

TOWN OF EAST BANK, WEST VIRGINIA

\$76,000 Waterworks Revenue Bond  
Series 1987

DATE OF CLOSING: September 9, 1987

TOWN OF EAST BANK, WEST VIRGINIA  
\$76,000 WATERWORKS REVENUE BOND, SERIES 1987

Bond Transcript  
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September 9, 1987

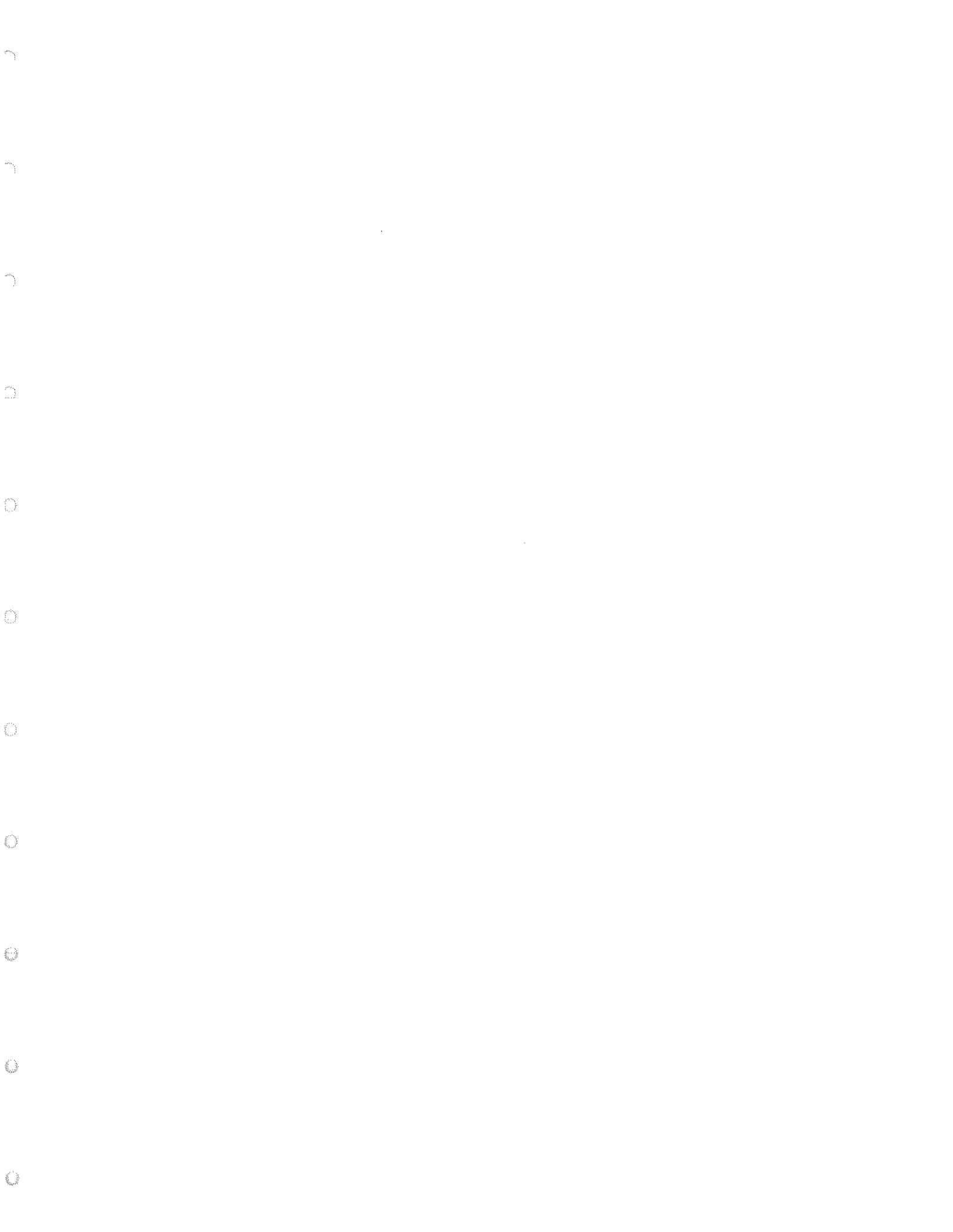
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The closing of the sale of \$76,000 in aggregate principal amount of the Waterworks Revenue Bond, Series 1987, of the Town of East Bank, West Virginia, to the United States Department of Agriculture, Farmers Home Administration will take place at the offices of the National Bank of Belle, Belle, West Virginia, at 10:00 a.m., on Wednesday, September 9, 1987. All transactions at such closing will be deemed to have taken place simultaneously on September 9, 1987, and no document shall be deemed to have been delivered unless and until all transactions are complete and all documents are delivered.





## CERTIFICATE

*I, Ken Hechler, Secretary of State of the State of West Virginia, hereby certify that*

the attached is a true copy of Chapter 8, Article 19 of the West Virginia Code, pertaining to Municipal Waterworks and Electric Power Systems, as contained in the records of my office.

*Given under my hand and the Great Seal of the State of West Virginia, on this*

Fourth day of

September 1987



*Ken Hechler*

*Secretary of State.*

Moreover, the validity and enforcement of the assessments in this article provided shall not be impaired by the issuance and sale of bonds, as provided in article one [§ 13-1-1 et seq.] of chapter thirteen of this Code, for the same improvements, nor by the application, in whole or in part, of the proceeds of any such bond issue to the cost of any such improvement prior to collection of said assessments. (1949, c. 89; 1959, c. 122; 1969, c. 86.)

**§ 8-18-21. Cumulative authority.**

The power and authority herein granted shall be in addition to and not in derogation of any power and authority vested in any municipality under any constitutional, statutory or charter provisions which may now or hereafter be in effect. (1969, c. 86.)

PART XII. CONNECTION TO SEWERS; BOARD OF HEALTH.

**§ 8-18-22. Connection to sewers; board of health.**

The owner or owners of any lot or parcel of land abutting on any street, alley, public way or easement in any municipality on which a public sewer is now located or may hereafter be constructed and laid (whether constructed and laid under the provisions of this article or any other provisions of law) upon which lot or parcel of land any business or residence building is now located or may hereafter be erected, not connected with a public sewer, may be required and compelled by the board of health to connect any such building with such sewer. Notice so to connect may be given by the board of health either to the owner, lessee or occupant of such building. Each day's failure to comply with such notice and connect with such sewer by such owner or owners, after ten days from the giving of such notice, shall be a misdemeanor and a separate and new offense under this section, and each such offense shall be punishable by a fine of not less than five nor more than twenty-five dollars. Jurisdiction to hear, try, determine and sentence for any violation of this section is hereby vested in the police or municipal court thereof, or, where no police court exists, in the mayor thereof. (1908, c. 8, § 3; Code 1923, c. 47, § 49c(3); 1969, c. 86.)

Cross reference. — As to control over sewers by department of health, see § 16-1-9.

ARTICLE 19.

**MUNICIPAL WATERWORKS AND ELECTRIC POWER SYSTEMS.**

**Part I. Municipal Waterworks and Electric Power Systems**  
Authorized; Definition.

Sec.

municipal electric power systems; extension beyond corporate limits; definitions.

Sec.

8-19-1. Acquisition and operation of municipal waterworks systems; construction of improvements to

**Part II. Limitations on Sale or Lease of Certain Municipal Waterworks.**

8-19-2. [Repealed.]

## MUNICIPAL CORPORATIONS

### Part III. Right of Eminent Domain.

- Sec.  
8-19-3. Right of eminent domain; limitations.

### Part IV. Revenue Bond Financing.

- 8-19-4. Estimate of cost; ordinance for issuance of revenue bonds; interest on bonds; rates for services.  
8-19-5. Publication of abstract of ordinance and notice; hearing.  
8-19-6. Amount, negotiability and execution of bonds.  
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8-19-16. Protection and enforcement of rights of bondholders, etc.; receivership.

### Part V. Grants, Loans and Advances; Cumulative Authority.

- 8-19-17. Grants, loans and advances.  
8-19-18. Additional and alternative method for constructing or improving and for financing waterworks or electric power system; cumulative authority.

### Part VI. Operation by Board; Construction.

- 8-19-19. Alternative procedure for acquisition, construction or improvement of waterworks or electric power system.  
8-19-20. Article to be liberally construed.

**Revision of chapter.** — See note under the same catchline at the beginning of this chapter.

**Michie's Jurisprudence.** — For general discussion of municipal waterworks, see 20 M.J., Water Companies and Waterworks, §§ 6, 7.

**Legislative intent.** — The purpose of this article is to allow a municipality to create a waterworks or electric power system. It is clear that the legislature desired that the municipality be allowed to borrow for the system so long as the municipality itself was not obligated for the debt. Allowing the municipality to make grants from time to time to its utility systems does not circumvent legislative intention provided that the municipality does not borrow the money to make the grant. Op. Att'y Gen., April 3, 1979.

It appears clear the legislature recognized the need for municipal utility systems; how-

ever, it did not wish the municipality to become generally obligated for the building or acquisition of the system. Financing is provided for primarily by revenue bonds, and bondholders are assured of a safe investment through the collection of sufficient user charges to service the bonds and maintain the assets of the system. Op. Att'y Gen., April 3, 1979.

Action under this article is discretionary with the municipality. *Hinkle v. Town of Franklin*, 118 W. Va. 585, 191 S.E. 291 (1937).

And a discretionary act may not ordinarily be controlled by mandamus. *Hinkle v. Town of Franklin*, 118 W. Va. 585, 191 S.E. 291 (1937).

Hence, mandamus does not lie to compel town to provide sufficient funds to pay for waterworks system. *Hinkle v. Town of Franklin*, 118 W. Va. 585, 191 S.E. 291 (1937).

PART I. MUNICIPAL WATERWORKS  
AND ELECTRIC POWER SYSTEMS  
AUTHORIZED; DEFINITION.

§ 8-19-1. Acquisition and operation of municipal waterworks systems; construction of improvements to municipal electric power systems; extension beyond corporate limits; definitions.

Subject to and in accordance with the provisions of this article, any municipality may acquire, construct, establish, extend, equip, repair, maintain and operate, or lease to others for operation, a waterworks system, or construct, maintain and operate additions, betterments and improvements to an existing waterworks system or an existing electric power system, notwithstanding any provision or limitation to the contrary in any other law or charter: Provided, that such municipality shall not serve or supply water facilities or electric power facilities or services within the corporate limits of any other municipality without the consent of the governing body of such other municipality.

When used in this article, the term "waterworks system" shall be construed to mean and include a waterworks system in its entirety or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system.

When used in this article, the term "electric power system" means a system or facility which produces electric power in its entirety or any integral part thereof, including, but not limited to, power lines and wires, power poles, guy wires, insulators, transformers, generators, cables, power line towers, voltage regulators, meters, power substations, machinery and all other facilities necessary, appropriate, useful or convenient or incidental in connection with or to an electric power supply system. (1933, Ex. Sess., c. 26, § 1; 1937, c. 52; 1939, c. 97; 1949, c. 90; 1955, c. 133; 1969, c. 86; 1978, c. 72; 1983, c. 151.)

**Cross reference.** — For acquisition and operation of combined waterworks and sewerage systems, see §§ 8-20-1 et seq.

**Effect of amendment of 1983.** — The amendment, in the first paragraph, deleted "within the corporate limits of said municipality and within the area extending twenty miles beyond the corporate limits of such

municipality" preceding "notwithstanding any provision or limitation to the contrary" and inserted "other" preceding "law or charter: Provided."

**ALR reference.** — Right to compel municipality to extend its water system, 45 ALR 829; 48 ALR2d 1222.

§ 8-19-2

MUNICIPAL CORPORATIONS

PART II. LIMITATIONS ON SALE OR LEASE OF  
CERTAIN MUNICIPAL WATERWORKS.

§ 8-19-2.

Repealed by Acts 1974, c. 78.

PART III. RIGHT OF EMINENT DOMAIN.

§ 8-19-3. Right of eminent domain; limitations.

For the purpose of acquiring, constructing, establishing or extending any waterworks system, or for the purpose of constructing any additions, betterments or improvements to any waterworks or electric power system, or for the purpose of acquiring any property necessary, appropriate, useful, convenient or incidental for or to any waterworks or electric power system, under the provisions of this article, the municipality shall have the right of eminent domain as provided in chapter fifty-four [§ 54-1-1 et seq.] of this Code: Provided, that such right of eminent domain for the acquisition of a complete privately owned waterworks system shall not be exercised without prior approval of the public service commission, and in no event shall any municipality construct, establish or extend beyond the corporate limits of said municipality a municipal waterworks or electric power system under the provisions of this article to supply service in competition with an existing privately or municipally owned waterworks or electric power system in such municipality or within the proposed extension of such system, unless a certificate of public convenience and necessity therefor shall have been issued by the public service commission. Nothing herein shall prohibit a municipal electric power system from constructing, operating and maintaining electric generators or electric generating systems or electric transmission systems outside of said municipality and said electric generation systems shall not be under the jurisdiction of the public service commission. (1933, Ex. Sess., c. 26, § 9; 1937, c. 52; 1969, c. 86; 1978, c. 72; 1983, c. 151.)

**Effect of amendment of 1983.** — The amendment added the second sentence.

**Statutes pertaining to eminent domain must be strictly construed.** *City of Mullens v. Union Power Co.*, 122 W. Va. 179, 7 S.E.2d 870 (1940).

The words "without prior approval of the public service commission" appearing in this section, are not substantially different from the words "unless the consent and approval of the public service commission of West Virginia is first obtained," appearing in § 24-2-12. *Lockard v. City of Salem*, 127 W. Va. 237, 32 S.E.2d 568 (1944).

**Municipality may acquire privately owned waterworks by eminent domain.** — Nowhere in the statutes is a municipality or other corporate body politic authorized by statute, expressly or by necessary implication, to exercise the power of eminent domain for the acquisition of the property and assets of an operating utility as such, except the acquisition of privately owned waterworks systems, provided for by this section. *City of Mullens v. Union Power Co.*, 122 W. Va. 179, 7 S.E.2d 870 (1940).

## PART IV. REVENUE BOND FINANCING.

**§ 8-19-4. Estimate of cost; ordinance for issuance of revenue bonds; interest on bonds; rates for services.**

Whenever a municipality shall, under the provisions of this article, determine to acquire, by purchase or otherwise, construct, establish, extend or equip a waterworks system, or to construct any additions, betterments or improvements to any waterworks or electric power system, it shall cause an estimate to be made of the cost thereof, and shall, by ordinance, provide for the issuance of revenue bonds under the provisions of this article, which ordinance shall set forth a brief description of the contemplated undertaking, the estimated cost thereof, the amount, rate or rates of interest, the time and place of payment, and other details in connection with the issuance of the bonds. Such bonds shall be in such form and shall be negotiated and sold in such manner and upon such terms as the governing body of such municipality may by ordinance specify. All such bonds and the interest thereon, and all properties and revenues and income derived from such waterworks or electric power system, shall be exempt from all taxation by this State, or any county, municipality, political subdivision or agency thereof. Such bonds shall bear interest at not more than twelve percent per annum, payable at such times, and shall be payable as to principal at such times, not exceeding forty years from their date, and at such place or places, within or without the State, as shall be prescribed in the ordinance providing for their issuance. Such ordinance shall also declare that a statutory mortgage lien shall exist upon the property so to be acquired, constructed, established, extended or equipped, fix minimum rates or charges for water to be collected prior to the payment of all of said bonds and shall pledge the revenues derived from the waterworks or electric power system for the purpose of paying such bonds and interest thereon, which pledge shall definitely fix and determine the amount of revenues which shall be necessary to be set apart and applied to the payment of the principal of and interest upon the bonds and the proportion of the balance of such revenues, which are to be set aside as a proper and adequate depreciation account, and the remainder shall be set aside for the reasonable and proper maintenance and operation thereof. The rates or charges to be charged for the services from such waterworks or electric power system shall be sufficient at all times to provide for the payment of interest upon all bonds and to create a sinking fund to pay the principal thereof as and when the same become due, and reasonable reserves therefor, and to provide for the repair, maintenance and operation of the waterworks or electric power system, and to provide an adequate depreciation fund, and to make any other payments which shall be required or provided for in the ordinance authorizing the issuance of said bonds. (1933, Ex. Sess., c. 26, § 3; 1933, 2nd Ex. Sess., c. 49; 1955, c. 133; 1969, c. 86; 1970, c. 7; 1978, c. 72; 1980, c. 33; 1981, 1st Ex. Sess., c. 2.)

**§ 8-19-5. Publication of abstract of ordinance and notice; hearing.**

After the ordinance for any project under this article has been adopted, an abstract of the ordinance, determined by the governing body to contain sufficient information as to give notice of the contents of such ordinance, together with the following described notice, shall be published as a Class II legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this Code, and the publication area for such publication shall be such municipality. The notice to be published with said abstract of the ordinance shall state that said ordinance has been adopted, that the municipality contemplates the issuance of the bonds described in the ordinance, that any person interested may appear before the governing body, upon a certain date, which shall be not less than ten days subsequent to the date of the first publication of such abstract and notice and which shall not be prior to the date of the last publication of such abstract and notice, and present protests, and that a certified copy of the ordinance is on file with the governing body for review by interested parties during the office hours of the governing body. At such hearing all protests and suggestions shall be heard and the governing body shall take such action as it shall deem proper in the premises: Provided, that if at such hearing written protest is filed by thirty percent or more of the freeholders of the municipality, then the governing body of said municipality shall not take further action unless four fifths of the qualified members of said governing body assent thereto. (1933, Ex. Sess., c. 26, § 4; 1967, c. 105; 1969, c. 86; 1971, c. 103; 1981, 1st Ex. Sess., c. 2.)

**§ 8-19-6. Amount, negotiability and execution of bonds.**

Bonds herein provided for shall be issued in such amounts as may be necessary to provide sufficient funds to pay all costs of acquisition, construction, establishment, extension or equipment, including engineering, legal and other expenses, together with interest to a date six months subsequent to the estimated date of completion. Bonds issued under the provisions of this article are hereby declared to be negotiable instruments, and the same 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. All signatures on the bonds or coupons and the corporate seal may be mechanically reproduced if authorized in the ordinance authorizing the issuance of the bonds. Said bonds shall not be negotiated at a price lower than a price which when computed to maturity upon standard tables of bond values will show a net return of more than thirteen percent per annum to the purchaser upon the amount paid therefor. (1933, Ex. Sess., c. 26, § 5; 1933, 2nd Ex. Sess., c. 49, § 5; 1969, c. 86; 1970, c. 7; 1980, c. 33; 1981, 1st Ex. Sess., c. 2.)

**§ 8-19-7. Bonds payable solely from revenues; not to constitute municipal indebtedness.**

Bonds issued under the provisions of this article shall be payable solely from the revenues derived from such waterworks or electric power system, and such bonds shall not in any event constitute an indebtedness of such municipality within the meaning of any constitutional or statutory provision or limitation, and it shall be plainly stated on the face of each bond that the same has been issued under the provisions of this article, and that it does not constitute an indebtedness of such municipality within any constitutional or statutory provision or limitation. Subject to the provisions of subsection (b), section twelve [§ 8-19-12] of this article, the ordinance authorizing the issuance of the bonds may contain such covenants and restrictions upon the issuance of additional revenue bonds thereafter as may be deemed necessary or advisable for the assurance of payment of the bonds thereby authorized and as may thereafter be issued. (1933, Ex. Sess., c. 26, § 6; 1933, 2nd Ex. Sess., c. 49; 1969, c. 86; 1978, c. 72.)

**§ 8-19-8. Lien of bondholders.**

There shall be and there is hereby created and granted a statutory mortgage lien upon the waterworks or electric power system so acquired, constructed, established, equipped, extended or improved from the proceeds of bonds hereby authorized to be issued, which shall exist in favor of the holder of said bonds and each of them, and to and in favor of the holder of the coupons attached to said bonds, and such waterworks or electric power system shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest upon said bonds.

Any municipality in acquiring an existing waterworks system or in improving an existing waterworks or electric power system may provide that payment therefor shall be made by issuing revenue bonds and delivering the same at such prices as may be agreed upon within the limitations prescribed in section six [§ 8-19-6] hereof. Any revenue bonds so issued in payment for such an existing waterworks or electric power system shall for all purposes be regarded as partaking of the nature of and as being secured by a purchase money mortgage upon the property so acquired or improved; and the holders thereof shall have, in addition to any other remedies and rights prescribed by this article, such remedies and rights as may now or hereafter exist in law in the case of purchase money mortgages. (1933, Ex. Sess., c. 26, § 7; 1933, 2nd Ex. Sess., c. 49; 1969, c. 86; 1978, c. 72.)

**§ 8-19-9. Covenants with bondholders.**

Any ordinance authorizing the issuance of bonds, hereunder, or any trust indenture with any banking institution or trust company within or without the State for the security of said bonds, which any such municipality is hereby empowered and authorized to enter into and execute, 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 said waterworks or electric power system may be applied and the securing, use and disposition thereof, including, if deemed 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, control or operation of such waterworks or electric power system, including any part thereof heretofore or hereafter acquired, constructed, established, extended or equipped 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 deemed necessary or desirable;

(c) The fixing, establishing and collecting of such rates or charges for the use of the services and facilities of the waterworks or electric power system, including the parts thereof heretofore or hereafter acquired, constructed, established, extended or equipped and the revision of same from time to time, as will always provide revenues at least sufficient to provide for all expenses of repair, maintenance and operation of such waterworks or electric power system, the payment of the principal of and interest upon all bonds or other obligations payable from the revenues of such waterworks or electric power 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 the waterworks or electric power 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 waterworks or electric power system;

(e) Subject to the provisions of subsection (b), section twelve [§ 8-19-12] of this article, limitations or restrictions upon the issuance of additional bonds or other obligations payable from the revenues of such waterworks or electric power system, and the rank or priority, as to lien and source and security for payment from the revenues of such waterworks or electric power system, between bonds payable from such 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 such defaults may be declared cured and the acceleration of the maturity of such bonds rescinded and repealed;

(g) Budgets for the annual repair, maintenance and operation of such waterworks or electric power 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 waterworks or electric power system, or any part thereof, and the use and disposition of the proceeds of any insurance; and

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

Any such ordinance or trust indenture may also contain such other additional covenants as shall be deemed necessary or desirable for the security of the holders of bonds issued hereunder, notwithstanding that such other covenants are not expressly enumerated above, it being the intention hereof to grant to municipalities plenary power and authority to make any and all covenants or agreements necessary in order to secure greater marketability for bonds issued hereunder as fully and to the same extent as such covenants or agreements could be made by a private corporation rendering similar services and facilities and to grant to municipalities full and complete power and authority to enter into any contracts, covenants or agreements with holders of bonds issued hereunder not inconsistent with the Constitution of this State. (1955, c. 133; 1969, c. 86; 1978, c. 72.)

**§ 8-19-10. Operating contract.**

Any such municipality may enter into contracts or agreements with any persons for (1) the repair, maintenance and operation and management of the facilities and properties of said waterworks or electric power system, or any part thereof, or (2) the collection and disbursement of the income and revenues therefor, or for both (1) and (2), for such period of time and under such terms and conditions as shall be agreed upon between such municipality and such persons. Any such municipality shall have plenary power and authority to provide in the ordinance 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, is outstanding and unpaid. (1955, c. 133; 1969, c. 86; 1978, c. 72.)

**§ 8-19-11. Rates or charges for water and electric power must be sufficient to pay bonds, etc.; disposition of surplus.**

Rates or charges for water fixed precedent to the issuance of bonds shall not be reduced until all of said bonds shall have been fully paid, and may, whenever necessary, be increased in amounts sufficient to provide for the payment of the principal of and interest upon such bonds, and to provide proper funds for the depreciation account and repair, maintenance and operation charges. If any surplus shall be accumulated in the repair, maintenance and operation fund which shall be in excess of the cost of repairing, maintaining and operating the waterworks or electric power system during the remainder of the fiscal year then current, and the cost of repairing, maintaining and operating the said waterworks or electric power system during the fiscal year then next ensuing, then any such excess may be transferred to either the depreciation account or to the bond and interest redemption account, and if any surplus shall be accumulated in the depreciation account over and above that

which the municipality shall find may be necessary for the probable replacements which may be needed during the then present fiscal year, and the next ensuing fiscal year, such excess may be transferred to the bond and interest redemption account, and if any surplus shall exist in the bond and interest redemption account the same shall be applied insofar as possible in the purchase or retirement of outstanding revenue bonds payable from such account. (1933, Ex. Sess., c. 26, § 8; 1969, c. 86; 1978, c. 72.)

**§ 8-19-12. Service charges; sinking fund; amount of bonds; additional bonds; surplus.**

(a) Every municipality issuing bonds under the provisions of this article shall thereafter, so long as any of such bonds remain outstanding, repair, maintain and operate its waterworks or electric power system as hereinafter provided and shall charge, collect and account for revenues therefrom as will be sufficient to pay all repair, maintenance and operation costs, provide a depreciation fund, retire the bonds and pay the interest requirements of the bonds as the same become due. The ordinance pursuant to which any such bonds are issued shall pledge the revenues derived from the waterworks or electric power system to the purposes aforesaid and shall definitely fix and determine the amount of revenues which shall be necessary and set apart in a special fund for the bond requirements. The amounts as and when so set apart into said special fund for the bond requirements shall be remitted to the state sinking fund commission to be retained and paid out by said commission consistent with the provisions of this article and the ordinance pursuant to which such bonds have been issued. The bonds hereby authorized shall be issued in such amounts as may be determined necessary to provide funds for the purpose for which they are authorized, and in determining the amount of bonds to be issued it shall be proper to include interest on the bonds for a period not beyond six months from the estimated date of completion.

(b) If the proceeds of the bonds, because of error or otherwise, shall be less than the cost of the property or undertaking for which authorized, additional bonds may be issued to provide the amount of such deficit and such additional bonds shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority over the bonds first authorized and issued.

(c) If the proceeds of the bonds shall exceed the cost of the property or undertaking, the surplus shall be converted into the fund for the retirement of the bonds and payment of the interest thereon. (1933, Ex. Sess., c. 26, § 11; 1969, c. 86; 1978, c. 72.)

**§ 8-19-13. Discontinuance of water or electric power service for nonpayment of rates or charges.**

Any such municipality shall also have plenary power and authority, and may covenant with the holders of any bonds issued hereunder, to shut off and discontinue the supplying of the water or electric power service of said

waterworks or electric power system for the nonpayment of the rates or charges for said water or electric power service. (1955, c. 133; 1969, c. 86; 1978, c. 72.)

**§ 8-19-14. Bonds for additions, betterments and improvements.**

Whenever any municipality shall now or hereafter own and operate a waterworks or electric power system, whether acquired, constructed, established, extended or equipped under the provisions of this article or not, and shall desire to construct additions, betterments or improvements thereto, it may issue revenue bonds under the provisions of this article to pay for the same, and the procedure therefor, including the fixing of rates or charges and the computation of the amount thereof, and the power and authority in connection therewith, shall be the same as in this article provided for the issuance of bonds for the acquisition, construction, establishment, extension or equipment of a waterworks system in a municipality which has not heretofore owned and operated a waterworks system: Provided, that nothing in this article shall be construed as authorizing any municipality to impair or commit a breach of the obligation of any valid lien or contract created or entered into by it, the intention being to authorize the pledging, setting aside and segregation of such revenues for the construction of such additions, betterments or improvements only where and to the extent consistent with outstanding obligations of such municipality, and in accordance with the provisions of this article. (1933, Ex. Sess., c. 26, § 10; 1933, 2nd Ex. Sess., c. 49; 1969, c. 86; 1978, c. 72.)

**§ 8-19-15. System of accounts; audit.**

Any municipality operating a waterworks or electric power system under the provisions of this article shall set up and maintain a proper system of accounts in accordance with the requirements of the public service commission, showing the amount of revenues received from such waterworks or electric power system and the application of the same. At least once each year such municipality shall cause such accounts to be properly audited, and a report of such audit shall be open to the public for inspection at all reasonable times. (1939, c. 98, § 10; 1969, c. 86; 1978, c. 72.)

**§ 8-19-16. Protection and enforcement of rights of bondholders, etc.; receivership.**

Any holder of any bonds issued under the provisions of this article or of any coupons representing interest accrued thereon may by civil action, mandamus or other proper proceeding enforce the statutory mortgage lien created and granted in section eight [§ 8-19-8] of this article, protect and enforce any and all rights granted hereunder or under any such ordinance or trust indenture, and may enforce and compel performance of all duties required by the provisions of this article or by any such ordinance or trust indenture to be performed by the municipality, or by the governing body or any officer, including the making and collecting of reasonable and sufficient rates or charges for services

rendered by the waterworks or electric power system. If there be default in the payment of the principal of or interest upon any of such bonds, or of both principal and interest, any court having jurisdiction shall appoint a receiver to administer said waterworks or electric power system on behalf of the municipality, and the bondholders or trustee, or both, with power to charge and collect rates or charges sufficient to provide for the retirement of the bonds and pay the interest thereon, and for the payment of the repair, maintenance and operation expenses, and such receiver shall apply the revenues in conformity with the provisions of this article and the ordinance pursuant to which such bonds have been issued or any trust indenture, or both. (1933, Ex. Sess., c. 26, § 12; 1969, c. 86; 1978, c. 72.)

Rules of Civil Procedure. — As to receivers, see Rule 66, appearing in Volume 1A.

PART V. GRANTS, LOANS AND ADVANCES; CUMULATIVE AUTHORITY.

§ 8-19-17. Grants, loans and advances.

Any municipality is hereby empowered and authorized to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of acquisition, construction, establishment, extension or equipment of waterworks systems and the construction of additions, betterments and improvements to existing waterworks systems or to existing electric power systems, 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 waterworks system or electric power system or grants to the municipality from any agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any agency of the state, the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual.

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. (1961, c. 105; 1969, c. 86; 1978, c. 72; 1981, 1st Ex. Sess., c. 2.)

**§ 8-19-18. Additional and alternative method for constructing or improving and for financing waterworks or electric power system; cumulative authority.**

This article shall, without reference to any other statute or charter provision, be deemed full authority for the acquisition, construction, establishment, extension, equipment, additions, betterment, improvement, repair, maintenance and operation of or to a waterworks system or for the construction of any additions, betterments or improvements to an existing electric power system as herein provided 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, referendum or election or other or further proceeding with respect to any such undertaking or to the issuance or sale of bonds under the provisions of this article and no publication of any resolution, ordinance, notice or proceeding relating to any such undertaking or to the issuance or sale of such bonds shall be required, except as prescribed by this article, any provisions of other statutes of the State to the contrary notwithstanding: Provided, that all functions, powers and duties of the state department of health shall remain unaffected by this article.

This article shall be construed as cumulative authority for any undertaking herein authorized, and shall not be construed to repeal any existing laws with respect thereto. (1933, Ex. Sess., c. 26, § 13; 1969, c. 86; 1978, c. 72.)

PART VI. OPERATION BY BOARD; CONSTRUCTION.

**§ 8-19-19. Alternative procedure for acquisition, construction or improvement of waterworks or electric power system.**

As an alternative to the procedures hereinabove provided, any municipality is hereby empowered and authorized to acquire, construct, establish, extend, equip, repair, maintain and operate a waterworks system or to construct, maintain and operate additions, betterments and improvements to an existing waterworks system or an existing electric power system, whether acquired, constructed, established, extended or equipped under the provisions of this article or not, and to collect the revenues therefrom for the services rendered thereby, through the supervision and control of a committee, by whatever name called, composed of all or a portion of the governing body, or of a board or commission appointed by such governing body, as may be provided by the governing body, and if such alternative is followed, said committee, board or commission shall have and be limited to all the powers, authority and duties granted to and imposed upon a board as provided in article sixteen [§ 8-16-1 et seq.] of this chapter. (1961, c. 104; 1969, c. 86; 1978, c. 72.)

§ 8-19-20. Article to be liberally construed.

This article is necessary for the public health, safety and welfare and shall be liberally construed to effectuate its purposes. (1933, Ex. Sess., c. 26, § 14; 1969, c. 86.)

ARTICLE 20.

COMBINED WATERWORKS AND SEWERAGE SYSTEMS.

Part I. Combined Waterworks and Sewerage Systems Authorized; Definitions.

Sec.

Sec.

- 8-20-1. Acquisition and operation of combined waterworks and sewerage systems; extension beyond corporate limits; definitions.
- 8-20-1a. Cooperation with other governmental units.

Part II. Right of Eminent Domain.

- 8-20-2. Right of eminent domain; limitations.

Part III. Revenue Bond Financing.

- 8-20-3. Ordinance describing project; contents.
- 8-20-4. Publication of abstract of ordinance and notice; hearing.
- 8-20-5. Amount, negotiability and execution of bonds; refund of outstanding obligations or securities by sale or exchange of bonds.
- 8-20-6. Bonds payable solely from revenues; not to constitute municipal indebtedness.
- 8-20-7. Lien of bondholders.
- 8-20-8. Covenants with bondholders.
- 8-20-9. Operating contract.
- 8-20-10. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates

or charges; change in rates or charges; delinquent rates or charges as liens; civil action for recovery thereof.

