forth.

There was a further informal petition on the part of Armilda Ramey, who appeared in person and by her attorney, J. Brooks Lawson, Esq., and praying the court to delete and take out from the territory comprehended within said map and survey a portion of a village within said territory known as Rameytown or the property she owned therein, and evidence having been taken for and against this proposal, the Court was of the opinion that the petition of the said Armilda Ramey should be denied.

But it further appearing to the Court that the Norfolk & Western Railway Company and United Thacker Coal Company, by their attorney, Lant R. Slaven, Esq., were asserting that too much of their property had been incorporated within the territory comprehended by said map and survey, and that some of the territory thus comprehended was disproportionate to the population thereof; and it further appearing that agreements had been reached between the petitioners and the said Norfolk & Western Railway Company and the United Thacker Coal Company, corporations, and that these agreements had also been assented to by the said William Baisden and John B. Adair, who originally prayed that there be no changes in the boundary lines comprehended by said map and survey; that the agreements represented by the parties, as hereinbefore indicated, and indicated by modifications, which are shown on the said map by orange lines drawn on a second copy of said map and now tendered and hereby filed and marked "Map as Modified", eliminating certain portions originally comprehended within said map and survey, and that the description of the courses and distances as indicated by said orange lines are as follows:

REVISED DESCRIPTION OF BOUNDARY TO BE INCORPORATED  
FOR THE CITY OF DELBARTON, WEST VIRGINIA

Beginning at the mouth of Pigeon Creek of Pigeon Creek, Mingo County, West Virginia, thence running up Pigeon Roost Creek S 49 deg. 20' W 538.2 feet crossing the State Road to a stake, S 26 deg. 05' W 248.5 feet to a stake at the mouth of a small drain and at the upper end of Hervert Browning property, thence leaving said Pigeon Roost Creek and running S 13 deg. 00' E 5400 feet to a high knob between Orchard Branch and the Right Fork of Stonecoal Branch, thence S 45 deg. 43' W 4130 feet to a stake on the ridge between the left fork of Stonecoal Branch and Buffalo Creek, thence S 48 deg. 41' E 2730 feet across Stonecoal Branch to a stake, N 72 deg. 10' E 1105.0 feet to a stake' on a high knob corner to Boyd Adkins and with his line S 75 deg. 30' E 2458.0 feet crossing Pigeon Creek and U. S. Highway No. 52 to a twin sycamore, corner to Boyd Adkins, and with his line N 48 deg. 25' E 1001.0 feet to a stake on a point, thence N 25 deg. 29' E 2780 feet to a stake on a knob between Pigeon Creek and Rockhouse Fork, thence N 9 deg. 10' W 1903.0 feet to a stake on the point, thence leaving the point and with John Maynard's upper line N 48 deg. 35' E 1275.0 feet crossing the State Road to a stake on the west bank of Rockhouse Fork of Pigeon Creek, thence down Rockhouse Fork of Pigeon Creek and crossing same and the N & W Railway N 9 deg. 50' W 3455.0 feet to a stake on a high knob between Rockhouse Fork and Millstone Branch, thence start down the dividing ridge between same S 80 deg. 10' W 941.0 feet to a stake on a knob, thence S 58 deg. 40' W 1845.0 feet down the point to a double beech, a common corner with the United Thacker Coal Company - Celia Farley 59.7 acre tract, thence with the line of the said Celia Farley tract S 82 deg. 24' W 442.0 feet to a double beech in a field, thence S 40 deg. 04' W 255 feet to a stake in the center line of Pigeon Creek, thence down said creek with the meanders N 69 deg. 40' W 330.0 feet to a stake, thence with said creek N 35 deg. 53' W 210.0 feet to a stake,

thence with said creek N 9 deg. 00' E 780.0 feet to a stake, thence with said creek N 5 deg. 48' W 860.0 feet to a stake, thence with said creek N 47 deg. 45' W 480.0 feet to a stake, thence with said creek N 53 deg. 17' W 485.0 feet to a stake, thence with said creek N 63 deg. 36' W 545.0 feet to a stake thence N 64 deg. 22' W 535.0 feet to the place of beginning, containing 1109.50 acres or 1.73 square miles.

The Court is of the opinion, therefore, that the agreements effected between the petitioners and said corporations are fair and equitable; that it leaves out certain portions of the properties of said corporations, which, if retained, would appear to be so retained for the sole purpose of obtaining revenue for the said municipal corporation, since the population on said properties deleted by said agreements is scarcely none, and would render the territory, as shown on said original map disproportionate to the number of residents thereof.

IT IS, THEREFORE, THE JUDGMENT OF THIS COURT that the prayer of the said petition should be granted as modified by said agreements between the petitioners and the said Norfolk & Western Railway Company and the United Thacker Coal Company and as shown by orange lines on the said "Map as Modified", and the Clerk of this Court is hereby directed to issue a certificate of incorporation of the Town of Deibarton, Lee District, Mingo County, West Virginia.

The form of the said certificate of incorporation shall be as follows:

"A certificate, under oath, of Beulah Adair, Joe Kirk and Joe Varney is filed in this Court and made an exhibit this the sixth (6th) day of September Nineteen Hundred Forty-Six (1946), showing that a majority of all the qualified voters, residing in the following boundary, to-wit:

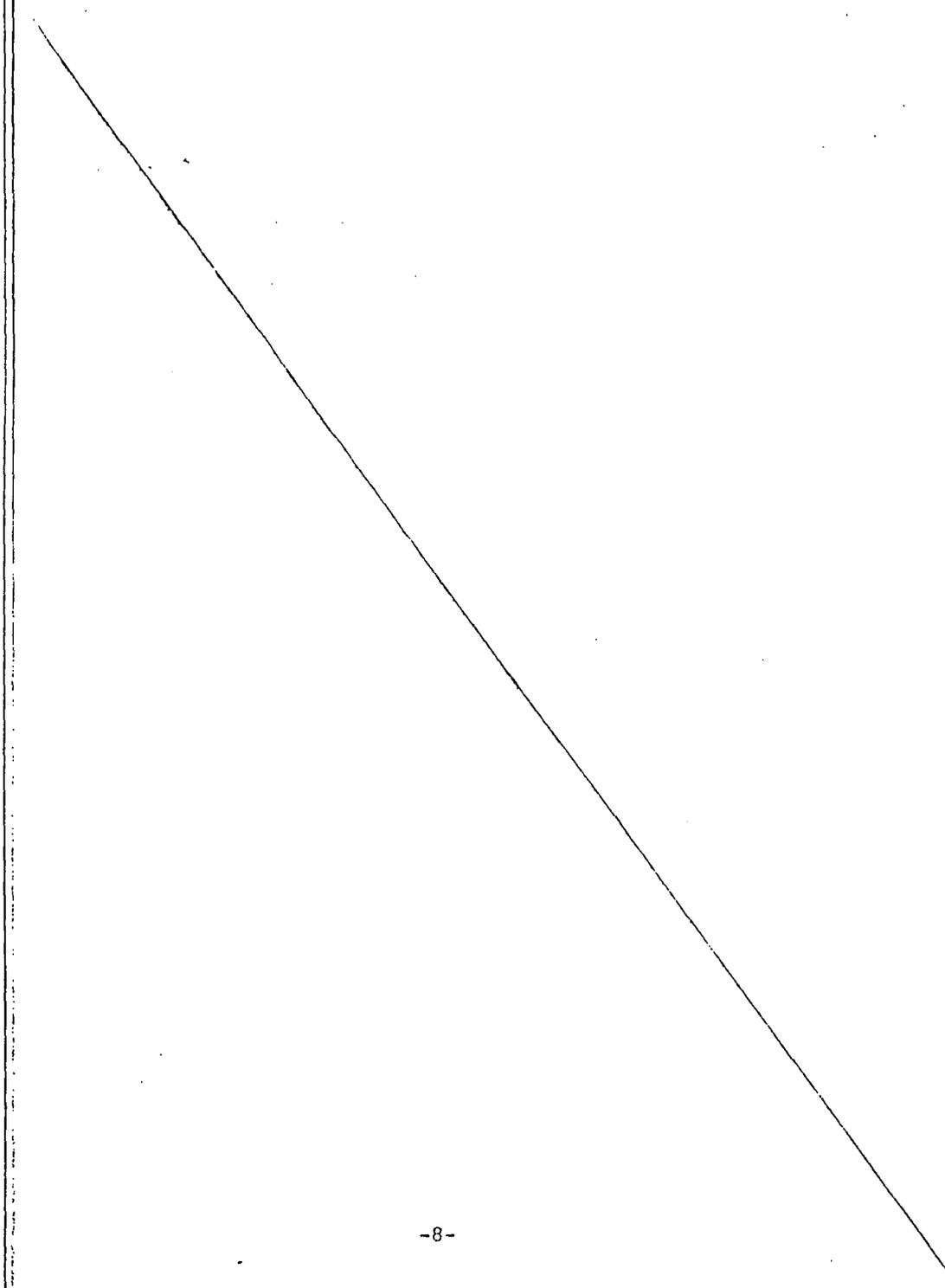
have voted, in due form of law, in favor of the incorporation of the Town of Delbarton, in Lee District, Mingo County, and bounded as herein set forth, and as it appears to the satisfaction of the Court that all of the provisions of Chapter Eight (8) of the Code of West Virginia have been complied with by the applicants for said incorporation, said Town of Delbarton is a body corporate, duly authorized within the corporate limits afore said, or as otherwise provided, to exercise all of the corporate powers conferred by the said Chapter from and after the date of this certificate."

It is further ordered that John Butcher, Beulah Adair and Joe Kirk, legal Voters and residents residing in said municipal corporation, be and are hereby appointed as commissioners of election to hold the first election to be held in said municipal corporation, and the said election must be held within sixty days from the date hereof and they shall appoint a time and place to hold said election by giving competent notice, as provided by statute, of the time and place of holding said election, and they shall appoint a time and place to hold said election by giving competent notice, as provided by statute, of the time and place of holding said election, and they shall canvass the results and issue certificates of election as results thereof may indicate to the officers elected, and shall perform all duties imposed upon them by statute in, about and concerning said election, and the Clerk of this Court is hereby directed to notify said appointees of their appointment as commissioners of said election.

REVISED DESCRIPTION OF BOUNDARY TO BE INCORPORATED  
FOR THE CITY OF DELBARTON, WEST VIRGINIA

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thence with said creek N 47 deg. 45' W 480.0 feet to a stake, thence with  
said creek N 53 deg. 17' W 485.0 feet to a stake, thence with said creek N  
63 deg. 36' W 545.0 feet to a stake, thence N 64 deg. 22' W 535.0 feet to  
the place of beginning, containing 1109.50 acres or 1.73 square miles.



"Coal Makes Us Go"

# Town of Delbarton

P.O. Box 730  
Delbarton, WV 25670  
Phone (304) 475-3359

**John W. Preece, Mayor**  
mayorjwp@hotmail.com  
Mobile: (304) 784-9222

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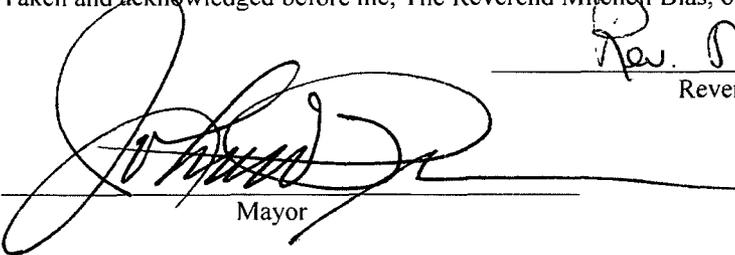
## **OATH OF OFFICE** **Recorder**

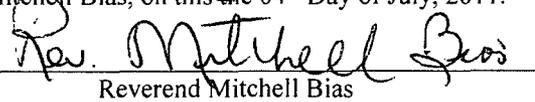
I, Kimberly Totten, do solemnly swear that I will uphold the duties of Recorder of the Town of Delbarton. I will faithfully execute all duties associated with the same.

I will uphold and enforce the Ordinance of the Town, the Laws of the State of West Virginia and the Constitution of the United States of America, so help me God.

Signed: 

Taken and acknowledged before me, The Reverend Mitchell Bias, on this the 04<sup>th</sup> Day of July, 2011.

  
Mayor

  
Reverend Mitchell Bias

**Delbarton, West Virginia – A Great Place to Call Home**

Members of Council: Joe Crum, John C. Davis, Mark Sizemore, Albert Totten, Jeremy Davis

Town Recorder: Kimberly Totten

**Come Ride the Hatfield – McCoy Trails With Us**

"Coal Makes Us Go"

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**John W. Preece, Mayor**  
mayorjwp@hotmail.com  
Mobile: (304) 784-9222

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## OATH OF OFFICE Council Member

I, Jeremy Davis, do solemnly swear that I will uphold the duties of Council Member of the Town of Delbarton. I will faithfully execute all duties associated with the same.

I will uphold and enforce the Ordinance of the Town, the Laws of the State of West Virginia and the Constitution of the United States of America, so help me God.

Signed: Jeremy Davis

Taken and acknowledged before me, The Reverend Mitchell Bias, on this the 04<sup>th</sup> Day of July, 2011.

John W. Preece  
Mayor

Rev. Mitchell Bias  
Reverend Mitchell Bias

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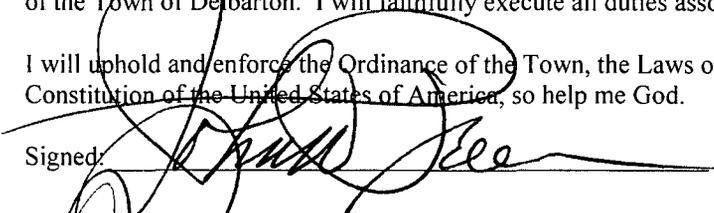
**John W. Preece, Mayor**  
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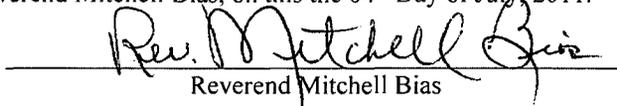
## OATH OF OFFICE Mayor

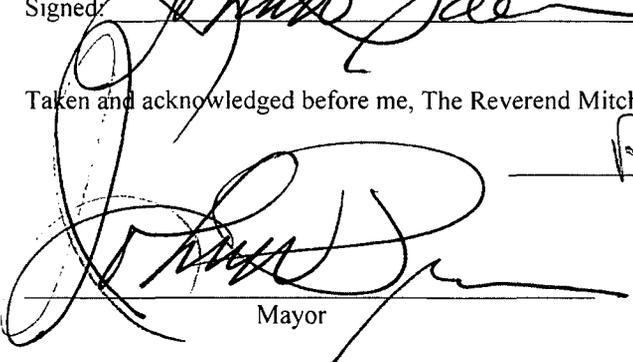
I, John W. Preece, do solemnly swear that I will uphold the duties of Mayor of the Town of Delbarton. I will faithfully execute all duties associated with the same.

I will uphold and enforce the Ordinance of the Town, the Laws of the State of West Virginia and the Constitution of the United States of America, so help me God.

Signed: 

Taken and acknowledged before me, The Reverend Mitchell Bias, on this the 04<sup>th</sup> Day of July, 2011.

  
Reverend Mitchell Bias

  
Mayor

**Delbarton, West Virginia – A Great Place to Call Home**

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mayorjwp@hotmail.com  
Mobile: (304) 784-9222

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## OATH OF OFFICE Council Member

I, Mark Sizemore, do solemnly swear that I will uphold the duties of Council Member of the Town of Delbarton. I will faithfully execute all duties associated with the same.

I will uphold and enforce the Ordinance of the Town, the Laws of the State of West Virginia and the Constitution of the United States of America, so help me God.

Signed: Mark Sizemore

Taken and acknowledged before me, The Reverend Mitchell Bias, on this the 04<sup>th</sup> Day of July, 2011.

John W. Preece  
Mayor

Rev. Mitchell Bias  
Reverend Mitchell Bias

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Members of Council: Joe Crum, John C. Davis, Mark Sizemore, Albert Totten, Jeremy Davis

Town Recorder: Kimberly Totten

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**John W. Preece, Mayor**  
mayorjwp@hotmail.com  
Mobile: (304) 784-9222

---

## OATH OF OFFICE Council Member

I, Joe Crum, do solemnly swear that I will uphold the duties of Council Member of the Town of Delbarton. I will faithfully execute all duties associated with the same.

I will uphold and enforce the Ordinance of the Town, the Laws of the State of West Virginia and the Constitution of the United States of America, so help me God.

Signed: Joe Crum

Taken and acknowledged before me, The Reverend Mitchell Bias, on this the 04<sup>th</sup> Day of July, 2011.

John W. Preece  
Mayor

Rev. Mitchell Bias  
Reverend Mitchell Bias

**Delbarton, West Virginia – A Great Place to Call Home**

**Members of Council: Joe Crum, John C. Davis, Mark Sizemore, Albert Totten, Jeremy Davis**

**Town Recorder: Kimberly Totten**

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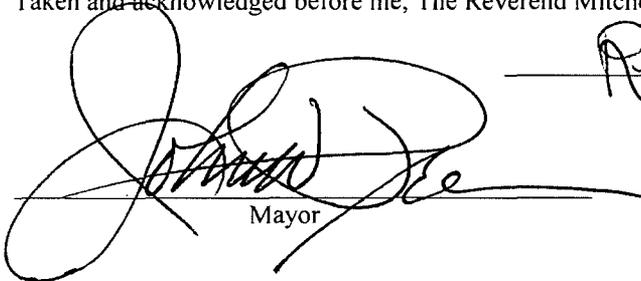
## OATH OF OFFICE Council Member

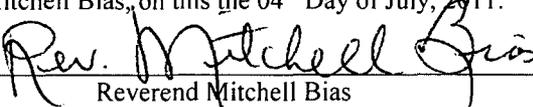
I, Albert Totten, do solemnly swear that I will uphold the duties of Council Member of the Town of Delbarton. I will faithfully execute all duties associated with the same.

I will uphold and enforce the Ordinance of the Town, the Laws of the State of West Virginia and the Constitution of the United States of America, so help me God.

Signed: Albert Totten

Taken and acknowledged before me, The Reverend Mitchell Bias, on this the 04<sup>th</sup> Day of July, 2011.

  
Mayor

  
Reverend Mitchell Bias

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mayorjwp@hotmail.com  
Mobile: (304) 784-9222

---

## OATH OF OFFICE Council Member

I, John C. Davis, do solemnly swear that I will uphold the duties of Council Member of the Town of Delbarton. I will faithfully execute all duties associated with the same.

I will uphold and enforce the Ordinance of the Town, the Laws of the State of West Virginia and the Constitution of the United States of America, so help me God.

Signed: John C. Davis

Taken and acknowledged before me, The Reverend Mitchell Bias, on this the 04<sup>th</sup> Day of July, 2011.

John W. Preece  
Mayor

Rev. Mitchell Bias  
Reverend Mitchell Bias

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"RESOLUTION ESTABLISHING RULES BY WHICH THE TIME AND PLACE OF ALL REGULARLY SCHEDULED MEETINGS AND THE TIME, PLACE AND PURPOSE OF ALL SPECIAL MEETINGS ARE TO BE MADE AVAILABLE, IN ADVANCE, TO THE PUBLIC AND NEWS MEDIA AND PROVIDING WHEN THIS RESOLUTION AND SUCH RULES SHALL TAKE EFFECT."

Be it Resolved and Ordered by the Council of the Town of Delbarton, Mingo County, West Virginia:

Section 1. Statutory Mandate for These Rules. The rules established in and by this Resolution are mandated by and promulgated pursuant to Chapter 6, Article 9A, of the Code of West Virginia, 1931, as amended (herein called the "Act"), and other applicable provisions of law. The provisions of the Act are incorporated herein as if fully set out herein.

Section 2. Findings and Determinations. It is hereby found, determined and declared as follows:

(A) Section 3 of the Act requires each governing body, as defined in the Act, to promulgate rules by which the time and place of all regularly scheduled meetings and the time, place and purpose of all special meetings are made available, in advance, to the public and news media.

(B) The Council of the Town of Delbarton (the "Council"), Mingo County, West Virginia (the "Town"), is the governing body of the Town within the meaning of the Act.

(C) Accordingly, it is hereby ordered that the rules set out in Section 3 hereof be promulgated and established as Rules of Procedure of the Council.

Section 3. Rules. The following are hereby promulgated and established as Rules of Procedure of the Council:

Rule No. 1. Notice of Regularly Scheduled Meetings. Immediately after adoption of this Resolution and in July of each year thereafter, the Council shall instruct the Recorder to, and the Recorder shall, post, and leave posted throughout the year to which it applies, at the regular meeting place where notices customarily are posted a notice setting forth the times and places of the Council's regularly scheduled meetings for the ensuing year. Such notice shall be of size and style sufficient to give notice and shall be of quality

sufficient to withstand deterioration throughout the year to which it applies. Additional copies of the notice shall be delivered to the Recorder.

Also immediately after adoption of this Resolution and in July of each year thereafter, the Council shall instruct the Recorder to, and the Recorder shall, distribute to each of the newspapers, television stations, radio stations and other news media listed below a notice identical to that posted.

#### MINGO COUNTY NEWS MEDIA

News Media

Address

Williamson Daily News

P.O. Box 1660  
Williamson, WV 25661

A notice shall be considered distributed to a news medium when it has been addressed to such news medium at the address listed above, or at such other address as the news medium has in writing requested be used, marked or stamped with first class postage and deposited in the United States mail. In June of each year after the adoption of this Resolution, the Council shall review the above list and shall amend such list as needed, in the opinion of the Council, to reflect properly all the newspapers, television stations, radio stations and other news media that customarily cover news of the area served by the Council.

In the event of any modification in the time or place of a regularly scheduled meeting of the Council, notice of such modification shall be given to the public and news media by posting at the place and distributing to the news media in the manner set forth above, not less than three (3) days prior to the date of such regularly scheduled meeting, or, if such regularly scheduled meeting has been rescheduled for an earlier time, prior to the date of such rescheduled meeting, a notice setting forth such modification in the time or place of such regularly scheduled meeting. A copy of such notice shall be attached to and made a part of the minutes of the meeting for which such notice was given.

Notwithstanding the foregoing provisions, notice of the recess or adjournment of a regularly scheduled meeting and of the time and place for the continuation or

reconvening thereof publicly given during such regularly scheduled meeting shall be adequate notice to the public and news media of the time and place thereof.

Provided, failure of the Recorder to comply exactly with the posting and distribution requirements hereof shall not invalidate the actions taken at the meeting for which such notice was posted and distributed if the Council shall determine that such posting and distribution were in substantial compliance herewith.

Rule 2. Notice of Special Meeting. Not less than three (3) but not more than eight (8) days prior to the date set for any special meeting of the Council, the Council shall instruct the Recorder to, and the Recorder shall, post on the door of the regular meeting place of the Council, and at such other place, if any, where notices customarily are posted a notice setting forth the time, place and purpose or purposes of such special meeting. Business at such special meeting shall be limited to the purpose or purposes specified in said notice.

As soon as practical after the posting of said notice, but not less than three (3) days prior to the date set for such special meeting, the Recorder shall distribute to each of the newspapers, television stations, radio stations and other news media listed in Rule No. 1 hereof a notice identical to that posted. Amendments made to such list, as provided for in said Rule No. 1, shall be incorporated by reference in this Rule No. 2. A notice shall be considered distributed to a news medium when it has been addressed to such news medium at the address listed in said Rule No. 1, or at such other address as the news medium has in writing requested be used, marked or stamped with first class postage and deposited in the United States mail.

A copy of such notice posted and distributed pursuant to this Rule No. 2 shall be attached to and made a part of the minutes of the meeting for which such notice was given.

Notwithstanding the foregoing provisions, notice of the recess or adjournment of any special meeting and of the time and place for the continuation or reconvening thereof publicly given during such special meeting shall be adequate notice to the public and news media of the time and place thereof, the purpose or purposes therefor remaining the same.

Provided, failure of the Recorder to comply exactly with the posting and distribution requirements hereof shall not invalidate the actions taken at the meeting for which such notice was posted and distributed if the Council shall determine that such posting and distribution were in substantial compliance herewith.

Rule No. 3. Emergency Meeting. A meeting as of the Council may be held without the notice to the public and news media required by Rule No. 1 and Rule No. 2 hereof only in the event of any emergency requiring immediate official action. The existence for such an emergency requiring immediate official action shall be determined by the Council and shall be attested to in a certificate by the Recorder describing such emergency and setting forth the reason or reasons immediate official action is required, which certificate shall be attached to and made a part of the minutes of such emergency meeting.

Section 4. Conflicting Provisions Repealed. All resolutions, orders and rules, or parts thereof, in conflict with the provisions of this Resolution are, to the extent of such conflicts, hereby repealed.

Section 5. Effective Time. This Resolution and the rules promulgated hereby shall take effect immediately upon the adoption hereof.

Introduced at Council Meeting: May 17, 1999

Adopted by Council: May 17, 1999

  
\_\_\_\_\_  
Mayor

[SEAL]

  
\_\_\_\_\_  
Recorder

145619

RULES OF PROCEDURE

TOWN OF DELBARTON SANITARY BOARD

ARTICLE I

NAME AND PLACE OF BUSINESS

Section 1. The name of this Sanitary Board shall be TOWN OF DELBARTON SANITARY BOARD (the "Sanitary Board").

Section 2. The principal office of the Sanitary Board will be located at City Hall, 1 Riverside Drive, Delbarton, WV 25670, Delbarton, West Virginia.

Section 3. The fiscal year of the Sanitary Board shall begin on the 1<sup>st</sup> day of July in each year and shall end on June 30 of the following year.

ARTICLE II

PURPOSE

Section 1. The Sanitary Board is organized exclusively for the purposes set forth in Chapter 16, Article 13 of the Code of West Virginia, 1931, as amended (the "Act").

ARTICLE III

MEMBERSHIP

Section 1. The members of the Public Service Board shall consist of the Mayor of the Town of Delbarton (the "Town") and two other persons appointed by the Town who shall serve for such terms as may be specified in the ordinance of the Town.

Section 2. Should any member of the Sanitary Board resign or otherwise become legally disqualified to serve as a member of the Sanitary Board, the Sanitary Board shall immediately notify the Town and request the appointment of a qualified person to fill such vacancy. Prior to the end of the term of any member of the Sanitary Board, the Sanitary Board shall notify the Town of the pending termination and request

the Town to enter an order of appointment or re-appointment to maintain a fully qualified membership of the Sanitary Board.

Section 3. The Sanitary Board shall have a registered Professional Engineer as a member of the Sanitary Board at all times that the Sanitary Board is constructing any extensions or improvements to the Sanitary System.

Section 4. The members of the Sanitary Board are not personally liable or responsible for any obligations of the Sanitary Board but are answerable only for willful misconduct in the performance of their duties.

#### ARTICLE IV

##### MEETINGS OF THE SANITARY BOARD

Section 1. The members of the Sanitary Board shall hold regular monthly meetings on such days of each month and at such place and hour as the members shall determine from time to time. If the day stated shall fall on a legal holiday, the meeting shall be held on the following day. Special meetings of the Sanitary Board may be called at any time by the Chairperson or by a quorum of the Sanitary Board.

Section 2. At any meeting of the Sanitary Board, a majority of the members of the Sanitary Board shall constitute a quorum. Each member of the Sanitary Board shall have one vote at any meeting and if a quorum is not present, those present may adjourn the meeting to a later date.

Section 3. Unless otherwise waived, notice to members of regular meetings shall be by letter or telephone. Unless otherwise waived, notice to members of each special meeting shall be by letter or telephone not less than 72 hours before the date fixed for such special meeting. The notice of any special meeting shall state briefly the purposes of such meeting and the nature of the business to be transacted at such meeting, and no business other than that stated in the notice shall be transacted at such special meeting.

Section 4. Pursuant to Chapter 6, Article 9A, Section 3 of the Code of West Virginia, 1931, as amended, notice of the date, time, place and agenda of all regularly scheduled meetings of the Sanitary Board, and the date, time, place and purpose of all special meetings of the Sanitary Board, shall be made available, in advance, to the public and news media as follows:

Rule No. 1. Notice of Regularly Scheduled Meetings. Immediately after adoption of these Rules of Procedure and in July of each year thereafter, the Sanitary Board shall instruct the Secretary to, and the Secretary shall, post, and leave posted throughout the year to which it applies, at the regular meeting place of the Sanitary Board, where notices customarily are posted, a notice setting forth the date, time and place of the Sanitary Board's regularly scheduled meetings for the ensuing year. In addition, a copy of the agenda for each regularly scheduled meeting shall also be posted at the same location by the Secretary not less than 72 hours before such regular meeting is to be held.

In the event of any modification to the date, time, place or agenda of a regularly scheduled meeting of the Sanitary Board, notice of such modification shall immediately be given to the public by posting at the places in the manner set forth above not less than 48 hours before such regular meeting is to be held. A copy of the notice of such modification shall be attached to and made a part of the minutes of the meeting for which such notice was given.

Rule No. 2. Notice of Special Meetings. Not less than 72 hours prior to the date set for any special meeting of the Sanitary Board, the Sanitary Board shall instruct the Secretary to, and the Secretary shall, post at the regular meeting place of the Sanitary Board, where notices customarily are posted, a notice setting forth the date, time, place and purpose or purposes of such special meeting. Business at such special meeting shall be limited to the purpose or purposes specified in said notice.

A copy of such notice posted and distributed pursuant to this Rule No. 2 shall be attached to and made a part of the minutes of the meeting for which such notice was given.

Rule No. 3. Emergency Meetings. The Sanitary Board may hold a meeting without providing the notice to the public required by Rule No. 1 and Rule No. 2 hereof only in the event of an emergency requiring immediate official action. The existence for such an emergency requiring immediate official action shall be determined by the Sanitary Board and shall be attested to in a certificate by the Secretary describing such emergency and setting forth the reason or reasons immediate official action is required, which certificate shall be attached to and made a part of the minutes of such emergency meeting.

Rule No. 4. Executive Sessions. The Sanitary Board may hold an executive session during a regular, special or emergency meeting in accordance with Chapter 6, Article 9A, Section 4 of the Code of West Virginia, 1931, as amended. During the open portion of the meeting, prior to convening an executive session, the

Chairperson shall identify the authorization under Chapter 6, Article 9A, Section 4 of the Code of West Virginia, 1931, as amended, for holding the executive session and present it to the Sanitary Board and to the general public, but no decision may be made in the executive session. An executive session may be held only upon a majority affirmative vote of the Sanitary Board members present. The Sanitary Board may hold an executive session and exclude the public only when a closed session is required for any of the actions permitted under Chapter 6, Article 9A, Section 4 of the Code of West Virginia, 1931, as amended.

Rule No. 5. Minutes. The Sanitary Board shall provide for the preparation of written minutes of all of its meetings. Subject to the exceptions set forth in Chapter 6, Article 9A, Section 4 of the Code of West Virginia, 1931, as amended, minutes of all meetings except minutes of executive sessions, if any are taken, shall be available to the public within a reasonable time after the meeting and shall include, at least, the following information:

- (1) The date, time and place of the meeting;
- (2) The name of each Board member present and absent;
- (3) All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and
- (4) The results of all votes and, upon the request of a Board member, the vote of each Board member, by name.

Rule No. 6. No Actions by Reference. Except as otherwise expressly provided by law, the Sanitary Board may not deliberate, vote, or otherwise take official action upon any matter by reference to a letter, number or other designation or other secret device or method, which may render it difficult for persons attending a meeting to understand what is being deliberated, voted or acted upon. However, this rule does not prohibit the Sanitary Board from deliberating, voting or otherwise taking action by reference to an agenda, if copies of the agenda, sufficiently worded to enable the public to understand what is being deliberated, voted or acted upon, are available for public inspection at the meeting. The Sanitary Board may not vote by secret or written ballot.

Rule No. 7. Broadcasting of Meetings. Except as otherwise provided in this rule, any radio or television station is entitled to broadcast all or any part of a Board meeting required to be open. The Sanitary Board may regulate the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting, so as to prevent undue interference with the meeting. The Sanitary Board shall allow the equipment to be placed within the meeting room in such a way as to permit its intended use, and the ordinary use of the equipment may not be declared to constitute undue

interference; provided, that if the Sanitary Board, in good faith, determines that the size of the meeting room is such that all the members of the public present and the equipment and personnel necessary for broadcasting, photographing, filming and tape-recording the meeting cannot be accommodated in the meeting room without unduly interfering with the meeting and an adequate alternative meeting room is not readily available, then the Sanitary Board, acting in good faith and consistent with the purposes of this rule, may require the pooling of the equipment and the personnel operating it.

Rule No. 8. Telephonic Meetings. Board meetings may be held by telephone conference or other electronic means. All Board members participating by telephone or other electronic means must be audible to all those personally present.

Section 5. All meetings of any committee of the Sanitary Board shall be subject to the Rules of Procedure set forth in Section 4 above.

## ARTICLE V

### OFFICERS

Section 1. The officers of the Sanitary Board shall be a Chairperson, Vice Chairperson, Secretary and Treasurer. The Chairperson shall be the Mayor of the Town. The Vice Chairperson shall be elected from the Members of the Sanitary Board. The Secretary and Treasurer may be one and the same and need not be members of the Sanitary Board.

Section 2. The officers, except for the Chairperson, of the Sanitary Board shall be elected each year by the members at the first meeting after the first day of January of each year. The officers, except for the Chairperson, so elected shall serve until the next annual election by the membership and until their successors are duly elected and qualified. Any vacancy occurring among the officers shall be filled by the members of the Sanitary Board at a regular or special meeting. Persons selected to fill vacancies shall serve until the next annual organizational meeting of the Sanitary Board when their successors shall be elected as hereinabove provided.

## ARTICLE VI

### DUTIES OF OFFICERS

Section 1. When present, the Chairperson shall preside as Chairperson at all meetings of the Sanitary Board. He/She shall, together with the Secretary, sign the minutes of all meetings at which he/she shall preside. He/She shall attend generally to

the executive business of the Sanitary Board and exercise such powers as may be conferred upon him/her by the Sanitary Board, by these Rules of Procedure, or prescribed by law. He/She shall execute, and if necessary, acknowledge for record, any deeds, deeds of trust, contracts, notes, bonds, agreements, or other documents necessary, requisite, proper or convenient to be executed by or on behalf of the Sanitary Board when and if directed by the members of the Sanitary Board.

Section 2. If the Chairperson is absent from any meeting, the Vice Chairperson shall act as Chairperson.

Section 3. The Secretary shall keep a record of all proceedings of the Sanitary Board which shall be available for inspection as other public records. Duplicate records shall be filed with the Town and shall include the minutes of all Board meetings. He/She shall, together with the Chairperson, sign the minutes of the meetings at which he/she is present. The Secretary shall have charge of the minute book, be the custodian of deeds and other documents and papers of the Sanitary Board. He/She shall also perform such other duties as may be required of him/her by law or as may be conferred upon him/her from time to time by the members of the Sanitary Board.

Section 4. The Treasurer shall be the lawful custodian of all funds of the Sanitary Board and shall pay same out on orders authorized or approved by the Sanitary Board. The Treasurer shall keep or cause to be kept proper and accurate books of accounts and proper receipts and vouchers for all disbursements made by or through him/her and shall prepare and submit such reports and statements of the financial condition of the Sanitary Board as the members may from time to time prescribe. The Treasurer shall keep and preserve all financial records of the Sanitary Board for 10 years and shall at all times have such records readily available for public inspection. At the end of his/her term of office, the Treasurer shall promptly deliver all financial records of the Sanitary Board to his successor in office. He/She shall also perform such other duties as may be required of him/her by law or as may be conferred upon him/her from time to time by the members of the Sanitary Board. The Treasurer shall furnish bond in an amount to be fixed by the Sanitary Board for the use and benefit of the Sanitary Board.

Section 5. No money may be paid out by the Sanitary Board except upon an order signed by the Chairperson and Secretary, or such other person or persons authorized by the Chairperson or the Secretary, as the case may be, to sign such orders on their behalf. Each order for the payment of money shall specify the purposes for which the amount thereof is to be paid, with sufficient clearness to indicate the purpose for which the order is issued, and there shall be endorsed thereon the name of the particular fund out of which it is payable and it shall be payable from the fund constituted for such

purpose, and no other. All such orders shall be reflected in the minutes of the next meeting of the Sanitary Board.

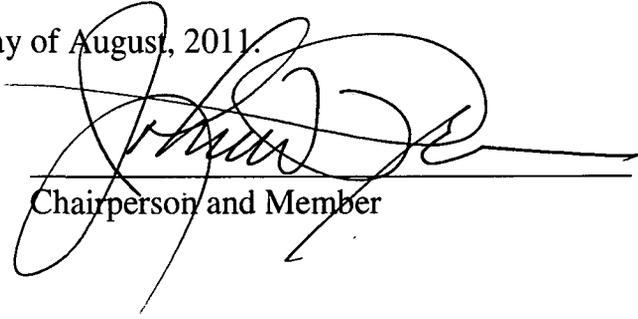
Section 6. The members and officers of the Sanitary Board shall make available to the Town, at all times, all of its books and records pertaining to the Sanitary Board's operation, finances and affairs, for inspection and audit.

## ARTICLE VII

### AMENDMENTS TO RULES OF PROCEDURE

Section 1. These Rules of Procedure may be altered, changed, amended or added to at any regular or special meeting of the Sanitary Board when a quorum is present and a majority of those present vote for the alteration, change, amendment or addition; but no such alteration, change, amendment or addition shall be made at any special meeting unless notice of the intention to propose such alteration, change, amendment or addition and a clear statement of the substance thereof be included in the written notice calling such special meeting.

Adopted this 8<sup>th</sup> day of August, 2011.

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and loops around itself.

Chairperson and Member

Vice Chairperson and Member

Member

CERTIFICATION

Certified a true copy of the Rules of Procedure duly adopted by the Board of the Town of Delbarton on August 8, 2011.

Dated this 8<sup>th</sup> day of August, 2011.

---

Secretary

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Entered: May 31, 2011

FINAL

6/20/2011

CASE NO. 11-0258-S-CN

TOWN OF DELBARTON

Application for a certificate of convenience  
and necessity to construct upgrades to its  
wastewater treatment and collection system.