- 8-20-11. Discontinuance of water service for nonpayment of rates or charges.
- 8-20-12. Use of revenues; sinking fund.
- 8-20-13. System of accounts; audit.
- 8-20-14. Repair and maintenance of municipal sewerage system outside corporate limits.
- 8-20-15. Protection and enforcement of rights of bondholders, etc.; receivership.

Part IV. Grants, Loans and Advances; Cumulative Authority.

- 8-20-16. Grants, loans and advances.
- 8-20-17. Additional and alternative method for constructing, etc., and financing combined waterworks and sewerage system; cumulative authority.

Part V. Operation by Board; Construction.

- 8-20-18. Alternative procedure for acquisition, construction, etc., of combined waterworks and sewerage system.
- 8-20-19. Article to be liberally construed.

Revision of chapter. — See note under the same catchline at the beginning of this chapter.

Legislative intent. — It appears clear that the legislature recognized the need for municipal utility systems; however, it did not wish the municipality to become generally obligated for the building or acquisition of the system.

Financing is provided for primarily by revenue bonds, and bondholders are assured of a safe investment through the collection of sufficient user charges to service the bonds and maintain the assets of the system. Op. Att'y Gen., April 3, 1979.

PART X. CONSTRUCTION; EXTRATERRITORIAL JURISDICTION.

§ 8-16-28. Reference to "municipal authorities" or "municipal authority" elsewhere in law to mean "governing body" for the purposes of this article only.

W. Va. Law Review. — Dobbs and Joslin, Development Bond Financing, 84 W. Va. L. Bankruptcy Preference Concerns in Industrial Rev. 573 (1982).

ARTICLE 19.

MUNICIPAL WATERWORKS AND ELECTRIC POWER SYSTEMS.

Part I. Municipal Waterworks and Electric Power Systems Authorized; Definition.

Sec.

8-19-1. Acquisition and operation of municipal waterworks systems; construction of improvements to municipal electric power systems; extension beyond corporate limits; definitions.

Part IV. Revenue Bond Financing.

8-19-4. Estimate of cost; ordinance for issuance of revenue bonds; interest on bonds; rates for services.

8-19-6. Amount, negotiability and execution of bonds.

8-19-8. Lien of bondholders; deeds of trust; se-

Sec.

curity agreements; priority of liens.

8-19-12. Service charges; sinking fund; amount of bonds; additional bonds; surplus.

Part V. Grants, Loans, Advances and Agreements; Cumulative Authority.

8-19-17. Grants, loans, advances and agreements.

8-19-18. Additional and alternative method for constructing or improving and for financing waterworks or electric power system; cumulative authority.

PART I. MUNICIPAL WATERWORKS AND ELECTRIC POWER SYSTEMS AUTHORIZED; DEFINITION.

§ 8-19-1. Acquisition and operation of municipal waterworks systems; construction of improvements to municipal electric power systems; extension beyond corporate limits; definitions.

Subject to and in accordance with the provisions of this article, any municipality may acquire, construct, establish, extend, equip, repair, maintain and operate, or lease to others for operation, a waterworks system, or construct, maintain and operate additions, betterments and improvements to an existing waterworks system or an existing electric power system, notwithstanding any provision or limitation to the contrary in any other law or charter: Provided, That such municipality shall not serve or supply water facilities or electric power facilities or services within the corporate limits of any other municipality without the consent of the governing body of such other municipality.

When used in this article, the term "waterworks system" shall be construed to mean and include a waterworks system in its entirety or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system.

When used in this article, the term "electric power system" means a system or facility which produces electric power in its entirety or provides for the distribution of electric power for local consumption and use or for distribution and resale or any combination thereof, or any integral part thereof, including, but not limited to, power lines and wires, power poles, guy wires, insulators, transformers, generators, cables, power line towers, voltage regulators, meters, power substations, machinery and all other facilities necessary, appropriate, useful or convenient or incidental in connection with or to an electric power supply system. (1933, Ex. Sess., c. 26, § 1; 1937, c. 52; 1939, c. 97; 1949, c. 90; 1955, c. 133; 1969, c. 86; 1978, c. 72; 1983, c. 151; 1986, c. 118; 1986, 1st Ex. Sess., c. 18.)

**Effect of amendments of 1986.** — Acts 1986, c. 118 amended this section to read as set out in the editor's note below. Acts 1986, 1st Ex. Sess., c. 18, in the last paragraph added: "or provides for the distribution of electric power for local consumption and use or for distribution and resale or any combination thereof."

**Editor's note.** — This section was amended twice in 1986, just in the Regular Session by c. 118 and later in the First Extraordinary Session by c. 18. Neither amendment referred to the other. The text of the session as amended by c. 18 (passed May 18, 1986 and effective May 18, 1986) is set out above. Chapter 118 (passed March 8, 1986 and effective June 6, 1986) amended the section to read: "Subject to and in accordance with the provisions of this article, any municipality may acquire, construct, establish, extend, equip, repair, maintain and operate, or lease to others for operation, a waterworks system, including acquisition of the municipal waterworks system resulting from the severance of a combined waterworks and sewerage system pursuant to section one-b [§ 8-20-1b], article twenty of this chapter, or construct, maintain and operate additions, betterments and improvements to an existing waterworks system or an existing electric power system, notwithstanding any

provision or limitation to the contrary in any other law or charter: Provided, That such municipality shall not serve or supply water facilities or electric power facilities or services within the corporate limits of any other municipality without the consent of the governing body of such other municipality.

When used in this article, the term "waterworks system" shall be construed to mean and include a waterworks system in its entirety or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system.

When used in this article, the term "electric power system" means a system or facility which produces electric power in its entirety or any integral part thereof, including, but not limited to, power lines and wires, power poles, guy wires, insulators, transformers, generators, cables, power line towers, voltage regulators, meters, power substations, machinery and all other facilities necessary, appropriate, useful, or convenient or incidental in connection with or to an electric power supply system."

## PART IV. REVENUE BOND FINANCING.

**§ 8-19-4. Estimate of cost; ordinance for issuance of revenue bonds; interest on bonds; rates for services.**

Whenever a municipality shall, under the provisions of this article, determine to acquire, by purchase or otherwise, construct, establish, extend or equip a waterworks system, or to construct any additions, betterments or improvements to any waterworks or electric power system, it shall cause an estimate to be made of the cost thereof, and may, by ordinance, provide for the issuance of revenue bonds under the provisions of this article, which ordinance shall set forth a brief description of the contemplated undertaking, the estimated cost thereof, the amount, rate or rates of interest, the time and place of payment, and other details in connection with the issuance of the bonds. Such bonds shall be in such form and shall be negotiated and sold in such manner and upon such terms as the governing body of such municipality may by ordinance specify. All such bonds and the interest thereon, and all properties and revenues and income derived from such waterworks or electric power system, shall be exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof. Such bonds shall bear interest at a rate per annum set by the municipality, payable at such times, and shall be payable as to principal at such times, not exceeding fifty years from their date, and at such place or places, within or without the state, as shall be prescribed in the ordinance providing for their issuance. Unless the governing body of the municipality shall otherwise determine, such ordinance shall also declare that a statutory mortgage lien shall exist upon the property so to be acquired, constructed, established, extended or equipped, fix minimum rates or charges for water or electricity to be collected prior to the payment of all of said bonds and shall pledge the revenues derived from the waterworks or electric power system for the purpose of paying such bonds and interest thereon, which pledge shall definitely fix and determine the amount of revenues which shall be necessary to be set apart and applied to the payment of the principal of and interest upon the bonds and the proportion of the balance of such revenues, which are to be set aside as a proper and adequate depreciation account, and the remainder shall be set aside for the reasonable and proper maintenance and operation thereof. The rates or charges to be charged for the services from such waterworks or electric power system shall be sufficient at all times to provide for the payment of interest upon all bonds and to create a sinking fund to pay the principal thereof as and when the same become due, and reasonable reserves therefor, and to provide for the repair, maintenance and operation of the waterworks or electric power system, and to provide an adequate depreciation fund, and to make any other payments which shall be required or provided for in the ordinance authorizing the issuance of said bonds. (1933, Ex. Sess., c. 26, § 3; 1933, 2nd Ex. Sess., c. 49; 1955, c. 133; 1969, c. 86; 1970, c. 7; 1978, c. 72; 1980, c. 33; 1981, 1st Ex. Sess., c. 2; 1984, c. 128; 1986, 1st Ex. Sess., c. 18.)

Effect of amendment of 1984. — The amendment substituted the present provisions relating to interest rate of bonds being set by the municipality for the former limitation of twelve percent.

Effect of amendment of 1986. — The amendment, effective May 18, 1986, in the first sentence substituted "may" for "shall" preced-

ing ", by ordinance"; in the fourth sentence substituted "fifty years" for "forty years"; at the beginning of the fifth sentence added "Unless the governing body of the municipality shall otherwise determine," and further on added "or electricity" following "charges for water."

**§ 8-19-6. Amount, negotiability and execution of bonds.**

Bonds herein provided for shall be issued in such amounts as may be necessary to provide sufficient funds to pay all costs of acquisition, construction, establishment, extension or equipment, including engineering, legal and other expenses, together with interest to a date six months subsequent to the estimated date of completion. Bonds issued under the provisions of this article are hereby declared to be negotiable instruments, and the same 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. All signatures on the bonds or coupons and the corporate seal may be mechanically reproduced if authorized in the ordinance authorizing the issuance of the bonds. (1933, Ex. Sess., c. 26, § 5; 1933, 2nd Ex. Sess., c. 49, § 5; 1969, c. 86; 1970, c. 7; 1980, c. 33; 1981, 1st Ex. Sess., c. 2; 1984, c. 128.)

Effect of amendment of 1984. — The amendment deleted the former last sentence relating to negotiating bonds below a certain price level.

**§ 8-19-8. Lien of bondholders; deeds of trust; security agreements; priority of liens.**

Unless the governing body shall otherwise determine in the ordinance authorizing the issuance of bonds under this article, there shall be and there is hereby created and granted a statutory mortgage lien upon the waterworks or electric power system so acquired, constructed, established, equipped, extended or improved from the proceeds of bonds hereby authorized to be issued, which shall exist in favor of the holder of said bonds and each of them, and to and in favor of the holder of the coupons attached to said bonds, and such waterworks or electric power system shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest upon said bonds.

Any municipality in acquiring an existing waterworks system or in improving an existing waterworks or electric power system may provide that financing therefor may be made by issuing revenue bonds and delivering the same at such prices as may be agreed upon within the limitations prescribed in section six [§ 8-19-6] hereof. Any revenue bonds so issued to provide financing for such an existing waterworks or for any improvements to an existing wa-

terworks or electric power system may be secured by a mortgage or deed of trust upon and security interest in the property so acquired or improved or any other interest of the municipality in property related thereto as determined by the municipality in the ordinance authorizing the issuance of such revenue bonds; and in such event the holders thereof shall have, in addition to any other remedies and rights prescribed by this article, such remedies and rights as may now or hereafter exist in law in the case of mortgages or deeds of trust on real property and security interests in personal property. Such mortgage or deed of trust, upon its recordation, shall have priority over all other liens or encumbrances, however created or arising, on the property covered by such mortgage or deed of trust, to the same extent and for the same amount as if the municipality were obligated to pay the full amount secured by such mortgage or deed of trust immediately upon the recordation of such mortgage or deed of trust and remained so obligated until the obligations secured are fully discharged. (1933, Ex. Sess., c. 26, § 7; 1933, 2nd Ex. Sess., c. 49; 1969, c. 86; 1978, c. 72; 1986, 1st Ex. Sess., c. 18.)

Effect of amendment of 1986. — The amendment, effective May 18, 1986, rewrote the section as set forth in the bound volume.

**§ 8-19-12. Service charges; sinking fund; amount of bonds; additional bonds; surplus.**

(a) Every municipality issuing bonds under the provisions of this article shall thereafter, so long as any of such bonds remain outstanding, repair, maintain and operate its waterworks or electric power system as hereinafter provided and shall charge, collect and account for revenues therefrom as will be sufficient to pay all repair, maintenance and operation costs, provide a depreciation fund, retire the bonds and pay the interest requirements of the bonds as the same become due. The ordinance pursuant to which any such bonds are issued shall pledge the revenues derived from the waterworks or electric power system to the purposes aforesaid and shall definitely fix and determine the amount of revenues which shall be necessary and set apart in a special fund for the bond requirements. The amounts as and when so set apart into said special fund for the bond requirements shall be remitted to the West Virginia municipal bond commission to be retained and paid out by said commission consistent with the provisions of this article and the ordinance pursuant to which such bonds have been issued: Provided, That payment of principal of and interest on any bonds owned by the United States of America or any agency or department thereof may be made by the municipality directly to the United States of America or said agency or department thereof. The bonds hereby authorized shall be issued in such amounts as may be determined necessary to provide funds for the purpose for which they are authorized, and in determining the amount of bonds to be issued it shall be proper to include interest on the bonds for a period not beyond six months from the estimated date of completion.

(b) If the proceeds of the bonds, because of error or otherwise, shall be less than the cost of the property or undertaking for which authorized, additional bonds may be issued to provide the amount of such deficit and such additional bonds shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority over the bonds first authorized and issued.

(c) If the proceeds of the bonds shall exceed the cost of the property or undertaking, the surplus shall be converted into the fund thereon. (1933, Ex. Sess., c. 26, § 11; 1969, c. 86; 1978, c. 72; 1986, c. 118.)

Effect of amendment of 1986. — The amendment in the third sentence in (a) substituted "West Virginia municipal bond commission" for "state sinking fund commission" and

added the proviso; and in (c) deleted "for the retirement of the bonds and payment of the interest" preceding "thereon" at the end of the subsection.

PART V. GRANTS, LOANS, ADVANCES AND AGREEMENTS; CUMULATIVE AUTHORITY.

§ 8-19-17. Grants, loans, advances and agreements.

As an alternative to, or in conjunction with, the issuance of revenue bonds authorized by this article, any municipality is hereby empowered and authorized to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, or otherwise enter into agreements, including, but not limited to, agreements of indemnity, assurance or guarantee with respect to, and for the purpose of financing part or all of, the cost of acquisition, construction, establishment, extension or equipment of waterworks systems and the construction of additions, betterments and improvements to existing waterworks systems or to existing electric power systems, and for the other purposes herein authorized, from or with 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, or the municipality's financial obligations contained in such other agreements, which need not bear interest, may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article, the revenues of or proceeds from the said waterworks system or electric power system or grants to the municipality from any agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment, and may be secured in the manner provided in sections eight, nine and sixteen [§§ 8-19-8, 8-19-9 and 8-19-16] of this article to secure bonds issued under the provisions of this article, but shall not otherwise be subject to the requirements of sections eleven and twelve [§§ 8-19-11 and 8-19-12] of this article, 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.

In no event shall any such loan or temporary advance or agreement be a general obligation of the municipality and such loans or temporary advances or agreements, including the interest thereon, shall be paid solely from the sources specified in this section. (1961, c. 105; 1969, c. 86; 1978, c. 72; 1981, 1st Ex. Sess., c. 2; 1986, c. 118; 1986, 1st Ex. Sess., c. 18.)

**Effect of amendments of 1986.** — Acts 1986, c. 118 rewrote this section to read as set out in the editor's note below. Acts 1986, 1st Ex. Sess., c. 18 rewrote the section as it appeared in the bound volume.

**Editor's note.** — This section was amended twice in 1986, first in the Regular Session by c. 118 and later in the First Extraordinary Session by c. 18. Neither amendment referred to the other. The text of the section as amended by c. 18 (passed May 18, 1986 and effective May 18, 1986) as set out above. Chapter 118 (passed March 8, 1986 and effective June 6, 1986) amended the section to read: "Any municipality is hereby empowered and authorized to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of acquisition, construction, establishment, extension or equipment of waterworks systems and the construction of additions, betterments and improvements to existing waterworks systems or to existing electric power systems, 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 waterworks system or electric power system or grants to the municipality from any agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any agency of the state, the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article to the contrary notwithstanding, interest on any such loan or temporary advance 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."

**County financing of municipal waterworks.** — A county commission may finance the acquisition of a waterworks system by a municipality. Op. Att'y Gen., Apr. 1, 1985, No. 6.

### § 8-19-18. Additional and alternative method for constructing or improving and for financing waterworks or electric power system; cumulative authority.

This article shall, without reference to any other statute or charter provision, be deemed full authority for the acquisition, construction, establishment, extension, equipment, additions, betterment, improvement, repair, maintenance and operation of or to a waterworks system or for the construction of any additions, betterments, improvements, repairs, maintenance or operation of or to an existing electric power system as herein provided and for the issuance and sale of the bonds or the alternative methods of financing by this article authorized, and shall be construed as an additional and alternative

method therefor and for the financing thereof, and no petition, referendum or election or other or further proceeding with respect to any such undertaking or to the issuance or sale of bonds or the alternative methods of financing under the provisions of this article and no publication of any resolution, ordinance, notice or proceeding relating to any such undertaking or to the issuance or sale of such bonds or the alternative methods of financing shall be required, except as prescribed by this article, any provisions of other statutes of the state to the contrary notwithstanding: Provided, That all functions, powers and duties of the state department of health shall remain unaffected by this article.

This article shall be construed as cumulative authority for any undertaking herein authorized, and shall not be construed to repeal any existing laws with respect thereto. (1933, Ex. Sess., c. 26, § 13; 1969, c. 86; 1978, c. 72; 1986, 1st Ex. Sess., c. 18.)

Effect of amendment of 1986. — The amendment, effective May 18, 1986, added "repairs, maintenance or operation of or" following "betterments, improvements,;" added "or

the alternative methods of financing" following "sale of bonds" and "of such bonds"; and made other minor changes.

ARTICLE 20.

COMBINED WATERWORKS AND SEWERAGE SYSTEMS.

Part I. Combined Waterworks and Sewerage Systems Authorized; Definitions.

Part IV. Grants, Loans and Advances Cumulative Authority.

Sec. 8-20-1b. Severance of combined system.

Sec. 8-20-16. Grants, loans and advances.

Part III. Revenue Bond Financing

8-20-12. Use of revenues; sinking fund.

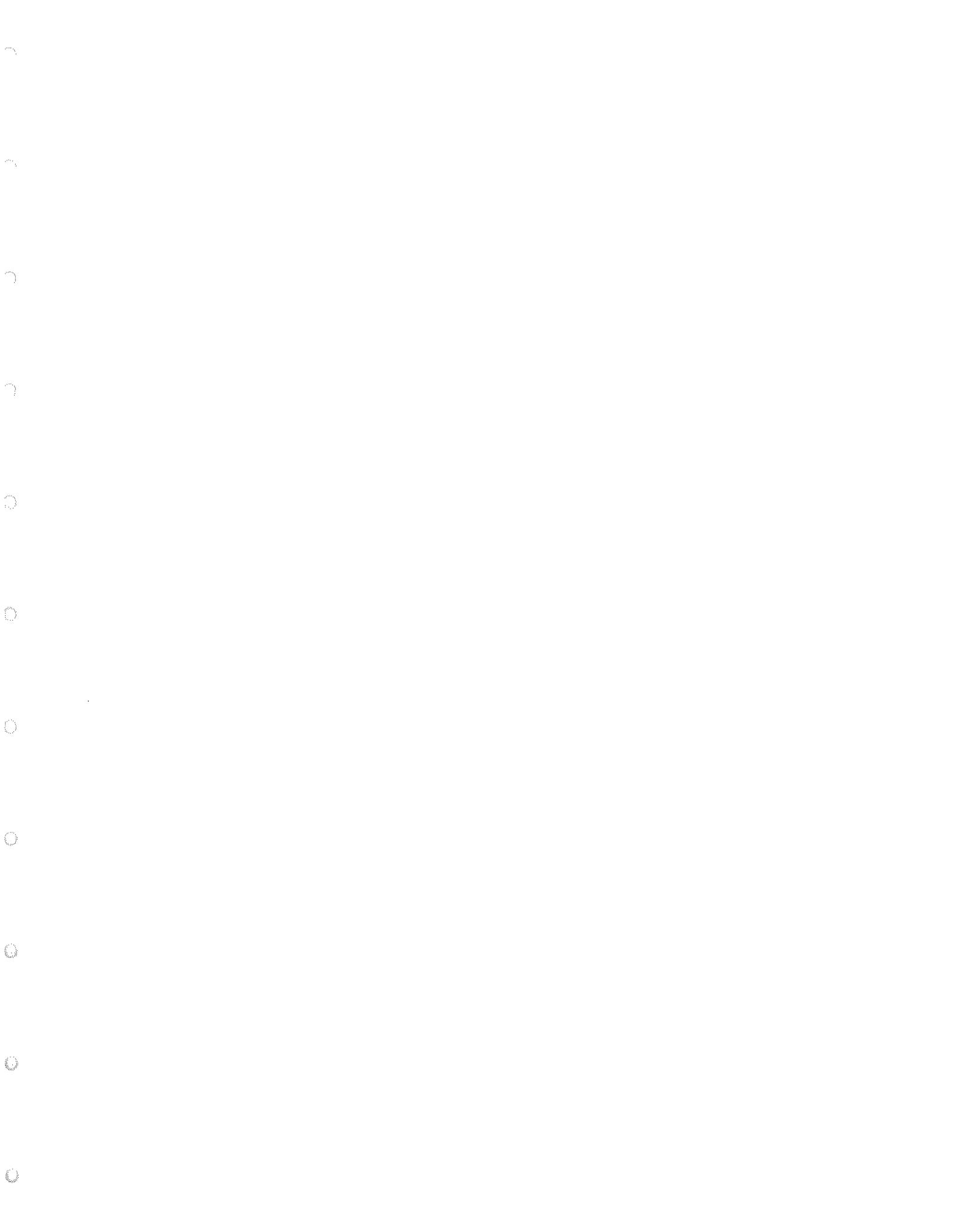
PART I. COMBINED WATERWORKS AND SEWERAGE SYSTEMS AUTHORIZED; DEFINITIONS.

§ 8-20-1b. Severance of combined system.

Any municipality which has combined its waterworks and sewerage system under the provisions of this article, or pursuant to provisions of any other law may hereafter sever said combined waterworks and sewerage system if the following conditions are met:

(a) An ordinance is enacted by the governing body of the municipality severing the combined waterworks and sewerage system into a separate waterworks system and a separate sewerage system.

(b) If revenue bonds or notes or other obligations with a lien on or pledge of the revenues of said combined waterworks and sewerage system, or any part thereof, are outstanding, then the municipality must provide in said ordinance (i) that the severance of the combined waterworks and sewerage system is not effective until all such outstanding revenue bonds or notes or other



Certificate of Incorporation  
 For the Town of Eastbank  
 October 18<sup>th</sup> A. D. 1889

A Certificate under oath of A. J. Nelson, Martin Nelson and Henry Ball was this day filed, showing that a majority of all the qualified voters residing in the following boundary town

Beginning at a stake at low water mark of the Great Kanawha River corner of the Lands owned by Wm Bryer & Mrs M Conihay and with low water mark of said River N 49° E 5 poles N 50° E 7 poles N 58° E 14 poles N 62° E 22 poles N 69° E 18 poles N 74° E 14 poles N 79° E 10 poles N 83½° E 18 poles E 12 poles S 77½° E 10 poles S 7½° E 10 poles S 71° E 18 poles S 59° E 40 poles S 38½° E 10 poles S 53° E 10 poles to a stake standing on the East side of a branch at low water mark of said River same being a corner to lands of Reynolds & O R R Co

Thence S 14½ W. 31 poles to O R R Co's right of way. Thence S 15½ E 127 poles to a stake Thence N 83½ W 120 poles to a stake Thence N 33½ W 97 poles to the corner of W Schlegel's survey and with the line of the same S 64° W 9½ poles N 83½

W 12 1/4 poles n 64° E 3 1/2 poles n 30 1/2°  
n 68 poles with the line of William Faxon  
and Mrs McComby to the place of begin-  
ning containing 10 7/4 acres - have been  
given in due form of law in favor of  
the Incorporation of the Town of Eastbank  
in the County of Kanawha Bounded as  
herein set forth.

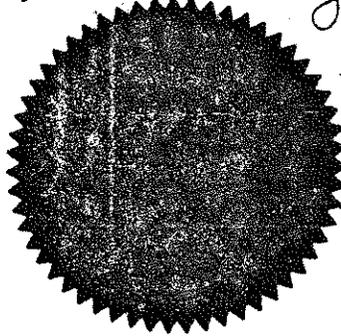
And it appearing to the sat-  
isfaction of the Court that all the provisions  
of Chapter 47 of the Code of West Virginia  
have been complied with by the Applicant  
for said Incorporation. The said Town is  
duly Authorized within the Corporate -  
limits aforesaid to exercise all the Corporate  
powers conferred by the said Chapter from  
and after the date of this Certificate

I do hereby certify that the  
aforesaid Certificate of Incorporation of the  
Town of Eastbank is in the words and  
substance as directed by a Decree entered  
in Law Order Book 21 page 123 Oct 17<sup>th</sup>  
1889 at a Special term of the Circuit Court  
for Kanawha County held at the Court House  
thereof on Thursday the 17<sup>th</sup> day of October 1889  
in pursuance of a Warrant for the same under the  
hand of the Hon F A Guthrie Judge of the 7<sup>th</sup> Judi-  
cial Circuit of West Virginia. Which  
Warrant was duly recorded

Given under my hand and Seal

of the Circuit Court of Kanawha  
County West Virginia on this  
the 18<sup>th</sup> day of October 1889 and  
in the 27<sup>th</sup> year of the State

O B Smith Clerk  
Kanawha Circuit Court

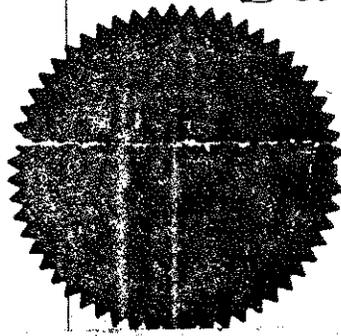


11  
XXXXXXXXXXXXXXXXXXXX

And the Court doth hereby appoint  
C. C. Colkins A. J. Nelson and W. M.  
Larrett all legal voters and residing  
within said Territory who shall act  
as Commissioners of Election at the next  
election to be held in said Town of  
Eastbank as provided by Law

A true copy from the record  
Teste

O B Smith Clerk  
Kanawha Circuit Court



777 Town of Eastbank		TO CLERK KANAWHA CIRCUIT COURT, Dr.	
1889 Oct 18 <sup>th</sup>	for United est. cert. in matter of Incorporation		\$ -
In part furnished by the said people who now comprise the Town of Eastbank			
Received Payment	O B Smith	Clerk	\$ -

SEP-20-78 5 53 91 • 1623-A RR 0.50

305-381

mail: Peggy Thompson  
East Bank, WV 25067

STATE OF WEST VIRGINIA  
At a Circuit Court for Kanawha County held at the Court House thereof  
on the 18th day of October 1889

(STATE OF WEST VIRGINIA)

At a Circuit Court for Kanawha County held at the Court House thereof on the 18th day of October, 1889).

In Matter of incorporation of the Town of East Bank, upon the application of M. F. Sprouse, W. R. Cummings, John Banister, D. M. Jarrett, T. R. Cooper, E. C. Elkins, S. Chapman, H. G. Blair and others and upon the proper notice being given as required by law in such cases made and provided.

A certificate under oath of A. J. Nelson, Martin Naylor and Henry Ball being duly filed in the Clerk's Office of this Court showing that a majority of all the qualified voters residing in the boundary hereinafter set forth have been given in due form of law in favor of the Incorporation of the Town of East Bank in the County of Kanawha bounded as hereinafter set forth as aforesaid and it appearing to the satisfaction of the Court that all the provisions of Chapter 47 of the Code of West Virginia have been complied with by the Applicants for said Incorporation the said Town is duly authorized within the corporate limits hereinafter set forth to exercise all the corporate powers conferred by the said Chapter from the after the date of the certificate herein ordered.

It is therefore ordered that the Clerk of this Court do issue a Certificate of Incorporation of said Town in favor and substance as follows.

A certificate under oath of A. J. Nelson, Martin Naylor and Henry Ball was this day filed showing that a majority of all the qualified voters residing the the foregoing boundary to-wit:

Beginning at a stake at low water mark of the Great Kanawha River, corner of the lands owned by William Payne and Mrs. McConlay and with low water mark of said River N. 49° E. 5 poles, N. 50 1/2° E. 4 poles N. 53° E. 14 poles N. 62° E. 22 poles N. 69° E. 18 poles N. 74° E. 14 Poles N. 79° E. 10 poles N. 83 1/2° E. 18 poles E. 12 poles S. 77 1/2° E. 10 poles S. 71 1/2° E. 10 poles S. 71° E. 18

poles S 59° E. 40 Poles S. 38 1/2° E. 10 poles S. 53° E. 10 poles to a stake standing on the East Side of a branch at low water mark of said River, same being a corner to lands of Reynolds and C. & O. R.R. Co. Thence S. 14 1/2 W 31 poles to C. & P. R.R. Cos. right of way. Thence S. 15 1/2 E. 127 poles to a stake, thence N. 83 1/2 W. 122 poles to a stake.

Thence W. 33 1/2 W. 97 poles to the corner of M. Schlagels survey and with the line of the same S. 64° W 3 2/3 poles N. 33 1/2° W. 32 1/4 poles W. 64° E. 3 2/3 poles N. 33 1/2 W. 68 poles with the line of William Pryor and Mrs. McConihay to the place of beginning containing 167 1/4 acres have been given in due form of law in favor of the Incorporation of the Town of East Bank in the County of Kanawha bounded as herein set forth.

And it appearing to the satisfaction of the Court that all the provisions of Chapter 47 of the Code of West Virginia have been complied with by the applicants for said Incorporation the said Town is duly authorized within the corporate limits aforesaid to exercise all the corporate powers conferred by the said Chapter from and after the date of this Certificate. And the Court doth hereby appoint E. C. Elkins, A. J. Nelson and D. M. Jarrett, all legal voters and residing within said territory who shall act as commissioners of Election at the first Election to be held in said Town of East Bank as provided by law.

STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, SS:

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

Given under my hand and the seal of said Court this 23rd day of October, 1970.

*Jack Kinder*  
CLERK  
CIRCUIT COURT OF KANAWHA COUNTY,  
WEST VIRGINIA.

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS

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

Given under my hand and the seal of said Court this \_\_\_\_\_  
19th day of September 1970  
*Phyllis J. Rutledge* CLERK  
Circuit Court  
KANAWHA COUNTY, WEST VIRGINIA

This instrument was presented to the Clerk of the County  
Commission of Kanawha County, West Virginia, on  
and the same is admitted to record.

SEP 20 1970  
Teste: *Kelly J. Partington* Clerk  
Kanawha County Commission



TOWN OF EAST BANK

P. O. BOX 307  
EAST BANK, WEST VIRGINIA 25067

I, CHARLES A BLAIR, DO SOLEMNLY SWEAR THAT I  
WILL UPHOLD THE CONSTITUTION OF THE UNITED STATES, THE CONSTITUTION OF THE  
STATE WEST VIRGINIA, AND THE ORDINANCES OF THE TOWN OF EAST BANK, AND  
THAT I WILL FAITHFULLY AND TO THE BEST OF MY ABILITY PERFORM THE DUTIES OF  
MR DR OF THE TOWN OF EAST BANK, TO WHICH OFFICE  
I HAVE BEEN DULY ELECTED BY THE CITIZENS OF THE TOWN OF EAST BANK, SO HELP  
ME GO

Charles A Blair

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 24 DAY OF June  
YEAR 1987.

James P. Pyles

James Pyles, RECORDER  
TOWN OF EAST BANK, WV.

TOWN OF EAST BANK

P. O. BOX 307  
EAST BANK, WEST VIRGINIA 25067

I, JAMES F. Pyles, DO SOLEMNLY SWEAR THAT I  
WILL UPHOLD THE CONSTITUTION OF THE UNITED STATES, THE CONSTITUTION OF THE  
STATE OF WEST VIRGINIA, AND THE ORDINANCES OF THE TOWN OF EAST BANK, AND  
THAT I WILL FAITHFULLY AND TO THE BEST OF MY ABILITY PERFORM THE DUTIES OF  
Recorder OF THE TOWN OF EAST BANK, TO WHICH OFFICE  
I HAVE BEEN DULY ELECTED BY THE CITIZENS OF THE TOWN OF EAST BANK, SO HELP  
ME GOD.

James G. Goff

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 29 DAY OF June  
YEAR 1987

James Pyles

James Pyles, RECORDER  
TOWN OF EAST BANK, WV.

TOWN OF EAST BANK

P. O. BOX 307

EAST BANK, WEST VIRGINIA 25067

I, Clarence J. Howard, DO SOLEMNLY SWEAR THAT I  
WILL UPHOLD THE CONSTITUTION OF THE UNITED STATES, THE CONSTITUTION OF THE  
STATE OF WEST VIRGINIA, AND THE ORDINANCES OF THE TOWN OF EAST BANK, AND  
THAT I WILL FAITHFULLY AND TO THE BEST OF MY ABILITY PERFORM THE DUTIES OF  
Councilman OF THE TOWN OF EAST BANK, TO WHICH OFFICE  
I HAVE BEEN DULY ELECTED BY THE CITIZENS OF THE TOWN OF EAST BANK, SO HELP  
ME GOD.

Clarence J. Howard

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 29 DAY OF June

YEAR 1987.

James E. Pyles

James Pyles, RECORDER  
TOWN OF EAST BANK, WV.

TOWN OF EAST BANK

P. O. BOX 307  
EAST BANK, WEST VIRGINIA 25067

I, LESLIE R. TYLER, DO SOLEMNLY SWEAR THAT I  
WILL UPHOLD THE CONSTITUTION OF THE UNITED STATES, THE CONSTITUTION OF THE  
STATE OF WEST VIRGINIA, AND THE ORDINANCES OF THE TOWN OF EAST BANK, AND  
THAT I WILL FAITHFULLY AND TO THE BEST OF MY ABILITY PERFORM THE DUTIES OF  
COUNCILMAN OF THE TOWN OF EAST BANK, TO WHICH OFFICE  
I HAVE BEEN DULY ELECTED BY THE CITIZENS OF THE TOWN OF EAST BANK, SO HELP  
ME GOD.

Leslie R. Tyler

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 29 DAY OF JUNE

YEAR 1987.

James E. Pyles

~~James Pyles~~, RECORDER  
TOWN OF EAST BANK, WV.

TOWN OF EAST BANK

P. O. BOX 307

EAST BANK, WEST VIRGINIA 25067

I, Lucille Roush, DO SOLEMNLY SWEAR THAT I  
WILL UPHOLD THE CONSTITUTION OF THE UNITED STATES, THE CONSTITUTION OF THE  
STATE OF WEST VIRGINIA, AND THE ORDINANCES OF THE TOWN OF EAST BANK, AND  
THAT I WILL FAITHFULLY AND TO THE BEST OF MY ABILITY PERFORM THE DUTIES OF  
Council OF THE TOWN OF EAST BANK, TO WHICH OFFICE  
I HAVE BEEN DULY ELECTED BY THE CITIZENS OF THE TOWN OF EAST BANK, SO HELP  
ME GOD.

Lucille Roush

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 29 DAY OF June

YEAR 1982.

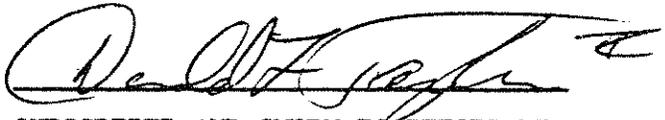
James Pyles

James Pyles, RECORDER  
TOWN OF EAST BANK, WV.

TOWN OF EAST BANK

P. O. BOX 307  
EAST BANK, WEST VIRGINIA 25067

I, Donald F. Taylor #, DO SOLEMNLY SWEAR THAT I  
WILL UPHOLD THE CONSTITUTION OF THE UNITED STATES, THE CONSTITUTION OF THE  
STATE OF WEST VIRGINIA, AND THE ORDINANCES OF THE TOWN OF EAST BANK, AND  
THAT I WILL FAITHFULLY AND TO THE BEST OF MY ABILITY PERFORM THE DUTIES OF  
Council OF THE TOWN OF EAST BANK, TO WHICH OFFICE  
I HAVE BEEN DULY ELECTED BY THE CITIZENS OF THE TOWN OF EAST BANK, SO HELP  
ME GOD.



SUBSCRIBED AND SWORN TO BEFORE ME

THIS 21 DAY OF JULY

YEAR 1987.



James Pyles, RECORDER  
TOWN OF EAST BANK, WV.



UNITED STATES DEPARTMENT OF AGRICULTURE  
FARMERS HOME ADMINISTRATION

ASSOCIATION WATER OR SEWER SYSTEM GRANT AGREEMENT

THIS AGREEMENT dated JULY 21, 19 87, between \_\_\_\_\_

TOWN OF EAST BANK

a public corporation organized and operating under Chapter 8, Article 19, Code of West  
Virginia

(Authorizing Statute)

herein called "Grantee," and the United States of America acting through the Farmers Home Administration, Department of Agriculture, herein called "Grantor," WITNESSETH:

WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement, or capital improvement of a (water) (sewer) system to serve the area under its jurisdiction at an estimated cost of \$ 265,200 and has duly authorized the undertaking of such project.

Grantee is able to finance not more than \$ 110,200 of the development costs through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable user charge.

Said sum of \$ 110,200 has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed \$ 155,000 or 80 percent of said development costs, whichever is the lesser, subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant.

NOW, THEREFORE, In consideration of said grant by Grantor to Grantee, to be made pursuant to ~~Section 804 (a) of the~~ Appalachian Regional Development Act of 1965. the Consolidated Farm and Rural Development Act for the purpose only of defraying a part not to exceed 80 percent of the development costs, as defined by applicable Farmers Home Administration instructions.

GRANTEE AGREES THAT GRANTEE WILL:

- A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.
- B. Permit periodic inspection of the construction by a representative of Grantor during construction.
- C. Comply with all applicable state and federal laws and regulations and manage, operate and maintain the system, including this project if less than the whole of said system, continuously in an efficient and economical manner.
- D. Make the services of said system available within its capacity to all persons in Grantee's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (possess capacity to enter into legal contract for services) at reasonable charges, including assessments, taxes, or fees in accordance with a schedule of such charges, ~~which may be modified from time to time by Grantee. The initial rate schedule must be approved by Grantor. Thereafter, Grantee may make such modifications to the rate system as long as the rate schedule remains reasonable and nondiscriminatory.~~ as approved by the Public Service Commission of West Virginia, as may be modified from time to time by Grantee. The initial rate schedule must be approved by Grantor. Thereafter, Grantee may make such modifications to the rate system as long as the rate schedule remains reasonable and nondiscriminatory.

The information collected through the grant agreement is required to obtain a construction development grant and is used to determine that the grant funds are used for authorized program purposes.

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

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

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

H. To execute Forms FmHA 400-1, "Equal Opportunity Agreement," and FmHA 400-4, "Assurance Agreement," and any other agreements required by Grantor which Grantee is legally authorized to execute. If any such forms have been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this Grant, another form of the same type need not be executed in connection with this Grant.

I. Upon any default under its representations or agreements set forth in this instrument, or in the instruments incident to the awarding of the grant, Grantee, at the option and demand of Grantor, to the extent legally permissible, will repay to grantor forthwith the original amount of the grant received with the interest accruing thereon from the date of default at the market rate for water and waste disposal loan assistance in effect on the date hereof or at the time the default occurred, whichever is greater. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it of previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

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

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

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

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

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

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

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sale proceeds). When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

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

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

The proposed facility improvements will consist of 650 feet of 10" main, 850 feet of 8" and 7350 feet of 6" line to replace existing 6", 4", and 2" line in addition to completing a loop in the system.

L. Abide by the following conditions pertaining to nonexpendable personal property which is furnished by the Grantor or acquired wholly or in part with grant funds. Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit. A Grantee may use its own definition of nonexpendable personal property provided such definition would at least include all tangible personal property as defined above.

1. Use of nonexpendable property.

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

(1) Activities sponsored by the FmHA.

(2) Activities sponsored by other Federal agencies.

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

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

(a) Nonexpendable property with a unit acquisition cost of less than \$1,000. The Grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(b) Nonexpendable personal property with a unit acquisition cost of \$1,000 or more. The Grantee may retain the property for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the Grantee has no need for the property and the property has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

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

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the property and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share \$100 or ten percent of the proceeds, whichever is greater, for the Grantee's selling and handling expenses.

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

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

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

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

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

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

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

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

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

NONE

M. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

4. Accounting records supported by source documentation.

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

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

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

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

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

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

T. In construction contracts in excess of \$2,000 and in other contracts in excess of \$2,500 which involve the employment of mechanics or laborers, to include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5).

U. To include in all contracts in excess of \$100,000 a provision that the contractor agrees to comply with all the requirements of Section 114 of the Clean Air Act (42 U.S.C. §1875C-9) and Section 308 of the Water Pollution Control Act (33 U.S.C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. Such regulations and guidelines can be found in 40 CFR 15.4 and 40 FR 17126 dated April 16, 1975. In so doing the Contractor further agrees:

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

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR 15.20 as of the date of contract award.

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

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

V. The following clause is applicable to nonprofit organizations:

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

#### GRANTOR AGREES THAT IT:

A. Will make available to Grantee for the purpose of this Agreement not to exceed \$ 155,000

which it will advance to Grantee to meet not to exceed 80 percent of the development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

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

needed for the original project, the Grantee shall use the property in connection with its other Federally sponsored activities, if any, in the following order of priority:

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

#### TERMINATION OF THIS AGREEMENT

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph 1 above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

IN WITNESS WHEREOF Grantee on the date first above written has caused these presence to be executed by its duly authorized \_\_\_\_\_ MAYOR

and attested and its corporated seal affixed by its duly authorized \_\_\_\_\_ RECORDER

ATTEST:

By James E. Lyles

RECORDER

(Title)

By Charles A. Blair II

TOWN OF EAST BANK  
Charles A. Blair II  
Mayor

(Title)

UNITED STATES OF AMERICA  
FARMERS HOME ADMINISTRATION

By Forrest W. Southall  
FORREST W. SOUTHALL  
District Director

(Title)



TOWN OF EAST BANK

P. O. BOX 307  
EAST BANK, WEST VIRGINIA 25067  
July 28, 1987

AUG - 3 1987  
*Handwritten initials and signature*

LETTER OF INTENT TO MEET CONDITIONS

Date: JULY 28, 1987

TO: Farmers Home Administration  
United States Department of Agriculture  
603 Morris Street  
Charleston, WV. 25301

We have reviewed and understand the conditions set forth in  
your letter of conditions dated May 14, 1985-----

It is our intent to meet all of them not later than Sept. 1, 1987.

Town of East Bank

BY: Charles A. Blain<sup>III</sup>

Mayor, Town of East Bank

It is hereby requested that the loan committed  
in the above described Letter of Conditions be  
closed at the interest rate in effect at the time  
of loan approval or the interest rate in effect  
at the time of loan closing, whichever is less.



United States  
Department of  
Agriculture

Farmers  
Home  
Administration

603 Morris Street  
Charleston, WV 25301  
(304) 347-5355

S. GEE

Honorable Charles Blair, Mayor  
Town of East Bank  
P. O. Box 307  
East Bank, WV 25067

May 14, 1985

Dear Mayor Blair:

This letter, with Attachments 1 through 10 and enclosures, defines certain changes which must be made in the Farmers Home Administration (FmHA) Letter of Conditions which was delivered to the Town of East Bank on July 12, 1979 and the amending letter dated September 15, 1981. The changes which will be defined and set forth by this letter must be understood and agreed to by you before further consideration will be given to your application. Any changes in project cost, source of funds, scope of services, or any other significant change in the project or applicant must be reported to and approved by FmHA by written amendment. Any changes not approved by FmHA shall be cause for discontinuance of processing of your application.

Because of changes in economic conditions, it is necessary to reduce the scope of your proposed water project. The FmHA loan docket will be completed based on an FmHA loan of \$64,000 (reduced \$441,000) and ARC Grant of \$155,000 (unchanged), and Town of East Bank funds totaling \$39,500. The total project cost will not exceed \$258,000.

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

Enclosed are the following:

- Attachment No. 1 - Final Project Planning Factors  
(All Copies)
- Attachment No. 2 - Town of East Bank Loan Docket  
Table of Contents (All Copies)
- Attachment No. 3 - FmHA Instruction 1942-A,  
Appendix A (Applicant Copy)
- Attachment No. 4 - FmHA Instruction 1942-A,  
Appendix B (Engineer Copy)
- Attachment No. 5 - FmHA Instruction 1942-A,  
Appendix C (Attorney and Bond Counsel Copies)



Farmers Home Administration is an Equal Opportunity Lender.  
Complaints of discrimination should be sent to  
Secretary of Agriculture, Washington, D.C. 20250

- Attachment No. 6 - FmHA Supplemental General Conditions  
(Engineer Copy)
- Attachment No. 7 - Instructions to Independent Certified  
Public Accountants and Licensed Public Accountants  
Performing Audits of Farmers Home Administration  
Borrowers and Grantees (Accountant's Copy)
- Attachment No. 8 - Water Purchase Contract (Form 442-30)  
(Attorney Copy)
- Attachment No. 9 - Sample Credit Agreement (Applicant and  
Attorney Copies)
- Attachment No. 10 - Various other FmHA Forms as identified  
on Attachment No. 2

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

The conditions charged by this letter are:

- ✓(1) Project Funding - The Town must provide evidence that \$39,500 has been irrevocably committed to the project. The funds must be available for use on the date of loan closing and will be deposited in the project construction account on that day.
- ✓(2) Satisfaction of Judgment Lien - The Town must furnish evidence that the Kanawha County Board of Education judgment lien in the amount of \$105,681.35 has been duly satisfied and released of record in the Office of the County Court in Kanawha County, WV.
- ✓(3) Revenue Bond Issue of 1952 - The Town must provide evidence that funds have been transmitted to the West Virginia Municipal Bond Commission in an amount necessary to fully satisfy the 1952 Water Bond Issue. The Town's Attorney must provide evidence to assure Bond Counsel that FmHA has a statutory lien of first priority on the water system and a lien of first priority on the Town's water system and its revenues.
- (4) Engineering Agreement - You must submit a proposed engineering agreement based on the changed scope of project. The agreement must be in FmHA approved form. Form FmHA 1942-19 "Agreement For Engineering Services" and attachments may be used and is enclosed for your convenience and use.
- ✓(5) Legal Service Agreement - You must submit a legal service agreement based on the changed scope of project. The agreement must be in FmHA approved form. Guide 14 to FmHA Instruction 1942-19 is enclosed for your convenience and may be used for this purpose.

- (6) Loan Repayment - The loan will be scheduled for repayment over a period of 40 years. The payments due the first 24 months will consist of interest only. Payments for the remaining 456 months will be equal amortized monthly installments. For planning purposes use a 5% interest rate and a monthly amortization factor of .00491, which provided for a monthly payment of \$315.00.

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

- (7) Security - The loan must be secured by a statutory lien of first priority, a pledge of the system's revenues and other agreements between you and the lender (FmHA) as set forth in the bond ordinance which must be properly adopted and executed by the appropriate officials of your organization. Additional security requirements are contained in Form FmHA 442-47 which is mentioned later.

In order for FmHA to accept the existing system as being adequate security to assure the repayment of the proposed 40 year FmHA loan, it will be necessary that the Town and its engineer provide an acceptable plan for locating and eliminating (fixing) leaks. The plan should provide a reasonable method and procedure for reducing the leakage to no more than 25% and should have a time schedule included therein. The leak detection and elimination program should be established and put into operation as soon as possible. FmHA will not authorize the project to be advertised for construction bids until a satisfactory program (plan) is in place (operational) and adequate progress is being made toward resolving the system's present extremely large leakage problem.

- (8) Users - This conditional commitment is based upon your providing evidence that you will have at least 440 bona fide users on the proposed system when it has been completed and is placed in operation. This evidence will consist of a certification from you that identifies and attests to the number of users that are actually connected to and using the Town's existing water system, at the time you request authorization to advertise the proposed project for construction bids. The authorization to advertise for construction bids will not be given until it is determined the necessary number of users are actually connected to the system.

Additionally, FmHA's loan commitment is based on the

Town's continuing to provide service to four large volume users. Evidence must be provided to show that those four large volume users will actually be connected to the system when it is completed and that the monthly water usage projected by the engineer for those four users is reasonable. In the event any of those four large volume users discontinue using the service, the Town must obtain enough additional users to make up the projected income that would be lost by not having that user(s) on the system.

Bond Counsel - The services of a recognized bond counsel are required. The bond counsel will prepare the form of ordinance to be used, in accordance with Appendix C, FmHA Instruction 1942-A. You should immediately provide your bond counsel with a copy of this letter of conditions, its attachments and enclosures.

- (9) Facility Control - Prior to advertisement for construction bids, you must furnish satisfactory evidence that you have or can obtain adequate continuous and valid control over the lands needed for the project. Such evidence must be in the following form:
- a. A right-of-way map showing clearly the location of all lands and rights needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.
  - b. A copy of deeds, contracts or options for any lands needed other than rights-of-way, along with a preliminary title opinion covering such lands. Form FmHA 427-9, "Preliminary Title Opinion," will be used. Also, in the case of existing systems or where the Town has already acquired real property (land or facilities), a preliminary title opinion(s) concerning all such property(s) will be provided.
  - c. A narrative opinion from your attorney concerning all permits, certificates and other items necessary to show that all legal requirements can be met and stating how they will be met. This narrative should also identify any condemnation proceedings that are anticipated and state how they will be handled.
  - d. A copy of the right-of-way easements for any rights-of-way needed on private lands. Form FmHA 442-20, "Right-of-Way Easement," may be used. Each easement need not be provided this office; however, each must be available for my review. A copy of the easement being used must be provided.

- e. Form 442-21, "Right-of-Way Certificate," and Form FmHA 442-22, "Opinion of Counsel Relative to Rights-of-Way," must be completed. These forms may contain a few exceptions such as properties that must be condemned; however, prior to start of construction or loan closing, whichever occurs first, new Forms FmHA 442-21 and 442-22 must be provided which do not provide for any exceptions.
- f. On the day of loan closing, the Town's attorney must furnish final title opinions on all land(s) being acquired. In the case of existing systems or where the Town has already acquired real property(s) (land or facilities), the Town's attorney will provide a separate final title opinion(s) covering such property(s) on the day of loan closing.
- (10) Permits - Copies of all permits needed for the project must be provided for our review prior to advertisement for construction bids. Such permits will include but are not limited to the following:
- West Virginia Department of Highways
  - Railroads
  - State Department of Health
  - Department of Natural Resources
  - Corps of Engineers
  - Public Land Corporation
- (11) Public Service Commission Approvals and Rates - You must determine that the Certificate of Convenience and Necessity which you now have from the Public Service Commission of West Virginia is adequate to cover the entire area to be served by the proposed system. If it is not adequate, a new certificate must be obtained and a copy provided for FmHA. If it is determined the Town's present certificate is adequate, written evidence of that fact must be provided FmHA. It has been determined the Town's present rate structure is adequate to produce enough reserve to operate and maintain the system to pay the required debt service and to build the necessary reserves. This determination was based on the information provided in the FY 84 audit of the water system.
- (12) Accounting - You must obtain the services of a qualified accountant. That accountant must agree (by letter) to develop and provide the following:
- a. All necessary accounting material required by the Public Service Commission of West Virginia (Rule 42).
  - b. Prior to advertisement for bids, your accountant must state in writing that he will establish your accounts and records in accordance with the requirements of the ordinance (resolution), and the requirements of the Public Service Commission within 20 days from the notice to do such.

- c. Prior to the start of construction, the accountant must certify that the accounts and records as required in (b) above have been established and are operational.

A representative of my office may want to review your accounts and records prior to authorizing the the issuance of award(s) to the contractor(s).

FmHA regulations (Attachment No. 3), and State Statutes outline audit requirements. The attached booklet, "Instructions to Independent Certified Public Accounts and Licensed Public Accountants Performing Audits of Farmers Home Administration Borrowers and Grantees," (Attachment No. 7) outlines FmHA audit requirements. You must enter into an agreement annually with an accountant (or the State Tax Commission) to perform the Town's annual audit. The agreement must be in accordance with the requirements of the State Tax Commissioner of West Virginia and must provide for the audit to be completed and submitted for our review within 90 days following the end of the Town's business year.

(13) Insurance and Bonding Requirements:

- a. Prior to preliminary loan closing you must acquire the following insurance and bond coverage:
- (1) Liability Insurance - Personal Liability - \$500,000 Property Damage - \$200,000-\$200,000
  - (2) Workmen's Compensation - In accordance with appropriate State laws.
  - (3) Position Fidelity Bond(s) - All positions occupied by persons entrusted with the receipt and/or disbursement of funds must be bonded for the maximum amount of funds to be under the control of that position at any one time. Form FmHA 440-24, "Position Fidelity Bond," will be used. A certified and effective dated power-of-attorney will be attached to each bond.
  - (4) National Flood Insurance - In addition to meeting the requirements for the type of assistance requested, the following requirements must be met for financial assistance for acquisition and/or construction in designated special flood or mudslide prone areas:
    - (a) If flood insurance is available, you must purchase a flood insurance policy at the time of loan closing.
    - (b) Applicants whose buildings, machinery or equipment are to be located in a community

which has been notified as having special flood or mudslide prone areas will not receive financial assistance where flood insurance is not available.

- ✓(5) Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all above-ground structures, to include machinery and equipment housed therein, in an amount equal to the insurable value thereof. This does not apply to water reservoirs, standpipes, elevated tanks or noncombustible materials used in treatment plants, clearwells, filters and the like.
- (14) You are, or have been approved to become, a recipient of Federal financial assistance from the United States Department of Agriculture.

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

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

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

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

(15) Contract Documents, Final Plans and Specifications -

- a. The contract documents should consist of the following:

- (1) FmHA Instruction 1942-A, Guide 19, "Agreement", and Attachments 1-9.

- (2) Farmers Home Administration Supplemental General Conditions (Guide 18, 9-30-80 Revised WV). One copy of this item is attached hereto (Attachment No. 6). Additional copies must be reproduced by the engineer.
- b. The contract documents must provide, as a minimum, the following insurance:
- (1) Liability Insurance - Personal Liability - \$500,000 Property Damage - \$200,000-\$200,000. (This coverage must include indemnification of the Town and its engineer.)
  - (2) Builder's Risk Insurance - On all structures and mechanical and electrical equipment in place or stored on the site to the full insurable value thereof.
  - (3) Workmen's Compensation - In accordance with applicable State laws.
- c. The contract documents and final plans and specifications must be submitted to FmHA for approval.
- (16) Interim Financing - Interim financing will be used for the FmHA loan. You must provide FmHA with a copy of the tentative agreement reached in connection with interim financing. The enclosed Sample Credit Agreement (Attachment No. 9) is an acceptable agreement and may be used.
- ✓ (17) Water Purchase Contract - You propose to purchase treated water from The Town of Cedar Grove therefore, you must enter into a Water Purchase Contract. Form FmHA 442-30 must be used unless you receive an exception from FmHA.
- (18) Other Grants - Prior to advertisement for construction bids, you must provide evidence showing the approval of the other grants. This evidence should include a copy of the grant award. Prior to award of the contract(s) to the contractor(s), you must provide written evidence that the "other" grant funds are available for expenditure. This evidence should consist of at least a letter from the grantor stating that funds are available for expenditure.
- (19) At a properly called meeting, you must adopt and properly execute the following form. Minutes showing the adoption must be provided:

New Form FmHA 1942-31 (ARC Grant)  
New Form FmHA 442-47 - Loan Resolution  
New Form FmHA 400-1 -

- (20) The enclosed Processing Checklist (Attachment No. 2) outlines the items needed to complete the loan docket. All the items listed must be included in the loan docket when it is forwarded to the FmHA State Office with a request for loan closing instructions to be issued.
- (21) Upon receipt of the loan docket, which contains all the items required above, FmHA may authorize you to advertise the project for construction bids. Such advertisement must be in accordance with appropriate State statutes. Immediately after bid opening you must provide FmHA with (a) a bid tabulation, (b) recommendations from you and your engineer as to the acceptability of the bids received, and (c) your recommendations for contract awards.
- (22) When the items required by item 21 have been received by the FmHA State Office, they will be included in the loan docket. If all parties then agree the construction bids received are acceptable, it is determined that adequate funds are available to cover the total facility costs, and that all the administrative conditions of loan approval have been satisfied, loan closing instructions will be issued. The closing instructions, a copy of which will be forwarded to you, will set forth any further requirements that must be met before the loan can be closed. When all parties agree that the closing requirements can be met, a mutually acceptable date for the preliminary loan closing will be scheduled.

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

Please complete and return the enclosed Form FmHA 442-46, "Letter of Intent to Meet Conditions," if you desire further consideration be given your application.

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

Sincerely yours,

FORREST W. SOUTHALL  
District Director

cc:

Administrator, FmHA  
Attn: Water and Waste Disposal  
Loan Division  
Washington, DC

State Director, FmHA  
Morgantown, WV

County Supervisor, Charleston

Appalachian, Usher, Milam ✓  
P. O. Box 98  
Dunbar, WV

John Mitchell, Attorney  
605 Virginia Street, East  
Charleston, WV 25301

Taunja Willis Miller, Bond Counsel  
Jackson, Kelly, Holt & O'Farrell  
P. O. Box 553  
Charleston, WV 25322

Donald Krisher  
Certified Public Accountant  
Peoples Building  
Charleston, WV 25301

Project Planning Factors

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

<u>Project Costs</u>	<u>Town of East Bank Contribution</u>	<u>ARC Grant</u>	<u>FmHA Loan</u>	<u>Total</u>
Construction	\$ 35,800	\$104,400.	\$32,400.	\$172,600.
Administrative	300.	1,200.	500.	2,000.
Land and Rights	200.	700.	100.	1,000.
Legal Fees	600.	2,400.	1,000.	4,000.
Engineering Fees	1,100.	40,300	25,900.	67,300.
Basic 39,300.				
Insp. 8,000.				
Spec. 20,000				
Bond Counsel	400.	1,800.	800.	3,000.
Interest	-0-	-0-	1,500.	1,500.
Proj. Contg.	<u>1,100.</u>	<u>4,200.</u>	<u>1,800.</u>	<u>7,100.</u>
TOTALS	\$ 39,500.	\$155,000.	\$64,000.	\$258,500.

Rates

Available for general domestic, commercial, and industrial service.

Minimum Charge

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

First 2,000 gals. @ \$ 2.94 per M gals.
Next 3,000 gals. @ \$ 2.22 per M gals.
Next 10,000 gals. @ \$ 1.93 per M gals.
Over 15,000 gals. @ \$ 1.70 per M gals.

5/8" meter - \$ 5.88 per mor
1" meter - \$ 15.05 per mor
1 1/2" meter - \$ 33.85 per mor
2" meter - \$ 60.20 per mor
3" meter - \$135.50 per mor
4" meter - \$240.80 per mor
6" meter - \$541.90 per mor
8" meter - \$963.35 per mor

(Minimum Monthly Bill \$5.88)

Delayed Payment Penalty

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

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

Connection Charge

After construction has been completed beyond the resident's home, there shall be a charge of one hundred and fifty dollars (\$150.00) for connection to the system.

Reconnection Charge

\$ 5.50

Income Analysis

Water Revenue Income (actual) from FY 84 Audit (440 users) - \$78,299.00

440 Total Users = \$6,524.92 monthly x 12 = \$78,299.00 annually (Income)

Budget

Income \$78,299.00

Expenses--

O & M \$ 71,779.

Debt Service 3,780.

Reserve 380.

\$75,939.00

Balance and Depreciation 2,360.00

Operation and Maintenance Expenses

Wages - Salaries (Includes reading billing & collection)	\$19,249
Office Expenses (telephone, rent, supplies)	530.
Taxes, Insurance, Bonds	800.
Fees (accounting, audit, legal)	2,100.
Utilities (electric, water, sewer, gas, fuel oil)	600.
Repair to Facilities and Equipment	1,500.
Fuel - Gasoline - Oil	500.
Miscellaneous Material and Supplies	1,500.
Water Purchase	45,000.

TOTAL \$71,779.

UNITED STATES DEPARTMENT OF AGRICULTURE  
 FARMERS HOME ADMINISTRATION  
 Table of Contents  
 Preapplications, applications - Complete Docket  
 Association Loans and Grants  
 Water and Sewer Systems

PREAPPLICATIONS

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proceed. Ref.</u>	<u>Respons. Party</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
D 621	Preapp. for Fed. Assist. O & 2		1942.17(m) (1)	App.			3
	Intergovernmental Review Comments	2	1942.17(m) (1)	App.			3
side 7/8	Preliminary Eng. Report	2	1942.18(f)	Engr.			6
	Audit for last year of operation	1	1942.17(h)	App./Att. Acct.			1
	Statement from State Historical Preservation Office concerning historical sites and archeological properties	2	1942.17(k) (5)	App.			3
	Brief Stmt. telling how facility will be operated	1	1942.17(b) (3)	App.			5
	List of users by name expected to use over 20,000 gals. per mo.	2	1942.17(h) (2)	App./Engr.			8
	List of users by number which will have a meter larger than 3/4 x 5/8 and also expected total consumption by these users	2	Preapp/ Packet	App./Engr.			8

UNITED STATES DEPARTMENT OF AGRICULTURE  
FARMERS HOME ADMINISTRATION  
Table of Contents  
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PREAPPLICATIONS

<u>Document or Action</u>	<u>No. Needed</u>	<u>Proceed. Ref.</u>	<u>Respons. Party</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
Breakdown of planned cost to show that cost related to users with meters larger than 3/4 x 5/8		Preapp/ Packet	Engr.			8
Copy of existing rate tariff	2	1942.17(h)	App/ Atty/Acct.			8
Identification of "Other" funding	2	1942.17(n) (5)	App/Att.			2
1942-19 Agreement for Engineering Services	3	1942.17(L) (1)	App/Engr.			6
Documentation on Service Area	1	1942.5(a)	FmHA			3
Written Certification that "Other" credit is <u>NOT</u> available	2	1942.17(b) (2)	App.			3
Documentation on Historical and Archeological Assessments	2	1901.255(2)	FmHA			3
Project Planning Factors	4	S/Office	FmHA			3



United States  
Department of  
Agriculture

Farmers  
Home  
Administration

*Bind Counsel*

P. O. Box 678  
Morgantown, WV 26505

FEB 10 1987

Subject: East Bank, Town  
FmHA Loan \$64,000  
(Closing Instructions)

FEB 09 1987

To: District Director, FmHA  
Charleston, WV

The subject loan must be handled and closed in accordance with the following. Reference is made to your letter of conditions dated July 12, 1978 and its Amendments dated September 15, 1981 and May 14, 1985. All of the requirements of those letters must be met and in addition, the loan must be closed in accordance with (1) FmHA Instruction 1942-A, (2) the attached, "Closing Guidelines for Community Facilities Loans to Public Bodies," and (3) any specific instructions issued by the Office of the General Counsel and attached hereto.

In addition to the above, the following comments are offered:

1. The Legal Services Agreement has been reviewed and found to be satisfactory.
2. Form FmHA 1942-31, "Association Water or Sewer System Grant Agreement," for the ARC grant needs to be initialed by the applicant on the 9th line from the top (where \$258,500 appears); on the 11th line from the top (where \$103,500 appears) and on the 13th line from the top (where \$103,500 appears). The applicant's initials are necessary since the amounts were modified. Also, you will need to execute the grant agreement on the date of loan closing.
3. Form(s) FmHA 427-10, "Final Title Opinion(s)," must be obtained covering any Preliminary Title Opinion(s) included in the docket.
4. New Forms FmHA 442-21, "Right-of-Way Certificate," and 442-22, "Opinion of Counsel Relative to Rights-of-Way," must be obtained showing No Exceptions.
5. You should be certain that permits from the Department of Highways and the Chesapeake and Ohio Railway Company are issued and signed copies are provided for your docket.
6. You need to assure that the Certificate of Convenience and Necessity has been issued and a copy is included in your docket.



Farmers Home Administration is an Equal Opportunity Lender.  
Complaints of discrimination should be sent to:  
Secretary of Agriculture, Washington, D.C. 20250

7. You will need to verify the number of users in accordance with FmHA Instruction 1942-A, Section 1942.6(b).
8. You will need to document your findings regarding Historical and Archaeological sites in accordance with 1901.255(2).
9. Your documentation on the service area is required in accordance with FmHA Instruction 1942-A, Section 1942.5(a).
10. The Agreement for Engineering Services included in your docket has not yet been approved. Correspondence in both the District and State Office files indicates the Agreement was sent to your office to be returned to the project engineer for revisions back in February 1986. You should be certain that a copy of the "approved" Agreement is included in your docket.
11. You should obtain comments from the State Historic Preservation Office for your docket as we could not locate them during the review.
12. Finally, once the loan has been closed, you should prepare Form FmHA 1940-10 and cancel the remaining \$441,000 loan obligation.

In accordance with Public Law 99-88 and FmHA Instruction 1942-A, Section 1942.5 (a)(1)(ii) (revised with Special PN dated 10-31-85), all FmHA Borrowers whose loans are closed after October 25, 1985, must be given the choice of the interest rate in effect at loan approval or loan closing. You should obtain a written request (choice) stating the interest rate at which the borrower wishes to have its loan closed.

You are reminded of your responsibility to assure full compliance with all administrative requirements of FmHA Instruction 1942-A, Letter of Conditions, and correspondence from OGC as well as this office. You should make certain that any necessary revisions are made to the appropriate forms and/or documents prior to considering the docket complete.

You need to make the necessary arrangements with me regarding your proposed news article and other related project publicity for the loan closing and/or groundbreaking. This should be accomplished ten days prior to the closing or otherwise as we may agree or arrange.