RECOMMENDED DECISION

On February 25, 2011, the Town of Delbarton ("Town"), by counsel Mark E. Kauffelt, filed with the Public Service Commission ("Commission") an application for a certificate of convenience and necessity to construct upgrades to its wastewater treatment and collection systems. The application described the project and its funding as follows:

The proposed project will provide wastewater treatment service to approximately 76 new residential and commercial customers (190 persons) in the Pigeonroost Creek, Rockhouse Branch, Pigeon Creek and surrounding areas of Mingo County. It will also improve service to approximately 373 existing customers (930 persons) in the Town of Delbarton because of the plant upgrade and existing sewer line rehabilitation. The proposed project consists of the construction of approximately 27,800 feet of 16-inch and smaller diameter gravity sewer pipe, 4,790 feet of 1½-inch and smaller diameter force main, 187 manholes, seventeen grinder pumping stations, cleanouts, service laterals and other related appurtenances. Treatment will be provided by the Town's existing wastewater treatment plant. The plant will be significantly upgraded. The plant upgrade will include construction of a plant lift station, new head works, new rotors and covers for the oxidation ditch, two new secondary clarifiers, new return sludge pumping station, new UV disinfection system, flow measurement, new belt filter press and conversion of the existing clarifiers into aerobic digesters.

The project is estimated to cost \$9,582,950.00. Anticipated funding consists of a Small Cities Block Grant of \$1,500,000.00, an EPA-State Tribal Assistance Grant of \$1,451,800.00, an Appalachian Regional Commission Grant of \$1,500,000.00, a WVDEP-SRF Disadvantaged Community Loan of \$2,000,000.00 at -5.0% interest for

40 years and a WV DEP SRF Conventional Loan of \$3,131,150.00 at zero (0) percent interest for 40 years (0.5% Admin fee).

Supporting documentation was filed.

On March 3, 2011, the Commission directed the Town to publish a Notice of Filing, which provided that, if no substantial 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 March 29, 2011, the Town filed an affidavit of publication of the Notice of Filing on March 11, 2011, in The Williamson Daily News, published in Mingo County.

On April 5, 2011, by Order, the Commission referred this matter to the Division of Administrative Law Judges for decision no later than August 9, 2011, if timely substantial protest was received, and no later than July 11, 2011, if such protest was not filed.

On May 23, 2011, Staff Attorney Chris Howard filed the Final Joint Staff Memorandum, with an attached memorandum from James Spurlock, of the Engineering Division, and James Boggess, of the Utilities Division. Staff confirmed the information provided in the application, and also included the following: "Due to the age and deteriorated condition of the existing sewer lines, the collection system experiences excessive inflow and infiltration, which result in hydraulic overloading at the treatment plant. The treatment plant itself has effluent violations and needs significant upgrades to achieve and maintain compliance" with its permit requirements. The Town has received all necessary permits for the project except for a modified NPDES permit, which is forthcoming. The estimated construction cost is \$7,436,000, including engineering costs of \$929,700, which is reasonable. Operation and maintenance expenses are expected to increase by approximately \$14,000 annually as a result of the project, which is reasonable. A rate increase that became effective May 1, 2011, will provide \$109,173 in annual revenues, a cash surplus of \$27,511 and 145.14% debt coverage, and will be adequate to cover the increased costs. Staff recommended that the application be granted and the project and its funding be approved, contingent upon receipt of the outstanding permit.

#### FINDINGS OF FACT

1. On February 25, 2011, the Town of Delbarton filed with the Public Service Commission an application for a certificate of convenience and necessity to construct upgrades to its wastewater treatment and collection systems. (See application).
2. The part of the project regarding the Town's collection system consists of the construction of approximately 27,800 feet of 16-inch and smaller diameter gravity sewer pipe, 4,790

feet of 1½-inch and smaller diameter force main, 187 manholes, seventeen grinder pumping stations, cleanouts, service laterals and other related appurtenances.

3. The part of the project regarding the Town's treatment plant involves significant upgrades to the Town's treatment plant, including construction of a plant lift station, new head works, new rotors and covers for the oxidation ditch, two new secondary clarifiers, new return sludge pumping station, new UV disinfection system, flow measurement, new belt filter press and conversion of the existing clarifiers into aerobic digesters. (See application; Final Joint Staff Memorandum filed May 23, 2011).

4. The Town's existing sewer lines are old and deteriorated, causing excessive inflow and infiltration, which result in hydraulic overloading at the treatment plant. The treatment plant has effluent violations and needs significant upgrades to achieve and maintain compliance with its permit requirements. (See Final Joint Staff Memorandum).

5. The Town has received all necessary permits except for a modified NPDES permit. (See Final Joint Staff Memorandum).

6. The total project cost is estimated at \$9,582,950, including an estimated construction cost of \$7,436,000. (See application; Final Joint Staff Memorandum).

7. The project will be financed by a Small Cities Block Grant of \$1,500,000.00, an EPA-State Tribal Assistance Grant of \$1,451,800.00, an Appalachian Regional Commission Grant of \$1,500,000.00, a WVDEP-SRF Disadvantaged Community Loan of \$2,000,000.00 at -5.0% interest for 40 years and a WV DEP SRF Conventional Loan of \$3,131,150.00 at zero (0) percent interest for 40 years (0.5% Admin fee). (See application; Final Joint Staff Memorandum).

8. Operation and maintenance expenses are expected to increase by approximately \$14,000 annually as a result of the project, which is reasonable. (See Final Joint Staff Memorandum).

9. A rate increase that became effective May 1, 2011, will provide \$109,173 in annual revenues, a cash surplus of \$27,511 and 145.14% debt coverage, and will be adequate to cover the increased costs. (See Final Joint Staff Memorandum).

10. Staff recommended that the application be granted and the project and its funding be approved, contingent upon receipt of the outstanding permit. (See Final Joint Staff Memorandum).

11. The Town published the Notice of Filing on March 11, 2011, in The Williamson Daily News, published in Mingo County, and no protest was filed. (See filing of March 29, 2011; Commission case file).

## CONCLUSIONS OF LAW

1. It is appropriate to approve the project, pursuant to W.Va. Code §24-2-11, because the public convenience and necessity require the project, upon condition that any needed outstanding permits be received and filed before construction begins on the project.
2. It is appropriate to approve the funding for the project.

## ORDER

IT IS, THEREFORE, ORDERED that the application filed on January 13, 2011, by the Town of Delbarton for a certificate of convenience and necessity to construct improvements to the Town's water system in Marion County at a total cost of \$5,085,276, is granted and the project is approved, without specific approval of the project's plans and specifications.

IT IS FURTHER ORDERED that the Town of Delbarton not proceed to construction unless and until it has received and filed with the Commission all required federal, state and local permits.

IT IS FURTHER ORDERED that the financing for the project, consisting of a Small Cities Block Grant of \$1,500,000.00, an EPA-State Tribal Assistance Grant of \$1,451,800.00, an Appalachian Regional Commission Grant of \$1,500,000.00, a WVDEP-SRF Disadvantaged Community Loan of \$2,000,000.00 at -5.0% interest for 40 years and a WV DEP SRF Conventional Loan of \$3,131,150.00 at zero (0) percent interest for 40 years (0.5% Admin fee), is approved.

IT IS FURTHER ORDERED that, if there are any changes in the plans and/or scope of the project or if a change in project cost or financing affects rates, the Town of Delbarton obtain Commission approval of such changes prior to commencing construction.

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

IT IS FURTHER ORDERED that the Town of Delbarton file a copy of the engineer's certified tabulation of bids for the project within ten (10) days of the opening date.

IT IS FURTHER ORDERED that the Town of Delbarton submit a certificate of substantial completion of the project from its engineer as soon as it becomes available.

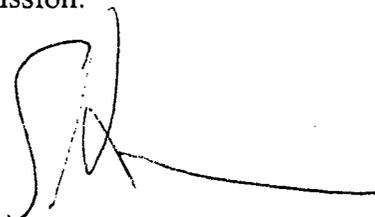
IT IS FURTHER ORDERED that this matter be removed from the Commission's docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this order upon the Commission by hand delivery, and by electronic service upon all parties of record who have filed an e-service agreement with the Commission and by United States Certified Mail, return receipt requested, upon all parties of record who have not filed an e-service agreement with the Commission.

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.



Sunya Anderson  
Administrative Law Judge

SA:s  
110258a.wpd



# WEST VIRGINIA

Infrastructure & Jobs Development Council

Gov. Joe Manchin, III  
Chairman

November 5, 2010

Kenneth Lowe, Jr.  
Public Member

The Honorable John W. Preece  
Mayor, Town of Delbarton

David "Bones" McComas  
Public Member

P.O. Box 730  
Delbarton, WV 25670

Ron Justice  
Public Member

Re: Town of Delbarton  
Water Project 2003S-751 (WDA GAN)

Louis Spadafore  
Public Member

Dear Mayor Preece:

James W., Ellars, P.E.  
Executive Director

At its October 6, 2010 meeting, the West Virginia Infrastructure and Jobs Development Council (Infrastructure Council) voted to recommend that the Town of Delbarton (Town) utilize a \$1,451,800 Environmental Protection Agency State Tribal Assistance Grant, pursue a \$1,500,000 Small Cities Block Grant (SCBG), a \$1,500,000 Appalachian Regional Commission (ARC) grant, a \$2,000,000 Clean Water State Revolving Fund debt forgiveness loan, and a \$3,131,150 Clean Water State Revolving Fund loan (0%, 40 yrs) to fund this \$9,582,950 Project. Since that meeting, the \$1,500,000 SCBG has been awarded.

Barbara J. Pauley  
Administrative Secretary

It will not be determined until next year if the ARC grant will be available for this project; therefore, at its November 5, 2010 meeting, the Infrastructure Council voted to approve that the Town receive a \$1,500,000 Water Development Authority Grant Anticipation Note (WDA GAN) to cover the ARC grant. Please contact the Water Development Authority at 304-558-3612 for specific information on the steps the Town needs to follow to apply for these funds.

If you have any questions regarding this matter, please contact James W. Ellars at 304-558-4607 (X201).

Sincerely,

Kenneth Lowe, Jr.

cc: Bob Decrease, P.E., BPH (via e-mail)  
Chris Jarrett, Executive Director, WDA (via e-mail)  
Rick Roberts, P.E., E.L. Robinson Engineering Co. (via e-mail)  
Jim Boggs, Region II P&DC (via e-mail)

[LETTERHEAD OF THE TOWN OF DELBARTON]

November 8, 2010

**VIA E- MAIL (brucea.smith@epa.gov)**

Mr. Bruce Smith (3WP50)  
EPA Region III  
Water Protection Division  
1650 Arch Street  
Philadelphia, PA 19103-2029

Re: Town of Delbarton, West Virginia  
EPA Grant No. XP-973250-01

Dear Mr. Smith:

The Town of Delbarton (the "Town") is in receipt of an October 14, 2010 letter from Lorraine H. Reynolds, Associate Director, Office of Infrastructure and Assistance, requesting among other things a status report on the Town's wastewater project and the above-referenced grant (the "EPA Grant"). The Town has worked hard to bring this project to construction and has had many setbacks in this effort including the failure to receive funding from the Rural Utilities Service. The Town has increased its sewer rates annually to be in a position to generate revenues to pay debt service on revenue bonds needed to match the EPA Grant.

Subsequent to the October 14, 2010 letter the Town has been able to complete its funding package. In late October, the Town received a \$1,500,000 Small Cities Block Grant and at the November 5, 2010 West Virginia Infrastructure and Jobs Development Council meeting, the Town was approved to receive a \$1,500,000 grant anticipation note to complete the funding package which includes in addition to the EPA Grant, \$5,131,150 in Clean Water State Revolving Loan Funds.

The Town has obtained over 80% of the needed lands and rights-of-ways for the project. The Town has applied for all required permits for the project. Attached is the proposed schedule for receiving a certificate from the Public Service Commission of West Virginia and advertising the project for construction bids.

Please consider this letter as a request for an 18 month extension on the expenditure of the EPA Grant. The Town has worked diligently to make this project a reality and having finally obtained the necessary funding believes it would be a terrible waste to terminate the EPA Grant at this time. It would take the Town years to obtain replacement funding while costs will continue to rise. Thank you for your consideration of this request.

Very Truly Yours,

John W. Preece, Mayor

cc: Rick Roberts (e-mail:  
Mike Johnson (e-mail:  
Jim Ellars (e-mail:

*AAach*

SRF-BPA-1  
(10/11)

BOND PURCHASE AGREEMENT

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

TOWN OF DELBARTON (C-544414/2003S-751)  
(Local Government)

W I T N E S S E T H:

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

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

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

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

WHEREAS, pursuant to the Act, the Authority and DEP are empowered to utilize moneys from the Fund to purchase the bonds of local governments to provide the financing for the acquisition or construction of wastewater treatment projects by such local governments, all subject to such provisions and limitations as are contained in the Clean Water Act and the Act;

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

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

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

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

WHEREAS, the Local Government has completed and filed with the Authority and DEP an Application for Purchase of Bonds with attachments and exhibits and an Amended Application for Purchase of Bonds also with attachments and exhibits (together, as further revised and supplemented, the “Application”), which Application is incorporated herein by this reference;

WHEREAS, having reviewed the Application and the Fund having available sufficient funds therefor, the Authority and DEP are willing to lend the Local Government the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Local Government with moneys held in the Fund, subject to the Local Government’s satisfaction of certain legal and other requirements of the Program; and

WHEREAS, the Local Government meets the “disadvantaged community” provisions of the SRF Regulations.

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

## ARTICLE I

### Definitions

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

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

1.3 “Local Act” means the official action of the Local Government required by Section 4.1 hereof, authorizing the Local Bonds.

1.4 “Local Bonds” means the revenue bonds to be issued by the Local Government pursuant to the provisions of the Local Statute, as hereinafter defined, and to be purchased by the Authority with money held in the Fund, all in accordance with the provisions of this Bond Purchase Agreement.

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

1.6 “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.

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

1.8 “Project” means the wastewater treatment facility project hereinabove referred to, to be constructed or being constructed by the Local Government in whole or in part with the net proceeds of the Local Bonds or being or having been constructed by the

Local Government in whole or in part with the proceeds of bond anticipation notes or other interim financing, which is to be paid in whole or in part with the net proceeds of the Local Bonds.

1.9 “SRF Regulations” means the regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations, as amended.

1.10 “System” means the wastewater treatment facility owned by the Local Government, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

1.11 Additional terms and phrases are defined in this Bond Purchase Agreement as they are used.

## ARTICLE II

### The Project and the System

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

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

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Local Government, subject to any mortgage lien or other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property is approved by DEP and the Authority.

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

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

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

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

2.8 The Local Government shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority and DEP and shall verify or have verified such insurance prior to commencement of construction. Until the Project facilities are completed and accepted by the Local Government, the Local Government or (at

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

2.9 The Local Government shall provide and maintain competent and adequate engineering services satisfactory to the Authority and DEP covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority, DEP and the Local Government at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies. The Local Government shall require the Consulting Engineers to submit Record Drawings, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Local Government shall notify DEP in writing of such receipt. The Local Government shall submit a Performance Certificate, the form of which is attached hereto as Exhibit A, and being incorporated herein by reference, to DEP within 60 days of the end of the first year after the Project is completed.

2.10 The Local Government should require the Consulting Engineers to submit the final or updated Operation and Maintenance Manual, if necessary as defined in the SRF Regulations, to DEP when the Project is 90% completed. The Local Government shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Local Government shall employ a state certified plant operator prior to the Project being 50% complete and notify the DEP in writing of such employment. The Local Government shall retain the operator(s) to operate the System during the entire term of this Loan Agreement.

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

2.12 The Local Government, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit B and incorporated herein by reference, and forward a copy by the 20<sup>th</sup> of each month to the DEP and the Authority.

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

### ARTICLE III

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

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

(a) The Local Government shall have delivered to the Authority and DEP a report listing the specific purposes for which the proceeds of the Local Bonds will be expended and the procedures as to the disbursement of bond proceeds, including an estimated monthly draw schedule;

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

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

(d) The Local Government shall either have received bids or entered into contracts for the construction of the Project, which are in an amount and otherwise compatible with the plan of financing described in the Application; provided that, if the proceeds of the Local Bonds will refund an interim construction financing, the Local Government must either be constructing or have constructed its Project for a cost and as

otherwise compatible with the plan of financing described in the Application; and, in either case, the Authority and DEP shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit D;

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

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

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

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

(i) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof, and the Authority and DEP shall have received a certificate of the accountant for the Local Government, or such other person or firm experienced in the finances of local governments and satisfactory to the Authority and DEP, to such effect; and

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

3.2 Subject to the terms and provisions of this Bond Purchase Agreement, the rules and regulations promulgated by the Authority and DEP, including the SRF Regulations, or any other appropriate State agency and any applicable rules, regulations and procedures promulgated from time to time by the federal government, it is hereby agreed that the Authority shall purchase the Local Bonds of the Local Government and the Local Government shall issue and sell the Local Bonds to the Authority, and in furtherance thereof it is agreed that the Local Government shall sell to the Authority and the Authority shall purchase 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 Local Bonds shall be secured and shall be repaid in the manner hereinafter provided in this Bond Purchase Agreement.

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Local Government by written notice to the Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Local Bonds shall be delivered to the Authority on a date as close as possible to the designated date and mutually agreeable to the Authority, DEP and the Local Government. The date of delivery so designated or agreed upon is hereinafter referred to as the "Date of Closing."

3.5 The Local Government understands and acknowledges that it is one of several local governments which have applied to the Authority and DEP for financing of wastewater treatment projects and that the obligation of the Authority to purchase the Local Bonds is subject to the Local Government's fulfilling all of the terms and conditions of this

Bond Purchase Agreement on or prior to the Date of Closing and to the requirements of the Program. The Local Government specifically recognizes that the Authority will not purchase the Local Bonds unless and until sufficient funds are available in the Fund to purchase all the Local Bonds and that, prior to such purchase, the Authority may purchase the bonds of other local governments set out in the State Project Priority List, as defined in the SRF Regulations. The Local Government further specifically recognizes that all bonds will be purchased in conjunction with the SRF Regulations and with the prior approval of DEP.

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

#### ARTICLE IV

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

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

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

(i) to pay Operating Expenses of the System;

(ii) to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document and beginning on the date set forth in Schedule X, to provide debt service on the Local Bonds by depositing in a sinking fund one-third (1/3) of the interest payment next coming due on the Local Bonds and one-third (1/3) of the principal payment next coming due on the Local Bonds and, beginning three (3) months prior to the first date of payment of principal of the Local Bonds, if the reserve account for the Local Bonds (the "Reserve Account") was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof in an amount equal to the maximum amount

of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "Reserve Requirement"), by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;

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

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

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

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by a pledge of either the net or gross revenues of the System as provided in the Local Act;

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

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

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

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

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

(vii) That the Local Government will not render any free services of the System;

(viii) That the Authority may, by proper legal action, compel the performance of the duties of the Local Government under the Local Act, including the making and collection of sufficient rates or charges for services rendered by the System, and shall also have, in the event of a default in payment of principal of or interest on the Local Bonds, the right to obtain the appointment of a receiver to administer the System or construction of the Project, or both, as provided by law and all rights as set forth in Section 5 of the Act;

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

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

(xi) That the Local Government shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority and DEP, which report shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the Local Government's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

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

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

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

(xv) That, as long as the Authority is the owner of any of the Local Bonds, the Local Government may authorize redemption of the Local Bonds with 30 days written notice to the Authority;

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

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

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

(xix) That the Local Government shall have obtained the certificate of the Consulting Engineers to the effect that the Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the Authority and DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and DEP is sufficient to pay the costs of acquisition and construction of the Project and all permits required by federal and State laws for construction of the Project have been obtained;

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

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

expending any proceeds of the Local Bonds available due to bid/construction/project underruns.

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

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

4.3 At least five percent (5%) of the proceeds of the Local Bonds will be advanced on the Date of Closing. The remaining proceeds of the Local Bonds shall be advanced by the DEP monthly as required by the Local Government to pay Costs of the Project, provided, however, if the proceeds of the Local Bonds will be used to repay an interim financing, the proceeds will be advanced on a schedule mutually agreeable to the Local Government, the DEP and the Authority. The Local Bonds shall not bear interest during the construction period but interest shall commence accruing on the completion date as defined in the SRF Regulations, provided that the annual repayment of principal and payment of interest shall begin not later than one (1) year after the completion date. The repayment of principal and interest on the Local Bonds shall be as set forth on Schedule Y hereto. In no event shall the interest rate on or the net interest cost of the Local Bonds exceed any statutory limitation with regard thereto.

4.4 The Local Bonds shall be delivered to the Authority in fully registered form, transferable and exchangeable as provided in the Local Act at the expense of the Local Government. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series.

4.5 As provided by the SRF Regulations, the Local Government agrees to pay from time to time, if required by the Authority and DEP, the Local Government's allocable share of the reasonable administrative expenses of the Authority relating to the Program. Such administrative expenses shall be determined by the Authority and shall include, without limitation, Program expenses, legal fees paid by the Authority and fees paid to the trustee and paying agents for any bonds or notes to be issued by the Authority for contribution to the Fund and the fees and expenses of any corporate trustee for the Fund.

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

## ARTICLE V

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

5.1 The Local Government hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Bond Purchase Agreement and the Local Act. The Local Government hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to purchase the Local Bonds, 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 Bond Purchase Agreement, the Local Government hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges (or where applicable, immediately file with the PSC for a rate increase) and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and this Bond Purchase Agreement.

5.3 In the event the Local Government defaults in any payment due to the Authority pursuant to this Bond Purchase Agreement, the amount of such default shall bear interest at the interest rate of the installment of the Local Bonds next due, from the date of the default until the date of the payment thereof.

5.4 The Local Government hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Local Government, the Authority may exercise any or all of the rights and powers granted under Section 5 of the Act, including, without limitation, the right to impose, enforce and collect charges of the System.

## ARTICLE VI

### Other Agreements of the Local Government

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

6.2 The Local Government hereby warrants and represents that all information provided to the Authority and DEP in this Bond Purchase 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 purchasing and receiving the Local Bonds, the Authority and DEP shall have the right to cancel all or any of their obligations under this Bond Purchase Agreement if (a) any representation made to the Authority and DEP by the Local Government in connection with the issuance of the Local Bonds shall be incorrect or incomplete in any material respect or (b) the Local Government has violated any commitment made by it in its Application or in any supporting documentation or has violated any of the terms of the Act, the SRF Regulations or this Bond Purchase Agreement.

6.3 The Local Government hereby agrees to repay on or prior to the Date of Closing any moneys due and owing by it to the Authority or any other lender for the planning or design of the Project, provided that such repayment shall not be made from the proceeds of the Local Bonds.

6.4 The Local Government 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 Local Government fails to make any such rebates as required, then the Local Government 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.

6.5 Notwithstanding Section 6.4, the Authority and DEP may at any time, in their sole discretion, cause the rebate calculations prepared by or on behalf of the Local Government to be monitored or cause the rebate calculations for the Local Government to be prepared, in either case at the expense of the Local Government.

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

6.7 The Local Government hereby agrees to file with the Authority and DEP upon completion of acquisition and construction of the Project a schedule in substantially the form of Amended Schedule A to the Application, setting forth the actual costs of the Project and sources of funds therefor.

## ARTICLE VII

### Miscellaneous

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

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

7.3 This Bond Purchase 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 Bond Purchase Agreement.

7.4 No waiver by any party of any term or condition of this Bond Purchase 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 Bond Purchase Agreement.

7.5 This Bond Purchase Agreement supersedes all prior negotiations, representations and agreements between the parties hereto relating to the Local Bonds and constitutes the entire agreement between the parties hereto in respect thereof.

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

7.7 This Bond Purchase Agreement shall terminate upon the earlier of:

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

(ii) the end of ninety (90) days after the date of execution hereof by the Authority or such later date as is agreed to in writing by DEP if the Local Government has failed to deliver the Local Bonds to the Authority;

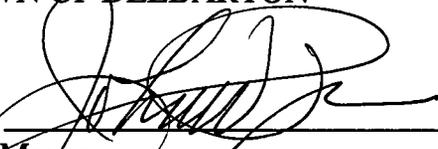
(iii) termination by the Authority and DEP pursuant to Section 6.2 hereof; or

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

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

TOWN OF DELBARTON

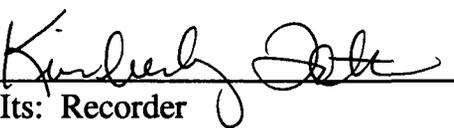
(SEAL)

By:  \_\_\_\_\_

Its: Mayor

Date: November 3, 2011

Attest:

  
Its: Recorder

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

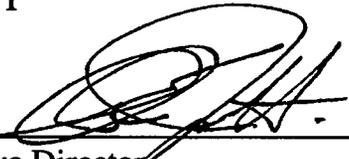
By:  \_\_\_\_\_

Its: Director

Date: November 3, 2011

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

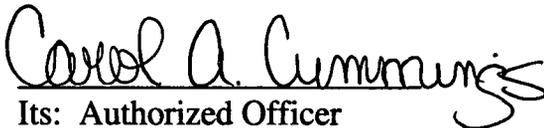
(SEAL)

By:  \_\_\_\_\_

Its: Executive Director

Date: November 3, 2011

Attest:

  
Its: Authorized Officer

**EXHIBIT A**

**FORM OF PERFORMANCE CERTIFICATE**

**[To Be Provided By DEP]**

**EXHIBIT B**

**MONTHLY FINANCIAL REPORT**

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

<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>
<b>1. Gross Revenues</b>	_____	_____	_____	_____
<b>2. Operating Expenses</b>	_____	_____	_____	_____
<b>3. Bond Payments:</b>				
<u>Type of Issue</u>				
<b>Clean Water SRF</b>	_____	_____	_____	_____
<b>Drinking Water TRF</b>	_____	_____	_____	_____
<b>Infrastructure Fund</b>	_____	_____	_____	_____
<b>Water Development Authority</b>	_____	_____	_____	_____
<b>Rural Utilities Service</b>	_____	_____	_____	_____
<b>Economic Development Administration</b>	_____	_____	_____	_____
<b>Other (Identify)</b>	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
<b>4. Renewal and Replacement Fund Deposits</b>	_____	_____	_____	_____

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

\_\_\_\_\_  
**Address**

\_\_\_\_\_  
**Telephone**

## INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

Item 1 You will need a copy of the current fiscal year budget adopted by the Local Government to complete Items 1 and 2. In Item 1, provide the amount of actual **Gross Revenues** for the current month and the total amount year-to-date in the respective columns. Divide the budgeted annual Gross Revenues by 12. For example, if Gross Revenues of \$1,200 are anticipated to be received for the year, each month the base would be increased by \$100 ( $\$1,200/12$ ). This is the incremental amount for the Budget Year-to-Date column.

Item 2 Provide the amount of actual **Operating Expenses** for the current month and the total amount year-to-date in the respective columns. Any administrative fee should be included in the Operating Expenses. Divide the budgeted annual Operating Expenses by 12. For example, if Operating Expenses of \$900 are anticipated to be incurred for the year, each month the base would be increased by \$75 ( $\$900/12$ ). This is the incremental amount for the Budget Year-to-Date column.

Item 3 Provide the **Bond Payments (principal, interest and reserve account)** for all the outstanding bonds of the Local Government according to the source of funding. For example, Clean Water State Revolving Fund loan from Department of Environmental Protection, Drinking Water Treatment Revolving Fund loan from Bureau for Public Health, Infrastructure Fund loan from Infrastructure and Jobs Development Council, or a loan from the Water Development Authority, etc.

Item 4 Provide the amount deposited into the **Renewal and Replacement Fund** each month. This amount is equal to 2.5% of Gross Revenues minus the total reserve account payments included in Item 3. If Gross Revenues are \$1,200, then \$30 (2.5% of \$1,200), LESS the amount of all reserve account payments in Item 3 should be deposited into the Renewal and Replacement Fund. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Local Government.

**The Local Government must complete the Monthly Financial Report and forward it to the Water Development Authority by the 20<sup>th</sup> day of each month, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project.**

**EXHIBIT C**

**PAYMENT REQUISITION FORM**

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

EXHIBIT D

FORM OF CERTIFICATE OF CONSULTING ENGINEER

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

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

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

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

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

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

forth in Schedule attached hereto as Exhibit A, and my firm<sup>1</sup> has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) as of the effective date thereof<sup>2</sup>, the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Bond Purchase Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the DEP; and (xi) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project; Sources of Funds and Cost of Financing" for the Project.

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

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

[SEAL]

\_\_\_\_\_  
<sup>1</sup>If another responsible party, such as the Issuer's attorney, reviews the insurance and payment bonds, then insert the following: [and in reliance upon the opinion of \_\_\_\_\_, Esq.] and delete "my firm has ascertained that".

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

## EXHIBIT E

### SPECIAL CONDITIONS

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

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

C. **ASSET MANAGEMENT** – The Local Government shall submit an acceptable asset management plan or where applicable, updated plans, to DEP no later than six months following substantial completion of the Project. This requirement shall be included in the bond closing documents.

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

E. **CLOSING REQUIREMENTS** – [Reserved].

EXHIBIT F

MONTHLY PAYMENT FORM

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

Re: [Name of bond issue]

Ladies and Gentlemen:

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

Sinking Fund:

Interest \$ \_\_\_\_\_

Principal \$ \_\_\_\_\_

Total: \$ \_\_\_\_\_

Reserve Account: \$ \_\_\_\_\_

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

[Name of Local Government]

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

Enclosure: copy of check(s)

{C2167197.1}

EXHIBIT G

OPINION OF BOND COUNSEL FOR LOCAL GOVERNMENT

[To Be Dated as of Date of Closing]

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

West Virginia Department of Environmental Protection  
601 57<sup>th</sup> Street  
Charleston, WV 25304

Ladies and Gentlemen:

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

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a bond purchase agreement dated \_\_\_\_, \_\_\_\_, including all schedules and exhibits attached thereto (the "Bond Purchase Agreement"), among the Local Government, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and (ii) the issue of a series of revenue bonds of the Local Government, dated \_\_\_\_, \_\_ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Bond Purchase Agreement. The Local Bonds are issued in the principal amount of \$ \_\_\_\_\_, in the form of one bond, registered as to principal only to the Authority, with principal payable quarterly on March 1, June 1, September 1, and December 1 of each year, beginning \_\_\_\_ 1, \_\_\_\_, and ending \_\_ 1, \_\_\_\_, all as set forth in the "Schedule Y" attached to the Bond Purchase Agreement and incorporated in and made a part of the Local Bonds.

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

We have also examined the applicable provisions of \_\_\_\_\_ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond \_\_\_\_\_ duly adopted or enacted by the Local Government on \_\_\_\_\_, as supplemented by the

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

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

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

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

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

6. The Local Bonds are, by statute, exempt \_\_\_\_\_, and under existing statutes and court decisions of the United States of America, as presently written and

applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for federal income tax purposes.

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

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

Very truly yours,

**SCHEDULE X**

**DESCRIPTION OF LOCAL BONDS**

- A. **Series A Bonds (CWSRF Base Program)**  
Principal Amount of Local Bonds \$3,131,150  
Purchase Price of Local Bonds \$3,131,150

The Local Bonds shall bear no interest. Commencing March 1, 2014, principal of the Local Bonds is payable quarterly, with an administrative fee of 0.5%. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

The Local Government shall submit its payments monthly to the Commission with instructions that the Commission will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority. If the Reserve Account is not fully funded at closing, the Local Government shall commence the payment of the 1/120 of the maximum annual debt service on the first day of the month it makes its first monthly payment to the Commission. The Local Government shall instruct the Commission to notify the Authority of any monthly payments which are not received by the 20th day of the month in which the payment was due.

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

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

Number of New Customers to Be Served: 76  
Location: Pigeonroost Creek, Rockhouse Branch, Pigeon Creek and surrounding areas

As of the date of the Loan Agreement, the Local Bonds are on a parity as to liens, pledge and source of and security for payment with the following obligations of the Local Government: none.

- B. Series B Bonds (CWSRF Forgiveness)**  
Principal Amount of Local Bonds \$2,000,000  
Purchase Price of Local Bonds \$2,000,000

The Local Bonds shall bear no interest. The Authority at the direction of the DEP shall forgive the principal amount of the Local Bonds. The principal amounts advanced under the Series 2011 B Bonds will be deemed forgiven on the 30th day of June in the fiscal year in which advanced. The Series 2011 B Bonds shall be deemed no longer outstanding after the last advance is forgiven.

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

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

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

**SCHEDULE Y  
DEBT SERVICE SCHEDULE**

<b>BOND DEBT SERVICE</b>					
Town of Delbarton					
CW SRF					
\$3,131,150					
0.5% Administrative Fee					
Series A bonds					
Period Ending	Principal	Interest	Total Debt Service	Admin Fee	Net Debt Service
3/1/2014	20,737		20,737	1,969.92	22,706.92
6/1/2014	20,737		20,737	1,969.92	22,706.92
9/1/2014	20,737		20,737	1,969.92	22,706.92
12/1/2014	20,737		20,737	1,969.92	22,706.92
3/1/2015	20,737		20,737	1,969.92	22,706.92
6/1/2015	20,737		20,737	1,969.92	22,706.92
9/1/2015	20,737		20,737	1,969.92	22,706.92
12/1/2015	20,737		20,737	1,969.92	22,706.92
3/1/2016	20,737		20,737	1,969.92	22,706.92
6/1/2016	20,737		20,737	1,969.92	22,706.92
9/1/2016	20,737		20,737	1,969.92	22,706.92
12/1/2016	20,737		20,737	1,969.92	22,706.92
3/1/2017	20,737		20,737	1,969.92	22,706.92
6/1/2017	20,736		20,736	1,969.92	22,705.92
9/1/2017	20,736		20,736	1,969.92	22,705.92
12/1/2017	20,736		20,736	1,969.92	22,705.92
3/1/2018	20,736		20,736	1,969.92	22,705.92
6/1/2018	20,736		20,736	1,969.92	22,705.92
9/1/2018	20,736		20,736	1,969.92	22,705.92
12/1/2018	20,736		20,736	1,969.92	22,705.92
3/1/2019	20,736		20,736	1,969.92	22,705.92
6/1/2019	20,736		20,736	1,969.92	22,705.92
9/1/2019	20,736		20,736	1,969.92	22,705.92
12/1/2019	20,736		20,736	1,969.92	22,705.92
3/1/2020	20,736		20,736	1,969.92	22,705.92
6/1/2020	20,736		20,736	1,969.92	22,705.92
9/1/2020	20,736		20,736	1,969.92	22,705.92
12/1/2020	20,736		20,736	1,969.92	22,705.92
3/1/2021	20,736		20,736	1,969.92	22,705.92
6/1/2021	20,736		20,736	1,969.92	22,705.92
9/1/2021	20,736		20,736	1,969.92	22,705.92
12/1/2021	20,736		20,736	1,969.92	22,705.92
3/1/2022	20,736		20,736	1,969.92	22,705.92
6/1/2022	20,736		20,736	1,969.92	22,705.92
9/1/2022	20,736		20,736	1,969.92	22,705.92
12/1/2022	20,736		20,736	1,969.92	22,705.92
3/1/2023	20,736		20,736	1,969.92	22,705.92
6/1/2023	20,736		20,736	1,969.92	22,705.92
9/1/2023	20,736		20,736	1,969.92	22,705.92
12/1/2023	20,736		20,736	1,969.92	22,705.92
3/1/2024	20,736		20,736	1,969.92	22,705.92
6/1/2024	20,736		20,736	1,969.92	22,705.92
9/1/2024	20,736		20,736	1,969.92	22,705.92
12/1/2024	20,736		20,736	1,969.92	22,705.92

<b>NET DEBT SERVICE</b>					
Town of Delbarton					
CW SRF					
\$3,131,150					
0.5% Administrative Fee					
	Principal	Interest	Total Debt Service	Admin Fee	Net Debt Service
3/1/2025	20,736		20,736	1,969.92	22,705.92
6/1/2025	20,736		20,736	1,969.92	22,705.92
9/1/2025	20,736		20,736	1,969.92	22,705.92
12/1/2025	20,736		20,736	1,969.92	22,705.92
3/1/2026	20,736		20,736	1,969.92	22,705.92
6/1/2026	20,736		20,736	1,969.92	22,705.92
9/1/2026	20,736		20,736	1,969.92	22,705.92
12/1/2026	20,736		20,736	1,969.92	22,705.92
3/1/2027	20,736		20,736	1,969.92	22,705.92
6/1/2027	20,736		20,736	1,969.92	22,705.92
9/1/2027	20,736		20,736	1,969.92	22,705.92
12/1/2027	20,736		20,736	1,969.92	22,705.92
3/1/2028	20,736		20,736	1,969.92	22,705.92
6/1/2028	20,736		20,736	1,969.92	22,705.92
9/1/2028	20,736		20,736	1,969.92	22,705.92
12/1/2028	20,736		20,736	1,969.92	22,705.92
3/1/2029	20,736		20,736	1,969.92	22,705.92
6/1/2029	20,736		20,736	1,969.92	22,705.92
9/1/2029	20,736		20,736	1,969.92	22,705.92
12/1/2029	20,736		20,736	1,969.92	22,705.92
3/1/2030	20,736		20,736	1,969.92	22,705.92
6/1/2030	20,736		20,736	1,969.92	22,705.92
9/1/2030	20,736		20,736	1,969.92	22,705.92
12/1/2030	20,736		20,736	1,969.92	22,705.92
3/1/2031	20,736		20,736	1,969.92	22,705.92
6/1/2031	20,736		20,736	1,969.92	22,705.92
9/1/2031	20,736		20,736	1,969.92	22,705.92
12/1/2031	20,736		20,736	1,969.92	22,705.92
3/1/2032	20,736		20,736	1,969.92	22,705.92
6/1/2032	20,736		20,736	1,969.92	22,705.92
9/1/2032	20,736		20,736	1,969.92	22,705.92
12/1/2032	20,736		20,736	1,969.92	22,705.92
3/1/2033	20,736		20,736	1,969.92	22,705.92
6/1/2033	20,736		20,736	1,969.92	22,705.92
9/1/2033	20,736		20,736	1,969.92	22,705.92
12/1/2033	20,736		20,736	1,969.92	22,705.92
3/1/2034	20,736		20,736	1,969.92	22,705.92
6/1/2034	20,736		20,736	1,969.92	22,705.92
9/1/2034	20,736		20,736	1,969.92	22,705.92
12/1/2034	20,736		20,736	1,969.92	22,705.92
3/1/2035	20,736		20,736	1,969.92	22,705.92
6/1/2035	20,736		20,736	1,969.92	22,705.92
9/1/2035	20,736		20,736	1,969.92	22,705.92
12/1/2035	20,736		20,736	1,969.92	22,705.92
3/1/2036	20,736		20,736	1,969.92	22,705.92
6/1/2036	20,736		20,736	1,969.92	22,705.92