After the loan has been closed, please forward to this office----

- Your certification showing that all administrative requirements of closing have been met.
- Two copies of the executed Bond.
- Two copies of the executed Bond Counsel's Opinion.
- Two complete sets of the Bond Transcript Documents.

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Please advise this office two weeks in advance of the closing date.  
If you have any questions regarding the above, please feel free to call us.

JOHN C. MUSGRAVE  
State Director

Enclosures

cc: County Supervisor, Winfield

U.S. DEPARTMENT OF AGRICULTURE

DATE

REFERENCE SLIP

5/26/87

TO  
Sammi Gee  
Jackson, Kelley, Holt +  
O'Farrell

- ACTION
- APPROVAL
- AS REQUESTED
- FOR COMMENT
- FOR INFORMATION
- INITIALS
- NOTE AND FILE
- NOTE AND RETURN
- PER PHONE CALL
- RECOMMENDATION
- REPLY FOR SIGNATURE OF
- RETURNED
- SEE ME
- YOUR SIGNATURE

REMARKS

East Bank  
Closing Instructions

FROM

Forest Southern

FINA



United States  
Department of  
Agriculture

Office of  
General  
Counsel

P.O. Box 1134  
Harrisburg, PA 17108  
FTS: 590-3713  
COM: 717-782-3713

February 3, 1987

SUBJECT: Town of East Bank  
\$64,000 Water and Waste Loan

TO: State Director, FmHA  
Morgantown, WV 26505

We are of the opinion that this loan is legally in order for closing provided that the following Closing Instructions are fully complied with beforehand and all administrative requirements are met.

1. The loan should be closed in accordance with our memorandum of October 21, 1980, and the "Standard Closing Guidelines for Community Facility Loans to Public Bodies" previously furnished to you for publication as a state bulletin.

Please advise if you have any questions.

*Nicholas Mamone*

NICHOLAS MAMONE  
ATTORNEY

ks

CLOSING GUIDELINES FOR  
COMMUNITY FACILITY LOANS TO PUBLIC BODIES

At or before the closing for the financing, the following conditions must be satisfied:

1. General Requirements. There must be full compliance with all requirements specified in (a) applicable Farmers Home Administration Instructions, (b) correspondence from OGC, (c) any applicable correspondence from the Administrator's office, (d) FmHA letter of conditions, (e) clearinghouse comments, and (f) any state office memorandum of approval.
2. Loan Resolution. Confirm that the Applicant has duly adopted the fully executed Form FmHA 442-47, Loan Resolution (Public Bodies).
3. Grant Agreement. In the event that a grant is also to be made to the Applicant, then the grant may be closed in accordance with FmHA Instructions provided that these Closing Instructions have also been complied with and duly authorized officials of the Applicant have fully executed Form FmHA 442-31, Grant Agreement.
4. Civil Rights. Confirm that the following fully executed civil rights forms are in the docket:
  - a. Form FmHA 400-1, Equal Opportunity Agreement.
  - b. Form FmHA 400-4, Assurance Agreement.
  - c. Form FmHA 400-8, Compliance Review (Pre-loan closing).
5. Environmental Impact. Confirm that a completed and executed Form FmHA 400-46, Environmental Impact Assessment, is in the docket. If the Assessment indicates that an Environmental Impact Statement must be filed, this must be accomplished prior to loan closing.
6. Clearinghouse Comments. Confirm that A-95 approvals have been received from both state and regional clearinghouses. Note any comments received and confirm that the Applicant intends to comply with such comments. If the Applicant expresses a contrary intention, the State Office should be notified immediately in detail. The State Office

should consult OGC with respect to the legal ramifications of any such noncompliance.

7. Specimen Bond(s). Prior to closing, confirm that the terms of the specimen bond(s) are consistent with FmHA Instructions, the FmHA Letter of Conditions and other obligating documents. Amortization schedules and maturity dates should be checked very carefully.
8. Certification of Payment. If FmHA loan proceeds will be used to retire interim indebtedness, the Applicant must provide FmHA with written statements in accordance with FmHA Instruction 1942-A, §1942.17(n)(2) [7 C.F.R. §1942.17].
9. Examination of Executed Bond(s). The District Director should examine the executed original Bond(s) at the closing to determine the following:
  - a. That the repayment and other terms of the Bond(s) are consistent with the FmHA Letter of Conditions and obligating documents.
  - b. That the Bond(s) has been fully executed by the proper officials of the Applicant as recited on the face of the Bond(s).
  - c. That the persons executing the Bond(s) are officials of the Applicant as shown on the General Incumbency Certificate.
  - d. That the Applicant's seal is on the Bond(s).
  - e. That any authentication certificate contained on the Bond(s) has been properly executed.
  - f. That the Bond(s) is fully registered in the name of the United States of America/Farmers Home Administration.
  - g. That the place of payment shown on the face of the Bond is correct and administratively acceptable.
  - h. That the Bond(s) is dated the date of closing.

10. Dates, Seals and Signatures. All certifications and opinions furnished by the Applicant, Local Counsel or Bond Counsel should be dated as of the date of Loan Closing. Wherever appropriate, the seal of the Applicant should be impressed on materials being furnished by the Applicant. Bond transcript items "b," "i," "k" and "m" listed below should be manually-executed originals. For the remaining Bond transcript documents, an original manual attestation by the Applicant's Clerk or Secretary will suffice.
  
11. Bond Transcript. A bond transcript should be compiled by Bond Counsel in accordance with the requirements contained in FmHA Instructions 1942-A, §1942.19(c) [7 C.F.R. §1942.19]. Confirm that the bond transcript contains each of the following items:
  - a. Certified copies of all organizational documents, i.e., special acts, charter, by-laws.
  - b. General Incumbency Certificate (may sometimes be referred to as Signature Certificate).
  - c. Certified copies of minutes or excerpts therefrom of all meetings of the Applicant's governing body at which action was taken in connection with the authorization and issuance of the Bond(s).
  - d. Certified copies of documents evidencing that the Applicant has complied fully with all statutory requirements incident to the calling and holding of a favorable bond election unless Bond Counsel advises you this is not applicable.
  - e. Certified documents evidencing that the Applicant has complied fully with all statutory requirements incident to advertising the consideration and/or adoption of the bond ordinance unless Bond Counsel advises you that this is not applicable.

- f. Certified copies of the resolutions or ordinances or other documents, such as the bond authorizing resolution or ordinance and any resolution establishing rates and regulating the use of the improvements, if such documents are not included in the minutes furnished.
- g. Copies of official Notice of Sale and Affidavit of Publication of Notice of Sale unless Bond Counsel advises you that this is not applicable.
- h. Specimen Bond (of each denomination), with any attached coupons.
- i. No Litigation Certificate of Local Counsel (See Item 12 below).
- j. Certified copies of resolutions or other documents pertaining to the award of the Bond(s).
- k. Non-Arbitrage Certificate.
- l. Any additional or supporting documents required by Bond Counsel.
- m. Preliminary approving opinion, if any, and final unqualified approving opinion of Bond Counsel, including opinion regarding interest on bonds being exempt from Federal and any State income taxes.

Any omissions from the Bond transcript should be supplied by the District Director with the assistance of the Applicant and Bond Counsel. Obviously, certain of the documents listed above will normally be delivered prior to the closing.

- 12. Attorney's No-Litigation Certificate. Local Counsel should deliver a manually-executed original attorney's no-litigation certificate dated the date of closing.
- 13. Evidence of Title. In all cases, confirm that Local Counsel has supplied FmHA with his or her title opinion regarding the sites for any project structures such as treatment plants and community buildings. The opinion should be on Form FmHA 427-10 with any changes necessary to reflect the circumstances of this financing. In the case of

utility-type financings, confirm that executed Form FmHA 442-21 and 442-22 concerning rights-of-way are also in the docket. Any title exceptions should either be removed prior to closing or be specifically cleared through OGC.

14. Additional Instructions. OGC will normally issue additional closing instructions on a case-by-case basis containing special requirements for specific loans. The District Director should review the Closing Instructions prepared by OGC relating to the specific case and close the loan in accordance with those instructions.



NOV 6 1978

This contract for the sale and purchase of water is entered into as of the 1st day of November, 19 78, between the Town of Cedar Grove

Town Hall, Cedar Grove, West Virginia 25039  
(Address)

hereinafter referred to as the "Seller" and the Town of East Bank

Town Hall, East Bank, West Virginia 25067  
(Address)

hereinafter referred to as the "Purchaser",

WITNESSETH:

Whereas, the Purchaser is organized and established under the provisions of Chapter 16, Article 13 of the Code of West Virginia, for the purpose of constructing and operating a water supply distribution system serving water users within the area described in plans now on file in the office of the Purchaser and to accomplish this purpose, the Purchaser will require a supply of treated water, and

Whereas, the Seller owns and operates a water supply distribution system with a capacity currently capable of serving the present customers of the Seller's system and the estimated number of water users to be served by the said Purchaser as shown in the plans of the system now on file in the office of the Purchaser, and

Whereas, by Resolution No. NA enacted on the 1st day of November, 19 78, by the Seller, the sale of water to the Purchaser in accordance with the provisions of the said Resolution was approved, and the execution of this contract

carrying out the said Resolution by the Mayor, Town of Cedar Grove and attested by the Secretary, was duly authorized, and

Whereas, by Resolution of the Town Council of the Purchaser, enacted on the 30th day of October, 19 78,

the purchase of water from the Seller in accordance with the terms set forth in the said Resolution was approved, and the execution of this contract by the Mayor, Town of East Bank, and attested by the Secretary was duly authorized;

Now, therefore, in consideration of the foregoing and the mutual agreements hereinafter set forth,

A. The Seller Agrees:

1. (Quality and Quantity) To furnish the Purchaser at the point of delivery hereinafter specified, during the term of this contract or any renewal or extension thereof, potable treated water meeting applicable purity standards of the West Virginia Department of Health

in such quantity as may be required by the Purchaser not to exceed 4,800,000 gallons per month.

In witness whereof, the parties hereto, acting under authority of their respective governing bodies, have caused this contract to be duly executed in SIX (6) counterparts, each of which shall constitute an original.

Seller: Town of Cedar Grove

By Harry Hager

Title Mayor, Town of Cedar Grove

Attest:  
Jacqueline Bullman  
Secretary

Purchaser: Town of East Bank

By Paul D. Slack

Title Mayor, Town of East Bank

Attest:  
Raymond C. Hitcher  
Secretary

This contract is approved on behalf of the Farmers Home Administration this 16<sup>TH</sup> day of JANUARY, 19 86.

By David E. Satterfield  
Title \_\_\_\_\_



AN ORDINANCE ESTABLISHING AND FIXING  
RATES, FEES, CHARGES AND DELAYED  
PAYMENT PENALTY CHARGES FOR SERVICE  
TO CUSTOMERS OF THE WATER SYSTEM OF  
THE TOWN OF EAST BANK

THE TOWN COUNCIL OF THE TOWN OF EAST BANK,

HEREBY ORDAINS: The following schedule of rates, fees, charges and delayed payment penalty charges are hereby fixed and determined as the rates, fees charges and delayed payment penalty to be charged to customers of the water system of the Town of East Bank throughout the territory served.

SECTION 1. SCHEDULE OF RATES

RATES:

First 2,000 gallons	\$3.39 per thousand gals.
Next 3,000 gallons	2.56 per thousand gals.
Next 10,000 gallons	2.23 per thousand gals.
Over 15,000 gallons	1.96 per thousand gals.
Minimum Rate	6.78

MINIMUM MONTHLY CHARGES

1	inch meter	\$ 17.35
1.5	inch meter	39.03
2	inch meter	69.42
3	inch meter	156.27
4	inch meter	277.71
6	inch meter	624.97
8	inch meter	1,111.03

Town Fire Hydrant Rental \$5.76 per hydrant per year payable quarterly.

A penalty of 10% will be added to all accounts not paid in full within twenty (20) days from date of bill.

If the foregoing rates and schedules are insufficient at any time to produce income and revenues from said municipal water works system sufficient to meet the requirements for the creation and maintenance of the accounts and funds herein set forth, such rates and schedules shall be increased in amounts sufficient to meet such requirements.

If any bill is not paid within twenty (20) days after the billing date rendered, the services and facilities of said municipal waterworks system

afforded to such consumer shall be shut off and disconnected and shall not be again connected, resumed or afforded to the use of such consumer until payment of all past due charges, plus a connection charge of \$6.84.

There shall be \$175.00 connection fee for new service.

The schedule of rates, fees, charges and delayed payment penalty charges contained herein shall become effective upon issuance of a Certificate of Completion for the Town of East Bank - Water System Improvements Project for which a new Bond Ordinance will be enacted for the purpose of securing Bonds to be sold to the Farmers Home Administration.

First Reading: September 2, 1986

Second Reading: September 16, 1986

Third Reading: September 30, 1986

Charles G. Blair<sup>g</sup>, Mayor  
John J. Byrnes, Recorder



PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Entered: June 24, 1987

CASE NO. 86-585-W-CN

TOWN OF EAST BANK, a municipal corporation, Kanawha County.

Application for a certificate of convenience and necessity to make improvements to certain portions of the existing water distribution system at East Bank, Kanawha County.

FINAL ORDER

On October 9, 1986, the Town of East Bank, a municipal corporation, Kanawha County, filed an application for a certificate of convenience and necessity to install 690 feet of 10-inch water pipe; 720 feet of 8-inch pipe; 7,300 feet of 6-inch pipe along with various size gate valves, fire hydrants and connections to make improvements to its existing water distribution system in East Bank.

The estimated total project cost is \$258,500 with funding to be provided by a \$155,000 Appalachian Regional Commission grant; a loan from FmHA of \$64,000 and funds from the Municipal Bond Commission in the amount of \$39,500. This latter item will come from accrued funds formerly on account at the Bond Commission, but which were transferred into an interest-bearing account until needed for this project.

This project was originally filed in 1985 (Case No. 85-756-W-CN) which was dismissed without prejudice because it was determined that the Town's rates were inadequate to cover the operating and maintenance expenses. After that case was dismissed, the Town did enact a rate ordinance whereby rates were increased approximately 15% to become effective on certification of completion of this project.

Pursuant to standard Commission policy, this filing was again reviewed by the Commission Staff who entered their recommendations in the form of a Joint Staff Final Recommendation dated June 10, 1987, from Staff Attorney Mary C. Wright. Ms. Wright states that Staff's investigation has found this project to be more feasible both from a financial and engineering standpoint. Need has clearly been established by the submission of evidence that the current system has a severe leaking problem. Because water is purchased from the Town of Cedar Grove, these leaks cause a higher bill than is necessary.

One item of concern to Staff was the judgment for \$105,681.35 obtained by the Kanawha County Board of Education against the Town for overcharges for water and sewer services provided to East Bank High School. The Town and the Board of Education have now reached an agreement on the judgment whereby the Town will pay to the Board a smaller amount in return for the release of the judgment. The releases have been signed by the Chairman of the Board of Education and Staff believes this matter has now been taken care of. In light of the above, Ms. Wright states that Staff now recommends the application be approved contingent on bids coming in within the cost estimates provided by the Applicant.

#### FINDINGS OF FACT

1. On October 9, 1986, the Town of East Bank, a municipal corporation, Kanawha County, filed an application for a certificate of convenience and necessity to install 690 feet of 10-inch pipe; 720 feet of 8-inch pipe; 7,300 feet of 6-inch pipe along with various size gate valves, fire hydrants and connections to make improvements to its existing water distribution system at East Bank.

2. The total estimated project cost will be \$258,500.

3. Funding for the project is to come from a grant from the Appalachian Regional Commission in the amount of \$155,000, a loan from Farmers Home Administration in the amount of \$64,000 and \$39,500 which is presently invested in an interest-bearing account and was obtained from the Municipal Bond Commission.

4. The Town of East Bank has enacted rates, to become effective upon the completion of this project, and which will provide sufficient funds to meet the increase in operating and maintenance expenses.

5. The Applicant has obtained a certificate of approval from the State Department of Health.

6. The Town of East Bank has submitted an Affidavit of Publications indicating that the publication requirements of West Virginia Code §24-2-11 have been met. As of the date of this Order, no written protest to the granting of this application has been received.

7. Staff recommends approval of this project without hearing, as the need for this project is well documented, the construction bids are anticipated to be within the parameters given to Staff, the necessary funds are committed and this project now stands ready to go to construction.

#### CONCLUSIONS OF LAW

Based upon a review of the application and of all the information contained in the case file, the Administrative Law Judge is of the opinion, finds and concludes:

1. That there exists a public need for the proposed installation of 690 feet of 10-inch pipe, 720 feet of 8-inch pipe, 7,300 feet of 6-inch pipe, along with the various size gate valves, fire hydrants and connections necessary to make improvements to the water distribution

system of the Town of East Bank, Kanawha County, as the same is set forth in the Town's application.

2. That the public convenience and necessity will best be served by the issuance of a certificate of convenience and necessity to the Applicant for the proposed project.

3. That the Applicant has provided adequate and proper notice to the public of this application and no protests have been received to the granting of the application.

4. That the proposed financing for the project is reasonable, committed and should be approved.

5. That good cause has been shown for waiving formal hearing on this matter, pursuant to West Virginia Code §24-2-11.

6. That the issuance of a certificate of convenience and necessity should be valid for this project as proposed and any substantial changes in the scope of the project, construction costs and/or funding after bids have been taken and funding received, will require further Commission approval.

#### ORDER

IT IS, THEREFORE, ORDERED:

1. That formal hearing on this matter be waived, pursuant to West Virginia Code §24-2-11, for the reasons that no protests were received after publication and there remains no outstanding issues to be litigated.

2. That the proposed financing for this project be approved.

3. That a certificate of convenience and necessity be, and it hereby is, granted to the Town of East Bank to install, construct and maintain 690 feet of 10-inch pipe, 720 feet of 8-inch pipe, 7,300 feet of 6-inch pipe along with the various size gate valves, fire hydrants and

connections necessary to make improvements to its existing water distribution system, as the same has been set forth in this application.

4. That if any substantial changes in the scope of this project, construction costs and/or funding become necessary after construction bids are taken and funding received, the Applicant shall apply to the Commission for approval of the same.

5. That the Executive Secretary of the Commission shall serve a copy of this order upon the Applicant by United States Certified Mail, return receipt requested, and upon Commission Staff by hand delivery.

This order is issued pursuant to General Order No. 212, dated December 16, 1982, which order designates the Division of Administrative Law Judges as the initial decision making body in the Public Service Commission and authorizes the Public Service Commission Administrative Law Judges to issue orders on behalf of the Commission in all proceedings filed pursuant to Chapter 24 of the West Virginia Code, which proceedings are not set for hearing and which orders shall have the full force and effect of Commission orders, without the provision for the filing of exceptions thereto.

Leave is hereby granted to the parties to file a petition for further hearing, reopening, or rehearing pursuant to Rule 19 of the Commission's Rules of Practice and Procedure with the Executive Secretary of the Commission within ten (10) days after the date this order is mailed.

  
Mark T. Aliff  
Administrative Law Judge

MTA:cjf

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Entered: July 30, 1987

CASE NO. 86-585-W-CN (Reopened)

TOWN OF EAST BANK, a municipal corporation.

Application for a certificate of convenience and necessity and for approval of additional and revised financing.

ORDER APPROVING  
CHANGE IN FINANCING

On October 9, 1986, the Town of East Bank, a municipal corporation, Kanawha County, filed an application for a certificate of convenience and necessity to install 690 feet of 10-inch water line; 720 feet of 8-inch water line; 7,300 feet of 6-inch line along with various sized gate valves, fire hydrants and connections to make improvements to its existing water system in East Bank and vicinity.

The estimated total project at that time was \$258,500, with funding to be provided by a \$155,000 Appalachian Regional Commission Grant; a loan from the Farmers Home Administration (FmHA) of \$64,000 and funds from the Municipal Bond Commission in the amount of \$39,500. This latter item was to come from accrued funds formerly on account at the Bond Commission, but which were transferred into an interest-bearing account until needed for the project.

By order of this Commission entered June 24, 1987, a certificate of convenience and necessity was granted to the Town of East Bank to install,

construct and maintain the aforesaid extension to its system, as proposed in its application. The order further provided that if any substantial changes in the scope of this project, construction costs and/or funding become necessary after the bids were taken and funding received, the Applicant was to apply to the Commission for approval of the same.

On July 24, 1987, the Commission received a letter from Forrest W. Southall, District Director for the Farmers Home Administration. In this letter, Mr. Southall informed the Commission that the low bid for improvements to the Town's water system exceeded the total project cost estimates by \$27,124. The Town has agreed to contribute additional cash in the amount of \$15,124 and has requested FmHA to increase its loan to fund the remaining amount of \$12,000. FmHA has agreed to this request and has taken the proper steps. Commission approval of this additional financing is requested to allow the Town of East Bank to continue with this project.

Pursuant to standard Commission policy, this filing was submitted to the Commission's various operating divisions for their respective review and recommendations. On July 27, 1987, the Commission received a Supplemental Joint Staff Memorandum from Staff Attorney Mary C. Wright, which contained Staff's recommendations in this proceeding. Staff has examined the impact of this additional financing on the project and has determined it to be still financially feasible. Therefore, Staff recommends approval of the request for additional financing, as contained in the Town of East Bank's request.

Upon consideration of all of the foregoing and all the matters contained in the case file, the Administrative Law Judge is of the opinion,

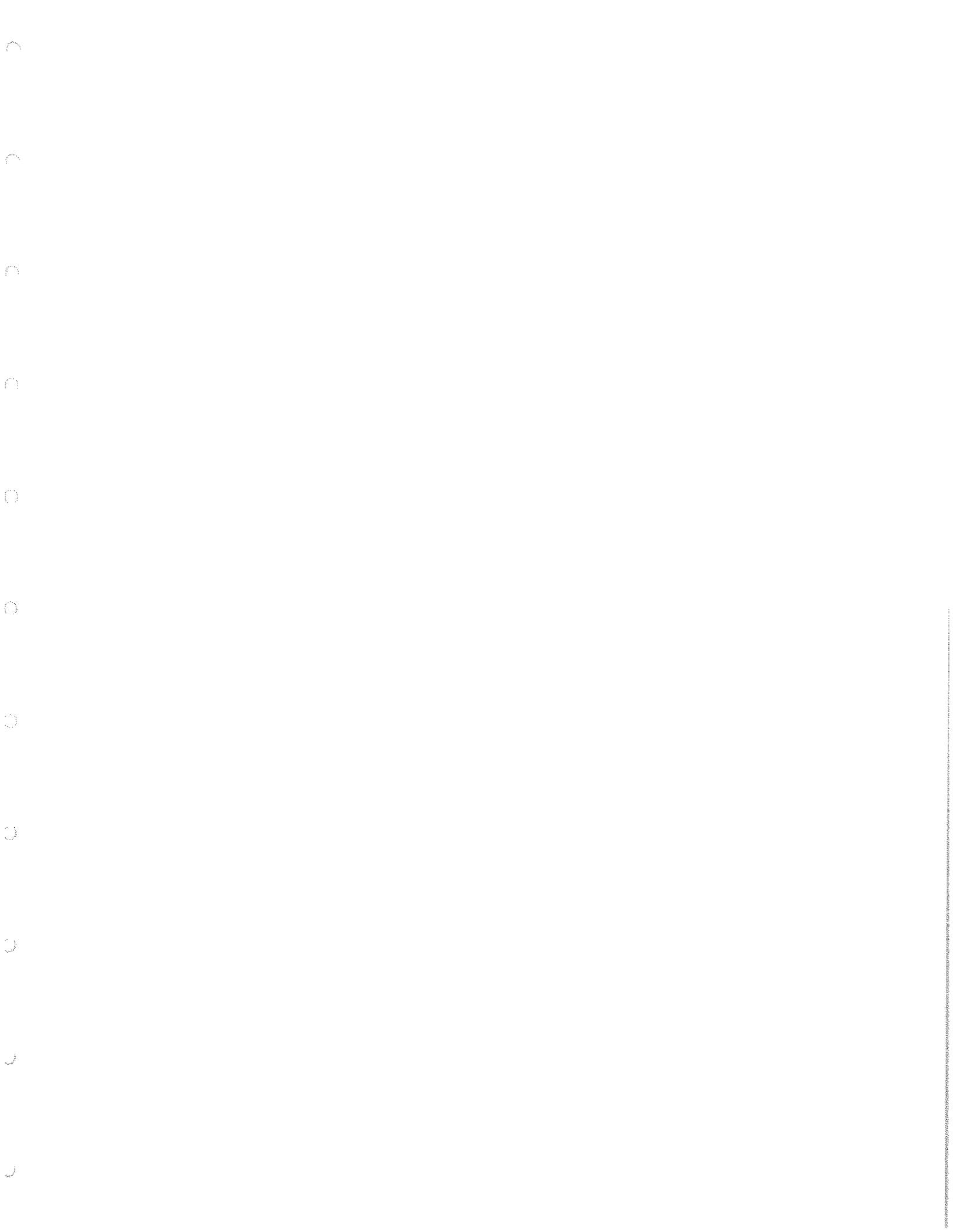
finds and concludes that the request of the Town of East Bank for approval of its request to increase the proposed financing for this project in the amount of \$27,124, which is to be made up by additional loan proceeds from the Farmers Home Administration in the amount of \$12,000 and an additional cash contribution in the amount of \$15,124 from the Town, itself, is reasonable and is approved herein.

IT IS, THEREFORE, ORDERED that the request by the Town of East Bank, a public utility, to amend the Commission's order of June 24, 1987, to allow it to receive an additional loan amount of \$12,000 and to contribute a cash amount of \$15,124, is reasonable and is approved herein for use in the making of improvements to its existing water distribution system at East Bank, Kanawha County, as the same was approved by said order.

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

This order is issued pursuant to General Order No. 212, dated December 16, 1982, which order designates the Division of Administrative Law Judges as the initial decision making body in the Public Service Commission and authorizes the Public Service Commission Administrative Law Judges to issue orders on behalf of the Commission in all proceedings filed pursuant to Chapter 24 of the West Virginia Code, which proceedings are not set for hearing and which orders shall have the full force and effect of Commission orders, without the provision for the filing of exceptions thereto.

Leave is hereby granted to the parties to file a petition for further hearing, reopening, or rehearing pursuant to Rule 19 of the Commission's

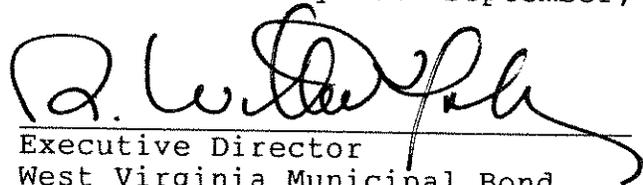


CERTIFICATE OF WEST VIRGINIA  
MUNICIPAL BOND COMMISSION

Re: Town of East Bank, West Virginia  
\$58,000 Water Revenue Bond,  
dated March 1, 1952

The undersigned, on behalf of the West Virginia Municipal Bond Commission, hereby certifies that the above-noted bond issue was fully paid, both as to principal and interest, on March 1, 1986.

Witnesseth by signature this 9th day of September,  
1987.

  
\_\_\_\_\_  
Executive Director  
West Virginia Municipal Bond  
Commission

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

THE BOARD OF EDUCATION OF THE  
COUNTY OF KANAWHA, a public  
corporation,

Plaintiff,

v.

CIVIL ACTION NO. CA-80-1546

*Wellman*

FILED

87 SEP -4 PM 3:05

CATHY S. GATSON, CLERK  
KANAWHA COUNTY, WEST VIRGINIA

TOWN OF EAST BANK,

Defendant.

ORDER OF DISMISSAL

This day came The Board of Education of the County of Kanawha, a corporation, by Stuart Calwell, its President, and came also The Town of East Bank, by John R. Mitchell, its attorney, and made known to the Court that the matters in difference between the plaintiff and the defendant have been compromised, settled and agreed. Upon motion, it is ordered that this cause be dismissed as compromised, settled and agreed.

Dated this 4<sup>th</sup> day of September 1987.

ENTER:

*[Signature]*  
Circuit Judge

Presented by:

*[Signature]*  
President, Kanawha County Board of Education

Inspected by:

*[Signature]*  
Attorney for Defendant

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS.

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

Given under my hand and seal of said Court

9<sup>th</sup> day of Sept 19 87  
*[Signature]* CLERK  
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

THE BOARD OF EDUCATION OF THE  
COUNTY OF KANAWHA, a public  
corporation,

Plaintiff,

v.

TOWN OF EAST BANK SANITARY  
BOARD,

Defendant.

FILED

27 SEP -87 PM 3:05

CATHY S. GATSON, CLERK  
CIRCUIT COURT  
CIVIL ACTION NO. CA-80-2356

Weekman

ORDER OF DISMISSAL

This day came The Board of Education of the County of Kanawha, a corporation, by Stuart Calwell, its President, and came also The Town of East Bank Sanitary Board by John R. Mitchell, its attorney, and made known to the Court that the matters in difference between the plaintiff and the defendant have been compromised, settled and agreed. Upon motion, it is ordered that this cause be dismissed as compromised, settled and agreed.

Dated this 4<sup>th</sup> day of September 1987.

ENTER:

[Signature]  
Circuit Judge

Presented by:

[Signature]  
President, Kanawha County Board of Education

Inspected by:

[Signature]  
Attorney for Defendant

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS.

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

Given under my hand and seal of said Court  
9<sup>th</sup> day of September 1987  
[Signature] CLERK  
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

[Signature]



Prayer was given by Councilman Shawver.

The common council of the Town of East Bank met in regular session in the Council Chambers.

PRESENT : Mayor Blair

ABSENT : Recorder Pyles

Councilman's Tyler, Shawver, Roush, Cummings, & Taylor  
Also Present: Rev. Burnsworth (Hampton Baptist Church)  
Mrs. Georgia Crist, Sammie L. Gee attorney  
for Jackson, Kelly, Holt and O'Farrell, and  
Sister Clara

In the absence of Rec. Pyles Councilman Tyler will serve as Recorder Pro-tem.

The meeting was called to order by Mayor Blair at 7:07 P.M.

ITEM 1 Old Business: 2nd reading form 1942-47-(Rev. 11-84) authorizing and providing for incurrence of indebtedness.  
Councilman Taylor moved to accept 2nd reading Via title reference  
2nd by Councilman Shawver, Motion Passed (6-0) Unanimous

ITEM 2 Old Business: 2nd reading USDA-FMHA form 4427 (Rev. 8-12-76) Operating Budget .  
Councilman Tyler moved to approve 2nd reading of operating budget motion was 2nd by Councilman Taylor motion passed (6-0) Unanimous.

ITEM 3 Old Business : 2nd reading form FMHA 1942-31 USDA-FHA association, water, or sewer system Grant agreement.  
Several Councilman asked for fuller reading on form 1942-31.

Councilman Tyler read minutes of previous meeting which will included information contained in form 1942-31, Councilman Taylor moved to approve minutes as read, motion was 2nd by Councilman Shawver motion carried (6-0) Unanimous minutes approved.

ITEM 5 Old Business: Interm Financing

Mayor Blair read to council letter to be sent to Merchants National Bank for financing for water systems improvements, he requested from council permission to sign said resulation.

Attorney Gee (of Jackson, Kelly, Holt and O'Farrell) explained procedures concerning financing hope to close on or about Sept. 9th discussed with attorney Gee amount of local funding.

Councilman Taylor moved to have Mayor Blair sign resulation, motion 2nd by Councilman Taylor motion passed. (5-1 ) 1 against (Cummings)

Councilman Cummings read portion of newspaper article dated April 1986 concerning water system, including fire hydrants, Council discussed what improvements system will consist of question asked concerning amount of pipe & hydrants, Mayor Blair read amount of pipe to be installed plus other items to be installed (includes 13 new fire hydrants).

ITEM 1 New Business: Bond Ordinance water project financing  
Bond ordinance was explained to council and those in attendance by Attorney Gee, step by step. Articles 1 thru 10

Special Attention : Depreaction accounts,  
Article 4 (Very important) system  
Revenues & appreciation there of

Amount of principal interest FHA \$ 374.00 monthly depreciation account \$150.00 monthly until account reaches \$10,000.00 amount that must be retained in that account.

Covered Article 6 Line of Credit, Article 7 sections 7-01 thru 7-21 discussed article 7-12 article 7-16 thru 7-21 concerns tax laws and financing, rebates, etc. general purpose of bonds, exempt status, right to ammend ordinance(7-16.

Article 9 Section 901-903, and Miscellance

Second reading will be on tues August 18, Public hearing will be on tues Sept. 1 Ordinance will be published in Charleston Gazette August 20th and 27th.

Attorney Gee read Bond Ordinance by title Councilman Tyler moved to accept 1st. reading of Bond Ordinance, motion was 2nd by Councilman Shawver motion passed (6-0) Unamious

ITEM 1 New Business: East Bank Ministerial Association Presentation representing the Ministerial Association were Rev. Burnsworth and Sister Clara Sec of association.  
Rev. Burnsworth requested permission to erect a sign in the Vacinty of the Garden Club sign or area of Blair Crossing, said sign would contain the individual names and addresses of the Churches of East Bank and permission to place printed poster containing the times of worship of the various churches, on the town Bullentin board.

Council discussed placement of sign, Mayor sugested reerecting old sign east end of Town. Councilman Tyler moved to grant permission for sign and posters to be erected and placed, 2nd by Councilman Roush, motion passed (5-0) Unamious Councilman Taylor absent during vot.

Georgia Crist: Water easement : Mayor informed Mrs. Crist of his meeting with John Hart Sr. and John Hart Jr concerning ease ment.

John Hart Sr. to contact Marion Leake, Mayor explained to council easement problem.

## ITEM 4 Pay Raise for Louise Cummings

Mayor Blair requested a \$100.00 a Month across the board raise.  
Council discussed pay raise provisions.

Councilman Tyler moved to raise Louise Cummings salary \$100.00 per Month effective July 1, 1987 and to reevaluate for any additional raise when the new rates go into effect if funds are available at that time motion was 2nd by Councilman Roush motion passed 6-0 Unanimous.

## ITEM 2 New Business- Water Meters

Council discussed meter reader, July bills will be approximately 2 to 3 weeks late, picked up books on July 13th as of this meeting had not finished 2nd book.

Memo to John Porter, concerning water reading and water commissioner to talk with John Porter.

Letter from Ken Plants- Council discussed collecting , issue pink slips.

Discussed Over Bid

Discussed Raffle

Councilman Cummings informed Council of her discussion with Carl Payne, Bus Garage, he is requesting a No Parking sign on Elm st in the Vacinty of the Methodist Church to be in effect Mon thur Firday.  
Mayor Blair informed Council problem has already been taken care of.

Councilman Roush brought to the attention of Council problem of children playing in the street on Shaver Ave. request Chief talk to parents.

Expenditures sheets were approved by acclamation.

Councilman Cummings moved to ajourn, 2nd by Councilman Shawver passed 6-0 Unanimous , there being no further business meeting duly ajourned at 9:06 P.M.

Charles A. Blair <sup>II</sup> Mayor Lessie R. Tyler Rec. Pro-Tem



August 18, 1937

Prayer was given by Councilman Shawver.

Meeting was called to order by Mayor Blair at 7:02 P.M.

PRESENT: Mayor Blair, Recorder Pyles,  
Councilman: Taylor, Tyler, Shawver  
Three Citizens and Samuel L. Gee, Bond Council Attorney.

Taylor moved to accept Expenditure Sheets, Tyler second, passed.  
Tyler read minutes of previous meeting, Shawver moved to  
accept, Taylor second, passed.

Taylor moved to accept third reading of form 1942 (Rev 11-84)  
authorizing & providing for incurrence of indebtedness.  
Shawver second, passed.

Taylor moved to accept third reading USDA-FMHA Form 44-27  
(Rev. 8-12-76) operating Budget. Tyler second, passed.

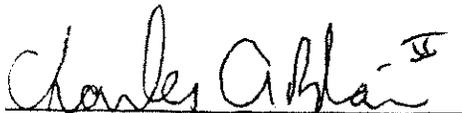
Tyler moved to accept third reading form FMHA 1942-31-USA-FHA  
Association Water and Sever System Grant Adjustment. Taylor  
second, passed.

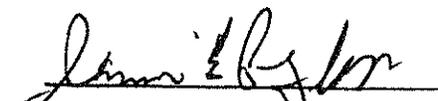
Shawver moved to accept reading Bond Ordinance  
Water Project Financing, Tyler second, passed.

Tyler moved to Adopt Resolution issue of Bonds for  
Water Works improvement, Resolution attached to minutes.  
Taylor second, passed.

Marion Leake had several comments on the Water Project.

Taylor moved to adjourn, Tyler second, Adjourned 8:20 P.M.

  
MAYOR

  
RECORDER

A RESOLUTION FINDING THAT AN ORDINANCE WAS ADOPTED BY THE COUNCIL OF THE TOWN OF EAST BANK, WEST VIRGINIA ON AUGUST 18, 1987, AUTHORIZING THE ISSUANCE OF THE TOWN OF EAST BANK WATERWORKS REVENUE BOND IN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$76,000 AND THE SALE THEREOF TO THE UNITED STATES DEPARTMENT OF AGRICULTURE, FARMERS HOME ADMINISTRATION, TO FINANCE THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE WATERWORKS SYSTEM AND AUTHORIZING AN IRREVOCABLE LINE OF CREDIT IN AN AMOUNT NOT TO EXCEED \$76,000 TO PROVIDE FUNDS FOR SUCH ACQUISITION AND CONSTRUCTION PENDING REIMBURSEMENT FROM THE UNITED STATES DEPARTMENT OF AGRICULTURE, FARMERS HOME ADMINISTRATION AND AN AGREEMENT WITH RESPECT THERETO, ALL AS MORE FULLY SET OUT THEREIN; FINDING THAT AN ABSTRACT OF SAID ORDINANCE, TOGETHER WITH A NOTICE THAT SAID ORDINANCE HAS BEEN ADOPTED, THAT THE TOWN OF EAST BANK CONTEMPLATES THE LINE OF CREDIT AND THE AGREEMENT RELATED THERETO, AND THE ISSUANCE OF THE WATERWORKS REVENUE BOND DESCRIBED IN SAID ORDINANCE AND THAT ANY PERSON INTERESTED MAY APPEAR BEFORE THE COUNCIL OF THE TOWN OF EAST BANK UPON A CERTAIN DATE AND PRESENT PROTEST, MUST BE PUBLISHED; REVIEWING THE ABSTRACT PREPARED ON BEHALF OF THE RECORDER AND DETERMINING THAT SUCH ABSTRACT CONTAINS SUFFICIENT INFORMATION AS TO GIVE NOTICE OF THE CONTENTS OF SAID ORDINANCE; AND DIRECTING THE PUBLICATION OF SUCH ABSTRACT, TOGETHER WITH SAID NOTICE.

Whereas, the Council of the Town of East Bank (the "Council") on August 18, 1987, adopted an Ordinance authorizing the issuance of the Town of East Bank Waterworks Revenue Bond in an aggregate principal amount not to exceed \$76,000 and the sale thereof to the United States Department of Agriculture, Farmers Home Administration to finance the acquisition and construction of certain extensions, additions, betterments and improvements to the waterworks system of the Town of East Bank, West Virginia (the "Town"), a line of credit in an amount not to exceed \$76,000 to provide funds for such acquisition and construction pending reimbursement from the United States Department of Agriculture, Farmers Home Administration, and an agreement with respect to said line of credit, all as more fully set out therein (said Ordinance is hereinafter referred to as the "Ordinance");

WHEREAS, Chapter 8, Article 19, Section 5 of the Code of West Virginia, 1931, as amended (the "Act") requires that an abstract of the Ordinance, together with a notice that the Ordinance has been adopted, that the Town contemplates the issuance of the "bonds" described in the Ordinance and that any person interested may appear before the Council upon a certain date and present protests, and that a certified copy of the Ordinance is on file with the "governing body" for review by interested persons during the office hours of the "governing body", be published;

WHEREAS, the Act further requires that such abstract of the Ordinance be determined by the Council to contain sufficient information as to give notice of the contents of the Ordinance;

WHEREAS, the Recorder presented to this meeting an abstract of the Ordinance (the "Abstract"), together with a notice as described above (the "Notice"), as hereinafter set forth; and

WHEREAS, the Council of the Town has reviewed the Abstract and has found and determined that such Abstract contains sufficient information as to give notice of the contents of the Ordinance.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE TOWN OF EAST BANK, WEST VIRGINIA AS FOLLOWS:

1. It is hereby found and determined that the Ordinance was duly adopted by the Council at its regular meeting held on August 18, 1987, and that the Act requires that the Abstract, together with the Notice, be published.

2. The Abstract, together with the Notice, as prepared on behalf of the Recorder, in the following form and substance, contains sufficient information as to give notice of the contents of the Ordinance:

Notice is hereby given to any person interested that on August 18, 1987, the Council of the Town of East Bank adopted an Ordinance that:

1. Determined that it is necessary and desirable for the health, welfare and safety of the inhabitants of the Town of East Bank, West Virginia (the "Town"), that there be constructed certain extensions, additions, betterments and improvements to the waterworks system of the Town (the

existing waterworks system, the Project, as hereunder defined and all future extensions, additions, betterments and improvements thereto are herein referred to as the "System"), consisting primarily of approximately 690 feet of 10-inch PVC water pipe, 90 feet of 10-inch DIP water pipe, 720 feet of 8-inch PVC water pipe; 7,300 feet of 6-inch PVC water pipe, 134 feet of 6-inch DIP water pipe, along with various size gate valves, fire hydrants and connections (the "Project"), all in accordance with the plans and specifications prepared by Appalachian Engineers, Inc. (the "Consulting Engineer") and on file with the Town at an estimated cost of \$265,159 for a portion of which the Town has received a grant in the amount of \$155,000 from the Appalachian Regional Commission.

2. Determined that it is in the best interest of the Town to issue its Waterworks Revenue Bond (the "Bond") to the United States Department of Agriculture, Farmers Home Administration (the "Bond Purchaser") to permanently finance the cost of acquisition and construction of the Project and authorized the issuance by the Town of its Bond in a principal amount not to exceed \$76,000. The Bond shall bear interest at a rate of five percent (5%) per annum, shall mature 40 years from the date thereof, shall be payable as to interest only for the first 24 months and thereafter payable in monthly installments of \$374, covering principal and interest. The Bond may be prepaid, in whole or in part, at any time at the option of the Town.

3. Determined that it is in the best interest of the Town to have established and authorized establishment of a line of credit in an amount not to exceed \$76,000 (the "Line of Credit"), to provide funds for such acquisition and construction of the Project pending reimbursement from the Bond Purchaser.

4. Authorized and directed the Mayor of the Town to execute an agreement regarding the line of credit (the "Line of Credit Agreement").

5. Authorized the issuance by the Town of a note (the "Note") in an amount not to exceed \$76,000 for the purpose of evidencing the Town's obligation to repay any draw upon the Line of Credit and, thus, financing a portion of the cost of acquisition and construction of the Project.

6. Provided that the Note shall evidence only the indebtedness recorded on the record of advances attached thereto, shall bear interest at a rate not to exceed twelve percent (12%) per annum, shall mature not later than 24 months from the date thereof, subject to prepayment and shall be subject to further terms as set forth by the Line of Credit Agreement or a Supplemental Resolution.

7. Authorized the establishment of a revenue fund and the disposition of System revenues; provided for the monthly payment of principal and interest; provided for the creation of a reserve account for the Bond; provided for the creation of a depreciation account and the deposit of revenues therein and use thereof; provided for the payment of the operation and expenses of the System; and provided for the use of excess funds of the System.

8. Provided for the disposition of Bond proceeds; created a construction trust fund to hold the proceeds of the Line of Credit pending their use for Project costs; and provided for the repayment of the Line of Credit from the Bond proceeds.

9. Provided that the Bond shall not be or constitute an indebtedness of the Town within the meaning of any constitutional, statutory or charter limitation of indebtedness but shall be payable solely from the revenues of the System or from the reserve account.

10. Granted the Bond Purchaser a first lien on the gross revenues of the System.

11. Provided for the minimum rates and charges for the System as set forth in the

rate ordinance adopted by the Town on September 30, 1986, and required that the rates and charges always be sufficient to produce revenues to pay all reasonable expenses of operation, repair and maintenance of the System and leave a balance each year equal to at least 110% of the average annual debt service on the Bond and any bonds payable from the revenues of the System.

12. Provided for insurance coverage on the Project; provided that the Town will render no free service; provided for the enforcement of collection of fees, rates, rentals or other charges of the System and provided for the discontinuance of service for non-payment of the fees, rates, rentals or other charges of the System.

13. Established the terms of defaults and remedies of the owners of the Bond; provided for the security for and the rights and remedies of the owners of the Bond including the appointment of a receiver.

The Town of East Bank contemplates the Line of Credit and the Line of Credit Agreement, the issuance of the Note, and the issuance of the Bond described in and under the conditions set forth in the Ordinance abstracted above. Any person interested may appear before the Council of the Town at a regular meeting thereof at 7:00 p.m., Tuesday, September 1, 1987, in Council Chambers in the Town Hall, 2507 First Avenue, East Bank, West Virginia and present protests and be heard as to whether the Ordinance shall be put into effect. A certified copy of the Ordinance as adopted by the Council of the Town on August 18, 1987, is on file in the Office of the Recorder of the Town for review by interested persons during the regular office hours of such office, to-wit, 8:30 a.m. - 2:00 p.m., Mondays through Fridays.

/s/James E. Pyles  
Recorder of the Town  
of East Bank, West  
Virginia

3. The Recorder, as provided in the Notice, shall maintain in his office a certified copy of the Ordinance for

review by interested persons during the regular office hours of such office.

4. The Council, as provided in the Notice, shall meet on September 1, 1987, at 7:00 p.m., in Council Chambers in the Town Hall for the purpose of hearing all protests and suggestions regarding whether the Ordinance shall be put into effect.

5. The Recorder is hereby authorized and directed to cause the Abstract, together with the Notice, to be published as a Class II legal advertisement in the Charleston Gazette, a newspaper of general circulation in the Town, and the first publication of the Abstract and Notice shall be not less than 10 days before the date set aforesaid at which interested persons may appear before the Council of the Town and present protest, and the last publication of the Abstract and Notice shall be prior to said date set aforesaid.

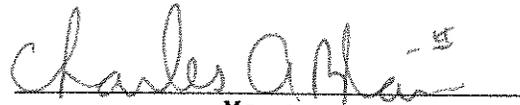
6. At such hearing, all protests and suggestions shall be heard, and the Council shall take such action as it shall deem proper in the premises; provided, however, that if at such hearing written protest is filed by thirty percent (30%) or more of the freeholders in the Town, then the Council shall not take further action unless four-fifths (4/5) of the qualified members of the Council assent thereto.

7. This Resolution shall take effect immediately upon adoption.

This Resolution adopted this 18th day of August, 1987.

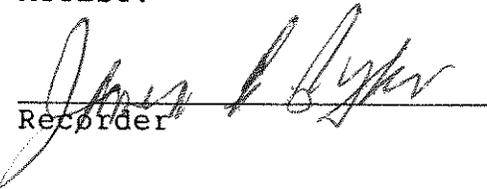
THE TOWN OF EAST BANK, WEST VIRGINIA

By:

  
\_\_\_\_\_  
Mayor

[SEAL]

ATTEST:

  
\_\_\_\_\_  
Recorder



# Affidavit of Publication

No. \_\_\_\_\_

STATE OF WEST VIRGINIA,

Kanawha County, to-wit:

I, Debra Caldwell of the

Sunday Gazette-Mail  Charleston Gazette, a daily Democratic newspaper  Daily Mail, a daily Republican newspaper, published in the City of Charleston, Kanawha County, West Virginia, do solemnly swear that the annexed notice of Town of East Bank

was duly published in said paper once a week for two successive weeks commencing with the issue of the 21st day of August, 1987, and ending with the issue of the 28th day of August, 1987, and was posted

at the front door of the Court House of said Kanawha County, West Virginia, on the 22nd day of August, 1987

Dates Published: 8/21/87, 8/28/87

Subscribed and sworn to before me this 28th day of August, 1987

Jandra J. Miller  
Notary Public of Kanawha County, West Virginia

My Commission expires October 28, 1991

Printer's Fee \$ 150.97

ACCT-7

1. Provided that the Note shall evidence only the indebtedness recorded on the record of advances attached thereto, shall bear interest at a rate not to exceed twelve percent (12%) per annum, shall mature not later than 24 months from the date thereof, subject to prepayment and shall be subject to further terms as set forth by the Line of Credit Agreement or a Supplemental Resolution.

2. Authorized the establishment of a revenue fund and the disposition of System revenues; provided for the monthly payment of principal and interest; provided for the creation of a reserve account for the Bond; provided for the creation of a depreciation account and the deposit of revenues therein and use thereof; provided for the payment of the operation and expenses of the System; and provided for the use of excess funds of the System.

3. Provided for the disposition of Bond proceeds; created a construction trust fund to hold the proceeds of the Line of Credit pending their use for Project costs; and provided for the repayment of the Line of Credit from the Bond proceeds.

4. Provided that the Bond shall not be or constitute an indebtedness of the Town within the meaning of any constitutional, statutory or charter limitation of indebtedness but shall be payable solely from the revenues of the System or from the reserve account.

5. Granted the Bond Purchaser a first lien on the gross revenues of the System.

6. Provided for the minimum rates and charges for the System as set forth in the rate ordinance adopted by the Town on September 30, 1986, and required that the rates and charges always be sufficient to produce revenues to pay all reasonable expenses of operation, repair and maintenance of the System and leave a balance each year equal to at least 110% of the average annual debt service on the Bond and any bonds payable from the revenues of the System.

7. Provided for insurance coverage on the Project; provided that the Town will render no free service; provided for the enforcement of collection of fees, rates, rentals or other charges of the System and provided for the discontinuance of service for non-payment of the fees, rates, rentals or other charges of the System.

8. Established the terms of defaults and remedies of the owners of the Bond; provided for the security for and the rights and remedies of the owners of the Bond including the appointment of a receiver.

9. The Town of East Bank contemplates the Line of Credit and the Line of Credit Agreement, the issuance of the Note, and the issuance of the Bond described in and under the conditions set forth in the Ordinance abstracted above. Any person interested may appear before the Council of the Town at a regular meeting thereof at 7:00 p.m., Tuesday, September 1, 1987, in Council Chambers in the Town Hall, 2507 First Avenue, East Bank, West Virginia and present protests and be heard as to whether the Ordinance shall be put into effect. A certified copy of the Ordinance as adopted by the Council of the Town on August 16, 1987, is on file in the Office of the Recorder of the Town for review by interested persons during the regular office hours of such office, to-wit, 8:30 a.m.-2:00 p.m., Mondays through Fridays.

James E. Pyles  
Recorder of the  
Town of East Bank,  
West Virginia

TOWN OF EAST BANK  
ABSTRACT AND NOTICE  
Notice is hereby given to any person interested that on August 18, 1987, the Council of the Town of East Bank adopted an Ordinance that:

1. Determined that it is necessary and desirable for the health, welfare and safety of the inhabitants of the Town of East Bank, West Virginia (the "Town"), that there be constructed certain extensions, additions, betterments and improvements to the waterworks system of the Town (the existing waterworks system, the "Project", as hereunder defined and all future extensions, additions, betterments and improvements thereto are herein referred to as the "System"), consisting primarily of approximately 690 feet of 10-inch PVC water pipe, 90 feet of 10-inch DIP water pipe, 720 feet of 6-inch PVC water pipe, 7,300 feet of 6-inch PVC water pipe, 34 feet of 6-inch DIP water pipe, along with various size gate valves, fire hydrants and connections (the "Project"), in accordance with the plans and specifications prepared by Appalachian Engineers, Inc. (the "Consulting Engineer") and on file with the Town of an estimated cost of \$65,159 for a portion of which the Town has received a grant in the amount of \$155,000 from the Appalachian Regional Commission.

2. Determined that it is in the best interest of the Town to issue its Waterworks Revenue Bonds (the "Bond") to the United States Department of Agriculture, Farmers Home Administration (the "Bond Purchaser") to permanently finance the cost of acquisition and construction of the Project and authorized the issuance of the Town of its Bond in a principal amount not to exceed \$6,000. The Bond shall bear interest at a rate of five percent per annum, shall mature 10 years from the date thereof, shall be payable as to interest for the first 24 months and hereafter payable in monthly installments of \$374, covering principal and interest. The Bond may be prepaid, in whole or in part, at any time at the option of the Town.

3. Determined that it is in the best interest of the Town to establish and authorize the establishment of a line of credit in an amount not to exceed \$76,000 (the "Line of Credit"), to provide funds for such acquisition and construction of the Project pending reimbursement from the Bond Purchaser.

4. Authorized and directed the Mayor of the Town to execute an agreement regarding the line of credit (the "Line of Credit Agreement").

5. Authorized the issuance by the Town of a note (the "Note") in an amount not to exceed \$76,000 for the purpose



TOWN OF EAST BANK, WEST VIRGINIA

Waterworks Revenue Bond

BOND AND LINE OF CREDIT ORDINANCE

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Exhibit A--Project Description

BOND AND LINE OF CREDIT ORDINANCE

Introduced in Council

8-4-87

Passed by Council

8-18-87

Introduced by

Council Member Tyler

An Ordinance authorizing the issuance of a Town of East Bank Waterworks Revenue Bond in aggregate principal amount of not to exceed \$76,000, and the sale thereof to the United States Department of Agriculture, Farmers Home Administration, to finance, along with other funds and moneys of, or available to, the Town of East Bank that may be lawfully expended for such purposes, the long-term cost of the acquisition and construction of certain extensions, additions, betterments and improvements to the waterworks system of the Town of East Bank, West Virginia; providing for the rights and remedies of and security for the owner of such Waterworks Revenue Bond; authorizing an irrevocable line of credit in an amount not to exceed \$76,000 to provide funds for such acquisition and construction pending reimbursement from the United States Department of Agriculture, Farmers Home Administration and authorizing an agreement with respect to said line of credit; and enacting other provisions related thereto.

BE IT ENACTED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF EAST BANK, WEST VIRGINIA:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Definitions. The following terms shall have the following meanings in this Ordinance unless the context expressly requires otherwise:

A. "Act" means Article 19 of Chapter 8 of the Code of West Virginia, 1931, as amended and in effect on the date of enactment of this Ordinance.

B. "Authorized Officer" means the mayor of the Town of East Bank or any other officer of said Town specifically designated by resolution of the Council, as hereinafter defined.

C. "Bond" or "Bonds" means the Original Bonds and any pari passu additional Bonds hereafter issued within the terms, restrictions and conditions contained in this Ordinance.

D. "Bond Proceeds Account" means the Waterworks Revenue Bond Proceeds Account established in the Construction Trust Fund, as hereinafter defined, by Subsection 5.01(B).

E. "Bond Register" means the books of the Town maintained by the Registrar, as hereinafter defined, for the registration and transfer of Bonds.

F. "Bondholder," "Holder of the Bonds" or "Owner of the Bonds" or any similar term means any person who shall be the registered owner, as shown by the Bond Register, of any outstanding Bond.

G. "Certificate of Authentication and Registration" means the Certificate of Authentication and Registration on the Bonds in substantially the form set forth in the Bond form contained herein.

H. "Town" means the Town of East Bank, a municipal corporation of the State of West Virginia, and, where appropriate, also means the Council thereof and any department, board, agency or instrumentality thereof in control of the management and operation of the System, as hereinafter defined.

I. "Construction Trust Fund" means the Town of East Bank Waterworks Revenue Bond Construction Trust Fund established by Section 5.02.

J. "Consulting Engineers" means Appalachian Engineers, Inc., Consulting Engineers, Dunbar, West Virginia, and any engineer or firm of engineers of reputation for skill and experience with respect to the design and construction of waterworks system that shall at any time be retained by the Town as consulting engineers for the System, as hereinafter defined.

K. "Cost of Works" or similar phrases mean those costs described in Section 1.03(P) hereof to be a part of the cost of the acquisition and construction of the Project, as hereinafter defined.

L. "Council" means the Town Council of the Town or any other governing body of the Town that succeeds to the functions of the Council as presently constituted.

M. "Credit Line Note" means the note authorized by Section 6.02 hereof to evidence the Town's obligation to repay any draw under the Line of Credit, as hereinafter defined.

N. "Depository Bank" means a state banking corporation or national banking association, eligible under the laws of the State of West Virginia to receive deposits of state and municipal funds and insured by the Federal Deposit Insurance Corporation, as shall be appointed by a resolution supplemental hereto, and any successor thereto.

O. "Depreciation Account" means the Waterworks Revenue Bond Depreciation Account established by Section 4.01(A)(2).

P. "Event of Default" means any event or occurrence specified in Section 8.01.

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

R. "Government" means the United States Department of Agriculture, Farmers Home Administration, and any successor thereto, as the Original Bond Purchaser of the Original Bond both as hereinafter defined.

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

T. "Gross Revenues" or "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 provisions 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 defined herein) or any connection charges, and for the furnishing by the Town of miscellaneous services.

U. "Independent Certified Public Accountant" means any firm of certified public accountants which shall be retained by the Town as independent accountants for the System, as hereinafter defined.

V. "Line of Credit" means the irrevocable line of credit in an amount not to exceed \$76,000 authorized by Section 6.01.

W. "Line of Credit Agreement" means the agreement establishing the Line of Credit, said agreement to be approved in substantial form by the Supplemental Resolution.

X. "Net Revenues" means Gross Revenues less Operating Expenses, as hereinafter defined.

Y. "Operating Expenses" means the reasonable, proper and necessary cost of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, fees and expenses of the fiscal agents, registrars, paying agents and trustees, 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, if any, or interest on interim financing or 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.

Z. "Ordinance," regardless of whether preceded by the article "the" or "this," means this Ordinance as it may hereafter from time to time be amended or supplemented.

AA. "Original Bond" means the not to exceed \$76,000 in aggregate principal amount of Waterworks Revenue Bond of the Town originally authorized to be issued and sold to the Government pursuant to this Ordinance and which will be specifically designated by a Supplemental Resolution.

BB. "Original Bond Purchaser" means the Government as purchaser, directly from the Town, of the Original Bond issued pursuant hereto.

CC. "Outstanding," when used with reference to Bonds, as of any particular date, describes all Bonds theretofore and thereupon being issued and delivered except (a) any Bond cancelled by the Registrar, as hereinafter defined, at or prior to said date; (b) any Bond for the payment of which monies equal to its principal amount, with interest to the date of maturity, shall be held in trust under this Ordinance and set aside for such payment (whether upon or prior to maturity); (c) any Bond deemed to have been paid as provided by Section 10.07; and (d) with respect to determining a specified percentage of Bondholders for the purpose of consents, notices and the like, any Bond registered to the Town.

DD. "Project" means the extensions, additions, betterments and improvements to the existing municipal waterworks system of the Town described in Exhibit A attached hereto and incorporated herein by reference.

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

(a) Government Obligations;

(b) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Bank; Federal Home Loan Bank System; Federal Land Banks; or Governmental National Mortgage Association;

(c) 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;

(d) 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 any said time account or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time account;

(e) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (c) 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 any said repurchase agreement either must mature as nearly as practicable coincident with the maturity of said repurchase agreement or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreement, and provided further that the holder of such repurchase agreements 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; and

(f) The "Consolidated Fund" (or any distinct portion thereof) managed by the West Virginia State Board of Investments pursuant to Article 6, Chapter 12 of the Code of West Virginia, 1931, as amended.

FF. "Registrar" means the Registrar for the Bonds which shall be appointed by a resolution supplemental hereto.

GG. "Reserve Account" means the Waterworks Revenue Bond Reserve Account established by Section 4.01(A)(1).

HH. "Revenue Fund" means the Waterworks Revenue Bond Revenue Fund established with the Depository Bank in Section 4.01(A).

II. "State" means the State of West Virginia.

JJ. "Supplemental Resolution" means any ordinance or resolution amendatory hereof or supplemental hereto and, when preceded by the article the, refers specifically to the supplemental resolution authorizing the sale of the Original Bond to the Government; provided, that any provision intended to be included in the Supplemental Resolution and not so included may be contained in any other Supplemental Resolution.

KK. "System" means the complete existing waterworks system now owned by the Town for a water supply system, in its entirety or any integral part thereof, and includes any extensions, additions, betterments and improvements thereto as authorized by this Ordinance, or hereafter constructed or acquired for said waterworks system from any sources whatsoever, within and without said Town.

LL. 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 or neuter gender shall include all other genders.

MM. Additional terms and phrases are defined in this Ordinance as they are used. Accounting terms not specifically defined herein shall be given meaning in accordance with general accepted accounting principles.

NN. The terms herein, hereunder, hereby, hereto, hereof and any similar terms refer to this Ordinance; and the term hereafter means after the date of the enactment of this Ordinance.

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

Section 1.02. Authority of This Ordinance. This Ordinance is enacted pursuant to the provisions of the Act and other applicable provisions of law.

Section 1.03. Findings. It is hereby found, determined and declared that:

(A) The Town now owns and operates a waterworks system, furnishing water service to residences, premises and businesses residing or located within and without the area of the Town.

(B) It is deemed necessary and desirable for the health, welfare and safety of the inhabitants of the Town that there be constructed certain extensions, additions, betterments and improvements to the System in accordance with the plans and specifications prepared by the Consulting Engineers, which Project is generally described in Exhibit A attached hereto and by this reference made a part hereof.

(C) The estimated maximum cost of the construction of the Project is \$265,159, of which \$76,000 will be permanently obtained from the proceeds of the Original Bond herein authorized, \$155,000 will be obtained from a grant from the Appalachian Regional Commission and \$34,159 will be provided by the Town. Pending the receipt of the advances of the Original Bond proceeds, the Town shall temporarily finance the construction with a Line of Credit in an amount not to exceed \$76,000.

(D) The period of usefulness of the System after completion of the Project will not be less than forty years.

(E) The estimated Gross Revenues to be derived in each year after the issuance of the Original Bond from the operation of the System will be sufficient to pay all the cost of the operation and maintenance of said System, the principal of and interest on the Original Bond authorized to be issued pursuant to this Ordinance and all sinking fund, reserve and other payments provided for in this Ordinance.

(F) The Town derives revenues from the System and upon the issuance of the Original Bond the Town will grant the Government a first lien on the Gross Revenues of the System, provided that if any interim financing is outstanding at the time of issuance of the Original Bond, the interim financing will have a junior and subordinate lien on revenues to that of the Government as Original Bond Purchaser.

(G) The Internal Revenue Code of 1986, as amended, and including the rules and regulations promulgated pursuant thereto or to any predecessors or successors thereto (collectively, the "Code"), provides exceptions from the rebate provisions for issues of small governmental units meeting certain requirements.

(H) It is in the best interest of the Town and its inhabitants to qualify for the small governmental unit exception from the rebate provisions.

(I) The Town is a governmental unit with general taxing powers.

(J) The Original Bonds are not private activity bonds as defined by the Code.

(K) Ninety-five percent (95%) or more of net proceeds (as defined with respect to the Code) of the Original Bonds will be used for local governmental activities of the Town.

(L) The Town reasonably expects that the aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by the Town and all subordinate entities thereof during the calendar year in which the Original Bonds will be issued, being 1987, will not exceed \$5,000,000.

(M) The Town will not permit at any time any of the proceeds of the Original Bonds or other funds of the Town to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Code.

(N) The Town will file all statements, instruments and returns necessary to assure the tax-exempt status of the Bonds.

(O) The Bonds will not be federally guaranteed within the meaning of the Code.

(P) It is deemed necessary for the Town to issue its Original Bond, in part to permanently finance the costs of acquisition and construction of the Project and enter into the Line of Credit Agreement to temporarily pay certain costs of acquisition and construction pending the advance from time to time of the Original Bond proceeds. Said costs shall be deemed to include the cost of all property rights, easements, and franchises deemed necessary therefor; the cost of the construction of said extensions, additions, betterments and improvements to the System and any other expenses necessary, incidental, desirable or appurtenant to the acquisition and construction of the Project and such replacements as are necessary therefor; the cost of interim financing for such Project; interest on the Original Bond, prior to, during and for six months after the estimated date of completion of construction of the Project; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; expenses for the service of registrars, paying agents, depositories or other agents in connection with the issuance of the Original Bond, and such other expenses as may be necessary or desirable to said acquisition and construction of the Project and placing the same in operation and the financing authorized by this Ordinance.

Section 1.04. Ordinance Constituting Contract. In consideration of the acceptance of the Bonds authorized to be issued hereunder by those who shall hold the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the Town and such Bondholders, and the covenants and agreements herein set forth to be performed by said Town shall be for the equal benefit, protection and security of the legal Holders of such Bonds.

ARTICLE II

AUTHORIZATION OF EXTENSIONS, ADDITIONS, BETTERMENTS  
AND IMPROVEMENTS TO THE SYSTEM

Section 2.01. Authorization of Extensions, Additions, Betterments and Improvements. There is hereby authorized the construction and acquisition of the Project in accordance with plans and specifications therefor prepared by the Consulting Engineers.

## ARTICLE III

### AUTHORIZATION, TERMS, EXECUTION AND REGISTRATION OF BONDS

Section 3.01. Authorization of the Original Bond. Subject and pursuant to the provisions hereof, the Bond of the Town to be known as "Town of East Bank Waterworks Revenue Bond," of the series to be designated by the Supplemental Resolution (the "Original Bond") is hereby authorized to be issued in the aggregate principal amount of not exceeding Seventy-Six Thousand Dollars (\$76,000) for the purpose of permanently financing a portion of the costs of the Project.

Section 3.02. Description of Original Bond. The Original Bond shall be issued as a fully registered Bond in single form with a record of amortized installments attached, numbered R-1, not to exceed \$76,000, and shall be dated on the date of delivery thereof. The Bond shall bear interest from date of delivery but only upon the amounts advanced thereunder, payable monthly, commencing on the first day of the month following the month in which the Bond is issued, at the rate of five per centum (5%) per annum, and shall be sold for the par value thereof.