{C2167197.1}

<b>NET DEBT SERVICE</b>					
<b>Town of Delbarton</b>					
<b>CW SRF</b>					
<b>\$3,131,150</b>					
<b>Date</b>	<b>Principal</b>	<b>Interest</b>	<b>Total Debt Service</b>	<b>Admin Fee</b>	<b>Net Debt Service</b>
9/1/2036	20,736		20,736	1,969.92	22,705.92
12/1/2036	20,736		20,736	1,969.92	22,705.92
3/1/2037	20,736		20,736	1,969.92	22,705.92
6/1/2037	20,736		20,736	1,969.92	22,705.92
9/1/2037	20,736		20,736	1,969.92	22,705.92
12/1/2037	20,736		20,736	1,969.92	22,705.92
3/1/2038	20,736		20,736	1,969.92	22,705.92
6/1/2038	20,736		20,736	1,969.92	22,705.92
9/1/2038	20,736		20,736	1,969.92	22,705.92
12/1/2038	20,736		20,736	1,969.92	22,705.92
3/1/2039	20,736		20,736	1,969.92	22,705.92
6/1/2039	20,736		20,736	1,969.92	22,705.92
9/1/2039	20,736		20,736	1,969.92	22,705.92
12/1/2039	20,736		20,736	1,969.92	22,705.92
3/1/2040	20,736		20,736	1,969.92	22,705.92
6/1/2040	20,736		20,736	1,969.92	22,705.92
9/1/2040	20,736		20,736	1,969.92	22,705.92
12/1/2040	20,736		20,736	1,969.92	22,705.92
3/1/2041	20,736		20,736	1,969.92	22,705.92
6/1/2041	20,736		20,736	1,969.92	22,705.92
9/1/2041	20,736		20,736	1,969.92	22,705.92
12/1/2041	20,736		20,736	1,969.92	22,705.92
3/1/2042	20,736		20,736	1,969.92	22,705.92
6/1/2042	20,736		20,736	1,969.92	22,705.92
9/1/2042	20,736		20,736	1,969.92	22,705.92
12/1/2042	20,736		20,736	1,969.92	22,705.92
3/1/2043	20,736		20,736	1,969.92	22,705.92
6/1/2043	20,736		20,736	1,969.92	22,705.92
9/1/2043	20,736		20,736	1,969.92	22,705.92
12/1/2043	20,736		20,736	1,969.92	22,705.92
3/1/2044	20,736		20,736	1,969.92	22,705.92
6/1/2044	20,736		20,736	1,969.92	22,705.92
9/1/2044	20,736		20,736	1,969.92	22,705.92
12/1/2044	20,736		20,736	1,969.92	22,705.92
3/1/2045	20,736		20,736	1,969.92	22,705.92
6/1/2045	20,736		20,736	1,969.92	22,705.92
9/1/2045	20,736		20,736	1,969.92	22,705.92
12/1/2045	20,736		20,736	1,969.92	22,705.92
3/1/2046	20,736		20,736	1,969.92	22,705.92
6/1/2046	20,736		20,736	1,969.92	22,705.92
9/1/2046	20,736		20,736	1,969.92	22,705.92
12/1/2046	20,736		20,736	1,969.92	22,705.92
3/1/2047	20,736		20,736	1,969.92	22,705.92
6/1/2047	20,736		20,736	1,969.92	22,705.92
9/1/2047	20,736		20,736	1,969.92	22,705.92
12/1/2047	20,736		20,736	1,969.92	22,705.92
3/1/2048	20,736		20,736	1,969.92	22,705.92
6/1/2048	20,736		20,736	1,969.92	22,705.92

{C2167197.1}

<b>NET DEBT SERVICE</b>					
Town of Delbarton					
SRF					
\$3,131,150					
0% Interest Rate					
0.5% Administrative Fee					
40 Years from Closing Date					
Date	Principal	Interest	Total Debt Service	Admin Fee	Net Debt Service
9/1/2048	20,736		20,736	1,969.92	22,705.92
12/1/2048	20,736		20,736	1,969.92	22,705.92
3/1/2049	20,736		20,736	1,969.92	22,705.92
6/1/2049	20,736		20,736	1,969.92	22,705.92
9/1/2049	20,736		20,736	1,969.92	22,705.92
12/1/2049	20,736		20,736	1,969.92	22,705.92
3/1/2050	20,736		20,736	1,969.92	22,705.92
6/1/2050	20,736		20,736	1,969.92	22,705.92
9/1/2050	20,736		20,736	1,969.92	22,705.92
12/1/2050	20,736		20,736	1,969.92	22,705.92
3/1/2051	20,736		20,736	1,969.92	22,705.92
6/1/2051	20,736		20,736	1,969.92	22,705.92
9/1/2051	20,737		20,737	1,969.92	22,706.92
	<b>3,131,150</b>		<b>3,131,150</b>	<b>297,457.92</b>	<b>3,428,607.92</b>
<p>Note: Admin Fee payments calculated based on 0.5% of bond value outstanding paid in equal quarterly payments (rounded down to the nearest \$0.01).</p>					

**AN ORDINANCE OF THE TOWN OF DELBARTON ESTABLISHING AND FIXING RATES AND CHARGES FOR SEWER SERVICE FOR CUSTOMERS OF THE WATER SYSTEM OF THE TOWN OF DELBARTON,  
MINGO COUNTY, WEST VIRGINIA.**

WHEREAS, the Town Council of the Town of Delbarton, deems the present customer rates and charges for the furnishing of sewer service throughout the entire territory served by the Town of Delbarton to be inadequate to provide sufficient revenue to the Town of Delbarton to maintain and operate the water system and to reasonable cover the cost of providing certain customer services; and

WHEREAS, the Town Council of the Town of Delbarton deems that an increase in rates and charges is necessary to provide sufficient revenues to the Town of Delbarton to maintain and operate the water system and to reasonably cover the cost of providing certain customer services;

WHEREAS, the Town Council of the Town of Delbarton has proposed a project to serve 76 new residential and commercial customers and improve service to the existing sewer customers; and

WHEREAS, the Town Council of the Town of Delbarton has determined that a two-step rate increase is necessary, the first step to provide sufficient revenue for current operations, to take effect for service rendered on or after May 1, 2011, and the second step to support project funding, to take effect upon substantial completion of the project or commencement of project debt service, whichever occurs first;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Town Council of Town of Delbarton, Delbarton, West Virginia are the following customer rates and charges:

SECTION I. Rates and Charges

**STEP I  
(EFFECTIVE FOR SERVICE RENDERED ON OR AFTER MAY 1, 2011)**

**SCHEDULE I**

**APPLICABILITY**

Applicable to the entire territory served

**(C) AVAILABILITY**

Available for general domestic, commercial, industrial (except unusual industrial waste) and resale sewer service

**(C, I) RATES**

Residential Usage	<b>\$38.50</b> per month
Small Commercial	<b>\$38.50</b> per month
Restaurants	<b>\$56.10</b> per month
Beauty & Barber Shops	<b>\$38.50</b> per month
Funeral Home	<b>\$56.10</b> per month
Car Wash	<b>\$108.90</b> per month
Medical Half-Way House	<b>\$108.90</b> per month
Laundromat	<b>\$108.90</b> per month
Clinics	<b>\$108.90</b> per month
Schools	<b>\$460.90</b> per month
Low-Enrollment Schools	<b>\$238.70</b> per month
Small Schools (Headstart)	<b>\$71.50</b> per month
Hospitals	<b>\$108.90</b> per month

**(C, I) MINIMUM CHARGE**

Each customer shall pay a flat-rate charge per month applicable to the type of service connection. Rates shall be flat-rate until such time as metering is available. Metered rates will be based on consumption of water based on gallons per month.

**(C) DELAYED PAYMENT PENALTY**

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

**(N) TAP FEE**

**\$300.00**

The following charges are to be made whenever the utility installs a new tap to serve an applicant:

A tap fee of **\$100** will be charged to customers applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding before the Commission. This pre-construction tap fee will be invalid after the completion of construction adjacent to an

applicant's premises that is associated with a certificate proceeding.

A tap fee of **\$300.00** will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system

(N) RETURNED CHECK CHARGE

A service charge of **\$25.00** will imposed upon any customer whose check for payment of charges is returned by the bank for any reason.

(N) WATER DISCONNECT/RECONNECT/ADMINISTRATIVE FEES

Water service will not be restored until all past due water bills have been paid in full and all accrued penalties plus a disconnection charge of **\$25.00** have been paid.

There will be a **\$25.00** reconnection charge paid prior to restoration of water service which has been previously disconnected for any reason.

In the event Utility staff or agents collect money at the customer's residence in order to stop disconnection, an administrative fee of **\$25.00** shall be paid in addition to other charges to prevent disconnection.

(N) EFT, ACH, CREDIT CARD AND DROP-BOX PAYMENTS

A service charge will be imposed on EFT, ACH, Credit card or Drop Box payments. The amount shall be equal to the actual charges to the Utility from the financial institution for processing payment.

(N) INCREMENTAL COSTS

An amount not to exceed **\$3.50** per 1,000 gallons is to be used when a bill reflects consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical usage. The Utility shall establish a nondiscriminatory policy regarding this provision for leak adjustments.

**SCHEDULE II**

(N) SURCHARGE FORMULA TO BE APPLIED IN CASES WHERE SURFACE DRAINAGE IS CONNECTED TO THE UTILITY'S SANITARY SEWER SYSTEM

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

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

S - The surcharge in dollars

- A** - The area under roof and/or the area of any other water collection surface connected to the sanitary sewer, in square feet.
- R** - The measured monthly rainfall, in inches
- .0006233** - A conversion factor to change inches of rain x square feet of surface to thousands of gallons of water
- C** - The Utility's approved rate per thousand gallons of metered water usage.

The Utility shall not impose the surcharge unless, and until, the customer has been notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke testing, dye testing, or on-site inspection that rain or other surface water is being introduced into the sanitary sewer system at the customer's location, and that the customer has not acted within thirty (30) days from receipt of such notice to divert the water from the sanitary sewer system.

Said surcharge shall be calculated and imposed for each month that said condition continues to exist. Failure to pay the surcharge and/or correct the situation shall give rise to the possible termination of water service in accordance with the Rules and Regulations of the Public Service Commission of West Virginia.

(N)

### SCHEDULE III

#### SURCHARGE FORMULA TO BE APPLIED IN THE CASE OF USERS PRODUCING UNUSUAL WASTE

The charge for the treatment of unusual waste will be calculated on the basis of the following formula:

$$C_i = V_o V_i + B_o B_i + S_o S_i$$

**C<sub>i</sub>** = charge to unusual users per year

**V<sub>o</sub>** = average unit cost of transport and treatment chargeable to volume, in dollars per gallon

**V<sub>i</sub>** = volume of wastewater from unusual users in gallons per year

**B<sub>o</sub>** = average unit cost of treatment, chargeable to Biochemical Oxygen Demand (BOD) in dollars per pound

**B<sub>i</sub>** = weight of BOD from unusual users in pounds per year

**S<sub>o</sub>** = average unit cost of treatment (including sludge treatment) chargeable to total solids in dollars per pound

**S<sub>i</sub>** = weight of total solids from unusual users in pounds per year

When an unusual user is to be served, a preliminary study of its wastes, and the cost of transport and treatment thereof, will be made. Waste containing materials which, in the judgment of the Utility, should not be introduced into the sewer system need not be handled by it. The results of this preliminary study will be used to determine the feasibility of the proposed sewer service and the charge therefore, based upon the formula set out above.

Thereafter, unusual sewage will be monitored on a regular basis and at the conclusion of each fiscal year, based on the investigation aforesaid and audit of the Utility records, new cost figures will be calculated for use in the above formula. The cost of establishing the monitoring facilities shall be paid by the unusual user. Based on these audited figures, additional billings covering the past fiscal year will be made for payment by each unusual user, or refund given by the Utility, as the case may be. Such audited figures will then be used for the preliminary billing for the next fiscal year, at the end of which an adjustment will be made as aforesaid.

(N)

#### SCHEDULE IV

##### APPLICABLE INSIDE AND OUTSIDE OF THE LIMITS OF THE UTILITY

Where the amount of sanitary sewage discharged into the Utility's wastewater collection and/or transmission and/or treatment system by certain industrial plant or plants cannot be accurately determined by the use of the plant's water meter or meters, and said plant cannot install a flow meter to measure such waste, a special formula will be used whereby such plant or plants will pay to the Utility a sewer charge calculated at fifty (50) gallons of water per each employee at the plant each working day.

(N)

#### SCHEDULE V

##### APPLICABILITY

Applicable within the entire territory served

##### AVAILABILITY OF SERVICE

Available for wastewater and leachate haulers

##### RATES

*Commodity Charge* – Each customer shall pay a commodity charge of **\$40.00** per 1,000 gallons per load. Load will be the **actual capacity** of the truck or other transport method delivering wastewater and leachate. Actual capacity shall be determined, or verified solely, by the Utility.

##### DELAYED PAYMENT PENALTY

The above schedule is net. On all current usage billings not paid when due, ten percent (10%) will be added to the net current amount unpaid.. This delayed payment penalty is not interest and is to be collected only once where it is appropriate.

**RETURNED CHECK CHARGE**

A service charge of **\$25.00** will be imposed upon any customer whose check for payment of charges is returned by the bank for any reason.

**C – Indicates Change    N – Indicates New    I – Indicates Increase**

**STEP II  
(EFFECTIVE UPON SUBSTANTIAL PROJECT COMPLETION OR  
COMMENCEMENT OF PROJECT DEBT SERVICE, WHICHEVER OCCURS FIRST)**

**SCHEDULE I**

**APPLICABILITY**

Applicable to the entire territory served

**AVAILABILITY**

Available for general domestic, commercial, industrial (except unusual industrial waste) and resale sewer service

**(I) RATES**

Residential Usage	\$46.20 per month
Small Commercial	\$46.20 per month
Restaurants	\$67.32 per month
Beauty & Barber Shops	\$46.20 per month
Funeral Home	\$67.32 per month
Car Wash	\$130.68 per month
Medical Half-Way House	\$130.68 per month
Laundromat	\$130.68 per month
Clinics	\$130.68 per month
Schools	\$553.08 per month
Low-Enrollment Schools	\$286.44 per month
Small Schools (Headstart)	\$85.80 per month
Hospitals	\$130.68 per month

**MINIMUM CHARGE**

Each customer shall pay a flat-rate charge per month applicable to the type of service connection. Rates shall be flat-rate until such time as metering is available. Metered rates will be based on consumption of water based on gallons per month.

**DELAYED PAYMENT PENALTY**

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

### TAP FEE

**\$300.00**

The following charges are to be made whenever the utility installs a new tap to serve an applicant:

A tap fee of **\$100** will be charged to customers applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding before the Commission. This pre-construction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding.

A tap fee of **\$300.00** will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

### RETURNED CHECK CHARGE

A service charge of **\$25.00** will be imposed upon any customer whose check for payment of charges is returned by the bank for any reason.

### WATER DISCONNECT/RECONNECT/ADMINISTRATIVE FEES

Water service will not be restored until all past due water bills have been paid in full and all accrued penalties plus a disconnection charge of **\$25.00** have been paid.

There will be a **\$25.00** reconnection charge paid prior to restoration of water service which has been previously disconnected for any reason.

In the event Utility staff or agents collect money at the customer's residence in order to stop disconnection, an administrative fee of **\$25.00** shall be paid in addition to other charges to prevent disconnection.

### INCREMENTAL COSTS

An amount not to exceed **\$3.50** per 1,000 gallons is to be used when a bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical usage. The Utility shall establish a nondiscriminatory policy regarding this provision for leak adjustments.

### EFT, ACH, CREDIT CARD AND DROP-BOX PAYMENTS

A service charge will be imposed on EFT, ACH, Credit card or Drop Box payments. The amount shall be equal to the actual charges to the Utility from the financial institution for processing payment.

## SCHEDULE II

### SURCHARGE FORMULA TO BE APPLIED IN CASES WHERE SURFACE DRAINAGE IS CONNECTED TO THE UTILITY'S SANITARY SEWER SYSTEM

Where the Utility has discovered that a customer's roof drain, downspouts, storm sewer, or other similar facilities conducting surface water have been connected to the Utility's sewer system, and such customer has failed to take appropriate action, within thirty (30) days of receipt of a demand by

the Utility in accordance with the Rules and Regulations of the Public Service Commission, to eliminate such connection, a surcharge will be imposed upon the customer calculated on the basis of the following formula:

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

- S** - The surcharge in dollars
- A** - The area under roof and/or the area of any other water collection surface connected to the sanitary sewer, in square feet.
- R** - The measured monthly rainfall, in inches
- .0006233** - A conversion factor to change inches of rain x square feet of surface to thousands of gallons of water
- C** - The Utility's approved rate per thousand gallons of metered water usage.

The Utility shall not impose the surcharge unless, and until, the customer has been notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke testing, dye testing, or on-site inspection that rain or other surface water is being introduced into the sanitary sewer system at the customer's location, and that the customer has not acted within thirty (30) days from receipt of such notice to divert the water from the sanitary sewer system.

Said surcharge shall be calculated and imposed for each month that said condition continues to exist. Failure to pay the surcharge and/or correct the situation shall give rise to the possible termination of water service in accordance with the Rules and Regulations of the Public Service Commission of West Virginia.

### SCHEDULE III

#### SURCHARGE FORMULA TO BE APPLIED IN THE CASE OF USERS PRODUCING UNUSUAL WASTE

The charge for the treatment of unusual waste will be calculated on the basis of the following formula:

$$C_i = V_o V_i + B_o B_i + S_o S_i$$

**C<sub>i</sub>** = charge to unusual users per year

**V<sub>o</sub>** = average unit cost of transport and treatment chargeable to volume, in dollars per gallon

**V<sub>i</sub>** = volume of wastewater from unusual users in gallons per year

**B<sub>o</sub>** = average unit cost of treatment, chargeable to Biochemical Oxygen Demand (BOD) in dollars

per pound

**Bi** = weight of BOD from unusual users in pounds per year

**So** = average unit cost of treatment (including sludge treatment) chargeable to total solids in dollars per pound

**Si** = weight of total solids from unusual users in pounds per year

When an unusual user is to be served, a preliminary study of its wastes, and the cost of transport and treatment thereof, will be made. Waste containing materials which, in the judgment of the Utility, should not be introduced into the sewer system need not be handled by it. The results of this preliminary study will be used to determine the feasibility of the proposed sewer service and the charge therefore, based upon the formula set out above.

Thereafter, unusual sewage will be monitored on a regular basis and at the conclusion of each fiscal year, based on the investigation aforesaid and audit of the Utility records, new cost figures will be calculated for use in the above formula. The cost of establishing the monitoring facilities shall be paid by the unusual user. Based on these audited figures, additional billings covering the past fiscal year will be made for payment by each unusual user, or refund given by the Utility, as the case may be. Such audited figures will then be used for the preliminary billing for the next fiscal year, at the end of which an adjustment will be made as aforesaid.

#### SCHEDULE IV

##### APPLICABLE INSIDE AND OUTSIDE OF THE LIMITS OF THE UTILITY

Where the amount of sanitary sewage discharged into the Utility's wastewater collection and/or transmission and/or treatment system by certain industrial plant or plants cannot be accurately determined by the use of the plant's water meter or meters, and said plant cannot install a flow meter to measure such waste, a special formula will be used whereby such plant or plants will pay to the Utility a sewer charge calculated at fifty (50) gallons of water per each employee at the plant each working day.

#### SCHEDULE V

##### APPLICABILITY

Applicable within the entire territory served

##### AVAILABILITY OF SERVICE

Available for wastewater and leachate haulers

##### RATES

*Commodity Charge* – Each customer shall pay a commodity charge of **\$40.00** per 1,000 gallons per load. Load will be the **actual capacity** of the truck or other transport method delivering wastewater and leachate. Actual capacity shall be determined, or verified solely, by the Utility.

**DELAYED PAYMENT PENALTY**

The above schedule is net. On all current usage billings not paid when due, ten percent (10%) will be added to the net current amount unpaid.. This delayed payment penalty is not interest and is to be collected only once where it is appropriate.

**RETURNED CHECK CHARGE**

A service charge of **\$25.00** will be imposed upon any customer whose check for payment of charges is returned by the bank for any reason.

**C – Indicates Change    N – Indicates New    I – Indicates Increase**

**SECTION 2.** The customer rates and charges herein established and fixed as Step I shall be effective as to all service rendered on and after May 1, 2011, or as soon thereafter as legally permissible. The customers' rates and charges herein established and fixed as Step II shall be effective upon substantial completion of the project or commencement of project debt service, whichever occurs first. All rates and charges not changed by this ordinance shall remain in full force and effect.

**SECTION 3.** All ordinances, resolutions and orders or parts thereof in conflict with the provisions of this ordinance are, to the extent of such conflict, hereby repealed.

**SECTION 4.** The Town Recorder of the Town of Delbarton is hereby authorized and directed to have prepared and filed with the Public Service Commission of West Virginia, new tariffs or tariff sheets reflecting the tariff provision charges as herein ordained and to perform all other acts required by the statutes and laws of this State and valid applicable rules and regulations promulgated by the Public Service Commission of West Virginia, to fully effectuate the provisions of this ordinance.

**SECTION 5.** The Town Recorder is hereby authorized and directed to publish, and post as required by law, a notice of the proposed adoption of this ordinance as a Class II-O legal advertisement in compliance with the applicable requirements in a newspaper of general circulation in Mingo County, West Virginia, with such notice stating the subject matter and title of the ordinance, the date, time and place of the Town Council meeting which will consider the adoption of the ordinance, and such other information as may be required by law, and that any person interested may appear before the board on such date, at which time and place all parties and interests may be heard with respect to the adoption of this ordinance, and said notice shall be on file in the Office of the City Clerk and Town Recorder, shall be posted at the Mingo County Courthouse, and at the Utilities Department for review by interested persons during the regular office hours of such offices, and with such other information as the Town Recorder may determine to be necessary.

This Ordinance will be effective upon second reading and adoption.

A public hearing regarding the rate increase provided by this Ordinance will be held on March 14, 2011, beginning at 4:30 p.m., in the Town Council Chambers of the Town of Delbarton, Delbarton, West Virginia.

This Ordinance was introduced and read for the first time at a meeting of the Town Council held on February 14, 2011, and will be read a second time at a meeting of Town Council held on March 14, 2011.

Passed on reading \_\_\_\_\_

Public hearing held on \_\_\_\_\_

Second and final reading \_\_\_\_\_

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Town Recorder

P.S.C. W. Va. No. 5  
Canceling P.S.C. W. Va. No. 4

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**TOWN OF DELBARTON, a municipal corporation**

OF

DELBARTON, WEST VIRGINIA

**RATES, RULES AND REGULATIONS FOR FURNISHING  
SEWERAGE AND SEWAGE DISPOSAL SERVICE**

at the encompassed area within the Town of Delbarton and the communities of Puritan Mines, William Ann, Upper and Lower Pigeon Break, and the area leading from Delbarton to the Mingo County Vocational School in West Virginia

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

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Issued May 11, 2011

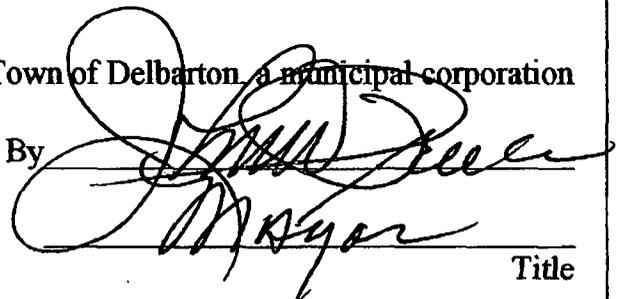
Effective for all service rendered on and after  
May 1, 2011 or as otherwise provided herein

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Passed by Town Council

Issued by Town of Delbarton, a municipal corporation

By



Title

**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.

**PHASE I - Effective for all service rendered on or after May 1, 2011**

**SCHEDULE I**

**APPLICABILITY**

Applicable to the entire territory served

**(C) AVAILABILITY**

Available for general domestic, commercial, industrial (except unusual industrial waste) and resale sewer service

**(C,I) RATES**

	Residential Usage	\$ 38.50 per month
	Small Commercial	\$ 38.50 per month
	Restaurants	\$ 56.10 per month
	Beauty & Barber Shops	\$ 38.50 per month
	Funeral Home	\$ 56.10 per month
	Car Wash	\$108.90 per month
	Medical Half-Way House	\$108.90 per month
	Laundromat	\$108.90 per month
	Clinics	\$108.90 per month
	Schools	\$460.90 per month
(N)	Low-Enrollment Schools	\$238.70 per month
(N)	Small Schools (Headstart)	\$ 71.50 per month
(N)	Hospitals	\$108.90 per month

**(C) MINIMUM CHARGE**

Each customer shall pay a flat-rate charge per month applicable to the type of service connection. Rates shall be flat-rate until such time as metering is available. Metered rates will be based on consumption of water based on gallons per month.

**(C) DELAYED PAYMENT PENALTY**

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

(C) Indicates change in text

(I) Indicates increase

(N) Indicates new

**PHASE I - Effective for all service rendered on or after May 1, 2011, (Continued)**

**SCHEDULE I, (Continued)**

**(N) TAP FEE**

The following charges are to be made whenever the utility installs a new tap to serve an applicant:

A tap fee of \$100.00 will be charged to customers applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding before the Commission. This pre-construction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding.

A tap fee of \$300.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

**(N) RETURNED CHECK CHARGE**

A service charge of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by the bank for any reason.

**(N) WATER DISCONNECT/RECONNECT/ADMINISTRATIVE FEES**

Water service will not be restored until all past due water bills have been paid in full and all accrued penalties plus a disconnection charge of \$25.00 have been paid.

There will be a \$25.00 reconnection charge paid prior to restoration of water service which has been previously disconnected for any reason.

In the event Utility staff or agents collect money at the customer's residence in order to stop disconnection, an administrative fee of \$25.00 shall be paid in addition to other charges to prevent disconnection.

**(N) EFT, ACH, CREDIT CARD AND DROP-BOX PAYMENTS**

A service charge will be imposed on EFT, ACH, Credit card or Drop-Box payments. The amount shall be equal to the actual charges to the Utility from the financial institution for processing payment.

**(N) Indicates new**

**PHASE I - Effective for all service rendered on or after May 1, 2011, (Continued)**

**SCHEDULE I, (Continued)**

**(N) INCREMENTAL COSTS**

An amount not to exceed \$3.50 per 1,000 gallons is to be used when a bill reflects consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical usage. The Utility shall establish a non-discriminatory policy regarding this provision for leak adjustments.

**(N) Indicates new**

**PHASE I - Effective for all service rendered on or after May 1, 2011, (Continued)****SCHEDULE II****(N) SURCHARGE FORMULA TO BE APPLIED IN CASES WHERE SURFACE DRAINAGE IS CONNECTED TO THE UTILITY'S SANITARY SEWER SYSTEM**

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

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

S – The surcharge in dollars

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

R – The measured monthly rainfall, in inches

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

C – The Utility's approved rate per thousand gallons of metered water usage

The Utility shall not impose the surcharge unless, and until, the customer has been notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke testing, dye testing, or on-site inspection that rain or other surface water is being introduced into the sanitary sewer system at the customer's location, and that the customer has not acted within thirty (30) days from receipt of such notice to divert the water from the sanitary sewer system.

Said surcharge shall be calculated and imposed for each month that said condition continues to exist. Failure to pay the surcharge and/or correct the situation shall give rise to the possible termination of water service in accordance with the Rules and Regulations of the Public Service Commission of West Virginia.

(N) Indicates new

**PHASE I - Effective for all service rendered on or after May 1, 2011, (Continued)**SCHEDULE III**(N) SURCHARGE FORMULA TO BE APPLIED IN THE CASE OF USERS PRODUCING UNUSUAL WASTE**

The charge for the treatment of unusual waste will be calculated on the basis of the following formula:

$$C_i = V_o V_i + B_o B_i + S_o S_i$$

$C_i$	=	charge to unusual users per year
$V_o$	=	average unit cost of transport and treatment chargeable to volume, in dollars per gallon
$V_i$	=	volume of wastewater from unusual users in gallons per year
$B_o$	=	average unit cost of treatment, chargeable to Biochemical Oxygen Demand (BOD) in dollars per pound
$B_i$	=	weight of BOD from unusual users in pounds per year
$S_o$	=	average unit cost of treatment (including sludge treatment) chargeable to total solids in dollars per pound
$S_i$	=	weight of total solids from unusual users in pounds per year

When an unusual user is to be served, a preliminary study of its wastes, and the cost of transport and treatment thereof, will be made. Waste containing materials which, in the judgment of the Utility, should not be introduced into the sewer system need not be handled by it. The results of this preliminary study will be used to determine the feasibility of the proposed sewer service and the charge therefore, based upon the formula set out above.

Thereafter, unusual sewage will be monitored on a regular basis and at the conclusion of each fiscal year, based on the investigation aforesaid and audit of the Utility records, new cost figures will be calculated for use in the above formula. The cost of establishing the monitoring facilities shall be paid by the unusual user. Based on the audited figures, additional billings covering the past fiscal year will be made for payment by each unusual user, or refund given by the Utility, as the case may be. Such audited figures will then be used for the preliminary billing for the next fiscal year, at the end of which an adjustment will be made as aforesaid.

**(N)** Indicates new

**PHASE I - Effective for all service rendered on or after May 1, 2011, (Continued)**

**SCHEDULE VI**

(N) **APPLICABLE INSIDE AND OUTSIDE THE LIMITS OF AUTHORITY**

Where the amount of sanitary sewage discharged into the Utility's wastewater collection and/or transmission and/or treatment system by certain industrial plant or plants cannot be accurately determined by the use of the plant's water meter or meters, and said plant cannot install a flow meter to measure such waste, a special formula will be used whereby such plant or plants will pay to the Utility a sewer charge calculated fifty (50) gallons of water per each employee at the plant each working day.

**SCHEDULE V**

(N) **APPLICABILITY**

Applicable within the entire territory served.

(N) **AVAILABILITY OF SERVICE**

Available for wastewater and leachate haulers.

(N) **RATES**

*Commodity Charge* – Each customer shall pay a commodity charge of \$40.00 per 1,000 gallons per load. Load will be the actual capacity of the truck or other transport method delivering wastewater and leachate. Actual capacity shall be determined, or verified solely, by the Utility.

(N) **DELAYED PAYMENT PENALTY**

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

(N) **RETURNED CHECK CHARGE**

A service charge of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by the bank for any reason.

(N) Indicates new

**PHASE II - Effective upon substantial project completion or commencement of project debt service whichever occurs first.**

SCHEDULE I

APPLICABILITY

Applicable to the entire territory served

AVAILABILITY

Available for general domestic, commercial, industrial (except unusual industrial waste) and resale sewer service

(I) RATES

Residential Usage	\$ 46.20 per month
Small Commercial	\$ 46.20 per month
Restaurants	\$ 67.32 per month
Beauty & Barber Shops	\$ 46.20 per month
Funeral Home	\$ 67.32 per month
Car Wash	\$130.68 per month
Medical Half-Way House	\$130.68 per month
Laundromat	\$130.68 per month
Clinics	\$130.68 per month
Schools	\$553.08 per month
Low-Enrollment Schools	\$286.44 per month
Small Schools (Headstart)	\$ 85.80 per month
Hospitals	\$130.68 per month

MINIMUM CHARGE

Each customer shall pay a flat-rate charge per month applicable to the type of service connection. Rates shall be flat-rate until such time as metering is available. Metered rates will be based on consumption of water based on gallons per month.

DELAYED PAYMENT PENALTY

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

(I) Indicates increase

**PHASE II - Effective upon substantial project completion or commencement of project debt service whichever occurs first.**

**SCHEDULE I , (Continued)**

**TAP FEE**

The following charges are to be made whenever the utility installs a new tap to serve an applicant:

A tap fee of \$100.00 will be charged to customers applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding before the Commission. This pre-construction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding.

A tap fee of \$300.00 will be charged to all customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

**RETURNED CHECK CHARGE**

A service charge of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by the bank for any reason.

**WATER DISCONNECT/RECONNECT/ADMINISTRATIVE FEES**

Water service will not be restored until all past due water bills have been paid in full and all accrued penalties plus a disconnection charge of \$25.00 have been paid.

There will be a \$25.00 reconnection charge paid prior to restoration of water service which has been previously disconnected for any reason.

In the event Utility staff or agents collect money at the customer's residence in order to stop disconnection, an administrative fee of \$25.00 shall be paid in addition to other charges to prevent disconnection.

**EFT, ACH, CREDIT CARD AND DROP-BOX PAYMENTS**

A service charge will be imposed on EFT, ACH, Credit card or Drop-box payments. The amount shall be equal to the actual charges to the Utility from the financial institution for processing payment.

**PHASE II - Effective upon substantial project completion or commencement of project debt service whichever occurs first.**

SCHEDULE I (Continued)

INCREMENTAL COSTS

An amount not to exceed \$3.50 per 1,000 gallons is to be used when a bill reflects consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical usage. The Utility shall establish a non-discriminatory policy regarding this provision for leak adjustments.

**PHASE II - Effective upon substantial project completion or commencement of project debt service whichever occurs first. (Continued)**

**SCHEDULE II**

**SURCHARGE FORMULA TO BE APPLIED IN CASES WHERE SURFACE DRAINAGE IS CONNECTED TO THE UTILITY'S SANITARY SEWER SYSTEM**

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

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

S – The surcharge in dollars

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

R – The measured monthly rainfall, in inches

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

C – The Utility's approved rate per thousand gallons of metered water usage

The Utility shall not impose the surcharge unless, and until, the customer has been notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke testing, dye testing, or on-site inspection that rain or other surface water is being introduced into the sanitary sewer system at the customer's location, and that the customer has not acted within thirty (30) days from receipt of such notice to divert the water from the sanitary sewer system.

Said surcharge shall be calculated and imposed for each month that said condition continues to exist. Failure to pay the surcharge and/or correct the situation shall give rise to the possible termination of water service in accordance with the Rules and Regulations of the Public Service Commission of West Virginia.

**PHASE II - Effective upon substantial project completion or commencement of project debt service whichever occurs first. (Continued)**SCHEDULE IIISURCHARGE FORMULA TO BE APPLIED IN THE CASE OF USERS PRODUCING UNUSUAL WASTE

The charge for the treatment of unusual waste will be calculated on the basis of the following formula:

$$C_i = V_o V_i + B_o B_i + S_o S_i$$

$C_i$	=	charge to unusual users per year
$V_o$	=	average unit cost of transport and treatment chargeable to volume, in dollars per gallon
$V_i$	=	volume of wastewater from unusual users in gallons per year
$B_o$	=	average unit cost of treatment, chargeable to Biochemical Oxygen Demand (BOD) in dollars per pound
$B_i$	=	weight of BOD from unusual users in pounds per year
$S_o$	=	average unit cost of treatment (including sludge treatment) chargeable to total solids in dollars per pound
$S_i$	=	weight of total solids from unusual users in pounds per year

When an unusual user is to be served, a preliminary study of its wastes, and the cost of transport and treatment thereof, will be made. Waste containing materials which, in the judgment of the Utility, should not be introduced into the sewer system need not be handled by it. The results of this preliminary study will be used to determine the feasibility of the proposed sewer service and the charge therefore, based upon the formula set out above.

Thereafter, unusual sewage will be monitored on a regular basis and at the conclusion of each fiscal year, based on the investigation aforesaid and audit of the Utility records, new cost figures will be calculated for use in the above formula. The cost of establishing the monitoring facilities shall be paid by the unusual user. Based on the audited figures, additional billings covering the past fiscal year will be made for payment by each unusual user, or refund given by the Utility, as the case may be. Such audited figures will then be used for the preliminary billing for the next fiscal year, at the end of which an adjustment will be made as aforesaid.

**PHASE II - Effective upon substantial project completion or commencement of project debt service whichever occurs first. (Continued)**

**SCHEDULE VI**

**APPLICABLE INSIDE AND OUTSIDE THE LIMITS OF AUTHORITY**

Where the amount of sanitary sewage discharged into the Utility's wastewater collection and/or transmission and/or treatment system by certain industrial plant or plants cannot be accurately determined by the use of the plant's water meter or meters, and said plant cannot install a flow meter to measure such waste, a special formula will be used whereby such plant or plants will pay to the Utility a sewer charge calculated fifty (50) gallons of water per each employee at the plant each working day.

**SCHEDULE V**

**APPLICABILITY**

Applicable within the entire territory served.

**AVAILABILITY OF SERVICE**

Available for wastewater and leachate haulers.

**RATES**

*Commodity Charge* – Each customer shall pay a commodity charge of \$40.00 per 1,000 gallons per load. Load will be the actual capacity of the truck or other transport method delivering wastewater and leachate. Actual capacity shall be determined, or verified solely, by the Utility.

**DELAYED PAYMENT PENALTY**

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

**RETURNED CHECK CHARGE**

A service charge of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by the bank for any reason.

**ORDINANCE OF THE TOWN OF DELBARTON**  
**NOTICE OF PUBLIC HEARING**

On January 10, 2011, the Town Council for the Town of Delbarton passed, on first reading, the following ordinance, increasing the sewer rates and charges of the Town of Delbarton to be effective April 15, 2011. A public hearing regarding the ordinance will be held February 28, 2011, beginning at 5:00 p.m. in the Town Council Chambers, Delbarton City Hall, 1 Riverside Drive, Delbarton, West Virginia. Any interested person may appear on such date and time and be heard with respect to the adoption of the ordinance. Copies of the proposed ordinance will be available for public inspection at the Office of the City Clerk and the Town Recorder, City Hall, Delbarton, West Virginia, 304-475-3359, during its regular business hours (8:00 a.m. to 4:00 p.m.) and the office of the Utilities Department during its regular business hours (8:00 a.m. to 4:00 p.m.) A second reading and final vote on the ordinance will occur at the meeting of the Town Council of the Town of Delbarton held on February 28, 2011, at the Town Council Chambers immediately following the public hearing:

**ORDINANCE OF THE TOWN OF DELBARTON**  
**NOTICE OF PUBLIC HEARING**

On February 14, 2011, the Town Council for the Town of Delbarton passed, on first reading, the following ordinance, increasing the sewer rates and charges of the Town of Delbarton to be effective on or after May 1, 2011. A public hearing regarding the ordinance will be held March 14, 2011, beginning at 4:30 p.m. in the Town Council Chambers, Delbarton City Hall, 1 Riverside Drive, Delbarton, West Virginia. Any interested person may appear on such date and time and be heard with respect to the adoption of the ordinance. Copies of the proposed ordinance will be available for public inspection at the Office of the City Clerk and the Town Recorder, City Hall, Delbarton, West Virginia, 304-475-3359, during its regular business hours (8:00 a.m. to 4:00 p.m.) and the office of the Utilities Department during its regular business hours (8:00 a.m. to 4:00 p.m.) A second reading and final vote on the ordinance will occur at the meeting of the Town Council of the Town of Delbarton held on March 14, 2011, at the Town Council Chambers immediately following the public hearing:

# Minutes of Town Council Meeting

A Town Council Meeting was called to order on Monday, **March 14, 2011** at 5:03 PM by Mayor John Preece.

Members of Council present: Councilmen Joe Crum, Mark Sizemore, and Albert Totten. Recorder Kimberly Totten, and Mayor John Preece.

Members of Council absent: Jeremy Davis and John Clifford Davis

Councilman Crum opened the meeting with prayer.

## **Public Hearing: Sanitation Tariff**

Public hearing was held today, March 14, 2011 at 4:30 pm for the public to discuss the raise of the sanitation rates ordinance. As a result, the council discussed the need to increase the sanitation rates. Councilman Sizemore motioned to suspend the reading of the ordinance; Councilman Crum seconded. All present council voted Aye. Motion Carried.

Councilman Crum motioned to approve the second reading of the sanitation ordinance increasing the sanitation rate gradually to \$46.20 beginning in May; councilman Totten seconded. All present Council voted Aye. Motion Carried.

## **Region II**

Jim Boggs presented amended project pages to reflect because the new fiscal year money has a different account number. Councilman Sizemore motioned to approve Mayor's signature on the amended pages; Councilman Crum seconded. All present Council voted aye. Motion carried.

Jim Boggs presented the following for Council's approval:

- FY 08 Drawdown 6 for \$2433.43 for Griffith and Associates
- FY10 budget amendment to reflect award of first year funds amending 1.1 million out of the budget leaving \$200,000.
- Letter of intent to the West Virginia Development Office with a progress report demonstrating and showing need for 1.1 million dollars by October due to starting of the sanitation upgrade project.
- Small cities block grant upfront documentation: code of conduct, resolution adopting federal procurement standards, designation of banking facilities, 3-Day rule policy, certification of anti displacement and relocation displacement plan, Residential anti displacement and relocation plan (D), Affirmative action plan (use minority business enterprise goal 5% of budget), Statement of Goals Executive Order #11625: Community Development plan, applicant disclosure update report (new monies granted/contractors added), Small City Block grant proxy resolution, Fair Housing Proclamation April is fair housing month for Delbarton, Administration agreement with Region II \$40,000 for 36 months or until project closeout.

Councilman Sizemore motioned to approve the Mayor's signature for the documents in regards to the FY2008 and FY2010 Small City Block Grants as presented by Jim Boggs with Region II Development; Councilman Crum seconded. All present Council voted Aye. Motion Carried.

**Minutes**

Councilman Sizemore motioned to approve the minutes of February 28, 2011 as presented; Councilman Crum seconded. All present Council voted Aye. Motion Carried.

**Lawn Mower**

Councilman Crum presented a quote in the amount of \$2,748.96 for a new lawn mower for the town. Councilman Totten motioned to purchase the lawn mower; Councilman Sizemore seconded.

**Budget Amendment**

Council was presented with a budget amendment in the amount of \$4,210 increase to account 299 updating beginning balance. Councilman Crum motioned to approve the budget amendment as presented; Councilman Totten seconded. All present council voted aye. Motion Carried.

**State Auditor's Office**

Councilman Totten motioned to send a letter requesting forgiveness of invoice from the State Auditor's Office be reduced due to hardship; Councilman Crum seconded. All present council voted aye. Motion Carried.

**Auction of Police Cruiser**

Cruiser will be auctioned off on March 26, 2011; newspaper was notified to run a legal ad today. Councilman Crum motioned to put a reserve on the Ford Taurus of \$800; Councilman Sizemore seconded. All present council voted Aye. Motion Carried.

**Annexation**

Council discussed the need to annex.

**Sanitation Asset Management**

Councilman Totten motioned to have EL Robinson complete the asset management plan for the sanitation system; Councilman Sizemore seconded. All present council voted aye. Motion Carried.

Councilman Totten motioned to adjourn at 6:35 pm.

\_\_\_\_\_  
(Mayor)

\_\_\_\_\_  
(Recorder)

TOWN OF DELBARTON  
SEWER REVENUE BONDS, SERIES 2011 A  
(WEST VIRGINIA CWSRF PROGRAM)  
SEWER REVENUE BONDS, SERIES 2011 B  
(WEST VIRGINIA CWSRF PROGRAM) AND  
SEWER GRANT ANTICIPATION NOTE, SERIES 2011  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

BOND AND NOTE ORDINANCE

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TOWN OF DELBARTON

AN ORDINANCE AUTHORIZING THE PAYMENT OF THE SEWER NOTE, SERIES 1999 OF THE TOWN OF DELBARTON AND AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE TOWN OF DELBARTON AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE TOWN OF NOT MORE THAN \$4,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2011 A (WEST VIRGINIA CWSRF PROGRAM), NOT MORE THAN \$2,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2011 B (WEST VIRGINIA CWSRF PROGRAM) AND NOT MORE THAN \$1,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER GRANT ANTICIPATION NOTE, SERIES 2011 (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS AND NOTES; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS AND NOTES; APPROVING, RATIFYING AND CONFIRMING LOAN AGREEMENTS RELATING TO SUCH BONDS AND NOTES; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND NOTES AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 16, Article 13, Chapter 22C, Article 2 and Chapter 22C, Article 1 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 Delbarton, West Virginia (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Mingo County of said State. The Issuer presently owns and operates a public sewerage system (together with the Project, as hereinafter defined, and any other further additions or extensions, the "System").

B. It is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed improvements and extensions to the System of the Issuer, consisting of extensions that will provide wastewater treatment service to approximately 76 new residential and commercial customers (190 persons) in the Pigeon Roost Creek, Rockhouse Branch, Pigeon Creek and surrounding areas of Mingo County consisting of construction of approximately 27,800 feet of 16-inch and smaller diameter gravity sewer pipe, 4,790 feet of 1½ inch and smaller diameter force main, 187 manholes, seventeen grinder pumping stations, cleanouts, service laterals and other related appurtenances; plant upgrades and existing sewer line rehabilitation consisting of construction of a plant lift station, new head works, new rotors and covers for the oxidation ditch, two new secondary clarifiers, new return sludge pumping station, new UV disinfection system, flow measurement, new belt filter press and conversion of the existing clarifiers into aerobic digestors and all necessary appurtenances (collectively, the "Project"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the DEP.

C. The Issuer intends to permanently finance a portion of the costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"), in connection with the West Virginia Water Pollution Control Revolving Fund pursuant to the Act and temporarily finance a portion of such cost through the issuance of its grant anticipation note to the Authority.

D. The Issuer has heretofore issued its Sewer Notes, Series 1999, dated June 15, 1999, in the original principal amount of \$66,073 (the "Series 1999 Notes"). The Issuer hereby determines that it is in its best interest to pay the entire outstanding principal of and all accrued interest on the Series 1999 Notes in full with proceeds of the Series 2011 A Bonds on the date of issuance thereof. The Issuer intends to permanently finance a portion of the costs of acquisition and construction of the Project and the costs of payment of the Series 1999 Notes through the issuance of its revenue bonds to the Authority.

E. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds in two series being the Sewer Revenue Bonds, Series 2011 A (West Virginia CWSRF Program) in an amount not to exceed \$4,000,000, (the "Series 2011 A Bonds") and the Sewer Revenue Bonds, Series 2011 B (West Virginia CWSRF Program) in an amount not to exceed \$2,000,000 (the "Series 2011 B Bonds" and collectively with the Series 2011 A Bonds, the "Series 2011 Bonds"), to permanently finance a portion of the costs of acquisition and construction of the Project and issue its Sewer Grant Anticipation Note, Series 2011 (West Virginia Water Development Authority) (the "Series 2011 Notes") to temporarily finance a portion of the costs of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest, if any, upon the Series 2011 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 the Reserve Accounts (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, fees and expenses of the Authority, including the SRF Administrative Fee (as hereinafter defined), discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2011 Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the acquisition or construction of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2011 Bonds or the repayment of indebtedness incurred by the issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

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

G. Pursuant to the Act, the Issuer has established a Sanitary Board, and the Sanitary Board has petitioned the Governing Body to issue the Series 2011 Bonds and the Series 2011 Notes for the purposes described in the Ordinance.

H. It is in the best interests of the Issuer that its Series 2011 Bonds be sold to the Authority pursuant to the terms and provisions of a Bond Purchase Agreement by and among the Issuer, the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and the Series 2011 Notes be sold to the Authority pursuant to the terms and provisions of a loan agreement by and between the Issuer and the Authority, the agreements in form satisfactory to the respective parties (collectively, the "Loan Agreements"), approved hereby if not previously approved by resolution of the Issuer.

I. Following the payment of the Series 1999 Notes, there are no outstanding bonds or obligations of the Issuer which are secured by Revenues or assets of the System.

J. The Issuer anticipates receiving an Appalachian Regional Commission grant that will permanently finance the portion of the Project paid for with proceeds of the Series 2011 Notes. The proceeds of the Grant shall secure the payment of the Series 2011 Notes.

K. The estimated revenues to be derived in each year following completion of the Project from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System and the principal of and interest, if any, on the Series 2011 Bonds and to make payments into all funds and accounts and other payments provided for herein.

L. The Issuer has complied with all requirements of West Virginia law and the Loan Agreements relating to authorization of the acquisition, construction and operation of

the Project and the System, the payment of the Series 1999 Notes, issuance of the Series 2011 Bonds and issuance of the Series 2011 Notes, or will have so complied prior to issuance of any thereof, including, among other things and without limitation, the approval of the Project and the financing thereof by the Council and the obtaining of a certificate of public convenience and necessity and approval of this financing and necessary user rates and charges described herein from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Series 2011 Bonds and Series 2011 Notes or such final order will not be subject to appeal or rehearing.

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

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2011 Bonds and Series 2011 Notes by those who shall be the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Registered Owners, 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 2011 Bonds and Series 2011 Notes, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

“Act” means, collectively, Chapter 16, Article 13, Chapter 22C, Article 2 and Chapter 22 C, Article 1 of the West Virginia Code of 1931, as amended and in effect on the date of adoption hereof.

“Authority” means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2011 Bonds and the Series 2011 Notes, or any other agency, board or department of the State of West Virginia that succeeds to the functions of the Authority, acting in its administrative capacity and upon authorization from the DEP and the Council under the Act.

“Authorized Officer” means the Mayor of the Issuer.

“Board” or “Sanitary Board” means the Sanitary Board of the Issuer as created and appointed by the Council of the Town to operate and manage the System, and any successor thereto.

“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 and Note Ordinance and all orders and resolutions supplemental hereto or amendatory hereof.

“Bond Purchase Agreement” means the Bond Purchase Agreement heretofore entered, or to be entered, into by and among the Issuer, the Authority and the DEP, providing for the purchase of the Series 2011 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.

“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 2011 Bonds and any bonds on a parity therewith subsequently authorized to be issued hereunder or by another resolution of the Issuer.

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

“Closing Date” means the date upon which there is an exchange of the Series 2011 Bonds for all or a portion of the proceeds of the Series 2011 Bonds from the Authority.

“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 E. L. Robinson Engineering Co., Charleston, 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 I 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.

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

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

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

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

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

“Governing Body” means the Town Council, as it may now or hereafter be constituted.

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

“Grants” means any grants to be committed to the Issuer as a part of the permanent financing of the Project from the sources described in Section 1.02J hereof or any other source the Issuer may obtain.

“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).

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

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

“Issuer” means the Town of Delbarton, a municipal corporation organized and existing under the laws of the State of West Virginia in Mingo County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

“Loan Agreements” means the Bond Purchase Agreement and the WDA Loan Agreement.

“Mayor” means the Mayor of the Issuer.

“Net Proceeds” means the face amount of the Series 2011 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Reserve Accounts.

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

“Notes” means, collectively, the Series 2011 Notes and, where appropriate, any notes on a parity therewith subsequently authorized to be issued hereunder or by any other ordinance of the Issuer.

“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, the SRF Administrative Fee, 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 monies, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X hereof; 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 7.10 hereof.

“Parity Notes” means additional Notes issued under the provisions and within the limitations prescribed by Section 7.11 hereof.

“Paying Agent” means the Commission or other entity designated as such for the Series 2011 Bonds in the Supplemental Resolution.

“Project” means the Project as described in Section 1.02 hereof.

“Qualified Investments” means and includes any of the following:

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;
- (c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;
- (d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;
- (e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC 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 Board of Treasury Investments pursuant to Chapter 12, Article 6C of the West Virginia Code of 1931, as amended; and

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

“Recorder” means the Recorder of the Issuer.

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

“Registrar” means the Bond Registrar.

“Regulations” means temporary and permanent regulations promulgated under the Code or any predecessor to the Code.

“Renewal and Replacement Fund” means the Renewal and Replacement Fund created by Section 5.01 hereof.

“Reserve Accounts” means the reserve account established for the Series 2011 Bonds.

“Reserve Requirement” means the amount required to be on deposit in the Reserve Account of the Series 2011 Bonds, if any.

“Revenue Fund” means the Revenue Fund established by Section 5.01 hereof.

“Series 1999 Notes” means the Issuer’s Sewer Note, Series 1999, dated June 15, 1999, issued in the original principal amount of \$66,073 to be paid with the proceeds of the Series 2011 Bonds.

“Series 2011 Bonds” means the Series 2011 A Bonds and the Series 2011 B Bonds.

“Series 2011 A Bonds” means the Sewer Revenue Bonds, Series 2011 A (West Virginia CWSRF Program), of the Issuer, authorized by this Ordinance.

“Series 2011 B Bonds” means the Sewer Revenue Bonds, Series 2011 B (West Virginia CWSRF Program), of the Issuer, authorized by this Ordinance.

“Series 2011 Notes” means the Sewer Grant Anticipation Note, Series 2011 (West Virginia Water Development Authority), authorized by this Ordinance.

“Series 2011 Bonds Construction Trust Fund” means the Series 2011 Bonds Construction Trust Fund established by Section 5.01 hereof.

“Series 2011 Bonds A Reserve Account” means the Series 2011 A Bonds Reserve Account established by Section 5.02 hereof

“Series 2011 A Bonds Reserve Requirement” means, as of any date of calculation, the maximum amount of principal and interest, if any, which will become due on the Series 2011 A Bonds in the then current year or any succeeding year.

“Series 2011 A Bonds Sinking Fund” means the Series 2011 A Bonds Sinking Fund established by Section 5.02 hereof.

“Series 2011 Bonds B Reserve Account” means the Series 2011 B Bonds Reserve Account established by Section 5.02 hereof

“Series 2011 B Bonds Reserve Requirement” means, as of any date of calculation, the maximum amount of principal and interest, if any, which will become due on the Series 2011 B Bonds in the then current year or any succeeding year.

“Series 2011 B Bonds Sinking Fund” means the Series 2011 B Bonds Sinking Fund established by Section 5.02 hereof.

“Series 2011 Note Fund” means the Series 2011 Note Fund established by Section 5.02 hereof.

“Sinking Funds” means the Sinking Funds established for the Series 2011 Bonds.

“SRF Administrative Fee” means any administrative fee required to be paid under the Bond Purchase Agreement for the Series 2011 A Bonds.

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

“State” means the State of West Virginia.

“Supplemental Resolution” means any resolution or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article “the,” refers specifically to the supplemental resolution or resolutions authorizing the sale of the Series 2011 Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2011 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 Series 2011 Bonds or

any other obligations of the Issuer, including, without limitation, the Renewal and Replacement Fund, the Sinking Funds and the Reserve Accounts.

“System” means the complete public combined waterworks and sewerage system of the Issuer, as presently existing in its entirety or any integral part, and shall include the Project and any additions, improvements, and extensions constructed or acquired for said system from any source whatsoever.

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

“Town Council” shall mean the Council of the Issuer.

“WDA Loan Agreement” means the loan agreement heretofore entered, or to be entered into, by and between the Issuer and the Authority providing for the purchase of the Series 2011 Notes, the form of which shall be approved and the execution and delivery by the Issuer and directed or ratified by the Supplemental Resolution.

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, Construction and Installation of the Project and the Payment of the Series 1999 Notes. There is hereby authorized and ordered the payment of the Series 1999 Notes and the acquisition, construction and installation of the Project, at an estimated cost of not to exceed \$10,451,800, 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 Series 2011 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, in an amount and otherwise compatible with the financing plan submitted to the Authority and the DEP.

The cost of the Project is estimated not to exceed \$10,451,800, of which an amount not to exceed \$4,000,000 will be obtained from proceeds of the Series 2011 A Bonds, an amount not to exceed \$2,000,000 will be obtained from the proceeds of the Series 2011 B Bonds, an amount not to exceed \$1,500,000 will be obtained from the proceeds of the Series 2011 Notes, \$1,451,800 will be obtained from the Environmental Protection Agency STAG Grant and \$1,500,000 will be obtained from a Small Cities Black Grant. The cost of payment of the Series 1999 Notes is estimated not to exceed \$75,000, a portion of which will be obtained from the proceeds of the Series 2011 A Bonds.

## ARTICLE III

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

Section 3.01. Authorization of Bonds and Series 2011 Notes. For the purposes of capitalizing interest, if any, on the Series 2011 Bonds or Series 2011 Notes, funding the respective Reserve Accounts for the Series 2011 Bonds, paying the Series 1999 Notes, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 2011 Bonds and Series 2011 Notes and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued negotiable Series 2011 Bonds and Series 2011 Notes of the Issuer. The Series 2011 Bonds shall be issued in two series, each as a single bond, designated respectively as "Sewer Revenue Bonds, Series 2011 A (West Virginia CWSRF Program)," in the principal amount not to exceed \$4,000,000, and the Sewer Revenue Bonds, Series 2011 B (West Virginia CWSRF Program) in an amount not to exceed \$2,000,000 and the Series 2011 Notes shall be issued in one series, as a single note, designated as "Sewer Grant Anticipation Note, Series 2011 (West Virginia Water Development Authority) in an amount not to exceed \$1,500,000, and all shall have such terms as are set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2011 Bonds and the Series 2011 Notes remaining after funding of the Reserve Accounts (if funded from Bond proceeds) and capitalizing interest, if any, on the Series 2011 Bonds or Series 2011 Notes, if any, shall be deposited in or credited to the Series 2011 Bonds Construction Trust Funds established by Section 5.01 hereof and applied as set forth in Article VI hereof

Section 3.02. Terms of Bonds and Notes. The Series 2011 Bonds and the Series 2011 Notes 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 on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 2011 Bonds and the Series 2011 Notes 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 2011 Bonds and the Series 2011 Notes, if any, 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 Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2011 Bonds shall be issued in the form of a single bond, for each series fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 2011 Bonds. The Series 2011 Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered

Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Bonds shall bear interest, if any, and shall be dated as set forth in a Supplemental Resolution.

Unless otherwise provided by the Supplemental Resolution, the Series 2011 Note shall initially be issued in the form of a single note, fully registered to the Authority, with a record of advances, representing the aggregate principal amount of the Series 2011 Note, and shall mature in sixty (60) months or as provided in the Supplemental Resolution. The Series 2011 Note shall be exchangeable at the option and expense of the Registered Owner for another fully registered Note or Notes of the same series in aggregate principal amount equal to the amount of said Note then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Note; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Notes, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Notes shall be dated and shall bear interest as specified in a Supplemental Resolution.

Section 3.03. Execution of Bonds and Series 2011 Notes. The Series 2011 Bonds and Series 2011 Notes 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 Series 2011 Bonds and Series 2011 Notes shall cease to be such officer of the Issuer before the Series 2011 Bonds and Series 2011 Notes so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 2011 Bonds and Series 2011 Notes may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. The Bond Registrar for the Series 2011 Bonds and Series 2011 Notes shall be the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns. No Series 2011 Bond and Series 2011 Note 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 forms set forth in Section 3.12 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of

Authentication and Registration on any Series 2011 Bond and Series 2011 Note 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 the Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability. Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2011 Bonds and Series 2011 Notes shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 2011 Bonds shall be conclusively deemed to have agreed that such Bonds and Series 2011 Notes 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 such Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2011 Bonds and Series 2011 Notes remain outstanding, the Issuer, through the Bond Registrar as its agent, shall keep and maintain books for the registration and transfer of the Bonds.

The registered Series 2011 Bonds and Series 2011 Notes shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Series 2011 Bonds and Series 2011 Notes or transferring the registered Series 2011 Bonds and Series 2011 Notes are exercised, all Series 2011 Bonds and Series 2011 Notes shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2011 Bonds and Series 2011 Notes surrendered in any such exchanges or transfers shall forthwith be canceled by the Bond Registrar. For every such exchange or transfer of Series 2011 Bonds and Series 2011 Notes, 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 Series 2011 Bonds or Series 2011 Notes or, in the case of any proposed redemption of Series 2011 Bonds or Series 2011 Notes, 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 or Notes Mutilated. Destroyed. Stolen or Lost. In case any Series 2011 Bond or Series 2011 Note 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 or Note of the same series and of like tenor as the Bonds or

Notes so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond or Note, upon surrender and cancellation of such mutilated Bond or Note, or in lieu of and substitution for the Bond or Note 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 or Notes so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond or Note shall have matured or be about to mature, instead of issuing a substitute Bond or Note, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond or Note be lost, stolen or destroyed, without surrender thereof

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2011 Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No holder or holders of the Series 2011 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer, if any, to pay the Series 2011 Bonds or the interest, if any, thereon.

Section 3.08. Notes not to be Indebtedness of the Issuer. The Series 2011 Note shall not, in any event, be or constitute corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the proceeds of a grant or grants made available to the Issuer subsequent to the issuance of the Note. No holder or holders of the Series 2011 Note shall ever have the right to compel the exercise the taxing power of the Issuer to pay the Series 2011 Note or the interest thereon.

Section 3.09. Bonds Secured by Pledge of Net Revenues. The payments required by the Series 2011 Bonds shall be secured by a first lien on the Net Revenues derived from the System. Such Net Revenues in an amount sufficient to pay the principal of and interest, if any, on and other payments for the Series 2011 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 3.10. Notes Secured by Pledge of Grant Proceeds. The payment of the debt service on the Series 2011 Notes shall be secured by a first lien on the Grant proceeds received by the Issuer subsequent to the issuance of the Note to permanently finance a portion of the costs of the Project.

Section 3.11. Delivery of Bonds and Notes. The Issuer shall execute and deliver the Series 2011 Bonds and Series 2011 Notes to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2011 Bonds and the Series 2011 Notes to the original purchasers upon receipt of the documents set forth below:

A. If other than the Authority, a list of the names in which the Series 2011 Bonds or Series 2011 Notes are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;

B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2011 Bonds and the Series 2011 Notes to the original purchasers;

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

D. An executed copy of the Loan Agreement; and

E. The unqualified approving opinion of bond counsel on the Series 2011 Bonds and the Series 2011 Notes.

Section 3.12. Form of Bonds and Notes. The text of the Series 2011 Bonds and the Series 2011 Notes 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 2011 A BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
TOWN OF DELBARTON  
SEWER REVENUE BONDS, SERIES 2011 A  
(WEST VIRGINIA CWSRF PROGRAM)

No. AR-1

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

KNOW ALL MEN BY THESE PRESENTS: The \_\_\_\_ day of \_\_\_\_\_, 2011, that the TOWN OF DELBARTON, a municipal corporation organized and existing under the laws of the State of West Virginia in \_\_\_\_\_ County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered \_\_\_\_\_ assigns the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 20\_\_, to and including \_\_\_\_\_ 1, 20\_\_, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. [The SRF Administrative Fee of 0% (as defined in the hereinafter described Bond Legislation) shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 20\_\_, as set forth on said EXHIBIT B.]

This Bond shall bear no interest. Principal and interest installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Bond Purchase Agreement by and among the Issuer, the Authority and the DEP, dated \_\_\_\_\_, 2011.

This Bond is issued (i) to pay in full the entire outstanding principal of and all accrued interest on the Issuer's Sewer Note, Series 1999 (the "Series 1999 Notes") (ii) to pay a portion of the costs of acquisition and installation of improvements and extensions to the existing public sewerage system of the Issuer (the "Project"); and (iii) to pay certain costs of issuance of the Bonds and related costs. The existing public sewerage system of the Issuer, the Physical

Project and any further improvements or extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on \_\_\_\_\_, 2011, as supplemented by a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 2011 (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 SEWER REVENUE BONDS, SERIES 2011 B (WEST VIRGINIA CWSRF PROGRAM) DATED \_\_\_\_\_, 2011, ISSUED SIMULTANEOUSLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$ \_\_\_\_\_ (THE "SERIES 2011 B BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holders of the Series 2011 B Bonds and from monies in the reserve account created under the Bond Legislation for the Bonds (the "Series 2011 A Bonds Reserve Account") and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, except from said special fund provided from the Net Revenues, the monies in the Series 2011 A 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 the Bonds, including the Series 2011 B Bonds. 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 [United Bank, Inc., 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 the payment of the Series 1999 Notes, to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of 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 DELBARTON has caused this Bond to be signed by its Mayor and its corporate seal, if any, to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated the day and year first written above.

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2011 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_, 2011.

[UNITED BANK, INC.],  
as Registrar

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



**EXHIBIT B**  
**DEBT SERVICE SCHEDULE**

(Form of)

ASSIGNMENT

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

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

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

(FORM OF SERIES 2011 B BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
TOWN OF DELBARTON  
SEWER REVENUE BONDS, SERIES 2011 B  
(WEST VIRGINIA CWSRF PROGRAM)

No. BR-1

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

KNOW ALL MEN BY THESE PRESENTS: The \_\_\_\_ of \_\_\_\_\_, 2011, that the TOWN OF DELBARTON, a municipal corporation organized and existing under the laws of the State of West Virginia in \_\_\_\_\_ County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly forgiveness of principal on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, \_\_\_\_\_ to and including \_\_\_\_\_ 1, 20, 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 100% forgivable as set forth in the Bond Purchase Agreement.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Bond Purchase Agreement by and among the Issuer, the Authority and the DEP, dated \_\_\_\_\_, 2011.

This Bond is issued (i) to pay the costs of acquisition and construction of improvements and extensions to the existing public sewerage system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public sewerage system of the Issuer, the Project and any further improvements or extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on \_\_\_\_\_, 2011, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 2011 (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 SEWER REVENUE BONDS, SERIES 2011 A (WEST VIRGINIA CWSRF PROGRAM), DATED \_\_\_\_\_, 2011, ISSUED SIMULTANEOUSLY HEREWITH IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$ \_\_\_\_\_ (THE "SERIES 2011 A BONDS");.

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of the Net Revenues in favor of the holders of the Series 2011 A Bonds and from monies in the reserve account created under the Bond Legislation for the Bonds (the "Series 2011 B Bonds Reserve Account") and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, except from said special fund provided from the Net Revenues, the monies in the Series 2011 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 on a parity with or junior to the Bonds including the Series 2011 A Bonds; provided however, that so long as there exists in the Series 2011 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 on a parity with or junior to the Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof. The Issuer shall make the payments into the Renewal and Replacement Fund as required by the Bond Legislation.

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

transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

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

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

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

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

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the TOWN OF DELBARTON 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 the day and year first written above.

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2011 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: \_\_\_\_\_, 2011.

[UNITED BANK, INC.],  
as Registrar

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



EXHIBIT B  
DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

\_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_ Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

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

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

(FORM OF SERIES 2011 NOTE)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
TOWN OF DELBARTON  
SEWER GRANT ANTICIPATION NOTE, SERIES 2011  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

No. A-1

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

KNOW ALL MEN BY THESE PRESENTS: That on this the \_\_\_\_ day of \_\_\_\_\_, 2010, the TOWN OF DELBARTON, a municipal corporation and political subdivision of the State of West Virginia in Mingo County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, on the maturity date of \_\_\_\_\_, 201\_\_.

This Note shall bear interest at the rate of \_\_\_\_%. The entire principal amount of this Note is payable in any coin or currency which, on the date of payment of such amount, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Note is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of United Bank, Inc., Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Note 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 upon the terms and conditions prescribed by, and otherwise in compliance with, the WDA Loan Agreement by and between the Issuer and the Authority, dated \_\_\_\_\_, 2011.

This Note is issued (i) to temporarily pay a portion of the costs of acquisition and construction of extensions and improvements to the sewerage system of the Issuer (the "Project"); (ii) to capitalize interest on the Note; and (iii) to pay costs of issuance of the Note. Such sewerage system, the Project, and any further extensions, additions, betterments or improvements thereto are herein called the "System." This Note is issued under the authority of

and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond and Note Ordinance duly enacted by the Issuer on \_\_\_\_\_, 2011, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 2011 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional notes under certain conditions, and such notes would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Note under the Bond Legislation.

**THIS NOTE HAS NO LIEN ON THE GROSS OR NET REVENUES OF THE SYSTEM.**

This Note and the interest thereon are payable only from and secured by a first lien on the proceeds of a grant or grants made available to the Issuer subsequent to the issuance of the Note to permanently finance the costs of the Project. This Note 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 as set forth in the Note Ordinance.

Subject to the registration requirements set forth herein, this Note is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Note, 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 Note, 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 Note shall be applied solely to payment of the costs of the Project and costs of issuance described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Note.

**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 Note do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Note, 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.

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

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the TOWN OF DELBARTON has caused this Note to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Note to be dated the day and year first written above.

[SEAL]

---

Mayor

ATTEST

---

Recorder

**CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

This Note is one of the Series 2011 Note 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: \_\_\_\_\_, 2011

[UNITED BANK, INC.], as Registrar

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

EXHIBIT A

RECORD OF ADVANCES

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

(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 said Bond on the books kept for registration thereof with full power of substitution in the premises.

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

\_\_\_\_\_  
In the presence of:

\_\_\_\_\_

Section 3.13. Sale of Bonds and Notes; Approval and Ratification of Execution of Loan Agreements. The Series 2011 Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Bond Purchase Agreement. The Series 2011 Notes shall be sold to the Authority, pursuant to the terms and conditions of the WDA Loan Agreement. If not so authorized by previous resolution, the Mayor is specifically authorized and directed to execute the Loan Agreements 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 Agreements to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The Loan Agreements, including all schedules and exhibits attached thereto, is hereby approved and incorporated into this Bond Legislation.

Section 3.14. Filing of Amended Schedule. Upon completion of the acquisition and construction of the Project, the Issuer will file with the Authority a schedule for the Series 2011 Notes, the form of which will be provided by the Authority, setting forth the actual costs of the Project and sources of funds therefor.

ARTICLE IV

[RESERVED]

## ARTICLE V

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

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created (or continued) 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; and
- (3) Series 2011 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 2011 A Bonds Sinking Fund;
- (2) Series 2011 A Bonds Reserve Account;
- (3) Series 2011 B Bonds Sinking Fund;
- (4) Series 2011 B Bonds Reserve Account;
- (5) Series 2011 Note Fund.

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 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 monies in 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 remit (i) to the Commission, commencing 4 months prior to the first date of payment of principal of the Series 2011 A Bonds, for deposit in the Series 2011 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal, if any, which will

mature and become due on the Series 2011 A Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2011 A 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; and (ii) to the Commission, commencing 4 months prior to the first date of payment of principal of the Series 2011 B Bonds, for deposit in the Series 2011 B Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal, if any, which will mature and become due on the Series 2011 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 2011 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.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit (i) to the Commission, commencing 4 months prior to the first date of payment of principal of the Series 2011 A Bonds, if not fully funded upon issuance of the Series 2011 A Bonds, for deposit in the Series 2011 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2011 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2011 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 2011 A Bonds Reserve Requirement; and (ii) to the Commission, commencing 4 months prior to the first date of payment of principal of the Series 2011 B Bonds, if not fully funded upon issuance of the Series 2011 B Bonds, for deposit in the Series 2011 B Bonds Reserve Account, an amount equal to 1/120th of the Series 2011 B Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2011 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 2011 B Bonds Reserve Requirement.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund, a sum equal to 2 1/2% of the Gross Revenues each month (as previously set forth in the Prior Resolutions and not in addition thereto), 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, 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 monies from the Renewal and Replacement Fund.

The Series 2011 Note has no lien on Gross Revenues or Net Revenues of the System. The Issuer shall remit to the Commission the principal and interest only upon receipt of

a grant or grants made available to the Issuer subsequent to the issuance of the 2011 Note to permanently finance a portion of the cost of the Project. Such principal and interest payment shall be deposited in the Series 2011 Note Fund to pay the Series 2011 Note.

Monies in the Series 2011 A Bonds Sinking Fund, the Series 2011 B Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 2011 A Bonds and the Series 2011 B Bonds, respectively, as the same shall become due. Monies in the Series 2011 A Bonds Reserve Account and the Series 2011 B Bonds Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the Series 2011 A Bonds and the Series 2011 B Bonds, respectively, as the same shall come due, when other monies in the Series 2011 A Bonds Sinking Fund and the Series 2011 B Bonds Sinking Fund, respectively, are insufficient therefor, and for no other purpose.

All investment earnings on monies in the Series 2011 A Bonds Sinking Fund, the Series 2011 A Bonds Reserve Account, the Series 2011 B Bonds Sinking Fund and the Series 2011 B Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Series 2011 Bond Construction Trust Funds, 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 2011 A Bonds and the Series 2011 B Bonds, respectively, and then to the next ensuing principal payment, if any, due thereon, all on a pro rata basis.

Any withdrawals from the Series 2011 A Bonds Reserve Account or the Series 2011 B Bonds Reserve Account which result in a reduction in the balance therein to below the respective Reserve Requirements 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 Series 2011 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 appropriate reserve account in an amount equal to the requirement thereof.

The Issuer shall not be required to make any further payments into the Series 2011 A Bonds Sinking Fund, the Series 2011 A Bonds Reserve Account, the Series 2011 B Bonds Sinking Fund, the Series 2011 B Bonds Reserve Account and the Series 2011 Note Fund when the aggregate amount of funds therein are at least equal to the respective aggregate principal amount of the Series 2011 A Bonds and Series 2011 B Bonds issued pursuant to this Bond Legislation then Outstanding and all interest, if any, to accrue until the maturity thereof.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2011 A Bonds Sinking Fund and the Series 2011 A Bonds Reserve Account, the Series 2011 B Bonds Sinking Fund, the Series 2011 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. The Issuer shall make the necessary arrangements whereby required payments into said accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Monies in the Series 2011 A Bonds Sinking Fund, the Series 2011 A Bonds Reserve Account, the Series 2011 B Bonds Sinking Fund and the Series 2011 B Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof

The Series 2011 A Bonds Sinking Fund, the Series 2011 A Bonds Reserve Account, the Series 2011 B Bonds Sinking Fund and the Series 2011 B Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2011 A Bonds and Series 2011 B Bonds, respectively, 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, if any, with respect to the Series 2011 Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited. [The Issuer shall also on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the SRF Administrative Fee as set forth in the Schedule Y attached to the Bond Purchase Agreement for the Series 2011 A Bonds.]

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

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

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

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

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

## ARTICLE VI

### BOND AND NOTE PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01. Application of Bond and Note Proceeds: Pledge of Unexpended Proceeds. From the monies received from the sale of the Series 2011 Bonds and Series 2011 Notes, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2011 A Bonds, there shall first be deposited with the Commission in the Series 2011 A 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 2011 A Bonds for the period commencing on the date of issuance of the Series 2011 A Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. From the proceeds of the Series 2011 B Bonds, there shall first be deposited with the Commission in the Series 2011 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 2011 B Bonds for the period commencing on the date of issuance of the Series 2011 B Bonds and ending 6 months after the estimated date of completion of construction of the Project.

C. From the proceeds of the Series 2011 Notes, there shall first be deposited with the Commission in the Series 2011 Note Fund, the amount, if any, set forth in the Supplemental Resolution for capitalized interest.

D. Next, from the proceeds of the Series 2011 A Bonds, there shall be deposited with the Commission in the Series 2011 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding the Series 2011 A Bonds Reserve Account.

E. Next, from the proceeds of the Series 2011 B Bonds, there shall be deposited with the Commission in the Series 2011 B Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding the Series 2011 B Bonds Reserve Account.

F. Next, from the proceeds of the Series 2011 A Bonds, there shall be paid to the Commission, the amount set forth in the Supplemental Resolution for paying in full the entire outstanding principal of and all accrued interest on the Series 1999 Notes.

G. As the Issuer receives advances of the remaining monies derived from the sale of the Series 2011 A Bonds, such monies shall be deposited with the Depository Bank in the Series 2011 Bonds Construction Trust Fund and applied solely to payment of costs of the Project in the manner set forth in Section 6.02 and until so expended, are hereby pledged as additional security for the Series 2011 A Bonds.

H. As the Issuer receives advances of the remaining monies derived from the sale of the Series 2011 B Bonds, such monies shall be deposited with the Depository Bank in the Series 2011 Bonds Construction Trust Fund and applied solely to payment of costs of the Project in the manner set forth in Section 6.02 and until so expended, are hereby pledged as additional security for the Series 2011 B Bonds.

I. As the Issuer received advances of the remaining monies derived from the sale of the Series 2011 Note, such monies shall be deposited with the Depository Bank in the Series 2011 Bond Construction Fund and applied solely to payment of the costs of the Project in the manner set forth in Section 6.02 hereof and, until so expended, are hereby pledged as additional security for the Series 2011 Notes.