The Original Bond shall be subject to prepayment of scheduled installments, or any portion thereof, at the option of the Town, shall be payable as provided in the Bond form hereinafter set forth and shall be subject to the other terms and provisions set forth in the Bond.

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

Section 3.04. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Exhibit A, shall have been manually executed by the 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 Ordinance. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Registrar if manually signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability; Registration. The Bonds shall be, and have all of the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the State, and each successive Bondholder, in accepting any said Bond, shall be conclusively deemed to have agreed that such Bond shall be, and have all of the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State, and each successive Bondholder shall further be conclusively deemed to have agreed that said Bond shall be incontestable in the hands of a bona fide holder for value. So long as any of the Bonds remain Outstanding, the Registrar shall keep and maintain books for the registration and transfer the Bonds. Notwithstanding the foregoing, the Bonds shall be transferable only by transfer of registration upon the Bond Register by the registered owner thereof in person or by his attorney or legal representative duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or such duly authorized attorney or legal representative. Upon the transfer of a Bond, there shall be issued at the option of the Bondholder or the transferee another Bond or Bonds of the aggregate principal amount equal to the unpaid amount of the transferred Bond.

In all cases in which the privilege of exchanging Bonds or transferring the Bonds is exercised, Bonds shall be delivered in accordance with the provisions of this Ordinance. All Bonds surrendered in any such transfer shall forthwith be cancelled by the Registrar. For every such transfer of Bonds, the Registrar may make a charge sufficient to reimburse his office for any tax, fee or other governmental charge required to be paid with respect to such transfer and the cost of preparing each new Bond upon each transfer, and any other expenses of said Registrar incurred in connection therewith, which sum or sums shall be paid by the person requesting such transfer as a condition precedent to the exercise of the privilege of making such transfer; provided, the Town shall pay any such expenses incurred in connection with a transfer or exchange by the Government. The Registrar shall not be obligated to make any such transfer of Bonds during the ten (10) days preceding any interest payment on the Bonds or after notice of any prepayment or redemption of the Bonds has been given.

Any registration or transfer of registration of Bonds shall include supplying the Registrar with a Federal Employer Identification Number of the Bondholder (or comparable identifying information if the Bondholder is not a corporate entity) and such other information and shall comply with such other requirements as shall be determined by nationally recognized bond counsel to be necessary to render the interest on the Bond exempt from federal income taxation.

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

Any such duplicate Bond issued pursuant to this section shall constitute an original, additional contractual obligation on the part of the Town, whether or not the lost, stolen or destroyed Bond be at any time found by any one, and such duplicate Bond shall be entitled to equal and proportionate benefits and rights as to lien and source of security for payment from the revenues pledged herein with all other Bonds issued hereunder.

Section 3.07. Form of Bond. Subject to the provisions of this Ordinance, the text of the Original Bond and the other details thereof shall be of substantially the following tenor, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Ordinance, the Supplemental Resolution or any subsequent resolution or ordinance adopted or enacted prior to the issuance thereof:

(Form of Single, Fully Registered Bond)

No. R-1

TOWN OF EAST BANK, WEST VIRGINIA  
WATERWORKS REVENUE BOND, SERIES 1987

\$76,000.

Date \_\_\_\_\_

FOR VALUE RECEIVED, the TOWN OF EAST BANK, WEST VIRGINIA (herein called the "Borrower"), promises to pay to the order of the United States of America, Farmers Home Administration, United States Department of Agriculture (herein called the "Government"), at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing and in the manner provided below, the principal sum of Seventy-Six Thousand Dollars (\$76,000), plus interest on the unpaid principal balance at the rate of five per centum (5%) per annum.

The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only on the amounts advanced hereunder, commencing the first day of the month following the month of delivery of this Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof, and installments of \$374, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond, in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided herein below. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Extra payments, as defined in the regulations of the Farmers Home Administration, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government, shall become a part of

and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government. The Borrower has granted to the Government a lien on the proceeds of the Bond until such proceeds are expended for authorized purposes.

This Bond is issued to permanently finance a portion of the cost of construction and acquisition of certain extensions, additions, betterments and improvements to the Town's waterworks system (the "Project") (the Project, together with the existing waterworks system of the Town and any further extensions, additions, betterments and improvements thereto, herein called the "System") under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Article 19 of Chapter 8 of the Code of West Virginia, 1931, as amended, and an ordinance duly enacted by the Town Council of the Town of East Bank on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, as supplemented by a resolution duly adopted by said Town Council on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ (herein collectively called the "Ordinance"), and is subject to all the terms and conditions of said Ordinance. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Ordinance.

This Bond is payable only from and secured by the revenues to be derived from the operation of the System of the Borrower, which Gross Revenues shall be sufficient to pay the costs of operating and maintaining the System and principal of, and interest on, all bonds which may be issued for the construction, acquisition, improvement, extension or betterment of such System as and when the same become due and payable, and which shall be set aside and remitted to the Government as provided herein and in the Ordinance. This Bond does not constitute an indebtedness of the Town of East Bank within the meaning of any constitutional or statutory provisions or limitations, nor shall the Borrower be obligated to pay the same or the interest hereon except from the Gross Revenues as defined in the Ordinance, derived from the operation of said System. The Borrower in said Ordinance has covenanted and agreed that the schedule of rates or charges from time to time in effect shall be sufficient to provide for all reasonable operating expenses of the System and to leave a balance each year equal to at least 110% of the average annual debt service on this Bond and any other bonds on a parity with this Bond then outstanding and of the average annual debt service of any other obligations payable from the revenues of the System of the Borrower. Said Borrower has entered into certain further covenants with the owner of this Bond for the terms of which

reference is made to said Ordinance. Remedies provided the owner of this Bond are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

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

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

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

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Rural Development Act of 1972. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

IN WITNESS WHEREOF, the said Town of East Bank has caused this Bond to be signed by its Mayor, attested by its Recorder and its corporate seal to be impressed hereon, all as of the date first written above.

TOWN OF EAST BANK

\_\_\_\_\_  
(Name of Borrower)

\_\_\_\_\_  
(Signature of Executive Official)

Mayor  
(Title of Executive Official)

P. O. Box 307  
(Post Office Box No. or Street  
Address)

East Bank, West Virginia 25067  
(City, State and Zip Code)

[CORPORATE SEAL]

ATTEST:

\_\_\_\_\_  
(Signature of Attesting Official)

Recorder  
(Title of Attesting Official)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is the Bond described in the within-mentioned Ordinance and has been duly registered as of the date set forth below in the name of the United States of America, Farmers Home Administration, United States Department of Agriculture.

\_\_\_\_\_  
Registrar

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

Dated: \_\_\_\_\_

RECORD OF PAYMENTS

Date	Amount	Initialed By
(1)	\$	
(2)	\$	
(3)	\$	
(4)	\$	
(5)	\$	
(6)	\$	
(7)	\$	
(8)	\$	
(9)	\$	
(10)	\$	

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

Pay to the Order of \_\_\_\_\_

UNITED STATES OF AMERICA  
FARMERS HOME ADMINISTRATION

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

\_\_\_\_\_  
(Title)

## ARTICLE IV

### SYSTEM REVENUES AND APPLICATION THEREOF

Section 4.01. System Revenues and Application Thereof. So long as any of the Bonds shall be outstanding and unpaid, the Town covenants with the Bondholders as follows:

A. Establishment of Revenue Fund and Disposition of System Revenues. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited by the Town in the Revenue Fund, which is hereby established with the Depository Bank. The Revenue Fund shall constitute a trust fund for the purposes provided in this Ordinance and shall be kept separate and distinct from all other funds of the Town and used only for the purposes and in the manner herein provided. All revenues at any time remaining on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority.

(1) First, from the moneys in the Revenue Fund, the Town shall on the first day of each month, commencing on the first day of the month following the month of delivery of the Original Bond, apportion and set apart out of the Revenue Fund and remit to the office and place designated by the Original Bond (herein called the "Sinking Fund") the monthly payment of interest or of principal and interest set forth in the Original Bond form hereinabove set forth, such amount or amounts being the amount required to pay the interest on the Original Bond and to amortize the principal of the Original Bond over the life of the Original Bond; provided however, that the deposits to the Sinking Fund constitute actual payments of principal and interest. The amounts required for principal and interest payments on Bonds issued hereunder other than the Original Bonds shall be deposited in a sinking fund created by supplemental resolution.

The Town shall next transfer from the Revenue Fund and deposit in a Reserve Account at the West Virginia Municipal Bond Commission (the "Commission"), or in the case of Bonds other than the Original Bond in the reserve account in the sinking fund or otherwise as designated by Supplemental Resolution, on the first day of each month of each year, beginning with and including the month in which payments from the Revenue Fund for interest are commenced, an amount equal to ten percent (10%) of all amounts required for maturing principal and interest in that year: Provided, however, that no further payments shall be made into said Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the maximum amount of principal and interest which will mature and become due on said Bonds in any succeeding Fiscal Year.

Moneys in the Reserve Account shall be used only for the purpose of payment of maturing principal of or interest on the Bonds when moneys in the Revenue Fund or, in the case of Bonds other than the Original Bonds, the funds in the sinking fund created by Supplemental Resolution are insufficient therefor and for no other purpose.

Any withdrawals from the Reserve Account shall be subsequently restored from the first revenue available after all required payments to the Sinking Fund and Reserve Account, including any deficiencies for prior payments, have been made in full.

As and when additional Bonds ranking on a parity with the Original Bond are issued, provision shall be made by Supplemental Resolution for additional payments sufficient to pay the interest on such additional parity Bonds and to accomplish retirement thereof at or before maturity and to accumulate a balance in the Reserve Account in an amount equal to the maximum provided and required to be paid in principal and interest in any Fiscal Year for account of all the Bonds.

(2) Thereafter, from the moneys remaining in said Revenue Fund, the Town shall next, on the first day of each month commencing with the first month in which interest shall be payable from the Revenue Fund, remit to the Depository Bank for deposit in a special account to be designated the "Depreciation Account," which account is hereby established and created, a sum equal to \$150 (\$1,800 per year). No further payments shall be required to be made into said Depreciation Account when there shall have been deposited therein, and so long as there shall remain on deposit therein, Ten Thousand Dollars (\$10,000). All funds in said Depreciation Account shall be kept apart from all other municipal funds, and all or any part of said fund may be invested as provided by Article VIII. Withdrawals and disbursements may be made from said Depreciation Account for replacements, emergency repairs, additions, betterments or improvements to the System, deficiencies in the payment of principal and interest on the Bond, or debt service on obligations not on a parity with the Bonds, the proceeds of which obligations were used to finance such additions, betterments or improvements.

(3) Thereafter, from the moneys remaining in said Revenue Fund, the Town shall pay all Operating Expenses of the System.

(4) If all of the above required payments are then current, the Town may use any moneys remaining in the Revenue Fund for the following purposes: (a) for prepayment of the amount, or any part thereof, of the Bonds outstanding in accordance with the terms thereof, (b) additions, betterments or replacements to the System which the Consulting Engineers

certify are needed and/or (c) payments of principal and interest on subordinate waterworks revenue bonds or other obligations which may hereafter be issued by the Town on account of the System.

All of the funds provided for above shall constitute trust funds and shall be used only for the purposes provided herein.

(5) The moneys in excess of the sum insured by the maximum amounts insured by the Federal Deposit Insurance Corporation in the Revenue Fund, in the Reserve Account and in the Depreciation Account shall at all times be secured, to the full extent thereof in excess of such insured sum, by Government Obligations or such other obligations as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

(6) If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds 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 on the subsequent payment dates.

## ARTICLE V

### APPLICATION OF BOND PROCEEDS

#### Section 5.01. Application of Bond Proceeds.

From the moneys from time to time received from the sale of the Original Bond, the following amounts shall be first deducted and deposited as follows:

(A) The sum required, with other moneys available therefor, to pay interest on the Original Bonds during construction and for a period up to six months thereafter shall be deposited in the Construction Trust Fund, hereinafter created.

(B) The sum required, with other moneys available therefor, to pay the principal of and interest on the obligation incurred under the Line of Credit Agreement shall be deposited as provided in Section 6.02.

#### Section 5.02. Construction Trust Fund.

There is hereby created with the Depository Bank a special fund to be known as the "Construction Trust Fund," which fund shall be kept separate and apart from all other funds of the Town, and shall be drawn out, used and applied by the Town solely for the payment of the costs of the construction and acquisition of the Project and purposes incidental thereto, for the payment of interest on the Original Bonds during construction and for a period up to six months thereafter and for no other purposes whatsoever. All amounts received by the Town pursuant to a draw upon the Line of Credit authorized by Section 6.01 hereof shall be deposited in the Construction Trust Fund. The moneys in said fund shall be secured at all times by the deposit by such bank, as security, of Government Obligations having a fair market value at least equal to the balance in said fund in excess of the amount insured by the Federal Deposit Insurance Corporation. Any moneys not needed immediately for said purposes may, with the consent of the Consulting Engineers, be invested pursuant to Article IX. If for any reason the amounts on deposit in the Construction Trust Fund are not necessary for, or are not applied to, such purposes, then such unapplied amounts shall be deposited by the Town as determined by the rules and regulations of the Government. All such proceeds shall constitute a trust fund for such purposes, and there is hereby created a lien upon such moneys, until so applied, in favor of the Holders of the Original Bond herein authorized.

Expenditures or disbursements from said Construction Trust Fund, except for legal, fiscal and engineering expenses and expenses in connection with the issuance and sale of the Original Bond shall be made only after such expenditures or

disbursements shall have been approved in writing by the Consulting Engineers, the Authorized Officer and the Government.

## ARTICLE VI

### LINE OF CREDIT

Section 6.01. Authorization of Line of Credit. As a method of providing funds for the acquisition and construction of the Project to the extent grant proceeds and other funds are not available therefor and pending the receipt of advances from the Original Bond Purchaser, the Mayor of the Town is hereby authorized and directed to arrange for a Line of Credit in an amount not to exceed \$76,000. The amount and terms of the Line of Credit shall be approved by a resolution supplemental hereto.

Section 6.02. Authorization of Credit Line Note. For the purpose of evidencing the Town's obligation to repay any draw upon the Line of Credit and thus, of financing a portion of the cost of acquisition and construction of the Project, there shall be issued the Credit Line Note of the Town in an amount, not to exceed \$76,000, and upon such terms as set forth in a resolution supplemental hereto. The Credit Line Note shall be issued in single, fully registered form and shall be dated as of the date of delivery thereof. There shall be attached to the Credit Line Note a Record of Advances and Payments, upon which the date and principal amount of any draw upon the Line of Credit, the date and amount of any payment of principal of the Credit Line Note and the amount of the Credit Line Note outstanding after either of said transactions shall be recorded. Anything to the contrary herein, in the Line of Credit Agreement or therein notwithstanding, the Credit Line Note shall evidence only the outstanding indebtedness recorded on the Record of Advances and Payments attached thereto, and interest shall accrue only on the amount of each advance from the actual date thereof as listed on said Record of Advances and Payments. Each such advance shall bear interest, payable on such dates, at a rate set forth in a supplemental resolution but not to exceed 12 percent per annum. Interest shall cease to accrue on the amount of the Credit Line Note outstanding, or portions thereof, as the same are paid, as reflected by said Record of Advances and Payments. The Credit Line Note shall mature on such date, not later than twenty-four (24) months from the date thereof. The Credit Line Note shall be subject to such further terms as shall be provided by the Line of Credit Agreement. Notwithstanding the foregoing, the terms of the Credit Line Note, other than the principal amount thereof, may be modified by resolution supplemental and amendatory hereto, subject to the limits of the Act.

The Credit Line Note shall be payable as to principal upon surrender at the principal office of a registrar, designated in a resolution supplemental hereto, in any coin or currency which on the date of payment of principal is legal tender for the payment of public and private debts under the

laws of the United States of America; provided, that any partial payment of principal prior to the final maturity of the Credit Line Note shall be recorded on the Record of Advances and Payments attached to the Credit Line Note, and the Credit Line Note shall be returned to the owner thereof. Interest on the Credit Line Note shall be paid by check or draft mailed to the Owner thereof at the address as it appears on the books of said registrar; provided, that, at the option of the Owner, such payment may be made by wire transfer or such other method as shall be agreeable to the Owner, the Town and said registrar.

Section 6.03. Execution of Credit Line Note. The Credit Line Note shall be executed in the name of the Town by the signature of its Mayor, and the seal of the Town shall be affixed thereto and attested by the signature of the Recorder. Any Credit Line Note may be signed and sealed on behalf of the Town by such person as at the actual time of the execution of such Credit Line Note shall hold the proper office of the Town, although at the date of such Credit Line Note such person may not have held such office or may not have been so authorized.

Section 6.04. Negotiability, Transfer and Registration. Subject to the restrictions on transfer set forth below, the Credit Line Note shall be and have all of the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State, and each successive Owner, in accepting the Credit Line Note, shall be conclusively deemed to have agreed that said Credit Line Note shall be incontestable in the hands of a bona fide holder for value.

So long as the Credit Line Note or any portion thereof remains Outstanding, the registrar shall keep and maintain books for the registration and transfer of the Credit Line Note. The Credit Line Note shall be transferable only upon the books of the Town which shall be kept for that purpose at the office of the registrar (in such capacity and in the capacities of authenticating agent and paying agent as hereinafter provided, the "Note Registrar") by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Note Registrar duly executed by the registered owner or his duly authorized attorney. Upon the transfer of the Credit Line Note, there shall be issued at the option of the Owner or the transferee another Credit Line Note or Notes of the aggregate stated principal amount equal to the stated principal amount of such transferred Credit Line Note not paid as reflected on the Record of Advances and Payments attached thereto and outstanding in the aggregate principal amount equal to the advanced but unpaid amount of the transferred Note as reflected on the Record of Advances and Payments attached thereto.

In all cases in which the privilege of transferring the Credit Line Note is exercised, Credit Line Notes shall only be issued in accordance with the provisions of this Ordinance, as supplemented in connection with the issuance of the Credit Line Note. All Credit Line Notes surrendered in any such transfers shall forthwith be cancelled by the Note Registrar. For every such transfer of Credit Line Notes, the Note Registrar may make a charge sufficient to reimburse its office for any tax, fee or other governmental charge required to be paid with respect to such transfer and the cost of preparing each Credit Line Note upon each transfer, and any other expenses of the Note Registrar incurred in connection therewith, which sum or sums shall be paid by the person requesting such transfer as a condition precedent to the exercise of the privilege of making such transfer. The Note Registrar shall not be obliged to make any such transfer of Credit Line Notes during the ten (10) days preceding an interest payment date on the Credit Line Notes or after notice of any prepayment of the Credit Line Notes has been given.

Section 6.05. Form of Credit Line Note. The text of the Credit Line Note shall be in substantially the form provided by the Line of Credit Agreement, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Ordinance or any supplemental resolution or ordinance adopted or enacted prior to the issuance thereof. The Credit Line Note shall not become valid until authenticated by the Note Registrar.

Section 6.06. Proceeds of Draw Under Line of Credit Agreement. The proceeds of any draw made by the Town under the Line of Credit Agreement shall be immediately deposited in the Construction Trust Fund established with the Depository Bank and expended in accordance with Section 5.02 hereof.

## ARTICLE VII

### ADDITIONAL COVENANTS OF THE TOWN

Section 7.01. General Covenants of the Town. All the covenants, agreements and provisions of this Ordinance shall be and constitute valid and legally binding covenants of the Town 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 Ordinance, the Town hereby covenants and agrees with the Bondholders as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as the Bonds or the interest thereon is outstanding and unpaid or until there shall have been set apart in the Reserve Account or Sinking Fund and Reserve Account with respect to Bonds other than the Original Bond, a sum sufficient to pay when due, to defease or to prepay, the entire principal amount of the Bonds remaining unpaid, together with interest accrued and to accrue thereon.

Section 7.02. Bonds Not To Be Indebtedness of the Town. The Bonds shall not be or constitute an indebtedness of the Town within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the Gross Revenues of the System, as herein provided. No Holder or Holders of any Bonds issued hereunder shall ever have the right to compel the exercise of the taxing power of the Town to pay said Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Gross Revenues; Statutory Mortgage Lien. The payment of the debt service of all of the Bonds issued hereunder shall be secured forthwith equally and ratably by a first lien on the Gross Revenues derived from the operation of System, to the extent necessary to make the payments required under Section 4.01. The Gross Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Bonds herein authorized, and to make the payments into the Reserve Account and all other payments provided for in this Ordinance, are hereby irrevocably pledged in the manner provided in this Ordinance, to the payment of the principal of and interest on the Bonds herein authorized as the same become due, and for the other purposes provided in this Ordinance.

For the further protection of the holder of the Bonds, the statutory mortgage lien upon the System created by Chapter 8, Article 19, Section 8, of the Code of West Virginia, 1931, as amended, is hereby specifically recognized by the Town.

Section 7.04. Rates. While the Bonds authorized hereunder or any of them remain outstanding and unpaid, the

rates for all services and facilities rendered by said System shall be reasonable and just, taking into account and consideration the cost and value of said properties and the cost to maintain and operate the same and the proper and necessary allowance for depreciation thereof, and the amount necessary for the retirement of all Bonds and the interest thereon as may be outstanding under the provisions of this Ordinance. The schedule of rates and charges shall at all times be sufficient to pay the Operating Expenses of the System, provide an adequate Reserve Account and adequate Depreciation Account and pay the principal of and interest on all Bonds issued 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 Town hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient to provide for all reasonable Operating Expenses of the System and to leave a balance each year equal to at least 110% of the average annual debt service on the Bonds Outstanding and of the average annual debt service of any other obligations of the Town payable from Revenues of the System.

So long as any of the Bonds issued hereunder shall remain outstanding and unpaid, the following rates shall be the minimum monthly rates to be charged for the services rendered by said System:

Rates

Available for general domestic, commercial,  
and industrial service

First 2,000 gals. @ \$ 3.39 per M gals.  
Next 3,000 gals. @ \$ 2.56 per M gals.  
Next 10,000 gals. @ \$ 2.23 per M gals.  
Over 15,000 gals. @ \$ 1.96 per M gals.

(Minimum Monthly Bill \$6.78)

### Minimum Charge

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

5/8" meter - \$	6.78	per month
1" meter - \$	17.35	per month
1 1/2" meter - \$	39.03	per month
2" meter - \$	69.42	per month
3" meter - \$	156.27	per month
4" meter - \$	277.71	per month
6" meter - \$	624.97	per month
8" meter - \$	1,111.03	per month

### Delayed Payment Penalty

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

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

Section 7.05. Completion, Operation and Maintenance. The Town will expeditiously complete the Project in accordance with the plans and specifications prepared by the Consulting Engineers, subject to changes permitted by the Town and the Government, and will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof from the revenues of the System in the manner provided in this Ordinance.

Section 7.06. Sale of the System. So long as the Original Bond is Outstanding, the System may be sold, transferred, mortgaged, leased or otherwise disposed of or encumbered only with the written consent of the Government, and such consent will specify the disposition of any such sale or transfer.

Section 7.07. Issuance of Other Obligations Payable out of Revenues and General Covenant Against Encumbrances. The Town shall not issue any other obligations whatsoever, except pari passu additional bonds ("Additional Bonds") provided for in Section 7.08 hereof, 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 Original Bond; and all obligations hereafter issued by the Town payable from the revenues of the System, except such Additional Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on, and source of and security for payment from, such revenues and in all other respects, to the Original Bond.

The Town 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 Original Bond, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Original Bond and the interest thereon in this Ordinance, or upon the System or any part thereof, except as provided in Section 7.08.

Section 7.08. Issuance of Additional Bonds. No Additional Bonds, as in this section defined, payable out of the revenues of the System, shall be issued after the issuance of the Original Bond pursuant hereto, except under the conditions and in the manner herein provided.

(A) No such Additional Bonds shall be issued without the written consent in advance of the Government. No such Additional Bonds shall be issued except for the purpose of financing the costs of the construction or acquisition of extensions, additions, betterments and improvements to the System or refunding one or more series of Bonds issued hereunder, except as provided in subsection (F) of this section.

(B) No such Additional Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Recorder a written certification by a certified public accountant not in the regular employ of the Town, based upon the necessary investigation, reciting the conclusion that the Net Revenues actually derived from the System during the Fiscal Year immediately preceding the date of the issuance of such Additional Bonds shall have been not less than one hundred twenty percent (120%) of the average aggregate amount which will mature or become due in any succeeding Fiscal Year for principal of and interest on the Original Bond and on all Bonds of all other outstanding series on a parity with the Original Bond and on the Additional Bonds then proposed to be issued. This limitation may be waived or modified by the written consent of Bondholders representing 75% of each series of the then Outstanding Bonds issued pursuant hereto.

(C) Prior to or concurrently with the issuance of any such Additional Bonds, the Town shall have entered into written contracts for the immediate acquisition or construction of such

extensions, additions, betterments or improvements to the System which are to be financed by such Additional Bonds.

(D) The term "Additional Bonds," as used in this section, shall be deemed to mean Additional Bonds issued under the provisions and within the limitations of this section, payable from the revenues of the System on a parity with the Original Bond, and all the covenants and other provisions of this Ordinance (except as to details of such Additional Bonds inconsistent therewith) shall be for the equal benefit, protection and security of the Holders of any Bonds issued pursuant to this Ordinance and the Holders of any Additional Bonds subsequently issued within the limitations of and in compliance with this section. All such Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Gross Revenues of the System, and their source of and security for payment from said Gross Revenues, without preference of any Bond over any other. The Town shall comply fully with all the increased payments into the various funds, either new or created herein, required for such Additional Bonds, in addition to the payments required for the Original Bond originally issued hereunder. Redemption of Bonds prior to maturity, in the event that the Original Bond and Additional Bonds hereby authorized are Outstanding, shall as nearly as practical be on an equal pro rata basis reflecting the original amounts of each issue.

(E) No Additional Bonds shall be issued at any time unless all the payments into the respective funds provided for herein on Bonds then Outstanding and all other payments provided for herein shall have been made or paid up as required to the date of issuance of the Additional Bonds and the Town shall have fully complied with all the covenants, agreements and terms hereof or shall have remedied any deficiency in such compliance.

(F) With the written consent in advance of the Government, and anything to the contrary in subsections (A), (B) and (C) of this section notwithstanding, Additional Bonds may be authorized and issued by the Town pursuant to a supplemental ordinance in the event that the Original Bond should be insufficient, together with other funds lawfully available therefor, to pay or provide for all costs of construction of the Project. Any such Additional Bonds authorized and issued under the provisions of this subsection shall be limited to the aggregate principal amount required to make up any deficiency in funds for payment of such construction costs, and the maturities of any such Additional Bonds shall be in years and amounts suggested by the Government.

Section 7.09. Insurance and Bonds. The Town hereby covenants and agrees that, so long as the Bonds remain Outstanding, it will, as an expense of operation and maintenance of the System, procure, carry and maintain insurance with a

reputable insurance carrier or carriers covering the following risks and in the following amounts:

(A) Fire, Lightning, Vandalism, Malicious Mischief and Extended Coverage Insurance, to be procured prior to acceptance of any part of the Project from the contractor, on all above-ground insurable portions of the System, including machinery and equipment housed therein, in an amount equal to the insurable value thereof. In the event of any damage to or destruction of any portion of the System, the Town will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damaged or destroyed portion. The Town will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Town during construction of the Project in the full insurable value thereof.

(B) Public Liability Insurance, with limits of not less than \$500,000 for personal liability to protect the Town from claims for bodily injury and/or death and not less than \$200,000 from claims for damage to property of others which may arise from the operation of the System, such insurance to be procured at the commencement of construction of the Project.

(C) Vehicular Public Liability Insurance, in the event the Town owns or operates any vehicle in the operation of the System, or in the event that any vehicle not owned by the Town is operated for the benefit of the Town, with limits of not less than \$500,000 for personal liability to protect the Town from claims for bodily injury and/or death and not less than \$200,000 from claims for damage to property of others which may arise from such operation of vehicles, such insurance to be procured prior to acquisition or commencement of operation of any such vehicle.

(D) Workers' Compensation Coverage for All Employees of the System Eligible Therefor and Performance and Payment Bonds, such bonds to be in the amounts of 100% of the construction contract, will be required of each contractor dealing directly with the Town, and such payment bonds will be filed with the Clerk of The County Commission of Kanawha County prior to commencement of construction of the Project in compliance with the West Virginia Code, Chapter 38, Article 2, Section 39.

(E) Fidelity Bonds will be provided as to every officer and employee of the Town having custody of the Revenue Fund or of any other funds or valuable property of the System in an amount at least equal to the total funds in the custody of any such person at any one time, and initially in the amount required by the Government and to be increased thereafter as necessary to cover the maximum amount of funds under control of that position at any one time.

(F) Provided, however, and in lieu of and notwithstanding the foregoing provisions of this section, during construction of the Project and so long as the Government holds any of the Bonds, the Town will carry insurance and bonds or cause insurance and bonds to be carried for the protection of the Town, and during such construction will require each prime contractor to carry insurance, of such types and in such amounts as the Government may specify, with insurance carriers or bonding companies acceptable to the Government.

Section 7.10. Books and Records. The Town will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Town, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Ordinance shall have the right at all reasonable times to inspect the System and all parts thereof, and all records, accounts and data of the Town relating thereto.

The accounting system for the System shall follow generally accepted accounting practices to the extent allowed by the uniform system of accounts promulgated by the Public Service Commission of West Virginia. Separate control accounting records shall be maintained by the Town. Subsidiary records as may be required shall be kept in the manner, on the forms, books, and other bookkeeping records as prescribed by the Town. The Town 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 Town shall be reported to such agent of the Town as the Council of the Town shall direct.

The Town shall, at least once a year, cause the books, records and accounts of the System to be audited by an Independent Certified Public Accountant and shall mail the report of said Independent Certified Public Accountant to the Government and, upon request, to any other Holder or Holders of the Bonds. The Government, so long as it holds all the Bonds, may permit substitution of a copy of the annual audit report by the office of the State Tax Commissioner for the copy of an annual audit report by an Independent Certified Public Accountant.

The Town shall retain all records, books and supporting material for a period of three years after the issuance of such audit reports and financial statements, and such material, upon request, will be made available to the Government, the Controller General of the United States of America or their representatives.

Section 7.11. Fiscal Year; Budget. While the Original Bond is Outstanding and unpaid and to the extent not now prohibited by law, the System shall be operated and maintained

on a fiscal year basis commencing on July 1 of each year and ending on the following June 30, which period shall also constitute the budget year for the operation and maintenance of the System. Not later than thirty days prior to the beginning of each Fiscal Year, the Town agrees to adopt the annual budget for the ensuing year, and no expenditures for operation and maintenance expenses of the System in excess of such annual budget shall be made during such Fiscal Year unless unanimously authorized and directed by the Council. Copies of each annual budget shall be delivered to the Government by the beginning of each Fiscal Year.

If for any reason the Town shall not have adopted the annual budget before the first day of any Fiscal Year, it shall adopt a budget of current expenses from month to month until the adoption of the annual budget; provided, however, that no such monthly budget shall exceed the budget for the corresponding month in the year next preceding by more than ten percent (10%); and provided further, that adoption of a budget of current expenses shall not constitute compliance with the covenant to adopt an annual budget unless the Town's failure to submit an annual budget shall be for a reason beyond the control of the Town. Each such budget of current expenses shall be delivered and mailed immediately as in the case of the annual budget.

Section 7.12. Services Rendered to the Town. The Town will not render or cause to be rendered any free services of any nature by its System; and, in the event the Town or any department, agency, instrumentality, officer or employee of the Town shall avail himself 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 Town and any such department, agency, instrumentality, officer or employee. Such charges shall be paid as they accrue, and the Town shall transfer from its general funds sufficient sums to pay such charges for service to any of its departments or properties. The revenues so received shall be deemed to be Revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other Revenues derived from such operation of the System.

Section 7.13. Enforcement of Collections. The Town 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 laws of the State.

The Town further covenants and agrees that it will, to the full extent permitted by law, and the rules and regulations

promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services and facilities of the System for nonpayment of the fees, rentals or other charges for the services and facilities of the System, and will not restore such services until all delinquent charges for the services and facilities of all parts of the System, plus reasonable penalties and charges for the restoration of service, have been fully paid.

Section 7.14. No Competing Franchise. To the extent allowable by law, the Town will not grant or cause, consent to or allow the granting of any franchise or permit to any person, firm, corporation or body, or agency or instrumentality, for the providing of any services which would compete with services provided by the System.

Section 7.15. Consulting Engineer. The Town will retain recognized, qualified independent Consulting Engineers on an annual basis to supervise generally the operation, maintenance and renewal of the System, and to report annually to the Town in writing their recommendations and comments as to the System. Such annual report of the Consulting Engineers, or a summary thereof, shall be made available at reasonable times to the Government and to any Bondholder requesting the same.