J. 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 2011 Bonds shall be applied as directed by the DEP and any remaining proceeds of the Series 2011 Notes shall be deposited in the Series 2011 Note Fund to pay interest or reduce the outstanding principal amount of the Series 2011 Notes.

Section 6.02. Disbursements From the Bond Construction Trust Fund.

On or before the Closing Date, the Issuer shall have delivered to the DEP and the Authority a report listing the specific purposes for which the proceeds of the Series 2011 Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments of all Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Series 2011 Bonds Construction Trust Fund shall be made only after submission to and approval from the DEP, of a completed and signed "Payment Requisition Form," a form of which is attached to the Bond Purchase Agreement for the Series 2011 Bonds, in compliance with the construction schedule.

Pending such application, monies in the Bond Construction Trust Funds shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

Section 6.03. Disbursements of Note Proceeds. The Issuer shall each month provide the Authority with a requisition for the costs incurred for the Project, together with such documentation as the Authority shall require. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements of the proceeds of the Series 2011 Note from the Series 2011 Bonds Construction Trust Fund shall be made only after submission to, and approval from, the Authority of a certificate, signed by an Authorized Officer, stating that:

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

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

Pending such application, monies in the Series 2011 Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

Section 6.04. Additional Grant Anticipation Notes. In the event proceeds of the Grants are not sufficient or available on a timely basis to pay the Notes in full by the maturity date of the Notes, the Issuer covenants and agrees to issue and sell its additional grant anticipation notes in an amount sufficient to pay the Notes in full pursuant to the requirements of Section 10.01.

## 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 Series 2011 Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2011 Bonds or the interest, if any, thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2011 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 Registered Owner of the Series 2011 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2011 Bonds or the interest thereon.

Section 7.03. Notes not to be Indebtedness of the Issuer. The Series 2011 Note shall not be nor constitute a corporate indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of the Series 2011 Note shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2011 Note or the interest thereon.

Section 7.04. Bonds Secured by Pledge of Net Revenues; Lien Positions with Respect to Bonds. The payments required by the Series 2011 Bonds shall be secured by a first lien on the Net Revenues derived from the System. Such Net Revenues in an amount sufficient to pay the principal of and interest, if any, on and other payments for the Series 2011 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 7.05. Notes Secured by Pledge of Future Grant Proceeds. The payment of the Series 2011 Note and any interest accrued therein shall be secured by a first lien on the Issuer's receipt of future grant or grants received to permanently finance a portion of the costs of the Project. It is anticipated that the Issuer will be the beneficiary of an Appalachian Regional Commission Grant, which grant proceeds is pledged to and will be used to pay the Series 2011 Note and any interest accrued therein.

Section 7.06. Initial Schedule of Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal and shall provide an opinion of counsel to the Issuer of such

effect. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreements and the Issuer shall supply a certificate of certified public accountant to such effect.

So long as the Series 2011 Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Bond Purchase Agreement. In the event the schedule of rates, fees and charges initially established for the System in connection with the Series 2011 Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Bond Purchase Agreement.

Section 7.07. Sale of the System. So long as the Series 2011 Bonds and Series 2011 Notes are outstanding and except as otherwise required by law or with the written consent of the DEP, the Authority and the Council, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds and Notes Outstanding 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 2011 Bonds, immediately be remitted to the Commission for deposit in the Sinking Funds and the Series 2011 Note Fund, and, with the written permission of the DEP and the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest, if any, on the Series 2011 Bonds and Series 2011 Notes. Any balance remaining after the payment of the Series 2011 Bonds and Series 2011 Notes and interest, if any, 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 duly adopted, 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 in

accordance with the laws of the State. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. The payment of such proceeds into the Renewal and Replacement Fund shall not reduce the amount required to be paid into said fund by other provisions of this Bond Legislation. No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of \$50,000 and insufficient to pay all Bonds and Notes then Outstanding without the prior approval and consent in writing of the Holders of the Bonds and Notes 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 7.08. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided in this Section 7.08 and Section 7.10 hereof, the Issuer shall not issue any obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2011 Bonds. All obligations issued by the Issuer after the issuance of the Series 2011 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, pledge and source of and security for payment from such revenues and in all other respects, to the Series 2011 Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all finds and accounts set forth herein have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2011 Bonds, and the interest thereon, if any, upon any or all of the income and revenues of the System pledged for payment of the Series 2011 Bonds and the interest thereon, if any, in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the DEP and the Authority 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, or any other obligations related to the Project or the System.

Section 7.09. Issuance of Other Obligations Payable From the Proceeds of the Grants and General Covenant Against Encumbrances. Except as provided for in Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the proceeds of the Grants which rank prior to, or equally, as to lien on and source of and security for payment from such proceeds with the Series 2011 Notes. All obligations issued by the Issuer after the issuance of the Series 2011 Note and payable from the grants, 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 the proceeds of the Grants and in all other respects, to the Series 2011 Notes; 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 use or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2011 Notes, and the interest, any, thereon, upon any of the proceeds of the Grants pledged for payment of the Series 2011 Notes and the interest, if any, thereon in this Bond Legislation, or upon the System or any part thereof.

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

Section 7.10. Parity Bonds. No Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2011 Bonds pursuant to this Bond Legislation, without the prior written consent of the Authority and the DEP and without complying with the conditions and requirements herein provided.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2011 Bonds.

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

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

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

The “estimated average increased annual Net Revenues expected to be received in each of the 3 succeeding years,” as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates adopted by the

Issuer, the time for appeal of which shall have expired prior to the issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the Secretary prior to the issuance of such Parity Bonds.

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

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

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior liens of the Series 2011 Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 2011 Bonds.

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

Section 7.11. Additional Parity Bonds. No additional Parity Bonds, payable out of the Grants of the System, shall be issued after the issuance of the Series 2011 Notes pursuant to this Ordinance, without the prior written consent of the Authority and without complying with the conditions and requirements herein provided.

Section 7.12. 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 DEP and the Authority, 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 DEP and the Authority 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 DEP and the Authority, or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

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

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

The Issuer shall file with the DEP, the Authority, or any other original purchaser of the Series 2011 Bonds, and shall mail in each year to any Holder or Holders of the Series 2011 Bonds, requesting the same, an annual report containing the following:

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

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

(C) The amount of any Bonds, notes or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants (and to the extent legally required, in compliance with the applicable OMB Circular and the Single Audit Act, or any successor thereto), and shall mail upon request, and make available generally, the report of

the Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2011 Bonds, and shall submit said report to the DEP and the Authority, or any other original purchaser of the Series 2011 Bonds. Such audit report submitted to the DEP and the Authority shall include a statement that the Issuer is in compliance with the terms and provisions of the Act, the Loan Agreements and this Bond Legislation and that the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

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

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

The Issuer shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in EXHIBIT E of the Bond Purchase Agreement for the Series 2011 Bonds or as promulgated from time to time.

Section 7.13. Rates. Prior to the issuance of the Series 2011 Bonds, equitable rates or charges for the use of and service rendered by the System shall be established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Secretary, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2011 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with or junior to the Series 2011 Bonds; provided that, in the event that amounts equal to or in excess of the reserve requirements are on deposit respectively in the Series 2011 A Bonds Reserve Account and Series 2011 B Bonds Reserve Account and the reserve accounts for

obligations on a parity with or junior to the Series 2011 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 Series 2011 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with or junior to the Series 2011 Bonds. In any event, the Issuer shall not reduce the rates or charges for services described in Section 7.06.

Section 7.14. 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 DEP and the Authority 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 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 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 DEP and the Authority and to any Holder of any Bonds, within 30 days of adoption thereof, and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the DEP and the Authority and to any Holder of any Bonds, or anyone acting for and in behalf of such Holder of any Bonds.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for two years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the respective Loan Agreements, and forward a copy of such report to the DEP and the Authority by the 10<sup>th</sup> day of each month.

Section 7.15. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers in the form attached to the Loan Agreements, 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 DEP and the Authority, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the DEP and the Authority is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

The Issuer shall provide and maintain competent and adequate engineering services satisfactory to the DEP 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 DEP and the Authority, 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 Record Drawings, as defined in the SRF Regulations, to it within 60 days of the completion of the Project. The Issuer shall notify the DEP in writing of such receipt. The Issuer shall submit a "Performance Certificate," a form of which is attached to the Bond Purchase Agreement for the Series 2011 Bonds as Exhibit A, to the DEP within 60 days of the end of the first year after the Project is completed.

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

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

Section 7.16. 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 7.17. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the 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 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 any

system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law. If the water or sewer facilities are not owned by the Issuer, the Issuer shall enter into a termination agreement with the water and sewer providers, 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 7.18. No Free Services. Except as required by law, 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 7.19. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

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

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than \$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 or the Governing Body having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

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

The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Authority and the DEP and the Issuer shall verify such insurance prior to commencement of construction. In the event the Loan Agreements so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 7.20. Mandatory Connections. The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the PSC, shall connect with and use the System and shall cease the

use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30-day notice of the availability of the System, pay the rates and charges established therefor.

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

Section 7.21. Completion and Operation 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 has obtained all permits required by State and federal laws for the acquisition and construction of the Project and all orders and approvals, if required, from the Public Service Commission of West Virginia and the Council necessary for the acquisition and construction of the Project, the operation of the System and all approvals for issuance of the Bonds required by State law, with all requisite appeal periods having expired without successful appeal and the Issuer shall provide an opinion of counsel to such effect.

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

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

Section 7.22. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2011 Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Series 2011 Bonds.

Section 7.23. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2011 Notes, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Series 2011 Notes and shall be junior and subordinate to the statutory mortgage lien in favor of the Holders of the Series 2011 Bonds.

Section 7.24. Compliance with Loan Agreements and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Loan Agreements and the Act. Notwithstanding anything herein to the contrary, the issuer will provide the DEP with copies of all documents submitted to the Authority.

The Issuer also agrees to comply with all applicable laws, rules and regulations issued by the DEP, the Authority or other state, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

Section 7.25. Contracts; Change Orders, Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2011 Bonds and Series 2011 Notes or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to the DEP for written approval. The Issuer shall obtain the written approval of the DEP before expending any proceeds of the Series 2011 Bonds held in “contingency” as set forth in the respective schedules attached to the certificate of the Consulting Engineer. The Issuer shall also obtain the written approval of the DEP before expending any proceeds of the Series 2011 Bonds made available due to bid or construction or project underruns.

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

## ARTICLE VIII

### INVESTMENT OF FUNDS

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

Any investment shall be held in and at all times deemed a part of the fund or account in which such monies were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank, 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, or more often as reasonably requested by the Issuer, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2011 Bonds are Outstanding and as long thereafter as necessary to assure the exclusion of interest, if any, on the Series 2011 Bonds from gross income for federal income tax purposes.

Section 8.02. Certificate as to Use of Proceeds; Covenants as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2011 Bonds and Series 2011 Notes as a condition to issuance of the Series 2011 Bonds and Series 2011 Notes. In addition, the Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2011 Bonds and Series 2011 Notes as may be necessary in order to maintain the status of the Series 2011 Bonds and Series 2011 Notes as public purpose bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the proceeds of the Series 2011 Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority, the Council or the DEP, as the case may be, from

which the proceeds of the Series 2011 Bonds and Series 2011 Notes are derived, to lose their status as tax-exempt bonds; and (iii) to take such action, or refrain from taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority or the DEP, to ensure compliance with the covenants and agreements set forth in this Section, regardless of whether such actions may be contrary to any of the provisions of this Ordinance.

The Issuer shall annually furnish to the Authority information with respect to the Issuer's use of the proceeds of the Series 2011 Bonds and Series 2011 Notes and any additional information requested by the Authority.

## ARTICLE IX

### DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an “Event of Default” with respect to the Series 2011 Bonds and Series 2011 Notes:

(1) If default occurs in the due and punctual payment of the principal of or interest, if any, on the Series 2011 Bonds; or

(2) If the Issuer receives the Grants in an amount sufficient to pay the entire principal amount of the Series 2011 Notes and all interest thereon and fails to pay the entire principal amount of the Series 2011 Notes and all interest thereon; or

(3) If default occurs in the Issuer’s observance of any of the covenants, agreements or conditions on its part relating to the Series 2011 Bonds or Series 2011 Notes set forth in this Bond Legislation, any supplemental resolution or in the Series 2011 Bonds or Series 2011 Notes, 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, Registrar or any other Paying Agent or a Holder of a Bond;

(4) 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 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond or Note 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 or Notes, (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 or Notes, 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.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond or Note 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 or Notes, any Registered Owner of a Bond or Note 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 exercise.

Whenever all that is due upon the Bonds or Notes 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 or Notes 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 or Notes. 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 AND NOTES

Section 10.01. Payment of Bonds and Notes. A. If the Issuer shall pay or there shall otherwise be paid to the Holders of the Series 2011 Bonds, the principal of and interest, if any, due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2011 Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest, if any, on the Series 2011 Bonds from gross income for federal income tax purposes.

B. If the Issuer shall pay or there shall otherwise be paid, to the Holders of the Series 2011 Notes, the principal of and interest due or to become due thereon at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Grant proceeds and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2011 Notes 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 Series 2011 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2011 Bonds or Series 2011 Notes, no material modification or amendment of this Ordinance, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2011 Bonds or Series 2011 Notes shall be made without the consent in writing of the Registered Owners of the Series 2011 Bonds or Series 2011 Notes so affected and then Outstanding; provided, that no change shall be made in the maturity of any Notes or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest, if any, out of the funds herein respectively pledged therefore 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 Bonds, required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the exclusion of interest, if any, on the Series 2011 Bonds from gross income of the holders thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Series 2011 Bonds and Series 2011 Notes, 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, the Series 2011 Bonds, or the Series 2011 Notes.

Section 11.04. Headings. 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 orders or resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

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 Chairman, Secretary 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.

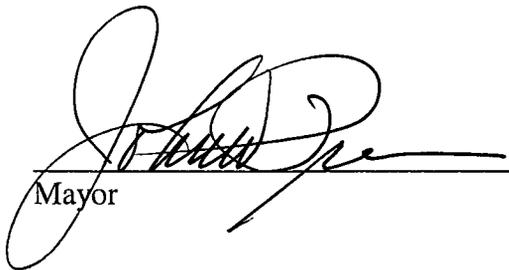
Section 11.07. Statutory Notice and Public Hearing. Upon adoption hereof, the abstract of this Ordinance in the form set forth in Exhibit C attached hereto and incorporated herein by reference, shall be published once a week for two successive weeks, with at least 6 full days intervening between each publication, in the Williamson Daily News, a qualified newspaper published and of general circulation in the Town of Delbarton, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2011 Bonds, and that any person interested may appear before the Council upon a certain date, not less than 10 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 Issuer for review by interested persons during office hours of the Issuer. The Council hereby determines that the abstract contains sufficient information as to give notice of the contents hereof. At such hearing, all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

Section 11.08. Effective Date. This Ordinance shall take effect immediately following the public hearing and final reading.

First Reading:	August 8, 2011
Second Reading	August 22, 2011
Final Reading/Public Hearing:	September 12, 2011

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Enacted this 12<sup>th</sup> day of September, 2011.



Mayor

CERTIFICATION

Certified a true copy of an Ordinance duly adopted by the Council of TOWN OF DELBARTON on the 12<sup>th</sup> day of September, 2011.

Dated: November 3, 2011.

[SEAL]

  
Recorder

**EXHIBIT A**

**Bond Purchase Agreement included in bond transcript as Document No. 2.3 (Tab No. 7)**

EXHIBIT B

TOWN OF DELBARTON, WEST VIRGINIA

NOTICE OF PUBLIC HEARING AND ABSTRACT OF BOND ORDINANCE

Notice is hereby given to any person interested that on \_\_\_\_\_, 2011, the Town Council of the Town of Delbarton, West Virginia (the "Town") adopted an ordinance which, among other things:

1. Authorized the design, acquisition and construction of certain extensions, additions, betterments and improvements (the "Project") to the Town's existing sewerage system (the "System"), the permanent financing of a portion of such costs thereof through the issuance of not more than \$\_\_\_\_\_ in aggregate principal amount of Sewer Revenue Bonds, Series 2011 A (West Virginia CWSRF Program) and not more than \$\_\_\_\_\_ in aggregate principal amount of Sewer Revenue Bonds, Series 2011 B (West Virginia CWSRF Program) (collectively, the "Bonds") and the temporary financing of a portion of such costs through the issuance of not more than \$\_\_\_\_\_ in aggregate principal amount of Sewer Grant Anticipation Notes, Series 2011 (West Virginia Water Development Authority) (the "Notes").

2. Directed that the Bonds and Notes be issued in such principal amounts, bear interest at such rate or rates, not exceeding the then legal maximum rate, mature on such dates and in such amounts and redeemable, in whole or in part, as prescribed in a supplemental resolution.

3. Directed the continuation of a revenue fund and the disposition of the System revenues; provided for the payment of operating expenses of the System and debt service on the Bonds provided for the payment of the Notes from future grant proceeds; directed the creation of a sinking fund and a reserve account for the Bonds and creation of the renewal and replacement fund; and directed the creation of a bond construction trust fund and the disbursement of Bond proceeds and Note proceeds.

4. Provided that the Bonds shall not be or constitute a corporate indebtedness of the Town within the meaning of any statutory or constitutional limitations, but shall be payable solely from the Net Revenues of the System; pledged the Net Revenues of the System to payment of the Bonds and established the rights of the registered owners of the Bonds to such Net Revenues; and provided certain conditions for the issuance of additional bonds.

5. Provided that the Notes shall not be or constitute a corporate indebtedness of the Town within the meaning of any statutory or constitutional limitations, but shall be payable solely from the proceeds of a future grant to the Town; pledged the proceeds of the future grant of the Town to the payment of the Notes; and provided certain conditions for the issuance of additional Notes.

6. Provided for insurance coverage on the Project and the System, enforcement of collection of fees, rates or other charges for the System and other covenants in

favor of the registered owners; established the events of default and the remedies of the registered owners; and provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

The Town contemplates the issuance of the Bonds and Notes described in, and under the conditions set forth in the Ordinance abstracted above. Any person interested may appear before the Council of the Town of Delbarton at a regular meeting on \_\_\_\_\_, 2011, at \_\_\_\_\_ p.m., in the Council Chambers, Town Hall, Delbarton, West Virginia, and present protests and be heard as to whether the above-described Ordinance shall be put into effect.

A certified copy of the Ordinance as adopted by the Council of Town on \_\_\_\_\_, 2011, is on file with the Recorder for review by interested persons at the Town Hall during regular office hours.

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Town Recorder of the Town of Delbarton,  
West Virginia

TOWN OF DELBARTON  
SEWER REVENUE BONDS, SERIES 2011 A  
(WEST VIRGINIA CWSRF PROGRAM)  
SEWER REVENUE BONDS, SERIES 2011 B  
(WEST VIRGINIA CWSRF PROGRAM)

2.9

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 DELBARTON SEWER REVENUE BONDS, SERIES 2011 A (WEST VIRGINIA CWSRF PROGRAM), SEWER REVENUE BONDS, SERIES 2011 B (WEST VIRGINIA CWSRF PROGRAM); DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; MAKING OTHER PROVISIONS AS TO THE BONDS; AND APPROVING INVOICES RELATING TO THE ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE TOWN AND AUTHORIZING PAYMENT THEREOF.

WHEREAS, the Town Council (the "Governing Body") of the Town of Delbarton (the "Issuer") has duly and officially passed a Bond and Note Ordinance on August 22, 2011, effective September 12, 2011 (the "Ordinance"), entitled:

AN ORDINANCE AUTHORIZING THE PAYMENT OF THE SEWER NOTE, SERIES 1999 OF THE TOWN OF DELBARTON AND AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS AND EXTENSIONS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE TOWN OF DELBARTON AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE TOWN OF NOT MORE THAN \$4,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2011 A (WEST VIRGINIA CWSRF PROGRAM), NOT MORE THAN \$2,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2011 B (WEST VIRGINIA CWSRF PROGRAM) AND NOT MORE THAN \$1,500,000

IN AGGREGATE PRINCIPAL AMOUNT OF SEWER GRANT ANTICIPATION NOTE, SERIES 2011 (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS AND NOTES; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS AND NOTES; APPROVING, RATIFYING AND CONFIRMING LOAN AGREEMENTS RELATING TO SUCH BONDS AND NOTES; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND NOTES AND ADOPTING 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 Sewer Revenue Bonds, Series 2011 A (West Virginia CWSRF Program) (the "Series 2011 A Bonds"), of the Issuer, in an aggregate principal amount not to exceed \$4,000,000, Sewer Revenue Bonds, Series 2011 B (West Virginia CWSRF Program) (the "Series 2011 B Bonds" and collectively with the Series 2011 A Bonds, the "Bonds") in an aggregate principal amount not to exceed \$2,000,000, all in accordance with Chapter 16, Article 13 and Chapter 22 C of the Code of West Virginia, 1931, as amended (collectively, the "Act"); and in the Ordinance it is provided that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price and other terms of each series of the Bonds should be established by a supplemental resolution, and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Issuer desires to issue its Series 2011 A Bonds and Series 2011 B Bonds pursuant to the Ordinance;

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the Bond Purchase Agreement to be entered into among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP") for the purchase of the Bonds (the "Bond Purchase Agreement") be approved, executed and ratified by the Issuer, that the exact principal amount, date, maturity date, interest rate, payment schedule, sale price 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;

WHEREAS, the Bond Purchase Agreement has been presented to the Issuer at this meeting; and

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DELBARTON, WEST VIRGINIA, AS FOLLOWS:

Section 1. It is hereby found and determined that:

(A) The Notice of Public Hearing and Abstract of Ordinance (the "Notice") was duly published in the Williamson Daily News, a qualified newspaper published and of general circulation in the Issuer, with the first publication thereof being not less than 10 days before the day set by the Ordinance and the Notice for the public hearing at which interested persons may appear before the Council and present protests and suggestions and with the last publication thereof being prior to said date set by the Ordinance and the Notice for the public hearing, and a copy of the Affidavit of Publication reflecting such publications is incorporated herein by reference;

(B) In accordance with the Ordinance and the Notice, the Recorder has maintained in his or her office a certified copy of the Ordinance for review by interested persons during the regular office hours of such office;

(C) In Council chambers, Town Hall, Delbarton, West Virginia, on September 12, 2011, at 7:00 p.m., prevailing time, in accordance with the Ordinance and the Notice, the Council met for the purpose of hearing protests and suggestions regarding whether the Ordinance should be put into effect and heard all protests and suggestions with regard thereto;

(D) At the public hearing, no significant reasons were presented that would require modification or amendment of the Ordinance and no written protest with regard thereto was filed by 30 percent or more of the freeholders of the Issuer; and

(E) The Ordinance shall be put into effect as of the date hereof and the Bonds contemplated thereby shall be issued, all as provided in the Ordinance and this Supplemental Resolution.

Section 2. The Issuer shall sell the Bonds to the Authority on behalf of the DEP pursuant to the Bond Purchase Agreement.

Section 3. Pursuant to the Ordinance, there are hereby authorized to issue the following Bonds of the Issuer:

A. Series 2011 A Bonds. The Town of Delbarton Sewer Revenue Bonds, Series 2011 A (West Virginia CWSRF Program), shall be in the form of a single bond, shall be issued in the principal amount of \$3,131,150, shall be dated such date, shall finally mature no later than September 1, 2051, shall bear no interest. The principal and interest of the Bonds shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2014, in the amounts as set forth in the

the Schedule Y attached to the Bond Purchase Agreement and incorporated in and made a part of the Series 2011 A Bonds. The Series 2011 A Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the redemption premium, if any, and otherwise in compliance with the Bond Purchase Agreement, so long as the Authority shall be the registered owner of the Series 2011 A Bonds. The Issuer does hereby approve and shall pay the SRF Administrative Fee equal to 0.5% of the principal amount of the Series 2011 A Bonds set forth in the "Schedule Y" attached to the Bond Purchase Agreement.

B. Series 2011 B Bonds. The Town of Delbarton Sewer Revenue Bonds, Series 2011 B (West Virginia CWSRF) shall be in the form of a single bond, numbered BR-1, in the principal amount of \$2,000,000. The Series 2011 B Bonds shall be dated the date of delivery thereof, shall finally mature September 1, 2013, and shall bear no interest. The principal amounts advanced under the Series 2011 B Bonds will be deemed forgiven on the 30th day of June in the fiscal year in which advanced. The Series 2011 B Bonds shall be deemed no longer outstanding after the last advance is forgiven. The Series 2011 B Bonds shall be subject to redemption upon the written consent of the Authority and the DEP, and upon payment of the redemption premium, if any, and otherwise in compliance with the Bond Purchase Agreement, so long as the Authority shall be the registered owner of the Series 2011 B Bonds.

Section 4. The Issuer hereby appoints and designates Bank of Mingo, Delbarton, West Virginia, to serve as Depository Bank for the Bonds under the Ordinance.

Section 5. The Municipal Bond Commission (the "Commission") is appointed as Paying Agent for the Bonds.

Section 6. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Ordinance.

Section 7. The Bond Purchase Agreement and the execution and delivery by the Mayor thereof shall be and the same are hereby authorized, approved, and directed. The Mayor shall execute and deliver the Bond Purchase Agreement with such changes, insertions and omissions as may be approved by the Mayor. The execution of the Bond Purchase Agreement by the Mayor shall be conclusive evidence of any approval required by this Section, and authorization of any action required by the Bond Purchase Agreement relating to the issuance and sale of the Bonds, including the payment of all necessary fees and expenses in connection therewith.

Section 8. The Issuer hereby appoints and designates United Bank, Inc., to serve as Registrar (the "Registrar") for the Bonds under the Ordinance and approves and accepts 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, directed and approved.

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 Ordinance approved and provided for, to the end that the Bonds may be delivered to the Authority pursuant to the Bond Purchase Agreement on or about November 3, 2011.

Section 10. The Issuer hereby authorizes the payment of its Sewer Note, Series 1999 (the "Series 1999 Notes") from the proceeds of the Series 2011 A Bonds. The Issuer shall pay the sum of \$66,224.97 from the proceeds of the Series 2011 A Bonds to pay in full the outstanding balance of the Series 1999 Notes to the West Virginia Water Development Authority as registered owner of the Series 1999 Notes.

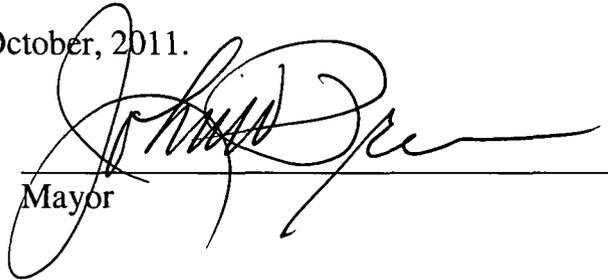
Section 11. The Issuer hereby determines to invest all moneys in the funds and accounts established by the Ordinance held by the Depository Bank until expended, in money market accounts secured by a pledge of direct obligations of, or obligations the timely payment of principals of and interest on which is guaranteed by, the United States of America, 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.

Section 12. The Issuer hereby approves and accepts all contracts relating to the financing, acquisition and construction of the Project.

Section 13. The Issuer hereby approves the costs of issuance and authorizes the payment of the same.

Section 14. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 24<sup>th</sup> day of October, 2011.

  
\_\_\_\_\_  
Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of the TOWN OF DELBARTON on the 24<sup>th</sup> day of October, 2011.

Dated this 3<sup>rd</sup> day of November, 2011.

[SEAL]

  
Recorder

# **Minutes of Town Council Meeting**

A Town Council Meeting was called to order on Monday, **August 22, 2011** at 5:00 PM by Mayor John Preece.

Members of Council present: Councilmen Joe Crum, Mark Sizemore, and Albert Totten, Recorder Kimberly Totten, and Mayor John Preece.

Members of Council absent: Councilmen Jeremy Davis and John Clifford Davis

Councilman Crum opened the meeting with prayer.

## **Region II Development**

Jim Boggs presented council with a budget amendment decreasing construction by \$3,387.49 and increasing permits and advertising by the same amount. Councilman Sizemore motioned to approve signature of the budget amendment as present by Mr. Boggs; Councilman Totten seconded. All present council voted Aye. Motion Carried.

Mr. Boggs also presented a request for drawdown #10 in the amount of \$3,387.49. The drawdown will include an invoice from Heartland Publications (\$2,854.90). Councilman Sizemore motioned to approve the drawdown as requested; Councilman Totten seconded. All present council voted Aye. Motion Carried.

## **Sanitation Ordinance**

Samme Gee with Jackson Kelly read the 2<sup>nd</sup> reading of the bond ordinance. Councilman Crum motioned to approve the second reading of the bond ordinance; Councilman Sizemore seconded. All present council voted Aye. Motion Carried.

## **Minutes**

Councilman Sizemore motioned to approve the minutes of August 8, 2011 as presented; Councilman Crum seconded. All present Council voted Aye. Motion Carried.

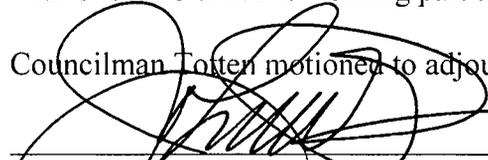
## **Gymnasium**

In regards to the lease on the gym with Regional Church of God, council discussed the fee to be associated with the lease. Councilman Sizemore motioned to charge the entity \$1 per month since they are responsible for all other monies associated with the gymnasium except major structural expenses; Councilman Crum seconded. All present council voted Aye with the exception of Councilman Totten due to personal conflict of interest. Motion Carried.

**Police Department**

Chief Hughes updated council with matters of the police department noting Sergeant Muncy with Sheriff's office is working part time with the department as well as Officer Lendaro.

Councilman Totten motioned to adjourn at 5:40 pm.

  
\_\_\_\_\_  
(Mayor)

  
\_\_\_\_\_  
(Recorder)

45  
10  
275  
45  
675  
12

**Town of Delbarton**  
**Regular Council Meeting Agenda**

5:00 PM Monday, September 26, 2011

- I. Call meeting to order.
- II. → Guest Presentations
- a) Misc.
- III. Old Business
- a) Minutes Approval
  - b) Sanitation Upgrade: Easements
  - c) Misc.
- IV. New Business
- a) Police Department
  - b) Misc.
- V. Adjourn

1550  
675  
875

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8100

# **Minutes of Town Council Meeting**

A Town Council Meeting was called to order on Monday, **September 12, 2011** at 5:40 PM by Mayor John Preece.

Members of Council present: Councilmen Joe Crum, Jeremy Davis, Mark Sizemore, and Albert Totten, Recorder Kimberly Totten, and Mayor John Preece.

Member of Council absent: Councilman John Clifford Davis

Councilman Crum opened the meeting with prayer.

## **Rutledge Law Office**

Attorney Glen Rutledge updated council of status of easements/condemnations. Paper work is ready to file to meet time line. Council discussed cases and how we can avoid condemnation. Rutledge will email the Rick Roberts with EL Robinson to set up a meeting with the citizens, council, and engineer to review the design of the project.

## **Sanitation Ordinance**

Ryan White with Jackson Kelly read the 3<sup>rd</sup> and final reading of the bond ordinance. Public Hearing was advertised and held as required. Councilman Crum motioned to approve the final reading of the bond ordinance and enactment of the ordinance; Councilman Jeremy Davis seconded. All present council voted Aye. Motion Carried.

## **Minutes**

Councilman Sizemore motioned to approve the minutes of August 22, 2011 as presented; Councilman Totten seconded. All present Council voted Aye. Motion Carried.

## **Dilapidated building ordinance**

Councilman Totten inquired of council if there was a dilapidated building ordinance. Council was not aware of an ordinance. Councilman Sizemore motioned to request Attorney Rutledge to work up an ordinance to remove dilapidated property throughout the town; Councilman Crum seconded. Councilman Totten abstained due to personal conflict. All other present council voted aye. Motion Carried.

## **Homecoming**

Councilman Totten updated council of festivities for homecoming. Councilman Sizemore motioned for the town to donate \$1000 to the Homecoming committee to help cover the cost of the annual festivities; Councilman Jeremy Davis seconded. Councilman Totten abstained due to conflict of interest. All other present council voted Aye. Motion Carried.

## **VFW**

The veterans requested the town assist with the parade and advertisement for Veterans Day Program on November 11, 2011.

**Elk Creek Walking Trail**

Councilman Sizemore inquired of status of the walking trail at the Elk Creek Park. Mayor advised we are in the process of pricing materials for the park.

**City Hall Roof**

Mayor is going to check on grant money from the House and Senate to pay for the roof. Two bids for roof both over \$10,000.

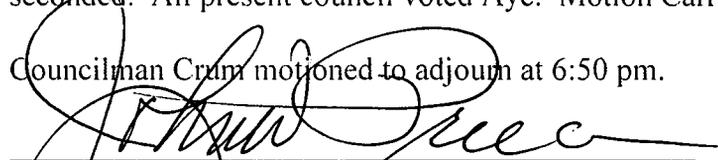
**Sanitation Department**

Councilman Totten motioned to purchase a good metal detector for the sanitation department; Councilman Sizemore seconded. All present Council voted Aye. Motion Carried.

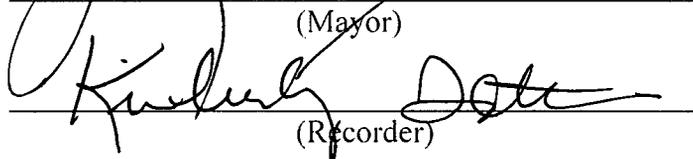
**Police Department**

Chief Hughes updated council with matters of the police department. Councilman Totten motioned to donate the old cruisers to the County to use for parts; Councilman Sizemore seconded. All present council voted Aye. Motion Carried.

Councilman Crum motioned to adjourn at 6:50 pm.



(Mayor)



(Recorder)

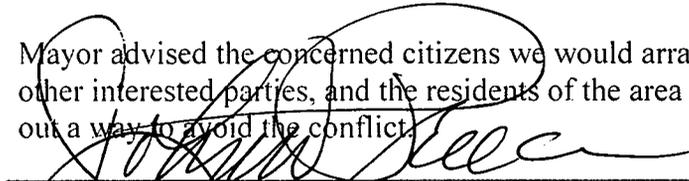
## Minutes of Town Council Public Hearing

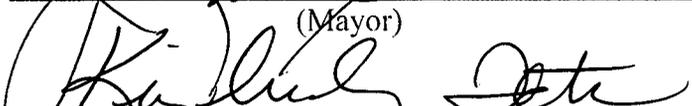
A public hearing was held in the Council Chambers of the Town of Delbarton on Monday September 12, 2011 at 4:30 pm in regards to the Sanitation upgrade system and the proposed issuance of revenue bonds/ amendment to June 11, 2009 engagement letter.

Citizens voiced concerns of the design the engineers have produced regarding their property. Major complaints voiced from citizens were in regards to potential flood issues if the wall would be damaged during construction. Also, a complaint was voiced about a tree that has been there a long time and may cause potential damage to their property. Citizens were concerned with the amount of property being included in the easement, limiting their use of the property for future purposes. The citizens were also concerned with the road they just got fixed being restored back to the condition it is currently.

Citizens inquired if the line could be re-engineered to another location; possible suggestions included along the fence, or in the creek. Council informed we were attempting to remove all lines from the creek to avoid potential flood damage and high levels of inflow and infiltration to the plant.

Mayor advised the concerned citizens we would arrange a meeting with the engineers, council, other interested parties, and the residents of the area to view suggestions and attempt to work out a way to avoid the conflict.

  
\_\_\_\_\_  
(Mayor)

  
\_\_\_\_\_  
(Recorder)

12 Sept 2011

# Public Hearing for Bond Ordinance

(1) Ryan White

(2) Harrison L. Hunt

(3) Gilton Hannah

(4) William B. Hunt

(5) Emmal Thompson

(6) Paul Hunt

(7) Roberta Hunt

(8) Joe Creek

(9) Jan Taylor

(10) David Green

(11) Glenn B. Hunt

12) Jeremy Davis

(13) Kimberly Totten

(14) Mark Simmons

(15) Albert Totten

(16)

(17)

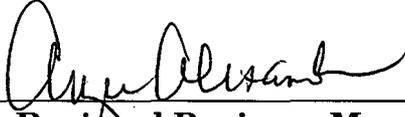
(18)

(19)

I, Angie Alexander, Regional Business Manager of Williamson Daily News, a newspaper published in Mingo County, West Virginia, do hereby certify that the annexed notice was published in said paper for 2 successive time(s) on the following date(s):

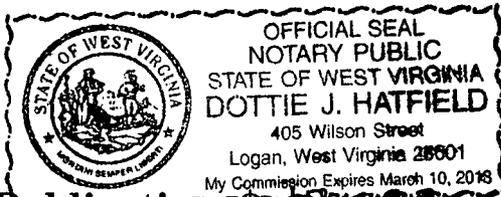
August 30th, & September 6, 2011

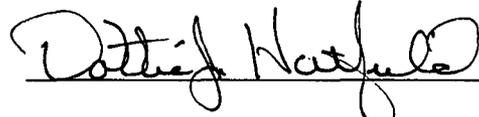
Given under my hand this 9th, day of September, 2011

  
Regional Business Manager

State of West Virginia  
County of Logan, to-wit:

Subscribed and sworn before me this 9th, day of September, 2011



  
NOTARY PUBLIC

Cost of Publication: \$ 184.85

COPY OF PUBLICATION

SEE ATTACHED

**TOWN OF DELBARTON, WEST VIRGINIA**

**NOTICE OF PUBLIC HEARING AND ABSTRACT OF BOND ORDINANCE**

Notice is hereby given to any person interested that on September 12, 2011, the Town Council of The Town of Delbarton, West Virginia (the "Town") adopted an ordinance which, among other things:

1. Authorized the design, acquisition and construction of certain extensions, additions, betterments and improvements (the "Project") to the Town's existing sewerage system (the "System"), the permanent financing of a portion of such costs thereof through the issuance of not more than \$4,000,000 in aggregate principal amount of Sewer Revenue Bonds, Series 2011 A (West Virginia CWSRF Program) and not more than \$2,000,000 in aggregate principal amount of Sewer Revenue Bonds, Series 2011 B (West Virginia CWSRF Program) (collectively, the "Bonds") and the temporary financing of a portion of such costs through the issuance of not more than \$1,500,000 in aggregate principal amount of Sewer Grant Anticipation Notes, Series 2011 (West Virginia Water Development Authority) (the "Notes").