Section 7.16. Covenant to Amend Ordinance. The Town retains the right to make any amendments, insertions or deletions by Supplemental Resolution to this Ordinance as the Town deems desirable or necessary prior to the issuance of the Bonds, including but not limited to amendments, insertions and deletions to comply with the Code. Notwithstanding the provisions of Section 10.01 hereof, the Town shall, without consent of the owners of any Bonds, amend or supplement this Ordinance by a resolution supplemental hereto or any amendatory Ordinance to comply with the Code if such amendment or supplement is necessary to preserve the tax-exempt status of the Bonds. The Council of the Town hereby retains the specific authority to amend this Ordinance or supplement it by resolution to comply with the Code. In its determination to amend or supplement this Ordinance, the Town may rely upon the opinion of a nationally recognized bond counsel.

Section 7.17. Public Purpose Bonds. The Town shall use the Original Bond proceeds solely for the Project as otherwise set forth herein, and the Project will be operated solely for the public purpose and as a local governmental activity of the Town.

Section 7.18. Private Activity Bond Covenant. The Town shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Town to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of

the Code by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The Town will take all actions necessary to comply with the Code in order to assure the tax-exempt status of the Bonds.

Section 7.19. Filing Covenant. The Town will file all statements, instruments and returns necessary to assure the tax-exempt status of the Bonds, including, without limitation, the information return required under Section 149(e) of the Code.

Section 7.20. Federal Guarantee Covenant. The Bonds, in whole or in part, are not and will not be, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

Section 7.21. Rebate Covenant. The Town is a governmental unit with general taxing powers to finance operations of or facilities of the nature of the Project and the System. As covenanted pursuant to Sections 7.17 and 7.18, the Original Bonds are not private activity bonds within the meaning of the Code, and 95% or more of the net proceeds (as defined with respect to the Code) of the Original Bonds will be used for local governmental activities of the Town. The Town reasonably expects it and all subordinate entities to issue less than \$5,000,000 in aggregate face amount of tax-exempt bonds (other than private activity bonds) during the calendar year, being 1987, in which the Original Bonds are to be issued. Therefore, the Town believes that it is excepted from the rebate requirements of Section 148(f) of the Code. Notwithstanding the foregoing, if the Town is, in fact, subject to such rebate requirement, the Town hereby covenants to rebate to the United States the amount required by the Code and to take all steps necessary to make such rebates. In the event the Town fails to make such rebates as required, the Town shall pay any and all penalties and obtain a waiver from the Internal Revenue Service in order to maintain the tax-exempt status of the interest on the Bonds.

## ARTICLE VIII

### DEFAULTS AND REMEDIES

Section 8.01. Events of Default. Each of the following events is hereby declared an "Event of Default":

(A) Failure to make payment of the principal of any of the Bonds either at the date therein specified for its payment or on the date fixed for redemption by proceedings for redemption, or otherwise;

(B) Failure to make payment of any installment of interest due on any of the Bonds on the date specified for the payment of such interest;

(C) Failure duly and punctually to observe or perform any of the covenants, conditions and agreements on the part of the Town contained in the Bonds, or in this Ordinance, or violation of or failure to observe any provision of any pertinent law, provided, that a default under any other agreement the Town has with the Government constitutes a default hereunder, and provided that any such failure or violation, excluding those covered in (A) and (B) above in this section, must continue for a period of thirty (30) days after written notice shall have been given to the Town by any Bondholder specifying such failure or violation and requiring the same to be remedied.

(D) If the Town files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

Section 8.02. Enforcement. Upon the happening of any Event of Default specified above, then, and in every such case, if the Government is the Holder of any of the Bonds outstanding, the Government, at its option, may:

(A) Declare the entire principal amount of the Bonds held by it then outstanding, and any interest accrued thereon, immediately due and payable;

(B) For the account of the Town, incur and pay reasonable expenses for repair, maintenance and operation of the System and such other reasonable expenses as may be necessary to cure the cause of default; or

(C) Take possession of the System and repair, maintain and operate such facilities.

Section 8.03. Remedies and Appointment of Receiver. Any Bondholder may, by proper legal action, compel the perfor-

mance of the duties of the Town under this Ordinance and the Act, including 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. Upon the happening of an Event of Default, any Bondholder 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 on behalf of the Town, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the Bonds and the interest thereon, the deposits into the funds and accounts hereby established as herein provided, and the payment of Operating Expenses of the System, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Ordinance and the Act.

The receiver so appointed shall forthwith, directly or by his 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 Town exercise all the rights and powers of the Town with respect to said facilities.

Whenever all that is due upon the Bonds issued pursuant to this Ordinance, and interest thereon, and under any covenants of this Ordinance for reserve, sinking or other funds, and upon any other obligations having a charge, lien or encumbrance upon the revenues of the System, and interest thereon, shall have been paid and made good, and all defaults under the provisions of this Ordinance shall have been cured and made good, possession of the System shall be surrendered to the Town upon the entry of an order of the court to that effect. Upon any subsequent Event of Default, any Holder of Bonds issued pursuant to this Ordinance 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, 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 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 Town and for the joint protection and benefit of the Town and Holders of Bonds issued pursuant to this Ordinance. Such receiver shall have no power

to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System, for the sole purpose of the protection of both the Town and Bondholders, and the curing and making good of any default under the provisions of this Ordinance, and the title to and ownership of said System shall remain in the Town, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the System.

## ARTICLE IX

### INVESTMENTS; NON-ARBITRAGE

Section 9.01. Investments. Any moneys held as a part of the funds and accounts created by this Ordinance, other than the Revenue Fund, shall be invested and reinvested by the Commission or the Depository Bank, as the case may be, at the direction of the Town in any Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this section.

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

The following specific provisions shall apply with respect to any investments made under the section:

A. Qualified Investments acquired for the Reserve Account shall have maturities or be subject to redemption at the option of the holder within five (5) years from the date of acquisition provided that all investment earnings on moneys in the Reserve Account shall be transferred, not less than once a year, to the Revenue Fund and applied in full to the next ensuing principal payment due on the Bonds.

B. Qualified Investments acquired for the Depreciation Fund shall have maturities or be subject to redemption at the option of the holder within ten (10) years from the date of acquisition.

C. Qualified Investments may be purchased for the Reserve Account or the Depreciation Fund either in the open market or from the Construction Trust Fund. If so purchased from the Construction Trust Fund, such Qualified Investments shall be purchased at a price equal to their original purchase price plus accrued interest.

Section 9.02. Restrictions as to Arbitrage Bonds.  
The Town hereby covenants that it shall not permit at any time or times any of the proceeds of the Bonds, or any other funds of the Town to be used directly or indirectly to acquire any securities or obligations the acquisition of which would cause any Bond to be an "arbitrage bond" as defined in Section 148 of the Code, and the Mayor of the Town shall deliver his certificate, based upon this covenant, with regard thereto to the Original Bond Purchaser.

Section 9.03. Restriction of Yield on Bond Proceeds.  
The Town shall comply with the yield restrictions on bond proceeds as set forth in Section 148 of the Code.

## ARTICLE X

### MISCELLANEOUS

Section 10.01. Modification or Amendment. No material modification or amendment of this Ordinance or of any ordinance or resolution amendatory hereof or supplemental hereto shall be made without the consent in writing of the Holders of two-thirds or more in principal amount of the Bonds then outstanding; provided, however, that no change shall be made in the maturity of any Bond or Bonds, or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Town to pay such principal of and interest on the Bonds as the same shall become due out of the Gross Revenues. Notwithstanding the above, no amendment or modification shall be made which would reduce the percentage of the principal amount of Bonds required for consent to the above permitted amendments or modifications, or for consent of 75% of the Holders of each series of Bonds outstanding to waiver or modification of the limitation upon issuance of Additional Bonds contained in Section 7.08.

Section 10.02. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance.

Section 10.03. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 10.04. Award and Delivery of Original Bond No. R-1. The Mayor and the Recorder of the Town are hereby authorized and directed to cause Bond No. R-1, representing all the Original Bond issue, hereby awarded to the Government pursuant to agreement, to be delivered to the Government as soon as the Government will accept such delivery and pay, from time to time, for Bond No. R-1.

Section 10.05. Repeal of Conflicting Ordinances. All ordinances, resolutions and orders, or parts thereof, in conflict with this Ordinance are to the extent of such conflict repealed; provided, however, that any loan resolution, or part thereof, adopted by the Town on Form FmHA 442-47 shall not be repealed hereby.

Section 10.06. Covenant of Due Procedure. The Town 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 final enactment and passage of this

Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the Town Recorder and members of Council of the Town 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 10.07. Defeasance. If the Town shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of all Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Ordinance, then the respective pledges of Gross Revenues, and other moneys and securities pledged under this Ordinance, and all covenants, agreements and other obligations of the Town to the Bondholders shall thereupon cease, terminate and become void and be discharged and satisfied.

Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited irrevocably in trust with the Depository Bank at the same or earlier time, shall be sufficient, to pay as and when due the principal of and interest on such Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Bonds shall, prior to the maturity thereof be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited in trust with the Depository Bank either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited irrevocably in trust with the Depository Bank at the same time, shall be sufficient, to pay when due the principal of and interest due and to become due on said Bonds on and prior to the maturity dates or, if the Town irrevocably determines to redeem the Bonds prior to the maturity thereof, to the redemption date thereof. Neither securities nor moneys deposited irrevocably in trust with the Depository Bank pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and interest on said Bonds; provided, that any cash received from such principal or interest payments on such securities deposited irrevocably in trust with the Depository Bank if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal of and interest to become due on said Bonds on and prior to such maturity or redemption dates

thereof, as the case may be, and interest earned from such reinvestments shall be paid over to the Town, as received by said Depository Bank, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

Section 10.08. Effective Date. This Ordinance shall take effect after passage, public hearing and otherwise in accordance with the Act.

First Reading: 8-4-87

Second Reading  
and Passage: 8-18-87

Public Hearing and  
Effective Date: 9-1-87

TOWN OF EAST BANK, WEST VIRGINIA

By: Charles A. Blain<sup>5</sup>  
Mayor

ATTEST:

[SEAL]

James E. Byler  
Recorder

This Ordinance approved as to form:

John L. Smithell  
Town Solicitor

EXHIBIT A

PROJECT DESCRIPTION

The Project consists of the installation of approximately 690 feet of 10-inch PVC water pipe, 90 feet of 10-inch DIP water pipe, 720 feet of 8-inch PVC water pipe, 7,300 feet of 6-inch PVC water pipe, 134 feet of 6-inch DIP water pipe, along with various size gate valves, fire hydrants and connections to make improvements to the Town of East Bank's existing water distribution system and other improvements incidental thereto.

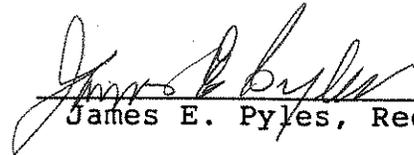
CERTIFICATE

I, the undersigned, Recorder of the Town of East Bank, Kanawha County, West Virginia, do hereby certify that the foregoing document is a true and accurate copy of the Bond and Line of Credit Ordinance duly adopted by the Council of the Town of East Bank at its regular meeting on August 18, 1987.

Dated this 18th day of August, 1987.

TOWN OF EAST BANK

By:

  
James E. Pyles, Recorder

(SEAL)



Council was led in prayer by Councilman Shawver.

The meeting was called to order by Mayor Blair at 7:02 P.M.

PRESENT : Mayor Blair  
Recorder Pyles  
Councilman Shawver, Taylor, Tyler, Roush  
Mrs. Leake, Mrs. Gee, Bond Counsel  
Representative from Montgomery Herald

Mrs. Gee presented copies of legal notice of Ordinance and Public Legality on new Water Project .

Mayor Blair opened meeting at 7:05 for Public Protest, Mrs. Leake reminded Mayor Blair that he forgot to post notice on board, Mayor Blair said that the notice was in the newspaper, Mrs. Leake said that she was totally against the Water Project.

Mrs. Leake talked against Item 5 concerning Bond acquisition of \$76,000.00 , Mrs. Gee reported that it was required by F.H.A. to ensure continuity line of credit.

Mayor Blair reported that Public Protest hearing closed at 7:19 P.M.

Mrs. Gee read ordinance, (copy attached to minutes) concerning Water Works improvement for Town of East Bank for third and final reading, Councilman Taylor moved to accept reading, Councilman Shawver second. Passed.

Mrs. Gee read resolution concerning ordinance which authorize sale of Bond, to better and improve Water Works system of Town of East Bank , also Affidavit of publication for two times in Newspaper once a week for two weeks, copy of resolution and Affidavit attached to minutes, Councilman Taylor moved and Councilman Tyler second the motion, motion Passed.

Mrs. Gee read Supplemental Resolution providing date, interest rate, sale price and line of Credit, Copy of Resolution attached to minutes. Councilman Tyler moved to accept Supplemental Resolution, Councilman Roush second. Passed.

Councilman Tyler read minutes of previous meeting, Councilman Taylor moved to accept minutes as read, Councilman Tyler second. Passed.

Council studied Gen Fund, Water Fund, E.B.F.D. , Rev Sharing, Expenditure sheets, Councilman Shawver moved to accept all fund payments, Councilman Taylor second. Passed.

Councilman Tyler moved to pay Mr. Taylor \$19.76 for supplies, Councilman Shawver second. Passed.

Mayor Blair reported that we need a easement from Mr. McCormick for site for Water pump.

Councilman Tyler moved to adjourn Councilman Shawver second. Adjourned at 8:00 P.M.

Charles A. Blair Mayor

James B. Pyles Recorder

A Resolution finding that the Council of the Town of East Bank, West Virginia adopted an Ordinance on August 18, 1987, which Ordinance authorized the issuance of a Town of East Bank Waterworks Revenue Bond in an aggregate principal amount not to exceed \$76,000 and the sale thereof to the United States Department of Agriculture, Farmers Home Administration to finance, along with other funds and moneys of or available to the Town of East Bank that may be lawfully expended for such purposes, the long-term cost of the acquisition and construction of certain extensions, additions, betterments and improvements to the waterworks system of the Town of East Bank, West Virginia; provided for the rights and remedies of and security for the owner of such Waterworks Revenue Bond; authorized an irrevocable line of credit in an amount not to exceed \$76,000 to provide funds for such acquisition and construction pending reimbursement from the United States Department of Agriculture, Farmers Home Administration and authorized an agreement with respect to said line of credit; and enacted other provisions related thereto, all as more fully set out therein; finding that the Council of the Town of East Bank adopted a resolution on August 18, 1987, directing that an abstract of said Ordinance, together with a notice that said Ordinance had been adopted, that the Town of East Bank contemplates the issuance of the Waterworks Revenue Bond and an irrevocable line of credit, all as described in said Ordinance, and that any person interested may appear before the Council of the Town of East Bank upon a certain date and present protests, be published; finding that said abstract and notice have been duly published; finding that the Council of the Town of East Bank met and heard all objections and suggestions regarding whether the Ordinance should be put into effect; and ordering that the Ordinance be put into effect and that the Waterworks Revenue Bond be issued and the irrevocable line of credit be entered into under the conditions provided therefor.

WHEREAS, the Council of the Town of East Bank, West Virginia (the "Council") on August 18, 1987, adopted an Ordinance (the "Ordinance"), which authorized the issuance of a Town of East Bank Waterworks Revenue Bond in an aggregate principal amount not to exceed \$76,000 and the sale thereof to the United States Department of Agriculture, Farmers Home Administration to finance, along with other funds and moneys of or available to the Town of East Bank (the "Town") that may be lawfully expended for such purposes, the long-term cost of the acquisition and construction of certain extensions, additions, betterments and improvements to the waterworks system of the Town; provided for the rights and remedies of and security for the owner of such Waterworks Revenue Bond; authorized an irrevocable line of credit in an amount not to exceed \$76,000 to provide funds for such acquisition and construction pending reimbursement from the United States Department of Agriculture, Farmers Home Administration and authorized an agreement with respect to said line of credit and enacted other provisions related thereto, all as more fully set out therein;



SUPPLEMENTAL RESOLUTION PROVIDING AS TO DATE, INTEREST RATE, SALE PRICE, AND OTHER TERMS OF THE WATERWORKS REVENUE BOND AND THE IRREVOCABLE LINE OF CREDIT OF THE TOWN OF EAST BANK; DESIGNATING REGISTRAR AND DEPOSITORY BANKS IN CONNECTION WITH SAID BOND; AND MAKING OTHER PROVISIONS AS TO THE BOND.

WHEREAS, the Council of the Town of East Bank, West Virginia (the "Town") has duly and officially passed an Ordinance on August 18, 1987, effective September 1, 1987 (the "Ordinance"), entitled:

An Ordinance authorizing the issuance of a Town of East Bank Waterworks Revenue Bond in aggregate principal amount of not to exceed \$76,000, and the sale thereof to the United States Department of Agriculture, Farmers Home Administration, to finance, along with other funds and moneys of, or available to, the Town of East Bank that may be lawfully expended for such purposes, the long-term cost of the acquisition and construction of certain extensions, additions, betterments and improvements to the waterworks system of the Town of East Bank, West Virginia; providing for the rights and remedies of and security for the owner of such Waterworks Revenue Bond; authorizing an irrevocable line of credit in an amount not to exceed \$76,000 to provide funds for such acquisition and construction pending reimbursement from the United States Department of Agriculture, Farmers Home Administration and authorizing an agreement with respect to said line of credit; and enacting other provisions related thereto.

WHEREAS, the Ordinance provides for the issuance of the Waterworks Revenue Bond of the Town of East Bank (the "Town") in aggregate principal amount not to exceed \$76,000, and the authorization for an irrevocable line of credit in an amount not to exceed \$76,000, all in accordance with Chapter 8,

Article 19, of the Code of West Virginia, 1931, as amended, (the "Act"), and in the Ordinance it is provided that the date, interest rate, sale price and other terms of the Bond and the terms of the irrevocable line of credit should be established by a supplemental resolution and that other matters relating to the Bond and the irrevocable line of credit be herein provided for;

WHEREAS, the United States Department of Agriculture, Farmers Home Administration ("FmHA") proposes to purchase the Bond;

WHEREAS, The Merchants National Bank proposes to extend the irrevocable line of credit; and

WHEREAS, the Council of the Town of East Bank (the "Council") deems it essential and desirable that this resolution (the "Supplemental Resolution"), be adopted and that the date, interest rate and sale price of the Bond be fixed hereby in the manner stated herein; that the terms of the irrevocable line of credit be fixed hereby in the manner stated herein; and that other matters relating to the Bond and the irrevocable line of credit be herein provided for.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE TOWN OF EAST BANK, WEST VIRGINIA AS FOLLOWS:

Section 1. Pursuant to the Ordinance and the Act, this Supplemental Resolution is adopted and there is hereby authorized and ordered to be issued the Waterworks Revenue Bond, Series 1987 (the "Bond"), in the aggregate principal

amount of \$76,000. The Bond shall be originally issued in the form of a single Bond, numbered R-1, shall be dated the date of delivery thereof, shall mature forty (40) years from the date thereof, shall bear interest at the rate of five per centum (5%) per annum on the principal amount advanced under the Bond, payable monthly commencing on the first day of the month following delivery of the Bond for the first 24 months after the date of delivery and thereafter shall be payable in monthly installments of \$374, covering principal and interest on the corresponding day of each month. The Bond is subject to prior redemption in whole or in part, at any time at the option of the Town.

Section 2. All other provisions relating to the Bond shall be as provided in the Ordinance, and the Bond shall be in substantially the form provided in the Ordinance with such changes, insertions and omissions as may be approved by the Mayor of the Town. The execution of the Bond by the Mayor shall be conclusive evidence of such approval.

Section 3. The Town hereby approves and accepts the offer of the Farmers Home Administration to purchase the Bond. The execution and delivery by the Mayor and Recorder of the Bond, and the performance of the obligations contained therein, on behalf of the Town, are hereby authorized, approved and directed. The price of the Bond shall be Seventy-six Thousand Dollars (\$76,000) (100% of par value), said purchase price to be advanced to the Town as needed to pay Project costs.

Section 4. The Town hereby appoints and designates The First National Bank of Belle, Belle, West Virginia, as the Depository Bank for the Revenue Fund and the Depreciation Account, as provided in the Ordinance.

Section 5. The Town hereby appoints and designates The Merchants National Bank, Montgomery, West Virginia, as the Depository Bank for the Construction Trust Fund, as provided in the Ordinance.

Section 6. The Town hereby appoints and designates The First National Bank of Belle, Belle, West Virginia, as Registrar for the Bond as provided in the Ordinance.

Section 7. The Town hereby authorizes and directs the Mayor and Recorder to enter into an irrevocable line of credit agreement with The Merchants National Bank, Montgomery, West Virginia, for an amount not to exceed \$76,000, for a term of not more than six months at a rate per annum of eight per centum (8%) and to take any and all action necessary to execute the irrevocable line of credit agreement and the note supporting said agreement and insure that funds are available to make payments pending FmHA reimbursement of Bond proceeds.

Section 8. The Mayor and Recorder are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bond, and by the Ordinance approved and provided for, and by the Farmers Home Administration financing to the end that the Bond may be delivered on or about September 9, 1987, to the Farmers Home Administration.

Section 9. The Town hereby directs the Depository Bank to initially invest all moneys in the funds and accounts established under the Ordinance in the West Virginia "Consolidated Fund" and to take such action as may be necessary to cause such moneys to be and remain invested in the Consolidated Fund until directed otherwise by the Town.

Section 10. The Town has general taxing powers to finance operations of or facilities of the nature of the System; 95% or more of the net proceeds of the Bond are to be used for local governmental activities of the Town; and the aggregate face amount of all tax-exempt bonds (other than "private activity bonds") issued by the Town and all subordinate entities thereof during the calendar year 1987 (being the calendar year in which the Bond is being issued), excluding any tax-exempt bond which is not outstanding at the time of a later issue or which is paid or redeemed with the net proceeds of a later issue, is not reasonably expected to exceed \$5,000,000.

Section 11. The Town and all subordinate entities do not reasonably expect to issue more than \$10,000,000 of tax-exempt obligations during the calendar year 1987 and hereby designate the notes issued pursuant to the irrevocable line of credit agreement as "qualified tax-exempt obligations" as defined in Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as it may hereafter be amended.

Section 12. The financing of the Project in part with proceeds of the Bond is in the public interest, serves a public

purpose of the Town and will promote the health, welfare and safety of the residents of the Town.

Section 13. This Supplemental Resolution shall be effective immediately upon adoption.

TOWN OF EAST BANK

Charles A. Blain\*  
Mayor

James B. Tyler  
Recorder

[SEAL]



TOWN OF EAST BANK, WEST VIRGINIA

\$76,000 Town of East Bank  
Waterworks Revenue Bond,  
Series 1987

GENERAL CERTIFICATE

CERTIFICATE OF:

1. AWARD OF BOND
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES
6. PUBLIC SERVICE COMMISSION ORDER
7. RATES
8. INCUMBENCY AND OFFICIAL NAME
9. LAND AND RIGHTS-OF-WAY
10. MEETINGS
11. INSURANCE
12. CUSTOMER CERTIFICATION
13. GRANT/PROJECT FINANCING
14. MANAGEMENT
15. DELIVERY, PAYMENT AND TERMS OF BOND

We, the undersigned MAYOR and the undersigned RECORDER of the Town of East Bank, State of West Virginia (herein called the "Town"), and the undersigned ATTORNEY for the Town, hereby certify in connection with the single, fully registered Town of East Bank Waterworks Revenue Bond, Series 1987, numbered R-1, dated the date hereof, in the principal amount of \$76,000 and bearing interest at the rate of five per centum (5%) per annum (herein called the "Bond"), as follows:

1. AWARD OF BOND: The entire issue of the Bond has been duly awarded to the United States Department of Agriculture, Farmers Home Administration, pursuant to a letter of commitment from said Administration and a Letter of Intent to Meet Conditions, dated July 28, 1987 executed by the Town.

2. NO LITIGATION: No controversy or litigation of any nature is now pending, or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting the issuance and delivery of the Bond; nor questioning the proceedings and authority by which the Council of the Town authorized the issuance and sale of the Bond; nor affecting the

validity of the Bond or the collection and pledge of the gross revenues or any provisions made or authorized for the payment thereof; nor questioning the existence of the Town or the title of the members or officers of the Town or of the Council thereof to their respective offices; nor questioning the construction and acquisition of the extensions, additions, betterments and improvements to the existing waterworks system of the Town financed in part by the proceeds of sale of the Bond (herein called the "Project"), nor operation by the Town of such waterworks system as expanded by the Project (such waterworks system as so expanded, and any further extensions, additions, improvements or betterments thereto, herein collectively called the "System"). On September 4, 1987, the Circuit Court of Kanawha County entered an Order of Dismissal with respect to The Board of Education of the County of Kanawha v. Town of East Bank (CA-80-1546) and Board of Education of the County of Kanawha v. Town of East Bank Sanitary Board (CA-80-2356).

3. GOVERNMENTAL APPROVALS: All applicable approvals and certificates required by law for construction of the Project and operation of the System have been duly and timely obtained and remain in full force and effect.

4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the Town or the System since the approval by said Farmers Home Administration of a loan to assist in acquisition and construction of the Project. Further, there has been no adverse change in the status of any grant necessary to finance the acquisition and construction of the Project. The Circuit Court of Kanawha County entered on September 4, 1987, an Order of Dismissal with respect to The Board of Education of the County of Kanawha v. Town of East Bank (CA-80-1546) and Board of Education of the County of Kanawha v. Town of East Bank Sanitary Board (CA-80-2356) as required by Paragraph 2 of the Farmers Home Administration Letter of Conditions.

The Town does not have, authorized or outstanding, any indebtedness having priority over or being on a parity with the Bond as to lien or source of or security for payment. The Town's Water Revenue Bond dated March 1, 1952 (the "Prior Bond") originally issued in the aggregate principal amount of \$58,000 were fully paid on March 1, 1986. As a result of the payment, the holders of the Prior Bond have no lien on the gross revenues of the System.

5. SIGNATURES: The undersigned Mayor and Recorder are the duly elected, qualified and serving officers of the Town as indicated by the official titles opposite their signatures below, and were duly authorized to execute and seal the Bond for the Town. The seal impressed upon the Bond and this certificate is the duly authorized, proper and only seal of the Town.

6. PUBLIC SERVICE COMMISSION ORDER: The undersigned Attorney hereby certifies that he has filed any information with the Public Service Commission of West Virginia (the "Public Service Commission") and taken any other actions required to maintain the Public Service Commission order, dated the 24th day of June, 1987, and modified by order dated July 30, 1987, in full force and effect. The appeal period from said orders has expired without successful appeal.

7. RATES: The rates enacted by ordinance on September 30, 1986, will become effective upon completion of the Project, and the Town has complied with all requirements of the Public Service Commission and State law to make the rates valid and effective.

8. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Town is "Town of East Bank," and it is a municipal corporation of the State of West Virginia in Kanawha County of said State. The governing body of the Town is its Council, consisting of five members and a Mayor and a Recorder, whose names and dates of commencement and termination of terms of office for all members during these Bond proceedings are as follows:

<u>Name</u>		<u>Date of Commencement of Office</u>	<u>Date of Termination of Office</u>
Mayor	Charles A. Blair II	7/1/87	6/30/89
Recorder	James E. Pyles	7/1/87	6/30/89
Council Member	Donald F. Taylor II	7/21/87	6/30/89
Council Member	Lucille Roush	7/1/87	6/30/89
Council Member	Caroline Cummings	7/1/87	6/30/89
Council Member	Clarence Shawver	7/1/87	6/30/89
Council Member	Leslie R. Tyler	7/1/87	6/30/89

John Mitchell is the duly appointed and acting attorney for the Town.

9. LAND AND RIGHTS-OF-WAY: All land in fee simple and all rights-of-way and easements necessary for the construction of the Project and the operation and maintenance of the System have been acquired or can and will be acquired by purchase or, if necessary, by condemnation by the Town and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions that

would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties that may have to be acquired by condemnation are, in the opinion of all the undersigned, within the ability of the Town to pay for the same without jeopardizing the security of or payments on the Bond.

10. MEETINGS: All actions, ordinances, resolutions, orders and agreements taken, adopted and entered into by or on behalf of the Town in any way connected with the construction, acquisition, operation and financing of the Project were authorized or adopted at meetings of the Council duly and regularly called and held pursuant to all applicable statutes and the rules of procedure of Council, and a quorum of duly appointed, qualified and acting members of the Council was present and acting at all times during all such meetings.

11. INSURANCE: The Town has maintained and will, or, as appropriate, has required and will require all contractors to, maintain Worker's Compensation, public liability and property damage insurance, and builder's risk insurance where applicable in accordance with the letters of conditions and commitment of Farmers Home Administration and the ordinance passed by the Council of the Town on the 18th day of August, 1987, authorizing the issuance of the Bond (herein called the "Bond Ordinance").

12. CUSTOMER CERTIFICATION: It is hereby certified that as of this date there are not less than 440 bona fide users of the System.

13. GRANTS AND PROJECT FINANCING: As of the date hereof, the Appalachian Regional Commission ("ARC") has committed to the Town the approximate sum of \$155,000. Said commitment is as of this date still in force and effect. As of the date hereof, the Town has deposited \$34,159, its local contribution, in the Construction Trust Fund at The Merchants National Bank, Montgomery, West Virginia.

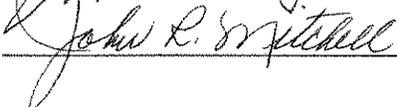
14. MANAGEMENT: The Town has heretofore delivered to said Farmers Home Administration, as the original purchaser of the Bond, a plan concerning operation and management of the System, which plan was found to be acceptable by such original purchaser.

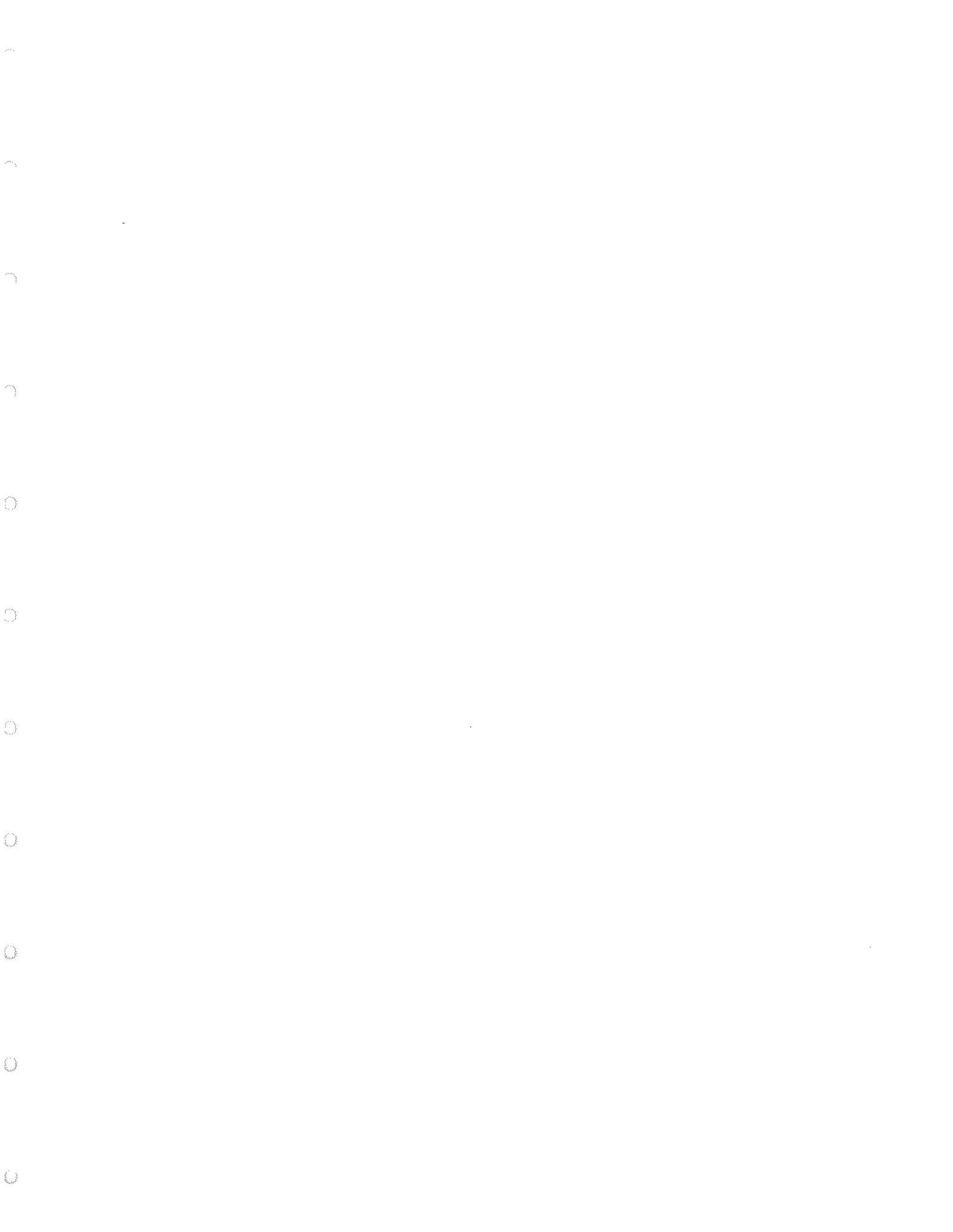
15. DELIVERY, PAYMENT AND TERMS OF BOND: On the date hereof, Bond Number R-1 was delivered to said Farmers Home Administration in Charleston, West Virginia, by the undersigned Mayor. At the time of such delivery, Bond Number R-1 had been duly and fully executed and sealed on behalf of the Town in accordance with the Bond Ordinance.