2. Directed that the Bonds and Notes be issued in such principal amounts, bear interest at such rate or rates, not exceeding the then legal maximum rate, mature on such dates and in such amounts and redeemable, in whole or in part, as prescribed in a supplemental resolution.

3. Directed the continuation of a revenue fund and the disposition of the System revenues; provided for the payment of operating expenses of the System and debt service on the Bonds provided for the payment of the Notes from future grant proceeds; directed the creation of a sinking fund and a reserve account for the Bonds and creation of the renewal and replacement fund; and directed the creation of a bond construction trust fund and the disbursement of Bond proceeds and Note proceeds.

4. Provided that the Bonds shall not be or constitute a corporate indebtedness of the Town within the meaning of any statutory or constitutional limitations, but shall be payable solely from the Net Revenues of the System; pledged the Net Revenues of the System to payment of the Bonds and established the rights of the registered owners of the Bonds to such Net Revenues; and provided certain conditions for the issuance of additional bonds.

5. Provided that the Notes shall not be or constitute a corporate indebtedness of the Town within the meaning of any statutory or constitutional limitations, but shall be payable solely from the proceeds of a future grant to the Town; pledged the proceeds of the future grant of the Town to the payment of the Notes; and provided certain conditions for the issuance of additional Notes.

6. Provided for insurance coverage on the Project and the System, enforcement of collection of fees, rates or other charges for the System and other covenants in favor of the registered owners; established the events of default and the remedies of the registered owners; and provided for the modification or amendment of the Ordinance upon the terms and conditions set forth in the Ordinance.

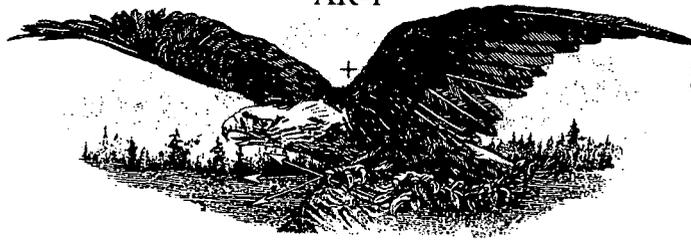
The Town contemplates the issuance of the Bonds and Notes described in, and under the conditions set forth in, the Ordinance abstracted above. Any person interested may appear before the Council of The Town of Delbarton at a regular meeting on September 12, 2011, at 4:30 p.m., in the Council Chambers, Town Hall, Delbarton, West Virginia, and present protests and be heard as to whether the above described Ordinance shall be put into effect.

A certified copy of the Ordinance as adopted by the Council of Town on August 22, 2011, is on file with the Recorder for review by interested persons at the Town Hall during regular office hours.

Kimberly Totten  
Town Recorder of The Town of Delbarton,  
West Virginia

8:30, 9:6

AR-1



SPECIMEN

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
TOWN OF DELBARTON  
SEWER REVENUE BONDS, SERIES 2011 A  
(WEST VIRGINIA CWSRF PROGRAM)

No. AR-1

\$3,131,150

KNOW ALL MEN BY THESE PRESENTS: The 3<sup>rd</sup> day of November, 2011, that the TOWN OF DELBARTON, a municipal corporation organized and existing under the laws of the State of West Virginia in Mingo 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 THREE MILLION ONE HUNDRED THIRTY-ONE THOUSAND ONE HUNDRED FIFTY DOLLARS (\$3,131,150), 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 March 1, 2014, to and including September 1, 2051, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The SRF Administrative Fee of 0.5% (as defined in the hereinafter described Bond Legislation) shall also be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing March 1, 2014, as set forth on said EXHIBIT B.

This Bond shall bear no interest. Principal and interest installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions

NUMBER  
AR-1  
SPECIMEN

prescribed by, and otherwise in compliance with, the Bond Purchase Agreement by and among the Issuer, the Authority and the DEP, dated November 3, 2011.

This Bond is issued (i) to pay in full the entire outstanding principal of and all accrued interest on the Issuer's Sewer Note, Series 1999 (the "Series 1999 Notes") (ii) to pay a portion of the costs of acquisition and installation of improvements and extensions to the existing public sewerage system of the Issuer (the "Project"); and (iii) to pay certain costs of issuance of the Bonds and related costs. The existing public sewerage system of the Issuer, the Physical Project and any further improvements or extensions thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on September 12, 2011, as supplemented by a Supplemental Resolution duly adopted by the Issuer on October 24, 2011 (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 SEWER REVENUE BONDS, SERIES 2011 B (WEST VIRGINIA CWSRF PROGRAM) DATED NOVEMBER 3, 2011, ISSUED SIMULTANEOUSLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,000,000 (THE "SERIES 2011 B BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the holders of the Series 2011 B Bonds and from monies in the reserve account created under the Bond Legislation for the Bonds (the "Series 2011 A Bonds Reserve Account") and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, except from said special fund provided from the Net Revenues, the monies in the Series 2011 A 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 the Bonds, including the Series 2011 B Bonds. The Issuer has entered into certain further covenants with the registered

## SPECIMEN

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 United Bank, Inc., 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 the payment of the Series 1999 Notes, to payment of the costs of the Project and costs of issuance hereof described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

NUMBER

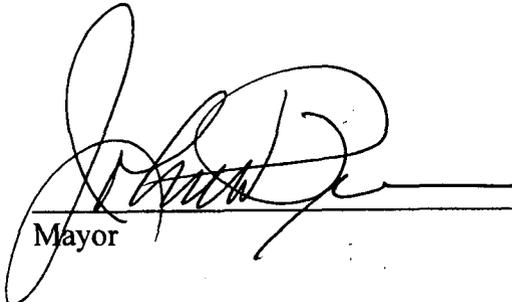
SPECIMEN

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

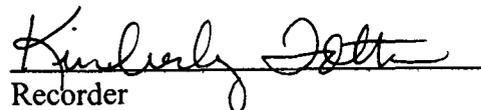
All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, the TOWN OF DELBARTON has caused this Bond to be signed by its Mayor and its corporate seal, if any, to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated the day and year first written above.

[SEAL]

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
Recorder

SPECIMEN  
AR-1

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2011 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: November 3, 2011.

UNITED BANK, INC.,  
as Registrar

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

EXHIBIT A  
RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$156,557.50	11/3/2011	(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			

SPAR-1

**EXHIBIT B  
DEBT SERVICE SCHEDULE**

**BOND DEBT SERVICE**

Town of Delbarton

CW SRF

\$3,131,150

0.5% Administrative Fee

Series A bonds

Period Ending	Principal	Interest	Total Debt Service	Admin Fee	Net Debt Service
3/1/2014	20,737		20,737	1,969.92	22,706.92
6/1/2014	20,737		20,737	1,969.92	22,706.92
9/1/2014	20,737		20,737	1,969.92	22,706.92
12/1/2014	20,737		20,737	1,969.92	22,706.92
3/1/2015	20,737		20,737	1,969.92	22,706.92
6/1/2015	20,737		20,737	1,969.92	22,706.92
9/1/2015	20,737		20,737	1,969.92	22,706.92
12/1/2015	20,737		20,737	1,969.92	22,706.92
3/1/2016	20,737		20,737	1,969.92	22,706.92
6/1/2016	20,737		20,737	1,969.92	22,706.92
9/1/2016	20,737		20,737	1,969.92	22,706.92
12/1/2016	20,737		20,737	1,969.92	22,706.92
3/1/2017	20,737		20,737	1,969.92	22,706.92
6/1/2017	20,736		20,736	1,969.92	22,705.92
9/1/2017	20,736		20,736	1,969.92	22,705.92
12/1/2017	20,736		20,736	1,969.92	22,705.92
3/1/2018	20,736		20,736	1,969.92	22,705.92
6/1/2018	20,736		20,736	1,969.92	22,705.92
9/1/2018	20,736		20,736	1,969.92	22,705.92
12/1/2018	20,736		20,736	1,969.92	22,705.92
3/1/2019	20,736		20,736	1,969.92	22,705.92
6/1/2019	20,736		20,736	1,969.92	22,705.92
9/1/2019	20,736		20,736	1,969.92	22,705.92
12/1/2019	20,736		20,736	1,969.92	22,705.92
3/1/2020	20,736		20,736	1,969.92	22,705.92
6/1/2020	20,736		20,736	1,969.92	22,705.92
9/1/2020	20,736		20,736	1,969.92	22,705.92
12/1/2020	20,736		20,736	1,969.92	22,705.92
3/1/2021	20,736		20,736	1,969.92	22,705.92
6/1/2021	20,736		20,736	1,969.92	22,705.92
9/1/2021	20,736		20,736	1,969.92	22,705.92
12/1/2021	20,736		20,736	1,969.92	22,705.92
3/1/2022	20,736		20,736	1,969.92	22,705.92
6/1/2022	20,736		20,736	1,969.92	22,705.92
9/1/2022	20,736		20,736	1,969.92	22,705.92
12/1/2022	20,736		20,736	1,969.92	22,705.92
3/1/2023	20,736		20,736	1,969.92	22,705.92
6/1/2023	20,736		20,736	1,969.92	22,705.92
9/1/2023	20,736		20,736	1,969.92	22,705.92
12/1/2023	20,736		20,736	1,969.92	22,705.92
3/1/2024	20,736		20,736	1,969.92	22,705.92
6/1/2024	20,736		20,736	1,969.92	22,705.92
9/1/2024	20,736		20,736	1,969.92	22,705.92
12/1/2024	20,736		20,736	1,969.92	22,705.92

**NET DEBT SERVICE**

Town of Delbarton

CW SRF

\$3,131,150

0.5% Administrative Fee

	Principal	Interest	Total Debt Service	Admin Fee	Net Debt Service
3/1/2025	20,736		20,736	1,969.92	22,705.92
6/1/2025	20,736		20,736	1,969.92	22,705.92
9/1/2025	20,736		20,736	1,969.92	22,705.92
12/1/2025	20,736		20,736	1,969.92	22,705.92
3/1/2026	20,736		20,736	1,969.92	22,705.92
6/1/2026	20,736		20,736	1,969.92	22,705.92
9/1/2026	20,736		20,736	1,969.92	22,705.92
12/1/2026	20,736		20,736	1,969.92	22,705.92
3/1/2027	20,736		20,736	1,969.92	22,705.92
6/1/2027	20,736		20,736	1,969.92	22,705.92
9/1/2027	20,736		20,736	1,969.92	22,705.92
12/1/2027	20,736		20,736	1,969.92	22,705.92
3/1/2028	20,736		20,736	1,969.92	22,705.92
6/1/2028	20,736		20,736	1,969.92	22,705.92
9/1/2028	20,736		20,736	1,969.92	22,705.92
12/1/2028	20,736		20,736	1,969.92	22,705.92
3/1/2029	20,736		20,736	1,969.92	22,705.92
6/1/2029	20,736		20,736	1,969.92	22,705.92
9/1/2029	20,736		20,736	1,969.92	22,705.92
12/1/2029	20,736		20,736	1,969.92	22,705.92
3/1/2030	20,736		20,736	1,969.92	22,705.92
6/1/2030	20,736		20,736	1,969.92	22,705.92
9/1/2030	20,736		20,736	1,969.92	22,705.92
12/1/2030	20,736		20,736	1,969.92	22,705.92
3/1/2031	20,736		20,736	1,969.92	22,705.92
6/1/2031	20,736		20,736	1,969.92	22,705.92
9/1/2031	20,736		20,736	1,969.92	22,705.92
12/1/2031	20,736		20,736	1,969.92	22,705.92
3/1/2032	20,736		20,736	1,969.92	22,705.92
6/1/2032	20,736		20,736	1,969.92	22,705.92
9/1/2032	20,736		20,736	1,969.92	22,705.92
12/1/2032	20,736		20,736	1,969.92	22,705.92
3/1/2033	20,736		20,736	1,969.92	22,705.92
6/1/2033	20,736		20,736	1,969.92	22,705.92
9/1/2033	20,736		20,736	1,969.92	22,705.92
12/1/2033	20,736		20,736	1,969.92	22,705.92
3/1/2034	20,736		20,736	1,969.92	22,705.92
6/1/2034	20,736		20,736	1,969.92	22,705.92
9/1/2034	20,736		20,736	1,969.92	22,705.92
12/1/2034	20,736		20,736	1,969.92	22,705.92
3/1/2035	20,736		20,736	1,969.92	22,705.92
6/1/2035	20,736		20,736	1,969.92	22,705.92
9/1/2035	20,736		20,736	1,969.92	22,705.92
12/1/2035	20,736		20,736	1,969.92	22,705.92
3/1/2036	20,736		20,736	1,969.92	22,705.92
6/1/2036	20,736		20,736	1,969.92	22,705.92

AR-1

**NET DEBT SERVICE**

Town of Delbarton

CW SRF

\$3,131,150

Date	Principal	Interest	Total Debt Service	Admin Fee	Net Debt Service
9/1/2036	20,736		20,736	1,969.92	22,705.92
12/1/2036	20,736		20,736	1,969.92	22,705.92
3/1/2037	20,736		20,736	1,969.92	22,705.92
6/1/2037	20,736		20,736	1,969.92	22,705.92
9/1/2037	20,736		20,736	1,969.92	22,705.92
12/1/2037	20,736		20,736	1,969.92	22,705.92
3/1/2038	20,736		20,736	1,969.92	22,705.92
6/1/2038	20,736		20,736	1,969.92	22,705.92
9/1/2038	20,736		20,736	1,969.92	22,705.92
12/1/2038	20,736		20,736	1,969.92	22,705.92
3/1/2039	20,736		20,736	1,969.92	22,705.92
6/1/2039	20,736		20,736	1,969.92	22,705.92
9/1/2039	20,736		20,736	1,969.92	22,705.92
12/1/2039	20,736		20,736	1,969.92	22,705.92
3/1/2040	20,736		20,736	1,969.92	22,705.92
6/1/2040	20,736		20,736	1,969.92	22,705.92
9/1/2040	20,736		20,736	1,969.92	22,705.92
12/1/2040	20,736		20,736	1,969.92	22,705.92
3/1/2041	20,736		20,736	1,969.92	22,705.92
6/1/2041	20,736		20,736	1,969.92	22,705.92
9/1/2041	20,736		20,736	1,969.92	22,705.92
12/1/2041	20,736		20,736	1,969.92	22,705.92
3/1/2042	20,736		20,736	1,969.92	22,705.92
6/1/2042	20,736		20,736	1,969.92	22,705.92
9/1/2042	20,736		20,736	1,969.92	22,705.92
12/1/2042	20,736		20,736	1,969.92	22,705.92
3/1/2043	20,736		20,736	1,969.92	22,705.92
6/1/2043	20,736		20,736	1,969.92	22,705.92
9/1/2043	20,736		20,736	1,969.92	22,705.92
12/1/2043	20,736		20,736	1,969.92	22,705.92
3/1/2044	20,736		20,736	1,969.92	22,705.92
6/1/2044	20,736		20,736	1,969.92	22,705.92
9/1/2044	20,736		20,736	1,969.92	22,705.92
12/1/2044	20,736		20,736	1,969.92	22,705.92
3/1/2045	20,736		20,736	1,969.92	22,705.92
6/1/2045	20,736		20,736	1,969.92	22,705.92
9/1/2045	20,736		20,736	1,969.92	22,705.92
12/1/2045	20,736		20,736	1,969.92	22,705.92
3/1/2046	20,736		20,736	1,969.92	22,705.92
6/1/2046	20,736		20,736	1,969.92	22,705.92
9/1/2046	20,736		20,736	1,969.92	22,705.92
12/1/2046	20,736		20,736	1,969.92	22,705.92
3/1/2047	20,736		20,736	1,969.92	22,705.92
6/1/2047	20,736		20,736	1,969.92	22,705.92
9/1/2047	20,736		20,736	1,969.92	22,705.92
12/1/2047	20,736		20,736	1,969.92	22,705.92
3/1/2048	20,736		20,736	1,969.92	22,705.92
6/1/2048	20,736		20,736	1,969.92	22,705.92

AR-1

**NET DEBT SERVICE**

Town of Delbarton

SRF

\$3,131,150

0% Interest Rate

0.5% Administrative Fee

40 Years from Closing Date

Date	Principal	Interest	Total Debt Service	Admin Fee	Net Debt Service
9/1/2048	20,736		20,736	1,969.92	22,705.92
12/1/2048	20,736		20,736	1,969.92	22,705.92
3/1/2049	20,736		20,736	1,969.92	22,705.92
6/1/2049	20,736		20,736	1,969.92	22,705.92
9/1/2049	20,736		20,736	1,969.92	22,705.92
12/1/2049	20,736		20,736	1,969.92	22,705.92
3/1/2050	20,736		20,736	1,969.92	22,705.92
6/1/2050	20,736		20,736	1,969.92	22,705.92
9/1/2050	20,736		20,736	1,969.92	22,705.92
12/1/2050	20,736		20,736	1,969.92	22,705.92
3/1/2051	20,736		20,736	1,969.92	22,705.92
6/1/2051	20,736		20,736	1,969.92	22,705.92
9/1/2051	20,737		20,737	1,969.92	22,706.92
	<b>3,131,150</b>		<b>3,131,150</b>	<b>297,457.92</b>	<b>3,428,607.92</b>

Note: Admin Fee payments calculated based on 0.5% of bond value outstanding paid in equal quarterly payments (rounded down to the nearest \$0.01).

AR-1

(Form of)  
ASSIGNMENT

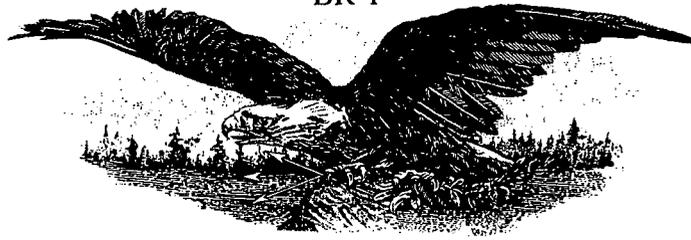
FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto \_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in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

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

In the presence of:

\_\_\_\_\_

NUMBER  
SPECIMEN  
BR-1



UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
TOWN OF DELBARTON  
SEWER REVENUE BONDS, SERIES 2011 B  
(WEST VIRGINIA CWSRF PROGRAM)

No. BR-1

\$2,000,000

KNOW ALL MEN BY THESE PRESENTS: The 3<sup>rd</sup> of November, 2011, that the TOWN OF DELBARTON, a municipal corporation organized and existing under the laws of the State of West Virginia in Mingo 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 TWO MILLION DOLLARS (\$2,000,000), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference. The principal amounts advanced under the Series 2011 B Bonds will be deemed forgiven on the 30th day of June in the fiscal year in which advanced. The Series 2011 B Bonds shall be deemed no longer outstanding after the last advance is forgiven.

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

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Department of Environmental Protection (the "DEP"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Bond Purchase Agreement by and among the Issuer, the Authority and the DEP, dated November 3, 2011.

This Bond is issued (i) to pay the costs of acquisition and construction of improvements and extensions to the existing public sewerage system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The existing public sewerage system of the Issuer, the Project and any further improvements or extensions thereto are herein called the "System." This Bond is issued under

the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on August 12, 2011, and a Supplemental Resolution duly adopted by the Issuer on October 24, 2011 (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 SEWER REVENUE BONDS, SERIES 2011 A (WEST VIRGINIA CWSRF PROGRAM), DATED NOVEMBER 3, 2011, ISSUED SIMULTANEOUSLY HERewith IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$3,131,150 (THE "SERIES 2011 A BONDS");

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of the Net Revenues in favor of the holders of the Series 2011 A Bonds and from monies in the reserve account created under the Bond Legislation for the Bonds (the "Series 2011 B Bonds Reserve Account") and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest, if any, on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, except from said special fund provided from the Net Revenues, the monies in the Series 2011 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 on a parity with or junior to the Bonds including the Series 2011 A Bonds; provided however, that so long as there exists in the Series 2011 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 on a parity with or junior to the Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description

BR-1

SPECIMEN

thereof. The Issuer shall make the payments into the Renewal and Replacement Fund as required by the Bond Legislation.

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

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

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

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

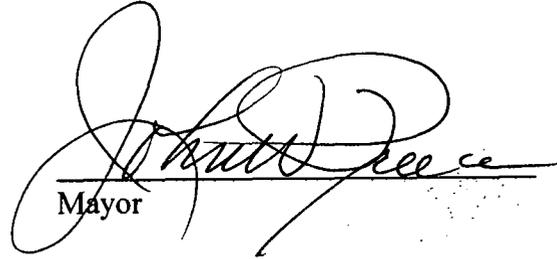
All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

[Remainder of Page Intentionally Blank]

BR-1

IN WITNESS WHEREOF, the TOWN OF DELBARTON 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 the day and year first written above.

[SEAL]

  
Mayor

ATTEST:

  
Recorder

## CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2011 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: November 3, 2011.

UNITED BANK, INC.,  
as Registrar

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

EXHIBIT A

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$100,000.00	11/3/2011	(20) \$	
(2)		(21) \$	
(3) \$		(22) \$	
(4) \$		(23) \$	
(5) \$		(24) \$	
(6) \$		(25) \$	
(7) \$		(26) \$	
(8) \$		(27) \$	
(9) \$		(28) \$	
(10) \$		(29) \$	
(11) \$		(30) \$	
(12) \$		(31) \$	
(13) \$		(32) \$	
(14) \$		(33) \$	
(15) \$		(34) \$	
(16) \$		(35) \$	
(17) \$		(36) \$	
(18) \$		(37) \$	
(19) \$			
		\$	_____

TOTAL

SPECIMEN  
BR-1

(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:

\_\_\_\_\_

BOND REGISTER

2.11(A)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
TOWN OF DELBARTON  
SEWER REVENUE BONDS, SERIES 2011 A  
(WEST VIRGINIA CWSRF PROGRAM)

<u>Bond Number</u>	<u>Principal Amount</u>	<u>Date of Bond</u>
No. AR-1	\$3,131,150	November 3, 2011

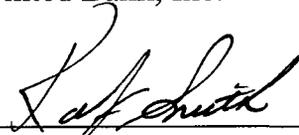
NO WRITING ON THIS BOND REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

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

Signature of Registrar:

United Bank, Inc.



\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

BOND REGISTER

2.11(B)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
TOWN OF DELBARTON  
SEWER REVENUE BONDS, SERIES 2011 B  
(WEST VIRGINIA CWSRF PROGRAM)

<u>Bond Number</u>	<u>Principal Amount</u>	<u>Date of Bond</u>
No. BR-1	\$2,000,000	November 3, 2011

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:

United Bank, Inc.

  
\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

TOWN OF DELBARTON  
SEWER REVENUE BONDS, SERIES 2011 A  
(WEST VIRGINIA CWSRF PROGRAM),  
SEWER REVENUE BONDS, SERIES 2011 B  
(WEST VIRGINIA CWSRF PROGRAM)

3.1

GENERAL CERTIFICATE ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES AND DELIVERY
6. RATES
7. INCUMBENCY AND OFFICIAL NAME
8. MEETINGS
9. INSURANCE
10. BOND PURCHASE AGREEMENT
11. SPECIMEN BOND
12. BOND PROCEEDS
13. PUBLICATION AND PUBLIC HEARING ON BOND  
AND NOTE ORDINANCE
14. LAND AND RIGHTS-OF-WAY
15. PUBLIC SERVICE COMMISSION ORDER
16. CONFLICTS OF INTEREST
17. PROCUREMENT OF ENGINEERING SERVICES
18. VERIFICATION OF SCHEDULE A
19. CLEAN WATER ACT
20. COUNTERPARTS

We, the undersigned MAYOR and the undersigned RECORDER of the Town of Delbarton in Mingo County, West Virginia (the "Issuer"), the undersigned TOWN ATTORNEY for the Issuer, and the PSC COUNSEL to the Issuer hereby certify in connection with the Issuer's Sewer Revenue Bonds, Series 2011 A (West Virginia CWSRF Program), numbered AR-1, dated the date hereof, in the principal amount of \$3,131,150 and the Sewer Revenue Bonds, Series 2011 B (West Virginia CWSRF Program), numbered BR-1, dated the date hereof, in the principal amount of \$2,000,000, dated the date hereof, (collectively, the "Bonds") as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning set forth in the

Bond and Note Ordinance duly passed by the Issuer on August 22, 2011, effective September 12, 2011 as supplemented by a Supplemental Resolution duly adopted by the Issuer on October 24, 2011 (collectively, the "Ordinance"), and the Bond Purchase Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Department of Environmental Protection ("DEP"), dated November 3, 2011 (the "Bond Purchase Agreement").

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 in any manner the authorization, issuance, sale and delivery of the Bonds, the acquisition and construction of the Project as described in the Ordinance (the "Project"), the operation of the Issuer's Combined Waterworks and Sewerage System (the "System"), the collection or use of the Gross Revenues, or the pledge and security of the Net Revenues for the Bonds; nor affecting the validity of the Bonds or any provisions made or authorized for the payment thereof; nor questioning the existence of the Issuer or the title of the members or officers of the Issuer or the Governing Body; nor questioning any proceedings of the Issuer taken with respect to the authorization, issuance, sale or delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection or use of the Gross Revenues, or the pledge and security of the Net Revenues for the Bonds.

3. GOVERNMENTAL APPROVALS AND BIDDING: All applicable and necessary approvals, permits, exemptions, consents, authorizations, registrations and certificates required by law for the acquisition and construction of the Project, the operation of the System and the issuance of the Bonds have been duly and timely obtained and remain in full force and effect, and competitive bids for the acquisition and construction of the Project have been solicited in accordance with Chapter 5, Article 22, Section 1 of the Code of West Virginia, 1931, as amended, which bids remain in full force and effect. The Issuer has received the Drug Free Workplace affidavits from the successful bidders required by Chapter 21, Article 1D 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 Issuer since the approval, execution and delivery by the Issuer of the Bond Purchase Agreement. The Issuer has met all conditions set forth in the Bond Purchase Agreement and will provide the financial, institutional, legal and managerial capabilities necessary to complete and operate the Project.

The Bonds are issued on a parity with each other, with respect to liens, pledge and source of and security for payment and in all other respects. There are no

other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

5. SIGNATURES AND DELIVERY: The undersigned Mayor and Recorder are the duly elected or appointed, qualified and acting officers of the Issuer as indicated by the official titles opposite their signatures below, and are duly authorized to execute and seal the Bonds for the Issuer. The seal impressed upon the Bonds and this Certificate is the duly authorized, proper and only seal of the Issuer. On the date hereof, the undersigned Mayor did officially sign all of the Bonds, consisting upon original issuance of a single Bond for each series, dated the date hereof, by his manual signature; the undersigned Recorder did officially cause the seal of the Issuer to be affixed upon the Bonds and to be attested by his manual signature; and the Registrar did officially authenticate and deliver the Bonds to a representative of the Authority as the original purchaser of the Bonds under the Bond Purchase Agreement.

6. RATES: The Issuer has duly enacted a sewer rate ordinance on March 14, 2011, setting forth the sewer rates and charges for the services of the System. The Issuer has complied with all requirements of the Act and the Public Service Commission of West Virginia (the "PSC") to make the rates valid and effective. The time for appeal of such rate ordinance has expired and there has been no appeal thereof and such rates are in full force and effect.

7. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is the "Town of Delbarton." The Issuer is a municipal corporation presently existing under the laws of, and a political subdivision of, the State of West Virginia in Mingo County of said State. The governing body of the Issuer is its Town Council, consisting of the Mayor and 5 council members duly elected, appointed, qualified and acting members, whose names and dates of termination of their current terms are as follows:

<u>Name</u>	<u>Date Of Termination Of Office</u>
John W. Preece, Mayor	June 30, 2015
Kimberly Totten, Recorder	June 30, 2015
Albert Totten, Council Member	June 30, 2015
Joseph Crum, Council Member	June 30, 2015
Clifford Davis, Council Member	June 30, 2015
Mark Sizemore, Council Member	June 30, 2015
Jeremy Davis, Council Member	June 30, 2015

The duly appointed and acting attorney for the Issuer is Glen R. Rutledge, Esq., Williamson, West Virginia. The duly appointed and acting PSC counsel for the Issuer is Kauffelt & Kauffelt, Charleston, West Virginia.

8. MEETINGS: All actions, ordinances, resolutions, orders and agreements taken, adopted and entered into by or on behalf of the Issuer in any way connected with the issuance of the Bonds and the acquisition, construction, operation and financing of the Project or the Systems were authorized or adopted at meetings of the Governing Body duly and regularly or specifically called and held pursuant to the Rules of Procedure of the Governing Body and all applicable statutes including Chapter 6, Article 9A of the Code of West Virginia, 1931, as amended, and a quorum of duly elected or appointed, qualified and acting members of the Governing Body was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

9. INSURANCE: The Issuer will maintain or, as appropriate, will require all contractors to maintain worker's 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 and the Bond Purchase Agreement. All insurance for the Systems required by the Ordinance and the Bond Purchase Agreement is in full force and effect.

10. BOND PURCHASE AGREEMENT: As of the date hereof, (i) the representations of the Issuer contained in the Bond Purchase Agreement are true and correct in all material respects as if made on the date hereof; (ii) the Bond Purchase Agreement do not contain any untrue statements of material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) to the best knowledge of the undersigned, no event affecting the Issuer has occurred since the date of the Bond Purchase Agreement, which should be disclosed for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information therein not misleading; and (iv) the Issuer is in compliance with the Bond Purchase Agreement.

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

11. SPECIMEN BOND: Attached hereto as Exhibit A and Exhibit B are specimens of the Bonds which are identical in all respects with the Bonds this day

delivered to the Authority and being substantially in the forms prescribed in the Ordinance.

12. BOND PROCEEDS: On the date hereof, the Issuer received \$256,557.50 from the Authority and the DEP, being a portion of the principal amount of the Series 2011 Bonds and more than a de minimus amount of the proceeds of the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer from time to time as acquisition and construction of the Project progresses.

13. PUBLICATION AND PUBLIC HEARING ON BOND AND NOTE ORDINANCE: Upon adoption of the Ordinance, an abstract thereof, determined by the Governing Body to contain sufficient information as to give notice of the contents thereof, was published once each week for 2 successive weeks, with not less than 6 full days between each publication, the first such publication occurring not less than 10 days before the date stated below for the public hearing, in Williamson Daily News, 1 qualified newspaper of general circulation in the Issuer, together with a notice to all persons concerned, stating that the Ordinance had been adopted and that the Issuer contemplated the issuance of the Bonds described in the Ordinance, stating that any person interested may appear before the Governing Body at the public hearing held at a public meeting of the Governing Body on September 12, 2011, at 4:30 p.m., prevailing time, for the Ordinance, in the council chambers of the Town Hall in Delbarton, West Virginia, and present protests, and stating that a certified copy of the Ordinance were on file at the office of the Recorder of the Issuer for review by interested parties during the office hours of the Issuer. At such hearing all objections and suggestions were heard by the Governing Body and the Ordinance became finally adopted, enacted and effective as of the date of such public hearing and remains in full force and effect.

14. LAND AND RIGHTS-OF-WAY: All land in fee simple and all rights-of-way and easements necessary for the acquisition and construction of the Project and the operation and maintenance of the Systems have been acquired or can and will be acquired by purchase, or, if necessary, by condemnation by the Issuer and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions which would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties which may have to be acquired by condemnation, are, in the opinion of all the undersigned, within the ability of the Issuer to pay for the same without jeopardizing the security of or payments on the Bonds.

15. PUBLIC SERVICE COMMISSION ORDER: The Issuer has received the Recommended Decision dated May 31, 2011, which became the final PSC Order on June 20, 2011, in Case No. 11-0258-S-CN, among other things, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the

financing for the Project. The time for appeal of the PSC Order has expired prior to the date hereof. Such Order remains in full force and effect.

16. **CONFLICTS OF INTEREST:** No member, officer or employee of the Issuer has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or in the sale of any land, materials, supplies or services to the Issuer or to any contractor supplying the Issuer, relating to the Bonds, the 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 5% of the particular business enterprise or contract.

17. **PROCUREMENT OF ENGINEERING SERVICES:** The Issuer has complied with all the requirements of Chapter 5G, Article 1 of the Code of West Virginia, 1931, as amended, in the procurement of the engineering services of the Consulting Engineers.

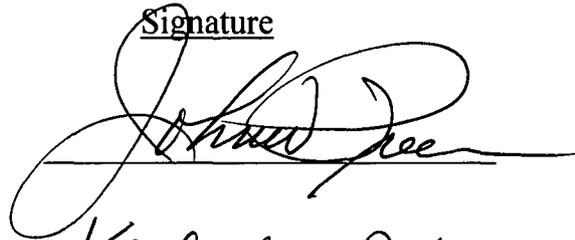
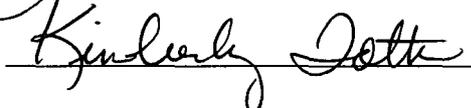
18. **VERIFICATION OF SCHEDULE B:** The final amended Schedule B attached to the Certificates of Consulting Engineer, with the signature of the Mayor and the Consulting Engineers, accurately represents the estimated costs of the Project, the sources of funds available to pay the costs of the Project and the costs of financing of the Bonds.

19. **CLEAN WATER ACT:** The Project as described in the Ordinance complies with Sections 208 and 303(e) of the Clean Water Act.

20. **COUNTERPARTS:** This Certificate may be executed in counterparts and all counterparts shall be deemed to be the Certificate.

WITNESS our signatures and the official corporate seal of the Town of Delbarton on this 3<sup>rd</sup> day of November, 2011.

[SEAL]

<u>Signature</u>	<u>Official Title</u>
 _____	Mayor
 _____	Recorder
_____	Town Attorney
 _____	PSC Counsel (as to matters in Sections 6 and 15)

WITNESS our signatures and the official corporate seal of the Town of Delbarton on this 3<sup>rd</sup> day of November, 2011.

[SEAL]

Signature

Official Title

\_\_\_\_\_

Mayor

\_\_\_\_\_

Recorder

\_\_\_\_\_

Town Attorney

\_\_\_\_\_

PSC Counsel  
(as to matters in Sections 6 and 15)

EXHIBIT A

See 2011 A Specimen Bond (Tab No. 14(A))

EXHIBIT B

See 2011 B Specimen Bond (Tab No. 14(B))

TOWN OF DELBARTON  
SEWER REVENUE BONDS, SERIES 2011 A  
(WEST VIRGINIA CWSRF PROGRAM),  
SEWER REVENUE BONDS, SERIES 2011 B  
(WEST VIRGINIA CWSRF PROGRAM)

3.2

CERTIFICATE AS TO USE OF PROCEEDS

On this 3<sup>rd</sup> day of November, 2011, the undersigned Mayor of the Town of Delbarton in Mingo County, West Virginia (the "Issuer"), being the official of the Issuer duly charged with the responsibility for the issuance of \$3,131,150 aggregate principal amount of Sewer Revenue Bonds, Series 2011 A (West Virginia CWSRF Program) (the "Series 2011 A Bonds") and \$2,000,000 aggregate principal amount of Sewer Revenue Bonds, Series 2011 B (West Virginia CWSRF Program) (the "Series 2011 B Bonds" and together with the Series 2011 A Bonds, the "Bonds"), all of the Issuer and dated November 3, 2011, hereby certify as follows:

1. I am the officer of the Issuer duly charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances and estimates herein certified and duly authorized to execute and deliver this certificate on behalf of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the same meanings as set forth in the Bond Ordinance duly enacted by the Issuer on September 12, 2011, as supplemented by the Supplemental Resolution passed by the Issuer on October 24, 2011 (collectively, the "Ordinance"), authorizing the Bonds.

2. This certificate may be relied upon as the certificate of the Issuer.

3. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on November 3, 2011, the date on which the Bonds are to be physically delivered in exchange for a portion of the principal amount of the Bonds, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

4. The Series 2011 A Bonds were sold on November 3, 2011, to the Authority, pursuant to Bond Purchase Agreement dated November 3, 2011, by and among the Issuer, the Authority, and the DEP, for an aggregate purchase price of \$3,131,150 (100% of par value), at which time, the Issuer received \$156,557.50 from the Authority and the DEP, being the first advance of the principal of the Series 2011 A Bonds. No accrued interest has been or will be paid on the Series 2011 A Bonds. The balance of the principal amount of the Series 2011 A Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

5. The Series 2011 B Bonds were sold on November 3, 2011, to the Authority, pursuant to Bond Purchase Agreement dated November 3, 2011, by and among the Issuer, the Authority, and the DEP, for an aggregate purchase price of \$2,000,000 (100% of par value), at which time, the Issuer received \$100,000.00 from the Authority and the DEP, being the first advance of the principal of the Series 2011 B Bonds. No accrued interest has been or will be paid on the Series 2011 B Bonds. The balance of the principal amount of the Series 2011 B Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

6. The Series 2011 A Bonds and the Series 2011 B Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying the Issuer’s Sewer Note, Series 1999 (the “Series 1999 Note”); (ii) paying a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the sewer system of the Issuer (the “Project”); (iii) paying costs of issuance of the Bonds 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 Bonds for the acquisition and construction of the Project, constituting a substantial binding commitment. The acquisition and construction of the Project and the allocation of the net sale proceeds of the Bonds to expenditures for costs of the Project shall commence immediately and proceed with due diligence to completion and, with the exception of proceeds deposited in the reserve account for the Bonds, if any, all of the proceeds from the sale of the Bonds, together with any investment earnings thereon, will be expended for payment of costs of acquisition and construction of the Project on or before November 1, 2012. The acquisition and construction of the Project is expected to be completed by September 1, 2012.

8. The total cost of the Project is estimated to be \$9,582,950. Sources and uses of funds for the Project are as follows:

SOURCES

Proceeds of the Series 2011 A Bonds	\$3,131,150.00
Proceeds of the Series 2011 B Bonds	\$2,000,000.00
Small Cities Block Grant	\$1,500,000.00
EPA STAG Grant	\$1,451,800.00
ARC Grant	<u>\$1,500,000.00</u>
Total Sources	\$9,582,950.00

USES

Payment of Series 1999 Note	\$66,224.97
-----------------------------	-------------

Costs of Project	\$9,465,225.03
Costs of Issuance	\$ <u>51,500.00</u>
Total Uses	\$9,582,950.00

9. Pursuant to the Ordinance, the following special funds or accounts have been created (or continued pursuant to the Prior Ordinances):

- (1) Revenue Fund;
- (2) Renewal and Replacement Fund;
- (3) Series 2011 Bonds Construction Trust Fund;
- (4) Series 2011 A Bonds Sinking Fund;
- (5) Series 2011 B Bonds Sinking Fund;
- (6) Series 2011 A Bonds Reserve Account; and
- (7) Series 2011 B Bonds Reserve Account.

10. Pursuant to the Ordinance, the proceeds of the Bonds will be deposited as follows:

(1) Series 2011 A Bond proceeds in the amount of \$66,247.97 will be deposited with the Municipal Bond Commission to pay the Water Development Authority the outstanding principal and interest due on the Series 1999 Note.

(2) Series 2011 A Bond proceeds in the amount of \$-0- will be deposited in the Series 2011 A Bonds Reserve Account.

(3) The balance of the proceeds of the Series 2011 A Bonds will be deposited in the Series 2011 Bonds Construction Trust Fund as received from time to time and applied solely to payment of costs of acquisition and construction of the Project, including costs of issuance of the Bonds and related costs, and for no other purpose.

(4) Series 2011 B Bond proceeds in the amount of \$-0- will be deposited in the Series 2011 B Bonds Reserve Account.

(5) The balance of the proceeds of the Series 2011 B Bonds will be deposited in the Series 2011 Bonds Construction Trust Fund as received from time to time and applied solely to payment of costs of acquisition and construction of the Project, including costs of issuance of the Bonds and related costs, and for no other purpose.

11. Moneys held in the Series 2011 A Bonds Sinking Fund will be used solely to pay principal of and interest, if any, on the Series 2011 A Bonds and will not be available to meet costs of acquisition and construction of the Project. All investment earnings on moneys in the Series 2011 A Bonds Reserve Account (if equal to the Series 2011 A Bonds Reserve Requirement) will be withdrawn therefrom, not less than once each year, and, during acquisition and construction of the Project, deposited into the Series 2011 Bonds Construction Trust Fund, and following completion of the Project, will be deposited in the Revenue Fund, and such amounts will be applied as set forth in the Ordinance.

12. Moneys held in the Series 2011 B Bonds Sinking Fund will be used solely to pay principal of and interest, if any, on the Series 2011 B Bonds and will not be available to meet costs of acquisition and construction of the Project. All investment earnings on moneys in the Series 2011 B Bonds Reserve Account (if equal to the Series 2011 B Bonds Reserve Requirement) will be withdrawn therefrom, not less than once each year, and, during acquisition and construction of the Project, deposited into the Series 2011 Bonds Construction Trust Fund, and following completion of the Project, will be deposited in the Sewer Revenue Fund, and such amounts will be applied as set forth in the Ordinance.

13. Work with respect to the acquisition and construction of the Project will proceed with due diligence to completion. The acquisition and construction of the Project is expected to be completed within 12 months of the date hereof.

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

15. With the exception of the amount deposited in the Series 2011 A Bonds Reserve Account and the Series 2011 B Bonds Reserve Account, if any, all of the proceeds of the Bonds will be expended on the Project within 12 months from the date of issuance thereof.

16. The Issuer does not expect to sell or otherwise dispose of the Project in whole or in part prior to the last maturity date of the Bonds.

17. The amount designated as cost of issuance of the Bonds consists only of costs which are directly related to and necessary for the issuance of the Bonds.

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

19. No proceeds of the Bonds will be used, directly or indirectly, in any trade or business carried on by any person who is not a governmental unit.

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

21. The Issuer shall use the proceeds of the Bonds solely for the costs of acquisition and construction of the Project, and the Project will be operated solely for a public purpose as a local governmental activity of the Issuer.

22. The Bonds are not federally guaranteed.

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

24. The Issuer has either (a) funded the Series 2011 A Bonds Reserve Account and the Series 2011 B Bonds Reserve Account at the maximum amount of principal and interest, if any, which will mature and become due on the Bonds in the then current or any succeeding year with the proceeds of the Bonds, or (b) created the Series 2011 A Bonds Reserve Account and the Series 2011 B Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until the Series 2011 A Bonds Reserve Account and the Series 2011 B Bonds Reserve Account holds an amount equal to the maximum amount of principal and interest, if any, which will mature and become due on the Bonds in the then current or any succeeding year. Moneys in the Series 2011 A Bonds Reserve Account and the Series 2011 B Bonds Reserve Account and the Series 2011 A Bonds Sinking Fund and the Series 2011 B Bonds Sinking Fund will be used solely to pay principal of and interest, if any, on the Bonds and will not be available to pay costs of the Project.

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

substantially the same source of funds or will have substantially the same claim to be paid out of substantially the same source of funds as the Bonds.

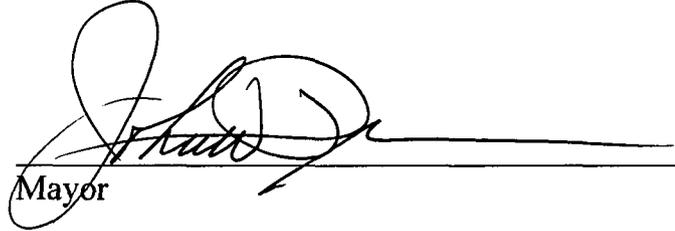
26. To the best of my knowledge, information and belief, there are no other facts, estimates and circumstances which would materially change the expectations herein expressed.

27. The Issuer will comply with instructions as may be provided by the Authority, at any time, regarding use and investment of proceeds of the Bonds, rebates and rebate calculations.

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

WITNESS my signature as of the date first written above.

TOWN OF DELBARTON



Handwritten signature of the Mayor, written in black ink over a horizontal line. The signature is stylized and cursive, starting with a large loop and ending with a long horizontal stroke.

Mayor

TOWN OF DELBARTON  
SEWER REVENUE BONDS, SERIES 2011 A  
(WEST VIRGINIA CWSRF PROGRAM),  
SEWER REVENUE BONDS, SERIES 2011 B  
(WEST VIRGINIA CWSRF PROGRAM)

3.3

CERTIFICATE OF RECORDER AS TO TRUTH  
AND ACCURACY OF DOCUMENTS DELIVERED

The undersigned duly elected Recorder of the Town of Delbarton (the "Issuer"), hereby certifies that the copies of the following documents being delivered in connection with the closing of the sale of the Town of Delbarton Sewer Revenue Bonds, Series 2011 A (West Virginia CWSRF Program) and Sewer Revenue Bonds, Series 2011 B (West Virginia CWSRF Program) (the "Bonds") are, as of the date hereof, true, complete and accurate copies of the originals of those documents maintained on file with the Issuer and delivered in the transcript of proceedings, that said documents have been duly adopted, enacted or entered by the Council of the Issuer, 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, supersedence, amendment or modification is also listed below:

1. Charter.
2. Oaths of Office of Mayor, Recorder and Council Members.
3. Public Service Commission Order.
4. Infrastructure Council Approval Letter.
5. Loan Agreements.
6. Sewer Rate Ordinance.
7. Minutes of Council Meetings regarding All Readings and Public Hearing of the Sewer Rate Ordinances.
8. Bond and Note Ordinance.
9. Supplemental Resolution.

10. Minutes of Council Meetings regarding All Readings and Public Hearing of the Bond and Note Ordinance and Adoption of the Supplemental Resolution.
11. Affidavit of Publication of the Notice of Public Hearing and Abstract of Bond and Note Ordinance.
12. NPDES Permit.
13. Evidence of Insurance.

WITNESS my signature and the official seal of the Town of Delbarton on  
this 3<sup>rd</sup> day of November, 2011.

  
Recorder

[SEAL]

TOWN OF DELBARTON  
SEWER REVENUE BONDS, SERIES 2011 A  
(WEST VIRGINIA CWSRF PROGRAM),  
SEWER REVENUE BONDS, SERIES 2011 B  
(WEST VIRGINIA CWSRF PROGRAM)

3.4

CERTIFICATE OF CONSULTING ENGINEER

I, Charles R. Roberts, Jr., Registered Professional Engineer, West Virginia License No. 10424, of E. L. Robinson Engineering Co., Charleston, West Virginia, hereby certify as follows:

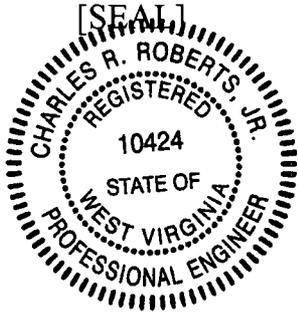
1. My firm is engineer for the acquisition and construction of certain additions, betterments and improvements consisting of the construction of approximately 27,800 feet of 16-inch and smaller diameter gravity sewer pipe, 4,790 feet of 1½ inch and smaller diameter force main, 187 manholes, seventeen grinder pumping stations, cleanouts, service laterals and other related appurtenances; plant upgrades and existing sewer line rehabilitation consisting of construction of a plant lift station, new head works, new rotors and covers for the oxidation ditch, two new secondary clarifiers, new return sludge pumping station, new UV disinfection system, flow measurement, new belt filter press and conversion of the existing clarifiers into aerobic digestors and all necessary appurtenances (the “Project”) to the existing public sewer system (the “System”) of the Town of Delbarton (the “Issuer”), to be constructed primarily in Mingo County, West Virginia, which acquisition and construction a portion of which is being permanently financed by the above-captioned bonds (the “Bonds”) of the Issuer. All capitalized words used herein and not defined herein shall have the same meaning set forth in the Bond and Note Ordinance passed by the Issuer on August 22, 2011, effective September 12, 2011, as supplemented by a Supplemental Resolution adopted by the Issuer on October 24, 2011, and the Bond Purchase Agreement by and among the Issuer, the West Virginia Water Development Authority (the “Authority”) and the West Virginia Department of Environmental Protection (“DEP”), dated November 3, 2011 (the “Bond Purchase Agreement”).

2. The Bonds are being issued for the purposes of (i) paying the Series 1999 Note; (ii) paying a portion of the costs of acquisition and construction of the Project; and (iii) paying certain costs of issuance and related costs.

3. To the best of my knowledge, information and belief (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the DEP and any change orders approved by the Issuer, the DEP and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least 40 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 in reliance upon the opinion of Glen Rutledge, Esquire, of even date herewith, all successful bidders have made required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the DEP and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project, to the extent the plans were prepared by my firm, and operation of the System; (ix) in reliance upon the certificate of the Issuer's certified public accountant, Griffith & Associates, PLLC, of even date herewith, as of the effective date thereof, the rates and charges for the System as enacted by the Issuer will be sufficient to comply with the provisions of the Bond Purchase Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the DEP and the Authority; (xi) attached hereto as Exhibit A are the final amended "Schedule B - Total Cost of Project, Sources of Funds and Cost of Financing" for the Bonds associated with the Project; and (xii) all contractors to be awarded contracts for the construction of the Project have submitted affidavits indicating such contractor has a drug free workplace plan pursuant to Chapter 21, Article 1D of the West Virginia Code of 1931, as amended.

4. The Project will serve 76 new customers in the Pigeonroost Creek, Rockhouse Branch, Pigeon Creek and surrounding areas.

WITNESS my signature and seal on this 3<sup>rd</sup> day of November, 2011.

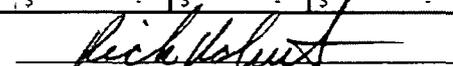


  
E. L. ROBINSON ENGINEERING CO.  
Charles R. Roberts, Jr., P.E.  
West Virginia License No. 10424

**SCHEDULE B--TOTAL PROJECT**  
 Delbarton, Town of  
**SEWER PROJECT - DEP CWSRF C-544414**  
**COST OF PROJECT, SOURCES OF FUNDS AND COST OF FINANCING**

A. Cost of Project	Total	DEP CWSRF (0%, 38 yrs)	CW Principal Forgiveness	E P A STAG (55%)	SCBG (ARC match)	ARC	TOTAL
<b>1. Construction</b>							
a. Contract 1 - Tri State Pipeline (CS)	\$ 4,374,967	\$ 2,054,767	\$ 1,201,000	\$ 571,800	\$ 547,400		\$ 4,374,967
b. Contract 2 - Breckenridge (TP)	\$ 2,799,000		\$ 799,000	\$ 500,000		\$ 1,500,000	\$ 2,799,000
Future CO work	\$ 600,112	\$ 600,112					\$ 600,112
subtotal	\$ 7,774,079	\$ 2,654,879	\$ 2,000,000	\$ 1,071,800	\$ 547,400	\$ 1,500,000	\$ 7,774,079
<b>2. Technical Services</b>							
a. Design Engineering	\$ 475,000	\$ -	\$ -	\$ 380,000	\$ 95,000	\$ -	\$ 475,000
b. Basic Engineering	\$ 86,400	\$ -	\$ -	\$ -	\$ 86,400	\$ -	\$ 86,400
c. Inspection	\$ 420,000	\$ -	\$ -	\$ -	\$ 420,000	\$ -	\$ 420,000
d. Special Services	\$ 62,700	\$ -	\$ -	\$ -	\$ 62,700	\$ -	\$ 62,700
<b>3. Legal &amp; Fiscal</b>							
a. Legal -Project	\$ 20,000	\$ -	\$ -	\$ -	\$ 20,000	\$ -	\$ 20,000
b. Legal PSC	\$ 10,000				\$ 10,000		\$ 10,000
Administration							
a. Project Coordinator	\$ 70,000				\$ 70,000		\$ 70,000
b. Accounting	\$ 28,500	\$ -	\$ -	\$ -	\$ 28,500	\$ -	\$ 28,500
<b>4. Sites and Other Lands</b>							
a. Sites and Lands	\$ 60,000	\$ -	\$ -	\$ -	\$ 60,000	\$ -	\$ 60,000
b. Legal Right-of-way Activities	\$ 70,000	\$ -	\$ -	\$ -	\$ 70,000	\$ -	\$ 70,000
<b>5. Miscellaneous</b>							
a. Permits	\$ 30,000	\$ -	\$ -	\$ -	\$ 30,000	\$ -	\$ 30,000
<b>6. IJDC deferred Loan</b>	\$ 66,250	\$ 66,250	\$ -	\$ -	\$ -	\$ -	\$ 66,250
<b>7. Contingency</b>	\$ 358,521	\$ 358,521					\$ 358,521
<b>8. Total of Lines 1 through 7</b>	\$ 9,531,450	\$ 3,079,650	\$ 2,000,000	\$ 1,451,800	\$ 1,500,000	\$ 1,500,000	\$ 9,531,450
<b>B. Cost of Financing</b>							
<b>9. Capitalized Interest</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>10. Other Costs</b>							
a. Bond Counsel	\$ 49,500	\$ 49,500	\$ -	\$ -	\$ -	\$ -	\$ 49,500
b. Bank Registrar Fee	\$ 500	\$ 500	\$ -	\$ -	\$ -	\$ -	\$ 500
c. Funded Reserve	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
d. Accountant	\$ 1,500	\$ 1,500					\$ 1,500
<b>11. Total Cost of Financing</b>	\$ 51,500	\$ 51,500	\$ -	\$ -	\$ -	\$ -	\$ 51,500
<b>12. Total Project Cost (line 8 plus line 11)</b>	\$ 9,582,950	\$ 3,131,150	\$ 2,000,000	\$ 1,451,800	\$ 1,500,000	\$ 1,500,000	\$ 9,582,950
		\$ 3,131,150	\$ 2,000,000	\$ 1,451,800	\$ 1,500,000	\$ 1,500,000	\$ 9,582,950
<b>C. Sources of Funds</b>							
<b>13. Federal Grants: STAG</b>	\$ 1,451,800	\$ -	\$ -	\$ 1,451,800	\$ -	\$ -	\$ -
<b>14. State Grants SCBG</b>	\$ 1,500,000	\$ -	\$ -	\$ -	\$ 1,500,000	\$ -	\$ -
<b>15. Other Grants ARC</b>	\$ 1,500,000	\$ -	\$ -	\$ -	\$ -	\$ 1,500,000	\$ -
<b>16. SRF Principle Forgiveness</b>	\$ 2,000,000		\$ 2,000,000				
<b>16. Total of Sources</b>	\$ 6,451,800	\$ -	\$ 2,000,000	\$ 1,451,800	\$ 1,500,000	\$ 1,500,000	\$ -
<b>17. Size of Bond Issue</b>	\$ 3,131,150	\$ 3,131,150	\$ -	\$ -	\$ -	\$ -	\$ 9,582,950

  
 Signature of Authorized Representative  
 Date 10/01/11

  
 Signature of Consulting Engineer  
 Date 10/11/11

9/29/2011 Rosalie M. Brodersen

2639636 total, E.P.A. \$1,451,800, 2nd rd match \$1,187,836  
 \$1,875,000 total, ARC SCBG match \$375,000



November 3, 2011

TOWN OF DELBARTON  
SEWER REVENUE BONDS, SERIES 2011 A  
(WEST VIRGINIA CWSRF PROGRAM),  
SEWER REVENUE BONDS, SERIES 2011 B  
(WEST VIRGINIA CWSRF PROGRAM),

Town of Delbarton  
Delbarton, WV 25670

West Virginia Water Development Authority  
Charleston, WV 25304

West Virginia Department of Environmental Protection  
Charleston, WV 25311

Jackson Kelly PLLC  
Charleston, WV 25301

Ladies and Gentlemen:

We have reviewed the sewer service rates of the Town of Delbarton (the "Issuer"), enacted by the Issuer on March 14, 2011, and the projected operating expenses and anticipated customer usage provided by E.L. Robinson Engineering Co., the consulting engineer of the Issuer. It is our opinion that such rates are sufficient (i) to provide for all operating expenses of the Sewerage System of the Issuer (the "System"), and (ii) to leave a balance each fiscal year equal to at least 115% of the maximum amount required in any succeeding fiscal year for the payment of principal of and interest on the Issuer's Sewer Revenue Bonds, Series 2011 A (West Virginia CWSRF Program), Sewer Revenue Bonds, Series 2011 B (West Virginia CWSRF Program) (the "Bonds").

It is further our opinion that the Net Revenues actually derived from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of the Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by the Bonds, will not be less than 115% of the maximum debt service in any succeeding year on the Prior Bonds and the Bonds.

Capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Ordinance authorizing the Bonds.

Very truly yours,

Michael D. Griffith, CPA, AFI  
Griffith & Associates, PLLC

MDG/dk

TOWN OF DELBARTON  
SEWER REVENUE BONDS, SERIES 2011 A  
(WEST VIRGINIA CWSRF PROGRAM),  
SEWER REVENUE BONDS, SERIES 2011 B  
(WEST VIRGINIA CWSRF PROGRAM)

3.6

RECEIPT FOR BONDS

The undersigned authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the Authority, hereby certifies as follows:

1. On the 3<sup>rd</sup> day of November, 2011, in Charleston, West Virginia, the Authority received the entire original issue of \$3,131,150 in aggregate principal amount of the Sewer Revenue Bonds, Series 2011 A (West Virginia CWSRF Program), of the Town of Delbarton (the "Issuer"), dated November 3, 2011, issued in the form of one bond, fully registered to the Authority, and numbered AR-1; and \$2,000,000 in aggregate principal amount of the Sewer Revenue Bonds, Series 2011 B (West Virginia CWSRF Program), of the Issuer, dated November 3, 2011, issued in the form of one bond, fully registered to the Authority, and numbered BR-1 (the "Bonds").

2. At the time of such receipt of the Bonds, they had been executed by the Mayor of the Issuer and attested by the Recorder of the Issuer, by their respective manual signatures, and the official seal of the Issuer had been impressed upon the Bonds.

WITNESS my signature on this 3<sup>rd</sup> day of November, 2011.

WEST VIRGINIA WATER DEVELOPMENT  
AUTHORITY

  
\_\_\_\_\_  
Authorized Representative

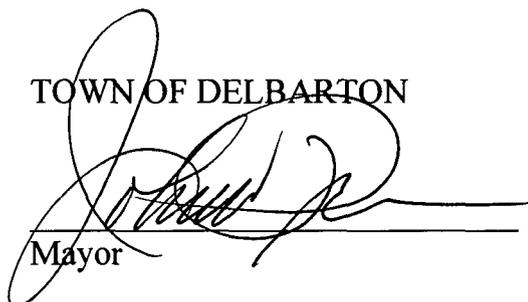
TOWN OF DELBARTON  
SEWER REVENUE BONDS, SERIES 2011 A  
(WEST VIRGINIA CWSRF PROGRAM),  
SEWER REVENUE BONDS, SERIES 2011 B  
(WEST VIRGINIA CWSRF PROGRAM)

RECEIPT FOR BOND PROCEEDS

On this 3<sup>rd</sup> day of November, 2011, the undersigned Mayor of the Town of Delbarton (the "Issuer"), for and on behalf of the Issuer, hereby certifies that the Issuer has received on the date hereof from the West Virginia Water Development Authority (the "WDA"), the sum of \$156,557.50, being the first advance on Sewer Revenue Bonds, Series 2011 A (West Virginia CWSRF Program) and the sum of \$100,000.00 being the first advance on Sewer Revenue Bonds, Series 2011 B (West Virginia CWSRF Program), dated the date hereof (the "Bonds"). The Issuer understands that the remaining proceeds of the Bonds will be advanced to the Issuer by the WDA from time to time as construction progresses.

WITNESS my signature as of the date first written above.

TOWN OF DELBARTON



\_\_\_\_\_  
Mayor

TOWN OF DELBARTON  
SEWER REVENUE BONDS, SERIES 2011 A  
(WEST VIRGINIA CWSRF PROGRAM),  
SEWER REVENUE BONDS, SERIES 2011 B  
(WEST VIRGINIA CWSRF PROGRAM)

3.8

REQUEST AND AUTHORIZATION TO  
AUTHENTICATE AND DELIVER THE BONDS

November 3, 2011

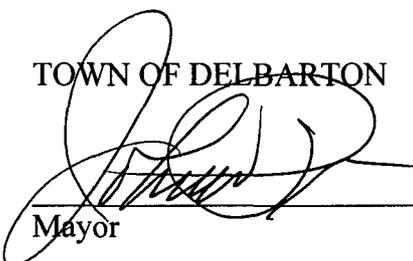
United Bank, Inc., as Registrar  
Charleston, West Virginia

Ladies and Gentlemen:

We herewith hand to you, duly executed, the \$3,131,150 Sewer Revenue Bonds, Series 2011 A (West Virginia CWSRF Program), in the form of one bond, numbered AR-1, dated November 3, 2011, and the \$2,000,000 Sewer Revenue Bonds, Series 2011 B (West Virginia CWSRF Program), in the form of one bond, numbered BR-1, dated November 3, 2011 (the "Bonds") of the Town of Delbarton (the "Issuer"), authorized to be issued under and pursuant to a Bond and Note Ordinance duly passed by the Issuer on August 22, 2011, effective September 12, 2011, and a Supplemental Resolution duly adopted by the Issuer on October 24, 2011.

You are hereby requested and authorized to register, authenticate and deliver the Bonds on behalf of the Issuer to the West Virginia Water Development Authority.

TOWN OF DELBARTON



\_\_\_\_\_  
Mayor

(SEAL)

Attest:



\_\_\_\_\_  
Recorder

TOWN OF DELBARTON  
SEWER REVENUE BONDS, SERIES 2011 A  
(WEST VIRGINIA CWSRF PROGRAM),  
SEWER REVENUE BONDS, SERIES 2011 B  
(WEST VIRGINIA CWSRF PROGRAM)

3.9

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 3<sup>rd</sup> day of November, 2011, by and between the TOWN OF DELBARTON, a municipal corporation (the "Issuer"), and UNITED BANK, INC., Charleston, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$3,131,150 Sewer Revenue Bonds, Series 2011 A (West Virginia CWSRF Program), in the form of one bond, numbered AR-1, in fully registered form and \$2,000,000 Sewer Revenue Bonds, Series 2011 B (West Virginia CWSRF Program), in the form of one bond, numbered BR-1, in fully registered form (collectively, the "2011 Bonds"), pursuant to a Bond and Note Ordinance duly passed by the Issuer on August 22, 2011, effective September 12, 2011, and a Supplemental Resolution duly adopted October 24, 2011 (collectively, 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 provide for an appointment by the Issuer of a Registrar for the Bonds; 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 Registrar for the Bonds, all as set forth in the Ordinance, such duties including, among other things, the duties to authenticate, register and deliver Bonds upon original issuance and when properly presented for exchange or

transfer, and shall do so with the intention of maintaining the exclusion of interest, if any, on the Bonds from gross income for federal income tax purposes, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as the Issuer advises it of and with generally accepted industry standards.

2. The Registrar agrees to furnish the Issuer with appropriate records of all transactions carried out by it as Registrar and to furnish the Issuer with the names and specimen signatures of the Registrar's authorized officers for the purposes of acting as the Registrar and with such other information and reports as the Issuer may from time to time reasonably require.

3. The Registrar shall have no responsibility or liability for any action taken by it at the specific direction of the Issuer.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Issuer hereby agrees to pay to the Registrar the compensation for services rendered as provided in the annexed schedule.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the 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 60 days' written notice sent by registered or certified mail to the other party, at the following respective address:

ISSUER:

Town of Delbarton  
PO Box 730  
Delbarton, WV 25670  
Attention: Mayor

**REGISTRAR:**

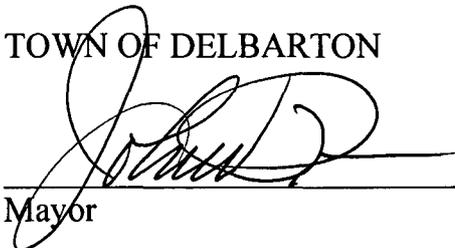
United Bank, Inc.  
500 Virginia Street, East  
Charleston, WV 25301  
Attention: Corporate Trust Department

The Issuer and the Registrar shall notify the other in writing of any change of address.

8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Ordinance.

IN WITNESS WHEREOF, the parties hereto have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the date first above-written.

TOWN OF DELBARTON



---

Mayor

UNITED BANK, INC.



---

Authorized Officer

EXHIBIT A

See Bond and Note Ordinance (Tab No. 10)  
See Supplemental Resolution (Tab No. 11)

TOWN OF DELBARTON

3.10

SEWER REVENUE BONDS, SERIES 2011 A  
(WEST VIRGINIA CWSRF PROGRAM),  
SEWER REVENUE BONDS, SERIES 2011 B  
(WEST VIRGINIA CWSRF PROGRAM)

CERTIFICATE OF REGISTRATION OF BONDS

UNITED BANK, INC., Charleston, West Virginia, as Registrar (the "Registrar"), hereby certifies that on the date hereof, the single, fully registered Sewer Revenue Bonds, Series 2011 A (West Virginia CWSRF Program), of the Town of Delbarton (the "Issuer"), dated November 3, 2011, in the principal amount of \$3,131,150, and numbered AR-1 and Sewer Revenue Bonds, Series 2011 B (West Virginia CWSRF Program) of the Issuer, dated November 3, 2011, in the principal amount of \$2,000,000, and numbered BR-1 was registered as to principal in the name of "West Virginia Water Development Authority" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of the Registrar.

WITNESS my signature on this 3<sup>rd</sup> day of November, 2011.

UNITED BANK, INC., as Registrar



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

TOWN OF DELBARTON  
SEWER REVENUE BONDS, SERIES 2011 A  
(WEST VIRGINIA CWSRF PROGRAM),  
SEWER REVENUE BONDS, SERIES 2011 B  
(WEST VIRGINIA CWSRF PROGRAM)

3.11

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

BANK OF MINGO, Delbarton, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond and Note Ordinance of the Town of Delbarton (the "Issuer"), passed by the Issuer on August 22, 2011, effective September 12, 2011, a Supplemental Resolution adopted by the Issuer on October 24, 2011 (collectively, the "Ordinance"), authorizing the issuance of the Town of Delbarton Sewer Revenue Bonds, Series 2011 A (West Virginia CWSRF Program), in the aggregate principal amount of \$3,131,150, Sewer Revenue Bonds, Series 2011 B (West Virginia CWSRF Program), in the aggregate principal amount of \$2,000,000, all dated November 3, 2011, and agrees to serve as Depository Bank, all as set forth in the Ordinance.

Witness my signature on this 3<sup>rd</sup> day of November, 2011.

BANK OF MINGO

  
Authorized Officer

**WEST VIRGINIA MUNICIPAL BOND COMMISSION**

1207 Quarrier Street, Suite 401

Charleston, WV 25301

(304) 558-3971

3.12(A)

**NEW ISSUE REPORT FORM**

Date of Report: November 3, 2011

ISSUE: The Town of Delbarton Sewer Revenue Bonds, Series 2011 A (West Virginia CWSRF Program)

ADDRESS: PO Box 730, Delbarton, WV 25670 COUNTY: Mingo

PURPOSE OF ISSUE: New Money  Refunding \_\_\_\_\_ Refunds issue(s) dated: \_\_\_\_\_

ISSUE DATE: November 3, 2011 CLOSING DATE: November 3, 2011

ISSUE AMOUNT: \$3,131,150 RATE: 0% / 0.5% Admin Fee

1st DEBT SERVICE DUE: March 1, 2014 1st PRINCIPAL DUE: March 1, 2014

1st DEBT SERVICE AMOUNT: \$20,737 PAYING AGENT: Municipal Bond Commission

BOND COUNSEL: Jackson Kelly PLLC UNDERWRITERS COUNSEL: \_\_\_\_\_  
Contact Person: Samme L. Gee, Esquire Contact Person: \_\_\_\_\_  
Phone: (304) 340-1318 Phone: (304)

CLOSING BANK: Bank of Mingo ESCROW TRUSTEE: \_\_\_\_\_  
Contact Person: Dawn Farley Contact Person: \_\_\_\_\_  
Phone: (304) 475-4750 Phone: \_\_\_\_\_

KNOWLEDGEABLE ISSUER CONTACT: OTHER: WVDEP  
Contact Person: John W. Preece Contact Person: Rosalie Brodersen  
Position: Mayor Function: Program Manager  
Phone: (304) 475-3359 Phone: (304) 558-0637  
E-Mail: mayorjwp@hotmail.com

DEPOSITS TO MBC AT CLOSE: \_\_\_\_\_ Accrued Interest: \$ \_\_\_\_\_  
Capitalized Interest: \$ \_\_\_\_\_  
By  Wire \_\_\_\_\_ Reserve Account: \$ \_\_\_\_\_  
 Check \_\_\_\_\_  Other: Payment of 1999 Note \$66,224.97

REFUNDS & TRANSFERS BY MBC AT CLOSE:  
By \_\_\_\_\_ Wire \_\_\_\_\_ To Escrow Trustee: \$ \_\_\_\_\_  
\_\_\_\_\_ Check \_\_\_\_\_ To Issuer: \$ \_\_\_\_\_  
\_\_\_\_\_ IGT \_\_\_\_\_ To Cons.Invest.Fund \$ \_\_\_\_\_  
\_\_\_\_\_ To Other: \_\_\_\_\_ \$ \_\_\_\_\_

NOTES: The Series 2011 A Reserve Fund will be funded over a ten year period.

**FOR MUNICIPAL BOND COMMISSION USE ONLY:**

Documents Required: \_\_\_\_\_

Transfers Required: \_\_\_\_\_

**WEST VIRGINIA MUNICIPAL BOND COMMISSION**

1207 Quarrier Street, Suite 401

Charleston, WV 25301

(304) 558-3971

3.12(B)

**NEW ISSUE REPORT FORM**

Date of Report: November 3, 2011

ISSUE: The Town of Delbarton Sewer Revenue Bonds, Series 2011 B (West Virginia CWSRF Program)

ADDRESS: PO Box 730, Delbarton, WV 25670 COUNTY: Mingo

PURPOSE OF ISSUE: New Money  Refunding \_\_\_\_\_ Refunds issue(s) dated: \_\_\_\_\_

ISSUE DATE: November 3, 2011 CLOSING DATE: November 3, 2011

ISSUE AMOUNT: \$2,000,000 RATE: 0% / 0% Admin Fee

1st DEBT SERVICE DUE: N/A 1st PRINCIPAL DUE: N/A

1st DEBT SERVICE AMOUNT: \$N/A PAYING AGENT: Municipal Bond Commission

BOND COUNSEL: Jackson Kelly PLLC UNDERWRITERS COUNSEL: \_\_\_\_\_  
Contact Person: Samme L. Gee, Esquire Contact Person: \_\_\_\_\_  
Phone: (304) 340-1318 Phone: (304)

CLOSING BANK: Bank of Mingo ESCROW TRUSTEE: \_\_\_\_\_  
Contact Person: Dawn Farley Contact Person: \_\_\_\_\_  
Phone: (304) 475-4750 Phone: \_\_\_\_\_

KNOWLEDGEABLE ISSUER CONTACT: OTHER: WVDEP  
Contact Person: John W. Preece Contact Person: Rosalie Brodersen  
Position: Mayor Function: Program Manager  
Phone: (304) 475-3359 Phone: (304) 558-0637  
E-Mail: mayorjwp@hotmail.com

DEPOSITS TO MBC AT CLOSE: \_\_\_\_\_ Accrued Interest: \$ \_\_\_\_\_  
Capitalized Interest: \$ \_\_\_\_\_  
By  Wire \_\_\_\_\_ Reserve Account: \$ \_\_\_\_\_  
 Check \_\_\_\_\_  Other: Payment of 1999 Note \$ \_\_\_\_\_

REFUNDS & TRANSFERS BY MBC AT CLOSE:  
By \_\_\_\_\_ Wire \_\_\_\_\_ To Escrow Trustee: \$ \_\_\_\_\_  
\_\_\_\_\_ Check \_\_\_\_\_ To Issuer: \$ \_\_\_\_\_  
\_\_\_\_\_ IGT \_\_\_\_\_ To Cons.Invest.Fund \$ \_\_\_\_\_  
\_\_\_\_\_ To Other: \_\_\_\_\_ \$ \_\_\_\_\_

NOTES: The Series 2011 B Bonds are 100% principal forgiveness.

FOR MUNICIPAL BOND COMMISSION USE ONLY:  
Documents Required: \_\_\_\_\_  
Transfers Required: \_\_\_\_\_



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west virginia department of environmental protection

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Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Phone: 304-926-0495  
Fax: 304-926-0496

Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
[www.dep.wv.gov](http://www.dep.wv.gov)

July 28, 2011

Honorable John Preece  
Mayor, Town of Delbarton  
P.O. Box 730  
Delbarton, WV 25670

**CERTIFIED RETURN RECEIPT REQUESTED**

**RE: WV/NPDES Permit Modification  
WV0042374-C, Mingo County**

Dear Mayor Preece,

This correspondence shall serve as Modification No. 3 of your existing WV/NPDES Water Pollution Control Permit No. WV0042374 issued the 15<sup>th</sup> day of April, 2008.

After review and consideration of the information submitted on, and with, WV/NPDES Water Pollution Control Permit Modification Application No. WV0042374-C dated the 4th day of April, 2011 and other relevant information, the subject permit is hereby modified to incorporate the following changes:

To acquire, construct, install, operate, and maintain improvements to the existing wastewater collection system and the wastewater treatment plant by installing 1,637 linear feet of sixteen inch diameter gravity sewer pipe, 2,635 linear feet of twelve inch diameter sewer pipe, 1,514 linear feet of ten inch gravity sewer line, 21,747 linear feet of eight (8) inch diameter gravity sewer pipe, 4,205 linear feet of one and a half (1 1/2) inch force main, 585 linear feet of one and a quarter (1 1/4) inch force main, approximately 187 manholes, a plant lift station, two (2) new secondary clarifiers, a new UV disinfection system, removal of the existing chlorination facility, a new belt press building with new belt press, conversion of two existing clarifiers into aerobic digesters, a new head works building with screening and grit removal facilities, a new dewatered sludge storage facility and any necessary appurtenances.

These facilities are to extend sanitary sewer service to 76 new customers in the Ragland, Pigeonroost Creek, Rockhouse Branch and Pigeon Creek area of Mingo County and to convey wastewater to the Town of Delbarton wastewater treatment plant and discharge

Promoting a healthy environment.

treated wastewater, via Outlet 001, to Pigeon Creek, approximately 13.7 miles from its mouth, of the Tug Fork of the Big Sandy River.

The above mentioned modification project shall be constructed in accordance with plans and specifications prepared by E.L. Robinson Engineering Co., 5088 Washington Street West, Charleston, West Virginia 25313 and identified by "TOWN OF DELBARTON, MINGO COUNTY, WEST VIRGINIA, WASTEWATER TREATMENT AND COLLECTION SYSTEM UPGRADE PROJECT AND SPECIFICATIONS AND CONTRACT DOCUMENTS, CONTRACTS 1 AND 2."

All other terms and conditions of the subject WV/NPDES Water Pollution Control Permit shall remain unchanged and in effect. If you have any questions in this regard, please contact David H. Cole, P.E. of this office at (304)-926-0499, ext. 1023.

Sincerely,



Scott G. Mandirola  
Director

SGM:dhc

cc: E.E. Supervisor  
E.E. Inspector

**ACORD**<sup>TM</sup>

**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)  
10/21/2011

PRODUCER 304.752.7075 FAX 304.752.2872  
McCallister & Herman, Inc.  
313 Hudgins Street  
P. O. Box 1887  
Logan, WV 25601

**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 DELBARTON  
P O BOX 730  
DELBARTON, WV 25670

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: BOARD OF RISK AND INS. MGNMT.	
INSURER B: Brickstreet Mutual Insurance	
INSURER C:	
INSURER D:	
INSURER E:	

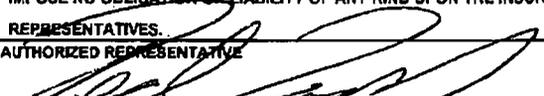
**COVERAGES**

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 ADDL LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A		<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	P800000543	07/01/2011	07/01/2012	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 1,000,000 PRODUCTS - COM/POP AGG \$ 1,000,000
A		<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	L800000543	07/01/2011	07/01/2012	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
		<b>EXCESS / UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
B		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> If yes, describe under SPECIAL PROVISIONS below	WC10217909-01	01/05/2011	01/05/2012	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
		OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
**WEST VIRGINIA WATER DEVELOPMENT AUTHORITY IS LISTED ON THE ABOVE POLICY AS ADDITIONAL INSURED.**

**CERTIFICATE HOLDER**  
  
 WEST VIRGINIA WATER DEVELOPMENT AUTHORITY  
 180 ASSOCIATION DRIVE  
 CHARLESTON, WV 25311-1751

**CANCELLATION**  
 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 



**CLOSING MEMORANDUM**

3.15

**To:** John W. Preece  
Samme Gee  
Rose Brodersen  
Carol Cummings  
Mark Kauffelt

**From:** Ryan White

**Date:** November 3, 2011

**Re:** The Town of Delbarton Sewer Revenue Bonds, Series 2011 A  
(West Virginia CWSRF Program)  
Sewer Revenue Bonds, Series 2011 B  
(West Virginia CWSRF Program)

---

1. **DISBURSEMENTS TO CITY**

Payor: West Virginia Department of Environmental Protection  
Source: Series 2011 A Bonds Proceeds  
Amount: \$90,332.53  
Date: November 3, 2011  
Form: Wire  
Payee: The Town of Delbarton  
Bank: Bank of Mingo  
Intersection of Route 52 & Route 65, Delbarton, WV  
ABA: 051501817  
Account #: 037281  
Account Name: Sewer Revenue Bonds Account  
Contact: Dawn Farley (304) 475-4750

{C2039646.1}

2. **DISBURSEMENTS TO CITY**

Payor: West Virginia Department of Environmental Protection  
Source: Series 2011 B Bonds Proceeds  
Amount: \$100,000  
Date: November 3, 2011  
Form: Wire  
Payee: The Town of Delbarton  
Bank: Bank of Mingo  
Intersection of Route 52 & Route 65, Delbarton, WV  
ABA: 051501817  
Account #: 037281  
Account Name: Sewer Revenue Bonds Account  
Contact: Dawn Farley (304) 475-4750

3. **DISBURSEMENTS TO MUNICIPAL BOND COMMISSION**

Payor: West Virginia Department of Environmental Protection on behalf of City  
Source: Series 2011 A Bonds Proceeds  
Amount: \$66,224.97  
Date: November 3, 2011  
Form: Wire Transfer  
Payee: West Virginia Municipal Bond Commission  
Bank: Branch Banking & Trust Company, Charleston, WV  
ABA No.: 051503394  
Account No.: 5270517317  
Contact: West Virginia State Treasurer for West Virginia Municipal Bond Commission  
Account: Note Payment Fund, to pay The Town of Delbarton Sewer Notes, Series 1999, dated June 15, 1999.

TOWN OF DELBARTON  
SEWER REVENUE BONDS, SERIES 2011 A  
(WEST VIRGINIA CWSRF PROGRAM),  
SEWER REVENUE BONDS, SERIES 2011 B  
(WEST VIRGINIA CWSRF PROGRAM)

3.16

RECEIPT OF PAYMENT OF SERIES 1999 NOTE

The undersigned duly authorized representative of the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, the registered owner of the Sewer Notes, Series 1999 (the "Note"), of the Town of Delbarton (the "Issuer"), dated June 15, 1999, in the original aggregate principal amount of \$66,073, hereby certifies that it has received the sum of \$66,224.97 from the Issuer and that such sum is sufficient to pay the entire outstanding principal amount of the Note and all Municipal Bond Commission Fees and discharge the liens, pledges and encumbrances securing the Note.

Dated this 3<sup>rd</sup> day of November, 2011.

WEST VIRGINIA WATER  
DEVELOPMENT AUTHORITY

  
Authorized Representative



*State of West Virginia*  
*Joe Manchin III*  
*Governor*

Office of the Governor  
State Capitol  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

Telephone: (304) 558-2000  
Toll Free: 1-888-438-2731  
FAX: (304) 342-7025  
[www.wvgov.org](http://www.wvgov.org)

January 14, 2009

The Honorable John W Preece  
Mayor  
Town of Delbarton  
Post Office Box 730  
Delbarton, West Virginia 25670

Dear Mayor Preece:

Thank you for your application to the Small Cities Block Grant Program.

Your request has been approved in the amount of \$200,000. These funds will enable you to complete the design and required administrative services for upgrades to the collection and treatment of wastewater in the Town of Delbarton.

In order to effectively utilize the limited dollars available, the West Virginia Development Office launched a program to assist communities with the engineering and administrative components of selected projects. This grant does not secure funding for the balance of the request in your application. The designed project must be resubmitted and will be competitively reviewed and considered for funding based on an amended application, availability of funds, and other requests pending at that time. The West Virginia Development Office reserves the right to withdraw these funds if your project does not proceed on schedule.

Please contact Mr. Michael Browning of the West Virginia Development Office, at (304) 558-2234, to complete the necessary contract in order to proceed with your project.

I am pleased to assist with these improvements for the citizens of the Town of Delbarton.

With warmest regards,

A handwritten signature in black ink, appearing to read "Joe Manchin III".

Joe Manchin III  
Governor

JM.mbm



*State of West Virginia*  
*Joe Manchin III*  
*Governor*

Office of the Governor  
State Capitol  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

Telephone: (304) 558-2000  
Toll Free: 1-888-436-2731  
FAX: (304) 342-7025  
[www.wv.gov](http://www.wv.gov)

October 20, 2010

The Honorable John W. Proce  
Mayor  
Town of Delbarton  
Post Office Box 730  
Delbarton, West Virginia 25670

Dear Mayor Proce:

Thank you for your application to the Small Cities Block Grant Program to upgrade the Town of Delbarton's sewer collection and treatment system. Your request has been approved in the amount of \$1,300,000.

In order to effectively use the limited dollars available, I hereby commit \$200,000 from our fiscal year 2010 allocation that will immediately be available to you. The remaining \$1,100,000 necessary to complete the project will be evaluated and committed in a future year's allocation, based on your ability to proceed forward with this project. I encourage you to expedite this project and reach its completion as quickly as possible. The West Virginia Development Office (WVDO) reserves the right to withdraw these funds if your project does not proceed on schedule. It will be at the discretion of the WVDO whether or not to replace these funds with a letter of Intent for consideration from future allocations. Please be advised that a letter of Intent is contingent upon the availability of federal funds.

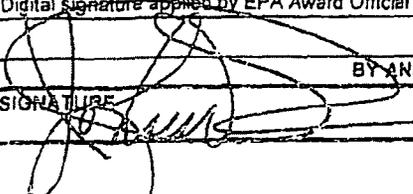
Please contact Mr. Michael Browning of the WVDO, at (304) 558-2234, extension 52007, to complete the necessary contract in order to proceed with your project.

I am pleased to assist with these improvements for the citizens of the Town of Delbarton.

With warmest regards,

Joe Manchin III  
Governor

JM:mbm

 <p><b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b> Assistance Amendment</p>	ASSISTANCE ID NO.			DATE OF AWARD
	PRG	DOC ID	AMEND#	01/07/2011
	XP	97325001	4	
	TYPE OF ACTION No Cost Amendment			MAILING DATE 01/07/2011
PAYMENT METHOD: Reimbursement			ACH# 30089	
RECIPIENT TYPE: Municipal	Send Payment Request to: West Virginia Department of Environmental Protection			
RECIPIENT:	PAYEE:			
Town of Delbarton PO Box 730 Delbarton, WV 25670 EIN: 55-0526532	Town of Delbarton PO Box 730 Delbarton, WV 25670			
PROJECT MANAGER	EPA PROJECT OFFICER	EPA GRANT SPECIALIST		
Mr. Randall Lewis PO Box 730 Delbarton, WV 25670 E-Mail: rlewis@elrobinson.com Phone: 304-776-7473 x.218	Bruce A Smith 1650 Arch Street, 3WP50 Philadelphia, PA 19103-2029 E-Mail: Smith.Brucea@epa.gov Phone: 215-814-5770	Baseemah El-Amin Grants & Audit Management Branch E-Mail: El-Amin.Baseemah@epa.gov Phone: 215-814-5371		
PROJECT TITLE AND EXPLANATION OF CHARGES Special Appropriations Project This amendment extends the budget and project periods to August 10, 2012 and updates the award conditions to provide for the design and construction of the rehabilitation or replacement of approximately 7.8 miles of existing 6" through 15" gravity sewer lines, 3 new pump stations, 4" force main, and upgrade of the existing sewage treatment plant.				
BUDGET PERIOD 10/01/2004 - 08/10/2012	PROJECT PERIOD 10/01/2004 - 08/10/2012	TOTAL BUDGET PERIOD COST \$2,639,637.00	TOTAL PROJECT PERIOD COST \$2,639,637.00	
<b>NOTICE OF AWARD</b>				
Based on your application dated 04/25/2005, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$0. EPA agrees to cost-share 55.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$1,451,800. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.				
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)		AWARD APPROVAL OFFICE		
ORGANIZATION / ADDRESS		ORGANIZATION / ADDRESS		
US EPA Region 3, 3PM70 1650 Arch Street Philadelphia, PA 19103-2029		U.S. EPA, Region 3 Water Protection Division 3WP00 1650 Arch Street Philadelphia, PA 19103-2029		
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>				
SIGNATURE OF AWARD OFFICIAL Digital Signature applied by EPA Award Official	TYPED NAME AND TITLE Wendy Bartel, Chief, Grants and Audit Management Branch		DATE 01/07/2011	
<b>AFFIRMATION OF AWARD</b>				
BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION				
SIGNATURE	TYPED NAME AND TITLE		DATE	
	John W. Bruce, Mayor		01/10/2011	



Approved Budget	
Program Element Classification (Construction)	Approved Allowable Budget Period Cost
1. Administration Expense	\$0
2. Preliminary Expense	\$0
3. Land Structure, Right Of Way	\$0
4. Architectural Engineering Basic Fees	\$535,000
5. Other Architectural Engineering Fees	\$0
6. Project Inspection Fees	\$0
7. Land Development	\$0
8. Relocation Expenses	\$0
9. Relocation Payments to Individuals & Bus.	\$0
10. Demolition and Removal	\$0
11. Construction and Project Improvement	\$2,104,637
12. Equipment	\$0
13. Miscellaneous	\$0
14. Total (Lines 1 thru 13)	\$2,639,637
15. Estimate Income	\$0
16. Net Project Amount (Line 14 minus 15)	\$2,639,637
17. Less: Ineligible Exclusions	\$0
18. Add: Contingencies	\$0
18. Total (Share: Recip 45.00% Fed 55.00%)	\$2,639,637
20. TOTAL APPROVED ASSISTANCE AMOUNT	\$1,451,800



APPALACHIAN  
REGIONAL  
COMMISSION

*A Proud Past,  
A New Vision*

Office of the Executive Director



September 2, 2011

The Honorable Earl Ray Tomblin  
Governor of West Virginia  
State Capitol, Building 1  
Charleston, West Virginia 25305

Re: Delbarton Wastewater Treatment &  
Collection System Upgrade (WV-  
17038-214-11)

Dear Governor Tomblin:

Enclosed is a copy of the Appalachian Regional Commission's approval of a grant for the referenced project dated September 1, 2011.

Appalachian Regional Commission funds in the amount of \$1,500,000 have been made available to the Director, Office of Block Grant Assistance, U.S. Department of Housing and Urban Development.

A copy of the approval is enclosed.

Sincerely yours,

THOMAS M. HUNTER  
Executive Director

Enclosure

cc: State Alternate



**To:** Earl F. Gohl, Federal Co-Chair

**Subject:** Delbarton Wastewater Treatment & Collection System Upgrade  
WV-17038-214-11

**Grantee:** Delbarton, Town of  
Delbarton, West Virginia

**County:** Distressed: Mingo

**Basic Agency:** Housing and Urban Development (HUD)

**Goal:** ARC Goal 3, Objective 2. State Strategy: 3.2.1 Assist community and regional water supply and sewage disposal projects that will address serious health and environmental compliance issues or that constitute a barrier to private investment leading to job creation or retention or community revitalization.

**Purpose:** To provide expanded and improved wastewater collection and treatment service to 449 households in the Town of Delbarton and surrounding area.

**Funding:**

ARC	\$ 1,500,000 (DC)	16%
Other Federal	1,451,800	15%
State	6,631,150	69%
<hr/>		
Total	\$9,582,950	100%

Small Cities Block Grant \$1,500,000 US EPA State Tribal Assistance Grant \$1,451,800, WV Department of Environmental Protection SRF \$2,000,000 forgivable loan and WVDEP SRF conventional loan \$3,131,150.

**Description**

The Town of Delbarton is seeking funding to extend and upgrade sewer service to 73 new households and three businesses and improve service to 373 existing customers. This project will entail the installation of over six miles of sewer pipe and force main and a number of significant upgrades to the existing 250,000 gallon wastewater treatment plant to improve efficiency and the wastewater treatment process.

**Rationale/Benefits:**

- The existing combined sewer system was installed in 1974 and has deteriorated over time and now experiences periods of excessive inflow and infiltration. During these periods of excessive flow, the collection system becomes overloaded creating conditions at the wastewater treatment plant that require the diversion of effluent into nearby streams with minimal treatment. The poor condition of the lines and the treatment plant result in effluent compliance issues for the plant and present public health hazards for the Town of Delbarton.
- The issues of excessive inflow and infiltration are further complicated by the project area being prone to flooding and a number of the collection lines being located near creeks. Their location makes it possible for the collection lines to become clogged through storm water intakes or otherwise damaged and washed away during periods of heavy rain. This current design flaw will be addressed through this project by relocating a number of collection lines away from local streams.

WV-17038-214-11

**Performance Measurements:**

Outputs:

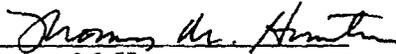
- Outputs for this project include over six miles of sewer lines, 187 manholes, 17 grinder pumping stations, cleanouts and related appurtenances. The treatment plant will construct a new plant lift station, receive new head works, new rotors and covers for the oxidation ditch, two new secondary clarifiers, a return sludge pumping station, UV disinfection system, flow measurement equipment, belt filter press and conversion of the existing clarifiers into aerobic digesters.

Outcomes:

- Outcomes for this project include new sanitary sewer service for 76 customers and improved service for 373 customers. One new position will be created at the renovated wastewater treatment plant.

This project will have a primary impact on distressed counties. The project is consistent with the ARC Act and Code and is recommended for funding.

**RECOMMENDED:**

  
Thomas M. Hunter  
Executive Director



November 3, 2011

Town of Delbarton  
P.O. Box 730  
Delbarton, WV 25670

West Virginia Department of Environmental Protection  
601 57<sup>th</sup> Street  
Charleston, WV 25304

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

Re: Town of Delbarton  
Sewer Revenue Bonds, Series 2011 A  
(West Virginia CWSRF Program)

Ladies and Gentlemen:

We have served as bond counsel to the Town of Delbarton (“the Issuer”), a municipal corporation, in connection with the issuance of its Sewer Revenue Bonds, Series 2011 A (West Virginia CWSRF Program), dated the date hereof (the “Bonds”).

We have examined certified copies of proceedings and other papers relating to the authorization of (i) a bond purchase agreement for the Bonds dated November 3, 2011, including all schedules and exhibits attached thereto (the “Bond Purchase Agreement”), by and among the Issuer, the West Virginia Water Development Authority (the “Authority”) and the West Virginia Department of Environmental Protection (the “DEP”), and (ii) the Bonds to be purchased by the Authority in accordance with the provisions of the Bond Purchase Agreement. The Bonds are issued in the principal amount of \$3,131,150, in the form of one bond, registered as to principal and interest to the Authority, will bear no interest, and with principal and interest payable quarterly on March 1, June 1, September 1, and December 1 of each year, commencing March 1, 2014, all as set forth in the Schedule Y attached to the Bond Purchase Agreement and incorporated in and made a part of the Bonds. The Bonds are subject to the SRF

{C2039598.1}

Town of Delbarton  
West Virginia Department of Environmental Protection  
West Virginia Water Development Authority  
November 3, 2011  
Page 2

Administrative Fee equal to 0.5% of the principal amount of the Bonds as set forth in the Schedule Y attached to the Bond Purchase Agreement.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13 and Chapter 22C, Article 2 of the Code of West Virginia, 1931, as amended (collectively, the "Act"), for the purposes of (i) paying the Issuer's Series 1999 Notes; (ii) paying a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public combined waterworks and sewerage system of the Issuer (the "Project"); and (iii) paying certain costs of issuance and related costs.

We have also examined the applicable provisions of the Act and a Bond and Note Ordinance duly passed by the Issuer on August 12, 2011, effective September 22, 2011, as supplemented by a Supplemental Resolution duly adopted by the Issuer on October 24, 2011 (collectively, the "Ordinance"), pursuant to and under which Act and Ordinance the Bonds are authorized and issued, and the Bond Purchase Agreement has been entered into. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Ordinance and the Bond Purchase Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance and in the Bond Purchase Agreement when used herein.

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

1. The Issuer is a duly organized and presently existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System, to enact the Ordinance and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Bond Purchase Agreement has been duly authorized by and executed on behalf of the Issuer and is a valid and binding special obligation of the Issuer, enforceable in accordance with the terms thereof.

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

4. The Issuer has legally and effectively enacted the Ordinance and adopted all other necessary resolutions in connection with the issuance and sale of the Bonds. The Ordinance constitutes a valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms thereof and contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Bond Purchase Agreement.

5. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a first lien on and pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment with the Issuer's Series 2011 B Bonds (as that term is defined in the Ordinance) issued simultaneously herewith, all in accordance with the terms of the Bonds and the Ordinance.

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

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

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

Very truly yours,

  
JACKSON KELLY PLLC



ATTORNEYS AT LAW PLLC

500 LEE STREET EAST • SUITE 1600 • P.O. BOX 553 • CHARLESTON, WEST VIRGINIA 25322 • TELEPHONE: 304-340-1000 • TELECOPIER: 304-340-1130

[www.jacksonkelly.com](http://www.jacksonkelly.com)

4.1(B)

November 3, 2011

Town of Delbarton  
PO Box 730  
Delbarton, WV 25670

West Virginia Department of Environmental Protection  
601 57<sup>th</sup> Street  
Charleston, WV 25304

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

Re: Town of Delbarton  
Sewer Revenue Bonds, Series 2011 B  
(West Virginia CWSRF Program)

Ladies and Gentlemen:

We have served as bond counsel in connection with the issuance by the Town of Delbarton (the "Issuer"), a municipal corporation created and existing under the laws of the State of West Virginia, of its \$2,000,000 Sewer Revenue Bonds, Series 2011 B (West Virginia CWSRF Program), dated the date hereof (the "Bonds").

We have examined the law and certified copies of proceedings and other papers relating to the authorization of an Bond Purchase Agreement dated as of the date hereof, including all schedules and exhibits attached thereto (the "Bond Purchase Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the "Authority") and the West Virginia Department of Environmental Protection (the "DEP"), and the Bonds, which are to be purchased by the Authority in accordance with the provisions of the Bond Purchase Agreement. The Bonds are originally issued in the form of one Bond, registered to the Authority. The principal amounts advanced under the Series 2011 B Bonds will be deemed forgiven on the 30th day of June in the fiscal year in which advanced. The Series 2011 B Bonds shall be deemed no longer outstanding after the last advance is forgiven.

---

Clarksburg, WV • Martinsburg, WV • Morgantown, WV • Wheeling, WV  
Denver, CO • Lexington, KY • Pittsburgh, PA • Washington, DC

{C2039822.1}

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), for the purposes of (i) paying a portion of the costs of acquisition and construction of improvements and extensions to the existing public combined waterworks and sewerage system of the Issuer (the "Project"); and (ii) paying certain costs of issuance and related costs.

We have also examined the applicable provisions of the Act and the Bond and Note Ordinance duly passed by the Issuer on August 22, 2011, effective September 12, 2011, as supplemented by a Supplemental Resolution duly adopted by the Issuer on October 24, 2011 (the "Bond Legislation"), pursuant to and under which Act and Bond Legislation the Bonds are authorized and issued, and the Bond Purchase Agreement has been entered into. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Bond Legislation and the Bond Purchase Agreement. All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Legislation and the Bond Purchase Agreement when used herein. Based upon the foregoing, and upon our examination of such other documents as we have deemed necessary, we are of the opinion, under existing law, as follows:

1. The Issuer is a duly created and validly existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt the Bond Legislation and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Bond Purchase Agreement has been duly authorized by and executed on behalf of the Issuer, is a valid and binding special obligation of the Issuer enforceable in accordance with the terms thereof, and inures to the benefit of the Authority and the DEP and cannot be amended by the Issuer so as to affect adversely the rights of the Authority or the DEP or diminish the obligations of the Issuer without the written consent of the Authority and the DEP.

3. The Bond Legislation and all other necessary ordinances and resolutions have been duly and effectively adopted by the Issuer and constitute valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their terms. The Bond Legislation contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Bond Purchase Agreement.

4. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System referred to in the Bond Legislation and secured by a first lien on and pledge of the Net Revenues of the System, on a parity with respect to liens, pledge and source of and security for payment from the Net Revenues with the Issuer's Series 2011 A Bonds (as defined in the Bond Legislation) issued simultaneously herewith, all in accordance with the terms of the Bonds and the Bond Legislation.

5. The Bonds are, under the Act, exempt from taxation by the State of West Virginia and the other taxing bodies of the State. The Bonds bear no interest.

It is to be understood that the rights of the holders of the Bonds and the enforceability of the Bonds, the Bond Purchase Agreement and the Bond Legislation, and the liens and pledges set forth therein, may be subject to and limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that their enforcement may also be subject to the exercise of judicial discretion and the application of equitable remedies in appropriate cases.

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

Very truly yours,

  
JACKSON KELLY PLLC

Town of Delbarton  
West Virginia Department of Environmental Protection  
West Virginia Water Development Authority  
Jackson Kelly PLLC  
November 3, 2011  
Page 1

**GLEN R. RUTLEDGE**  
ATTORNEY AT LAW  
P.O. Box 340  
Williamson, WV 25661  
E-mail: [glen.rutledge@frontier.com](mailto:glen.rutledge@frontier.com)

November 3, 2011

Town of Delbarton  
PO Box 730  
Delbarton, WV 25670

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

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

Jackson Kelly PLLC  
P. O. Box 553  
Charleston, WV 25322

Re: Town of Delbarton  
Sewer Revenue Bonds, Series 2011 A  
(West Virginia CWSRF Program)  
Sewer Revenue Bonds, Series 2011 B  
(West Virginia CWSRF Program)

Ladies and Gentlemen:

I am counsel to the Town of Delbarton in Mingo County, West Virginia (the "Issuer"). As such counsel, I have examined copies of the approving opinion of Jackson Kelly PLLC as bond counsel, relating to the above-captioned bonds of the Issuer (the "Bonds"), a bond purchase agreement for the Bonds, dated November 3, 2011, including all schedules and exhibits attached thereto (the "Bond Purchase Agreement"), by and among the Issuer, the West Virginia Water Development Authority (the

“Authority”), and the West Virginia Department of Environmental Protection (the “DEP”), a Bond and Note Ordinance duly passed by the Issuer on August 22, 2011, effective September 22, 2011, as supplemented by a Supplemental Resolution duly adopted by the Issuer on October 24, 2011, (collectively, the “Ordinance”). All capitalized terms used herein and not otherwise defined herein shall have the same meanings set forth in the Bond Purchase Agreement and the Ordinance of the Issuer when used herein.

I am of the opinion that:

1. The Issuer is a duly organized and presently existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System and to enact the Ordinance, all under the Act and other applicable provisions of law.

2. The Bond Purchase Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the DEP and the Authority, constitutes valid and binding agreements of the Issuer, enforceable in accordance with the terms.

3. The Mayor, Recorder and members of the Council and the Sanitary Board of the Issuer have been duly, lawfully and properly elected or appointed, as applicable, have taken the requisite oaths, and are authorized to act in their respective capacities on behalf of the Issuer.

4. The Ordinance has been duly adopted and enacted by the Issuer and is in full force and effect.

5. The execution and delivery of the Bonds and the Bond Purchase Agreement and the consummation of the transactions contemplated by the Bonds the Bond Purchase Agreement and the Ordinance, and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute, on the part of the Issuer, a breach or default under any ordinance, resolution, order, agreement, document or instrument to which the Issuer is a party or by which the Issuer or its properties are bound or any existing law, regulation, rule, order or decree to which the Issuer is subject.

6. The Issuer has received all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the creation and

existence of the Issuer, the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges, including, without limitation, all requisite orders, consents, certificates and approvals from the DEP, the West Virginia Infrastructure and Jobs Development Council and the Issuer has taken any other action required for the imposition of such rates and charges, including, without limitation, the enactment of an ordinance prescribing such rates and charges.

7. To the best of my knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Bond Purchase Agreement, the Bonds, and the Ordinance, the acquisition and construction of the Project, the operation of the System, the validity of the Bonds, the collection of the Gross Revenues or the pledge of the Net Revenues for the payment of the Bonds.

8. All successful bidders have made the required provisions for all insurance and payment and performance bonds and such insurance policies or binders and such bonds have been verified for accuracy. Based upon my review of the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, I am of the opinion that such surety bonds and policies: (1) are in compliance with the contracts; (2) are adequate in form, substance and amount to protect the various interest of the Issuer; (3) have been executed by duly authorized representatives of the proper parties; (4) meet the requirements of the Act, the Ordinance and the Bond Purchase Agreement; and (5) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

9. The contracts contain language requiring the contractors to provide affidavits from all contractors and subcontractors indicating that each contractor and subcontractor have a drug free workplace policy pursuant to Chapter 21, Article 1D of the West Virginia Code of 1931, as amended. The contractor has submitted a plan to implement the drug free workplace policy prior to the awarding of the contract pursuant to Chapter 21, Article 1D of the West Virginia Code of 1931, as amended.

Town of Delbarton  
West Virginia Department of Environmental Protection  
West Virginia Water Development Authority  
Jackson Kelly PLLC  
November 3, 2011  
Page 4

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

Very truly yours,

  
Glen R. Rutledge

LAW OFFICES  
KAUFFELT & KAUFFELT  
300 CAPITOL STREET STE 803  
CHARLESTON, WEST VIRGINIA 25301  
(304) 345-1272

JAMES D. KAUFFELT  
MARK E. KAUFFELT

T. D. KAUFFELT  
OF COUNSEL

MAILING ADDRESS  
P. O. BOX 3082  
CHARLESTON, WV 25331-3082  
FAX (304) 345-1280

October 28, 2011

Town of St. Delbarton  
Delbarton, WV 25670

West Virginia Water Development Authority  
Charleston, WV 25311

West Virginia Infrastructure & Jobs Development Council  
Charleston, WV 25311

West Virginia Department of Environmental Protection  
Charleston, WV 25304

Re: *Town of Delbarton*  
*Sewer Revenue Bonds, Series 2011 A*  
*(West Virginia CWSRF Program)*  
*Sewer Revenue Bonds, Series 2011 B*  
*(West Virginia CWSRF Program)*

Ladies and Gentlemen:

We are special counsel to the Town of Delbarton, a municipal corporation in Mingo County, West Virginia (the "Issuer"). As such counsel, we have represented the Issuer before the Public Service Commission of West Virginia in connection with the issuance of the above-referenced bonds, and the acquisition and construction of the Projects. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Legislation and the Bond Purchase Agreement when used herein.

We are of the opinion that:

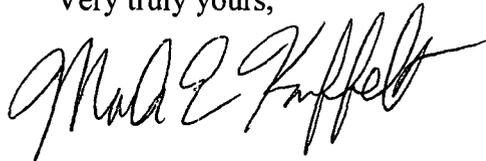
1. The Issuer has received all orders, certificates and authorizations from the Public Service Commission of West Virginia necessary for the issuance of the Bonds and the Series 2011 Note, the acquisition and construction of the Project, the operation of the System and the implementation of rates and charges, and the Issuer has taken any other

KAUFFELT & KAUFFELT

action required for the imposition of such rates and charges, including, without limitation, the adoption of an ordinance prescribing such rates and charges. The Issuer has received a Recommended Decision of an Administrative Law Judge dated May 31, 2011, as made final by the PSC in Case No. 11-0258-S-CN on June 20, 2011, among other things, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project. The time for appeal of such Order has expired prior to the date hereof.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark E. Kauffelt", written in a cursive style.

Mark E. Kauffelt

MEK/mmw  
Enclosure

**GLEN R. RUTLEDGE**  
ATTORNEY AT LAW  
P.O. Box 340  
Williamson, WV 25661  
E-mail: [glen.rutledge@frontier.com](mailto:glen.rutledge@frontier.com)

Tel: (304)-235-8500  
Fax: (304)-235-0900

October 21, 2011

Town of Delbarton  
P.O. Box 730  
Delbarton, WV 25670

West Virginia Department of Environmental Protection  
601 57<sup>th</sup> Street  
Charleston, WV 25304

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

Sammie Gee  
Attorney at Law  
Jackson Kelly PLLC  
500 Lee Street East, Suite 1600  
P.O. Box 553  
Charleston, WV 25322

Re: Final Title Opinion  
Town of Delbarton  
Wastewater Extension/Upgrade Project

Ladies and Gentlemen:

Please be advised that I have been hired by the Town of Delbarton to conclude the title work on and acquisition of easements and rights of ways for the above captioned project since the retirement of James Walker, the original land acquisition attorney. In that regard, I provide this Final Title Opinion. Please be advised as follows:

1. I am of the opinion that the Town of Delbarton ("Town") is a duly created and validly existing municipality possessed with all the powers and authority granted to municipalities under the laws of the State of West Virginia to construct, operate, and maintain the Project.
2. That the Town, according to the advice of the Project engineers, has obtained all necessary permits and approvals for the construction of the project.

3. That I have investigated and ascertained the location of and am familiar with the legal descriptions of the necessary sites, including easements and/or rights of ways examined by me and required for the Project as set forth in the plans for the Project by E.L. Robinson Engineering Company, the consulting engineers. A list of the sites examined by me is attached to this letter as Exhibit 1. This same representation for the other sites is made by James Walker in his Preliminary Title Opinion of March 31, 2011, a copy of which is attached hereto as Exhibit 2. According to the Project engineers, these two opinions encompass all the necessary sites for the Project.
4. I have examined the records in the Office of the Clerk of the County Commission of Mingo County, West Virginia, the county in which the Project is located, and, in my opinion, the Town has acquired legal title or such other estate or interest in the easements and/or rights of ways assigned to me (Exhibit 1). Further, it is my opinion, based upon my work, and relying upon the March 31, 2011 opinion of James Walker (Exhibit 2), that the Town has acquired the legal title or such other estate or interest in the necessary site components for the Project sufficient to assure undisturbed use and possession for the purpose of construction, operation, and maintenance of the Project for its estimate life.
5. All easements, rights of ways, and Orders Vesting Defeasible Title for the Town, related to sites assigned to me for examination and acquisition, have been acquired and recorded in the Office of the Clerk of the County Commission of Mingo County, West Virginia. Further, according to James Walker's opinion of March 31, 2011 (Exhibit 2), the same as been done for the easements and rights of ways for the other sites which he examined and acquired.
6. This opinion is subject to the following:
  - a. The accuracy of James Walker's March 31, 2011 Preliminary Title Opinion;
  - b. The accuracy of the records in the Office of the Clerk of the County Commission of Mingo County, West Virginia;
  - c. The accuracy of the engineering plans of E.L. Robinson Engineering Company;
  - d. Any unrecorded rights that might exist and would appear from personal inspection of the properties;

- e. The time period of examinations for each site as set forth in Exhibit 1.

Very truly yours,

  
Glen R. Rutledge

**Exhibit 1: Work performed by Glen Rutledge**

- E-3**            **Dave Hylton**  
Time period of examination: September 27, 2004 to October 19, 2011
- E-4,5**           **Lillie Baisden, et al.**  
Time period of examination: July 1, 1990 to October 19, 2011
- E-11,13, 14**    **Harrison Hunt, et ux.**  
Time period of examination:
- E-15,17**        **Paul Hunt, et ux.**  
Time period of examination: May 4, 1998 to October 19, 2011
- E-31**            **John Ramey**  
Time period of examination: June 6, 1994 to October 19, 2011
- E-32**            **Noah Evans**  
Time period of examination: November 18, 1997 to October 19, 2011
- E-33**            **Bank of Mingo**  
Time period of examination: March 30, 1994 to October 19, 2011
- E-81**            **John Ramey**  
Time period of examination: June 5, 1985 to October 19, 2011
- E-83**            **Fragale Realty (Marquis Development)**  
Time period of examination: July 23, 1987 to October 19, 2011
- E-84**            **Jason Floyd Curry (now Lena Curry and Nora Bragg)**  
Time period of examination: August 11, 1986 to October 19, 2011
- E-97**            **Rocky Pope, et ux**  
Time period of examination: December 27, 1982 to October 19, 2011

**Exhibit 1: Work performed by Glen Rutledge**

- E-3            Dave Hylton  
Time period of examination: September 27, 2004 to October 19, 2011
- E-4,5         Lillie Baisden, et al.  
Time period of examination: July 1, 1990 to October 19, 2011
- E-11,13, 14    Harrison Hunt, et ux.  
Time period of examination:
- E-15,17       Paul Hunt, et ux.  
Time period of examination: May 4, 1998 to October 19, 2011
- E-31          John Ramey  
Time period of examination: June 6, 1994 to October 19, 2011
- E-32          Noah Evans  
Time period of examination: November 18, 1997 to October 19, 2011
- E-33          Bank of Mingo  
Time period of examination: March 30, 1994 to October 19, 2011
- E-81          John Ramey  
Time period of examination: June 5, 1985 to October 19, 2011
- E-83          Fragale Realty (Marquis Development)  
Time period of examination: July 23, 1987 to October 19, 2011
- E-84          Jason Floyd Curry (now Lena Curry and Nora Bragg)  
Time period of examination: August 11, 1986 to October 19, 2011
- E-97          Rocky Pope, et ux  
Time period of examination: December 27, 1982 to October 19, 2011

March 31, 2011

Town of Delbarton  
P. O. Box 730  
Delbarton, WV 25670

West Virginia Department of Environmental Protection  
601 – 57<sup>th</sup> Street  
Charleston, WV 25304

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

Jackson Kelly, PLLC  
500 Lee Street East, Suite 1600  
Charleston, WV 25322

Re: Preliminary Title Opinion  
Town of Delbarton  
Wastewater Extension/Upgrade Project

Ladies and Gentlemen:

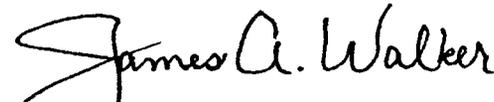
We are counsel to the Town of Delbarton (the "Issuer") in conjunction with a proposed project to construct a wastewater system extension/upgrade to serve the Town of Delbarton and surrounding areas of Mingo County (the "Project"). We provide this preliminary title opinion on behalf of the Issuer to satisfy the requirements of the West Virginia Department of Environmental Protection (the "DEP") for the Project. Please be advised of the following:

1. We are of the opinion that the Issuer is a duly created and validly existing municipality possessed with all the powers and authority granted to municipalities under the laws of the State of West Virginia to construct, operate and maintain the Project.
2. The Issuer has obtained all necessary permits and approvals for the construction of the project.
3. We have investigated and ascertained the location of, and are 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 E. L. Robinson Engineering Company, the consulting engineers for the Project.

4. We have examined the records on file in the Office of the Clerk of the County Commission of Mingo County, West Virginia, the county in which the Project is located, and, in our opinion, the Issuer has acquired legal title or such other estate or interest in all the necessary site components for the Project, including 100% of all real property and at least 80% of all easements and/or rights of way sufficient to assure undisturbed use and possession for the purpose of construction, operation and maintenance for the estimated life of the facility.
5. All deeds, easements and rights of way which have been acquired to date by the Issuer have been duly recorded in the Office of the Clerk of the County Commission of Mingo County to protect the legal title to and interest of the Issuer.

Very truly yours,

  
Legal Counsel  
Town of Delbarton

**PETITION OF THE SANITARY BOARD  
OF  
TOWN OF DELBARTON, WEST VIRGINIA**

TO THE COUNCIL OF THE TOWN OF DELBARTON, WEST VIRGINIA:

Pursuant to the provisions of Chapter 16, Article 13, Section 5 of the Code of West Virginia, 1931, as amended, the Sanitary Board (the "Sanitary Board") of the Town of Delbarton, West Virginia (the "Town"), hereby petitions the Council of the Town (the "Council") to enact an ordinance (the "Ordinance") which shall:

(a) authorize the acquisition and construction of certain extensions, additions, betterments and improvements to the Town's existing sewerage system (the "System") set forth in Exhibit A hereto (the "Project") and incorporated herein by reference;

(b) authorize the issuance of not to exceed \$6,000,000 in aggregate principal amount of Sewerage System Revenue Bonds, in one or more series as may be required, of The Town of Delbarton, the proceeds of which, shall be used, along with other funds and moneys of, or available to, the Sanitary Board which may be lawfully expended for such purposes, to permanently finance the cost of such design, acquisition and construction of the Project, to fund reserve accounts for such bonds and to pay other costs in connection therewith;

(c) authorize the issuance of not to exceed \$1,500,000 in aggregate principal amount of Sewer Grant Anticipation Notes, in one or more series as may be required by the Town of Delbarton, the proceeds of which shall be used to temporarily financed a portion of the cost of such design, acquisition and construction of the Project, to pay capitalized interest and pay other costs in connection therewith;

(d) authorize the construction of the Project; and

(e) contain such other provisions as may be necessary in the premises.

The Sanitary Board respectfully represents to the Council that one of the two persons appointed to the Sanitary Board by the Council is a registered professional engineer.

WITNESS our signatures on this 8<sup>th</sup> day of August, 2011.

SANITARY BOARD OF THE TOWN  
OF DELBARTON, WEST VIRGINIA

By: \_\_\_\_\_

Mayor of the Town and  
Ex-Officio Chairman

\_\_\_\_\_  
Member

\_\_\_\_\_  
Engineer-Member

## **EXHIBIT A**

### **DESCRIPTION OF PROJECT**

The Project consists of the following work: extensions that will provide wastewater treatment service to approximately 76 new residential and commercial customers (190 persons) in the Pigeon Roost Creek, Rockhouse Branch, Pigeon Creek and surrounding areas of Mingo County consisting of construction of approximately 27,800 feet of 16-inch and smaller diameter gravity sewer pipe, 4,790 feet of 1½ inch and smaller diameter force main, 187 manholes, seventeen grinder pumping stations, cleanouts, service laterals and other related appurtenances; plant upgrades and existing sewer line rehabilitation consisting of construction of a plant lift station, new head works, new rotors and covers for the oxidation ditch, two new secondary clarifiers, new return sludge pumping station, new UV disinfection system, flow measurement, new belt filter press and conversion of the existing clarifiers into aerobic digestors and all necessary appurtenances.