Bond Number R-1 is dated on the date hereof, and interest thereon at the rate of five per centum (5%) per annum upon only the amounts advanced under the Bond is payable from such date. The Bond shall be subject to prepayment of scheduled installments, or any portion thereof, at the option of the Town, and shall be payable as to both principal and interest as provided in the Bond.

WITNESS our signatures and the official corporate seal of the Town of East Bank on this 9th day of September, 1987.

[CORPORATE SEAL]

<u>Signature</u>	<u>Official Title</u>
 _____	Mayor
 _____	Recorder
 _____	Attorney



TOWN OF EAST BANK, WEST VIRGINIA

\$76,00 Town of East Bank  
Waterworks Revenue Bond,  
Series 1987

CERTIFICATE OF RECORDER AS TO TRUTH  
AND ACCURACY OF DOCUMENTS DELIVERED

I, the undersigned James E. Pyles, Recorder of the Town of East Bank, West Virginia, hereby certify that the copies of the following documents being delivered in connection with the closing of the sale of \$76,000 in principal amount of the Town of East Bank Waterworks Revenue Bond, Series 1987 (the "Bond") are, as of the date hereof, true and accurate copies of the originals of those documents maintained on file with the Town of East Bank, that said documents have been duly adopted, enacted or entered by the Council of said Town, 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, supersedure, amendment or modification is also listed below:

1. Charter of the Town of East Bank, West Virginia
2. Oaths of Office, dated June 29, 1987, of the following officials: Charles A. Blair II, Mayor; James E. Pyles, Recorder; Lucille Roush, Caroline Cummings, Clarence Shawver and Leslie R. Tyler, Council Members; an Oath of Office, dated July 21, 1987 of Donald F. Taylor II.
3. Letter of Intent to Meet Conditions, dated July 28, 1987.
4. Minutes of the September 2, 1986, meeting of the Council of the Town of East Bank, wherein the rate ordinance was introduced.
5. Minutes of the September 30, 1986, meeting of the Council of the Town of East Bank, wherein the rate ordinance was passed.
6. Minutes of the August 4, 1987, meeting of the Council of the Town of East Bank, wherein the bond and line of credit ordinance (the "Bond Ordinance") was introduced.
7. Minutes of the August 18, 1987, meeting of the Council of the Town of East Bank, wherein the Bond Ordinance

and a resolution authorizing publication of an abstract of the Bond Ordinance were adopted.

8. The resolution authorizing publication of an abstract of the Bond Ordinance.

9. The Bond Ordinance.

10. Minutes of the September 1, 1987, meeting of the Council of the Town of East Bank, wherein a public hearing was held on the Bond Ordinance, wherein the resolution putting the bond ordinance into effect was adopted and wherein the resolution awarding the bond was adopted.

11. The resolution putting the Bond Ordinance into effect.

12. Resolution Awarding the Town of East Bank Waterworks Revenue Bond, Series 1987 in the Principal Amount of \$76,000 (the "Supplemental Resolution").

WITNESS my signature and the official seal of the Town of East Bank, West Virginia, as of the 9th day of September, 1987.

  
\_\_\_\_\_  
Recorder, Town of East Bank

(SEAL)



TOWN OF EAST BANK, WEST VIRGINIA

\$76,000 Town of East Bank  
Waterworks Revenue Bond,  
Series 1987

ACCOUNTANT'S CERTIFICATE

The undersigned, on behalf of Cochran & Associates, hereby certifies the following:

(a) The accounts and records of the Town of East Bank, West Virginia have been established and are operational in accordance with the Letter of Conditions dated May 14, 1985 issued by the United State Department of Agriculture, Farmers Home Administration.

(b) Based on the rates and charges as set forth in the Rate Ordinance enacted September 30, 1986, and approved in the Order of the Public Service Commission of West Virginia (Case No. 86-585-W-CN) entered June 27, 1987, and projected operation and maintenance expenses and anticipated customer usage as furnished to us by Appalachian Engineers, Inc., Consulting Engineers, it is our opinion that such rates and charges will be sufficient to provide for all reasonable operating expenses, Depreciation Fund deposits and to leave a balance each year equal to at least 110% of the average annual debt service on the Waterworks Revenue Bond, Series 1987.

WITNESS my signature on the 9th day of September, 1987.

By:

  
COCHRAN & ASSOCIATES



TOWN OF EAST BANK, WEST VIRGINIA

\$76,000 Town of East Bank  
Waterworks Revenue Bond, Series 1987

ENGINEER'S CERTIFICATE

I, John R. Hart, Registered Professional Engineer, West Virginia License No. 7069, of Appalachian Engineers, Inc., Consulting Engineers, Dunbar, West Virginia, hereby certify that my firm is engineer for the construction and acquisition of the extensions, additions, betterments and improvements to the water distribution system (herein called the "Project") of the Town of East Bank (the "Town") to be constructed chiefly within the boundaries of the Town, which construction and acquisition are being financed in part by the above-captioned bonds of the Town of East Bank.

The Project is estimated to cost \$265,159 and is being funded by an Appalachian Regional Commission Grant in the amount of \$155,000, (the "ARC Grant"), a Town contribution of \$34,159 and a \$76,000 Loan from the United States Department of Agriculture, Farmers Home Administration (the "FmHA Loan").

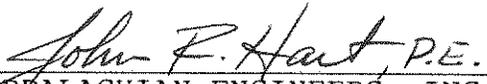
I further certify that all requirements of the FmHA Letter of Conditions, as amended, have been reviewed and that the Town has complied or will be in compliance with all requirements thereof consistent with the Project's funding schedule.

I further certify that we have examined and reviewed all plans, specifications, bid documents and construction contracts relating to the Project, and that all contractors have made the 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 and completeness.

I further certify that the construction and funding for the Project should proceed to a successful conclusion within the time schedules proposed and the construction period is estimated at 150 days. To the best of my knowledge (i) the Project will be constructed in accordance with plans and specifications prepared by my firm and is situate wholly or chiefly within the boundaries of the Town; (ii) the Project is adequate for the purpose for which it was designed and all necessary governmental approvals and permits for the construction thereof have been obtained; (iii) I have examined and reviewed all plans, specifications, bid documents and construction contracts relating to the Project and have ascertained that all contractors have made required provisions

for all insurance, and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy and completeness; (iv) the construction and funding for the Project should proceed to a successful conclusion within the time schedules proposed; and (v) adequate funding is available to complete the Project in accordance with the plans and specifications.

WITNESS my signature on this 9TH day of September, 1987.

  
\_\_\_\_\_  
APPALACHIAN ENGINEERS, INC.



TOWN OF EAST BANK, WEST VIRGINIA

\$76,000 Town of East Bank  
Waterworks Revenue Bond,  
Series 1987

ACCEPTANCE OF DUTIES OF DEPOSITORY BANK  
FOR REVENUE FUND AND DEPRECIATION ACCOUNT

The National Bank of Commerce of Belle, a national banking association with its principal office in Belle, West Virginia, hereby accepts appointment as Depository Bank in connection with Article IV of a Bond and Line of Credit Ordinance of the Town of East Bank passed August 18, 1987, and the Supplemental Resolution adopted September 1, 1987 (collectively, the "Ordinance") authorizing issuance of the Town of East Bank Waterworks Revenue Bond, Series 1987, dated September 9, 1987, in the aggregate principal amount of \$76,000 (the "Bond") and agrees to perform all duties of Depository Bank in connection with the Revenue Fund and the Depreciation Account, all as set forth in said Ordinance.

Witness my signature as of the 9th day of September, 1987.

THE NATIONAL BANK OF COMMERCE OF BELLE

By Gregory D. Mass  
Vice President

TOWN OF EAST BANK, WEST VIRGINIA

\$76,000 Town of East Bank  
Waterworks Revenue Bond, Series 1987

ACCEPTANCE OF DUTIES OF DEPOSITORY BANK  
FOR CONSTRUCTION TRUST FUND

The Merchants National Bank, a national banking association with its principal office in Montgomery, West Virginia, hereby accepts appointment as Depository Bank in connection with Article V of a bond and line of credit ordinance of the Town of East Bank passed August 18, 1987 and the supplemental resolution adopted September 1, 1987 (collectively, the "Ordinance") authorizing issuance of the Town of East Bank Waterworks Revenue Bond, Series 1987, dated September 9, 1987 in an aggregate principal amount of \$76,000 (the "Bond") and agrees to perform all duties of Depository Bank in connection with the Construction Trust Fund, all as set forth in said Ordinance.

WITNESS my signature as of this 9th day of September, 1987.

THE MERCHANTS NATIONAL BANK

By L S Mullens  
Vice President

TOWN OF EAST BANK, WEST VIRGINIA

\$76,000 Town of East Bank  
Waterworks Revenue Bond,  
Series 1987

ACCEPTANCE OF DUTIES OF REGISTRAR

The National Bank of Commerce of Belle, (formerly The National Bank of Belle), a national banking association with its principal office in Belle, West Virginia, hereby accepts appointment as Registrar in connection with an Ordinance of the Town of East Bank passed August 18, 1987, and the Supplemental Resolution adopted September 1, 1987 (collectively, the "Ordinance") authorizing issuance of the Town of East Bank Waterworks Revenue Bond, Series 1987, dated September 9, 1987, in the aggregate principal amount of \$76,000 (the "Bond") and agrees to perform all duties of Registrar in connection with such Bond, all as set forth in said Ordinance.

Witness my signature as of the 9th day of September, 1987.

THE NATIONAL BANK OF COMMERCE  
OF BELLE

By: Gregory D. Mass  
Vice President



TOWN OF EAST BANK, WEST VIRGINIA

\$76,000 Town of East Bank  
Waterworks Revenue Bond,  
Series 1987

NON-ARBITRAGE CERTIFICATE

I, Charles A. Blair II, Mayor of the Town of East Bank, West Virginia (herein called the "Town"), hereby certify and reasonably expect with respect to the issuance of the \$76,000 Town of East Bank Waterworks Revenue Bond, Series 1987 dated the date hereof (herein called the "Bond"), as follows:

1. The original proceeds of the Bond, being \$76,000, will be used as follows: (1) \$75,000 for the permanent financing of the cost of the acquisition and construction of extensions, additions, betterments and improvements to the Town's existing waterworks system (the "Project"); and (2) \$1,000 for expenses incurred in connection with the issuance of the Bond.

2. The Town will secure the payment of its Bond by creating over a period of approximately ten years a reserve fund that shall equal the maximum amount of principal and interest becoming due on the Bond in any year (herein called the "Reserve Account").

3. Except for the aforesaid Reserve Account and the Sinking Fund established pursuant to the Bond Ordinance, the Town has not created or established, nor does it expect to create or establish, any other sinking fund or similar fund. The Town has created a Depreciation Account under the Bond Ordinance, the funds in which may be used in emergency situations to pay debt service. The Depreciation Account funds are expected to be used for replacement, emergency repairs, additions, betterments and improvements to the system and the Town has no assurance that these funds will be available if needed for debt service.

The Town will make monthly payments of interest for the first two years following issuance of the Bond and monthly payments of principal and interest thereafter. The deposits to the Sinking Fund constitute actual payments of principal and interest. Therefore, the Town does not expect any funds to be held in the Sinking Fund.

4. The Town will as of the date hereof enter binding obligations for construction of the Project and work on the Project will proceed with due diligence to completion. The construction period for the Project is approximately 150 days. All of the proceeds of the Bond will be expended within three years of the date of issuance.

5. Any money deposited in the Sinking Fund, other than in the Reserve Account therein, will be spent within a thirteen month period beginning on the date of receipt, and any money received from the investment of the amounts held in the Sinking Fund, other than in the Reserve Account therein, will be spent with a one-year period beginning on the date of receipt. Since the deposits to the Sinking Fund constitute actual payment to the owner of the Bond, all funds in the Sinking Fund will be spent within thirty (30) days of receipt.

6. The Project will not be sold or otherwise disposed of in whole or in part before the maturity of the Bond.

7. The Town will be advanced funds as needed under the Bond. The sum of \$5,000 will be advanced on the date of issuance of the Bond. The remaining \$71,000 will be deposited, as advanced, in the Construction Trust Fund and used for permanent payment of the cost of acquisition and construction of the Project. Pending such use, the moneys, if any, in the Construction Trust Fund will be invested without restriction as to yield.

8. The Town has not been notified by the Internal Revenue Service of any listing or proposed listing of it as an issuer, the certification of which may not be relied upon by the holder of obligations of the Town or that there is any disqualification of the Town by the Internal Revenue Service because a certification made by the Town contains a material misrepresentation.

9. The Town has covenanted in the Bond Ordinance to make no use of the proceeds of the Bond which would cause the Bond to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as hereafter amended, and the regulations promulgated thereunder (the "Code").

10. The Bond was sold on September 9, 1987, to the United States Department of Agriculture, Farmers Home Administration. The Farmers Home Administration will advance the \$76,000 to the Town as needed and the amount outstanding under the Bond will be only the amount advanced. No accrued interest is payable on the Bond.

11. The Town has general taxing powers to finance operations of or facilities of the nature of the system, and the Town and all subordinate entities reasonably expect to issue less than \$5,000,000 of tax-exempt bonds during the calendar year 1987, being the calendar year in which the Bond is being issued. The Town has issued no other tax-exempt bonds during the calendar year except for the notes evidencing indebtedness up to \$76,000 under a line of credit agreement to temporarily finance the cost of acquisition and construction of the Project pending receipt of the Bond proceeds.

12. The original proceeds of the Bond will not exceed the amount necessary for the purposes of the issue by more than 5%.

This certification has been delivered pursuant to Section 148 of the Code as part of the record of proceedings and accompanying certificates with respect to the Bond. I am one of the officers of the Town charged by the Town in the Bond Ordinance with responsibility for issuance of the Bond, and, as such, I am an official referred to in Section 148 whose certification may be relied upon as the certification of the Town.

IN WITNESS WHEREOF, I have hereunto set my hand as of this 9th day of September, 1987.

  
\_\_\_\_\_  
Mayor, Town of East Bank



**JACKSON, KELLY, HOLT & O'FARRELL**

(IN KENTUCKY: JACKSON, KELLY, WILLIAMS & PALMORE)

**ATTORNEYS AT LAW**

1600 LAIDLEY TOWER

P. O. BOX 553

**CHARLESTON, WEST VIRGINIA 25322**

TELEPHONE 304-340-1000

TELECOPIER 304-340-1130

WRITER'S DIRECT DIAL NO.

**MORGANTOWN OFFICE**  
618 MONONGAHELA BUILDING  
MORGANTOWN, WEST VIRGINIA 26505  
TELEPHONE 304-292-7311

**LOUISVILLE OFFICE**  
600 MEIDINGER TOWER  
LOUISVILLE, KENTUCKY 40202  
TELEPHONE 502-589-6800

**LEXINGTON OFFICE**  
175 EAST MAIN STREET  
LEXINGTON, KENTUCKY 40507  
TELEPHONE 606-255-9500

**FRANKFORT OFFICE**  
202 WEST MAIN STREET  
FRANKFORT, KENTUCKY 40601  
TELEPHONE 502-227-4000

September 9, 1987

United States Department  
of Agriculture  
Farmers Home Administration  
Morris Street  
Charleston, West Virginia 25301

Town Council  
Town of East Bank  
East Bank, West Virginia 25067

Re: \$76,000 Town of East Bank  
Waterworks Revenue Bond,  
Series 1987

Ladies and Gentlemen:

We have examined a record of proceedings relating to the issue of the Waterworks Revenue Bond of the Town of East Bank, West Virginia (the "Town"), dated the 9th day of September, 1987, numbered R-1, in the principal amount of \$76,000, and bearing interest from the date of delivery at the rate of five per centum (5%) per annum (the "Bond").

The Bond is issued pursuant to Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended (the "Act"), and has been authorized by an ordinance duly passed by the Council of the Town on the 18th day of August, 1987, and supplemented on the 1st day of September, 1987 (the "Bond Ordinance").

Interest only on the Bond is payable in monthly installments for the first two years commencing on the first day of the month after the date of the Bond, and thereafter monthly installments of interest and principal are payable in the aggregate sum of \$374.00 for each installment, the final payment forty years after the date of the Bond to be in the sum of the unpaid principal and interest thereon to the date of such payment. Principal installments upon the Bond are subject to payment in advance, as provided therein and in the Bond Ordinance. The Bond is issued in single, fully registered form and is numbered R-1.

JACKSON, KELLY, HOLT & O'FARRELL

Town Council  
September 9, 1987  
Page 4

We have examined executed and authenticated Bond No. R-1, and, in our opinion, the form of said Bond and its execution and authentication are regular and proper.

Very truly yours,

*Jackson, Kelly, Holt & O'Farrell*



**JACKSON, KELLY, HOLT & O'FARRELL**

(IN KENTUCKY, JACKSON, KELLY, WILLIAMS & PALMORE)

**ATTORNEYS AT LAW**

1600 LAIDLEY TOWER

P. O. BOX 553

**CHARLESTON, WEST VIRGINIA 25322**

TELEPHONE 304-340-1000

TELECOPIER 304-340-1130

WRITER'S DIRECT DIAL NO.

**MORGANTOWN OFFICE**  
618 MONONGAHELA BUILDING  
MORGANTOWN, WEST VIRGINIA 26505  
TELEPHONE 304-292-7311

**LOUISVILLE OFFICE**  
600 MEIDINGER TOWER  
LOUISVILLE, KENTUCKY 40202  
TELEPHONE 502-588-6600

**LEXINGTON OFFICE**  
175 EAST MAIN STREET  
LEXINGTON, KENTUCKY 40507  
TELEPHONE 606-255-9500

**FRANKFORT OFFICE**  
202 WEST MAIN STREET  
FRANKFORT, KENTUCKY 40601  
TELEPHONE 502-227-4000

September 9, 1987

Town Council  
Town of East Bank  
East Bank, West Virginia 25067

Re: \$76,000 Town of East Bank Waterworks  
Revenue Bond, Series 1987

Ladies and Gentlemen:

We have examined a record of proceedings relating to the issuance of the Town of East Bank Waterworks Revenue Bond, Series 1987 (the "Bond"), in the principal amount of \$76,000, of the Town of East Bank, West Virginia (the "Town"), a municipal corporation organized and existing under the laws of the State of West Virginia and a Non-Arbitrage Certificate executed by Charles A. Blair, II, Mayor of the Town on this date. In the Non-Arbitrage Certificate, the Town represented that the (i) the Town has general taxing power to finance operations of or facilities of the nature of the Project; (ii) the Town and all subordinate entities reasonably expect to issue less than \$5,000,000 in tax exempt bonds during the calendar year 1987, being the calendar year in which the Bond was issued; and (iii) the Town has issued no other tax exempt bonds during the calendar year except for the note evidencing indebtedness up to \$76,000 under a line of credit agreement to temporarily finance the cost of acquisition and construction of the Project pending receipt of the Bond proceeds.

Based upon such Non-Arbitrage Certificates, we are of the opinion that the facts, estimates and circumstances set forth in the Non-Arbitrage Certificate are sufficient to satisfy the requirements of Section 148 of the Internal Revenue Code of 1986 (the "Code") and to support the conclusion that the bonds are not "arbitrage bonds" as defined therein. No matters have come to our attention which make unreasonable or incorrect such statements, expectations or representations.

JACKSON, KELLY, HOLT & O'FARRELL

Town Council  
September 9, 1987  
Page 2

Accordingly, it is our opinion that, under existing statutes, regulations and court decisions, the Bond is not an "arbitrage bond" as so defined. It is our further opinion, based upon such Non-Arbitrage Certificate that the proceeds of the Bond are not subject to the arbitrage rebate requirement as set forth in Section 148(f) of the Code. We express no opinion herein as to the taxability of the interest on the Bond in the event of the failure to comply with the other requirements and restrictions of Section 148 of the Code, and any regulations promulgated thereunder.

Very truly yours,

*Jackson, Kelly, Holt & O'Farrell*



LAW OFFICES  
JOHN R. MITCHELL

JOHN R. MITCHELL

September 9, 1987

605 VIRGINIA STREET EAST  
P. O. BOX 353  
CHARLESTON, WEST VIRGINIA 25322  
TELEPHONE (304)  
346-0307

United States Department of Agriculture,  
Farmers Home Administration  
603 Morris Street  
Charleston, West Virginia 25301

Jackson, Kelly, Holt & O Farrell  
P. O. Box 553  
Charleston, West Virginia 25322

COPY

RE: **Town of East Bank, West Virginia  
\$76,000.00 Waterworks Revenue Bond  
Series 1987**

Ladies & Gentlemen:

I am Counsel to the Town of East Bank, West Virginia (the "Issuer"). As such counsel, I have examined copies of the approving opinions of Jackson, Kelly, Holt & O Farrell, as bond counsel, relating to the above-captioned bonds, and accepted by the Issuer, dated September 9, 1987, a Bond and Line of Credit Ordinance enacted by the Issuer on August 18, 1987, as supplemented by a Supplemental Resolution adopted September 1, 1987 (collectively, the "Ordinance") and other documents relating to the above-captioned Bonds of the Issuer. Terms used in said opinions and Ordinance and not otherwise defined herein have the same meanings herein.

I am of the opinion that:

1. The Mayor, Recorder and members of the Council were duly and properly elected or appointed and are thereby authorized to act on behalf of the Issuer.
2. The Ordinance has been duly enacted by the Issuer and is in full force and effect.
3. The Issuer has received a Certificate of Convenience and Necessity from the Public Service Commission of West Virginia and said certificate is in full force and effect and the time for appeal therefrom has expired without successful appeal.
4. The Issuer has enacted a Rate Ordinance dated September 30, 1986, whereby the rates charged to the users of the City's water system were increased so as to meet the debt

service on the Bonds as well as the operation and maintenance costs. Under the terms of the Act, the Town has full authority to establish rates and to pledge the gross revenues from said rates to the payment of the Bonds.

5. The Issuer has received all the necessary permits, licenses, approvals and authorizations that are presently obtainable to construct the Project.

6. In order to construct this Project, all right of ways have been obtained except two (2) and right of entry has been obtained as a result of filing a condemnation suit in the Circuit Court of Kanawha County, West Virginia. (A certified copy of the Court order granting right of entry is attached hereto.)

7. The Town of East Bank has previously been sued by the Board of Education of the County of Kanawha, however, this matter has been settled and certified true copies of the dismissal order and copies of the releases are attached hereto.

8. To the best of my knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any Court, public council or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by or the validity of the Bond or the collection or pledge of the gross revenues.

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

Very truly yours,

  
John R. Mitchell

JRM/cas

Enclosures

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

THE BOARD OF EDUCATION OF THE  
COUNTY OF KANAWHA, a public  
corporation,

Plaintiff,

v.

TOWN OF EAST BANK SANITARY  
BOARD,

Defendant.

FILED

07 SEP -1 11 3:05

CIVIL ACTION NO. CA-80-2356

*Wellman*

ORDER OF DISMISSAL

This day came The Board of Education of the County of Kanawha, a corporation, by Stuart Calwell, its President, and came also The Town of East Bank Sanitary Board by John R. Mitchell, its attorney, and made known to the Court that the matters in difference between the plaintiff and the defendant have been compromised, settled and agreed. Upon motion, it is ordered that this cause be dismissed as compromised, settled and agreed.

Dated this 4<sup>th</sup> day of September 1987.

ENTER:

*[Signature]*  
Circuit Judge

Presented by:

*[Signature]*  
President, Kanawha County Board of Education

Inspected by:

*[Signature]*  
Attorney for Defendant

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS.

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

Given under my hand and seal of said Court \_\_\_\_\_  
4<sup>th</sup> day of Sept 1987  
*[Signature]*  
Circuit Court CLERK  
KANAWHA COUNTY, WEST VIRGINIA

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

THE BOARD OF EDUCATION OF THE  
COUNTY OF KANAWHA, a public  
corporation,

Plaintiff,

v.

CIVIL ACTION NO. CA-80-1546

FILED

97 SEP -4 PM 3:05

*Waldeman*

TOWN OF EAST BANK,

Defendant.

ORDER OF DISMISSAL

This day came The Board of Education of the County of Kanawha, a corporation, by Stuart Calwell, its President, and came also The Town of East Bank, by John R. Mitchell, its attorney, and made known to the Court that the matters in difference between the plaintiff and the defendant have been compromised, settled and agreed. Upon motion, it is ordered that this cause be dismissed as compromised, settled and agreed.

Dated this 4<sup>th</sup> day of September 1987.

ENTER:

*[Signature]*  
Circuit Judge

Presented by:

*[Signature]*

President, Kanawha County Board of Education

Inspected by:

*[Signature]*  
Attorney for Defendant

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS.

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

Given under my hand and seal of said Court \_\_\_\_\_

4<sup>th</sup> day of Sept 1987  
*[Signature]*

CLERK

Circuit Court

KANAWHA COUNTY, WEST VIRGINIA

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

THE TOWN OF EAST BANK,  
a municipal corporation,  
and CHARLES BLAIR, II,  
Mayor of the Town of  
East Bank,

Petitioners,

v.

Civil Action No. *87-Misc-483*

GEORGIA A. LEAKE CRIST, and  
husband, if any, MARION DAVID LEAKE,  
and MRS. MARION DAVID LEAKE,  
MARY ALICE LEAKE, and  
husband, if any,  
ROBERTA JEAN LEAKE, and  
husband, if any, and  
JAMES IRA BASIL LEAKE, and  
wife, if any, all heirs of  
ROBERT R. LEAKE, and  
ERIC B. GARDNER, and  
wife, if any,

Defendants.

FILED  
67 SEP -1 PM 3:06  
CIVIL COURT CLERK

ORDER FILING PETITION

This day came the Town of East Bank, a municipal corporation, and Charles Blair, II, its Mayor, by counsel, and tendered unto the Court and ask leave to file its application in writing, by petition, duly verified, together with its exhibits thereto attached, describing two certain tracts or parcels of land in the Town of East Bank, Kanawha County, West Virginia, which Petitioners propose to take an easement for public purposes as described in the Petition.

And the Court having seen and inspected said Petition with its exhibits thereto attached, and the same appearing proper in all respects, it is, therefore, considered and ORDERED by the Court, that said Petition, with its exhibits be, and it is hereby filed and made a part of the record hereof.

And it is further ORDERED that the petitioners, or their assigns, be at once permitted to enter upon the said property of the defendants for the purpose of constructing water lines.

And it further appearing to the Court that Petitioners prayer for a determination by this Court of Petitioners' right to condemn for public purposes the land described in said Petition, and for the appointment of Commissioners to ascertain a just compensation to the owner of the land taken and appropriated in this proceeding, the Court doth, upon motion, set down said petition and application for said determination and the appointment of Commissioners, for hearing on the 24 day of October, 1987, at 1:15 o'clock P.m.

It is further ORDERED that the Petitioner cause notice of the time and place of said hearing to be given to the defendants named in said Petition as required by law.

Dated this 4<sup>th</sup> day of September, 1987.

ENTER:

*A. Andrew Miller*

JUDGE

*John R. Mitchell*

JOHN R. MITCHELL, ESQUIRE

605 Virginia Street, East

P. O. Box 353

Charleston, West Virginia 25322

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS.

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

Given under my hand and seal of said Court.

*Hck* day of *Sept* 19 *87*  
*Cathy S. Gatson* CLERK  
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

RELEASE

KNOW ALL MEN BY THESE PRESENTS:

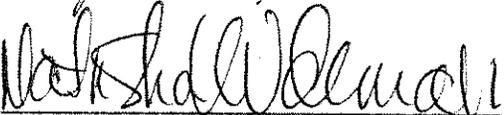
That The Board of Education of the County of Kanawha, hereinafter referred to as "The Undersigned", for in the consideration of the sum of Thirty Seven Thousand One Hundred Forty Two Dollars and Eighty Cents (\$37,142.80), cash in hand paid, the receipt of which is hereby acknowledged, do hereby release, remise and forever discharge Town Of East Bank Sanitary Board, of and from all claims, demands and cause of action whatsoever which the Undersigned now have or may hereafter have or claim to have arising by reason of sewage bill over charges and damages sustained by the Undersigned in an incident which occurred on or about the period of May 1974, through October, 1978, all of which is now the subject of a certain action which is pending in the Circuit Court of Kanawha County, styled The Board Of Education Of The County Of Kanawha v. Town Of East Sanitary Board, and being Civil Action No. CA-80-2356, it being the intention to release by this instrument all claims asserted in said action; release and forever discharge said Town Of East Bank Sanitary Board of and from all claims, demands and causes of action whatsoever which the Undersigned now have or may hereafter have or

claim to have against Town Of East Bank Sanitary Board arising by reason of any matter or thing whatsoever occurring prior to the date of these presents.

Signed and sealed this 15th day of May, 1987.

SIGNED:   
President, Kanawha County Board of Education

WITNESSES:

RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That The Board of Education of the County of Kanawha, hereinafter referred to as "The Undersigned", for in the consideration of the sum of Thirty Seven Thousand One Hundred Forty Two Dollars and Eighty Cents (\$37,142.80), cash in hand paid, the receipt of which is hereby acknowledged, do hereby release, remise and forever discharge Town Of East Bank, of and from all claims, demands and cause of action whatsoever which the Undersigned now have or may hereafter have or claim to have arising by reason of water bill over charges and damages sustained by the Undersigned in an incident which occurred on or about the period of May 1974, through October, 1978, all of which is now the subject of a certain action which is pending in the Circuit Court of Kanawha County, styled The Board Of Education Of The County Of Kanawha v. Town Of East, and being Civil Action No. CA-80-1546, it being the intention to release by this instrument all claims asserted in said action; release and forever discharge said Town Of East Bank of and from all claims, demands and causes of action whatsoever which the Undersigned now have or may hereafter have or claim to have against Town Of East Bank arising by reason of

any matter or thing whatsoever occurring prior to the date of these presents.

Signed and sealed this 15th day of May, 1987.

SIGNED:   
President, Kanawha County Board of Education

WITNESSES:




R-1

TOWN OF EAST BANK, WEST VIRGINIA  
WATERWORKS REVENUE BOND SERIES 1987

\$76,000

Date: September 9, 1987

FOR VALUE RECEIVED, the TOWN OF EAST BANK, WEST VIRGINIA (herein called the "Borrower"), promises to pay to the order of the United States of America, United States Department of Agriculture, Farmers Home Administration (herein called the "Government"), at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing and in the manner provided below, the principal sum of Seventy-Six Thousand Dollars (\$76,000), plus interest on the unpaid principal balance at the rate of five per centum (5%) per annum.

The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only on the amounts advanced hereunder, commencing the first day of the month following the month of delivery of this Bond and continuing on the corresponding day of each month for the first 24 months after the date hereof, and installments of \$374, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of 40 years from the date of this Bond, in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided herein below. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Extra payments, as defined in the regulations of the Farmers Home Administration, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government, shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government. The Borrower has granted to the Government a lien on the proceeds of the Bond until such proceeds are expended for authorized purposes.

This Bond is issued to permanently finance a portion of the cost of construction and acquisition of certain extensions, additions, betterments and improvements to the Town's waterworks system (the "Project") (the Project, together with the existing waterworks system of the Town and any further extensions, additions, betterments and improvements thereto, herein called the "System") under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Article 19 of Chapter 8 of the Code of West Virginia, 1931, as amended, and an ordinance duly passed by the Town Council of the Town of East Bank on the 18th day of August, 1987, as supplemented by a resolution duly adopted by said Town Council on the 1st day of September, 1987 (herein collectively called the "Ordinance"), and is subject to all the terms and conditions of said Ordinance. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for this Bond under the Ordinance.

This Bond is payable only from and secured by the revenues to be derived from the operation of the System of the Borrower, which Gross Revenues shall be sufficient to pay the costs of operating and maintaining the System and principal of, and interest on, all bonds which may be issued for the construction, acquisition, improvement, extension or betterment of such System as and when the same become due and payable, and which shall be set aside and remitted to the Government as provided herein and in the Ordinance. This Bond does not constitute an indebtedness of the Town of East Bank within the meaning of any constitutional or statutory provisions or limitations, nor shall the Borrower be obligated to pay the same or the interest hereon except from the Gross Revenues as defined in the Ordinance, derived from the operation of said System. The Borrower in said Ordinance has covenanted and agreed that the schedule of rates or charges from time to time in effect shall be sufficient to provide for all reasonable operating expenses of the System and to leave a balance each year equal to at least 110% of the average annual debt service on this Bond and any other bonds on a parity with this Bond then outstanding and of the average annual debt service of any other obligations payable from the revenues of the System of the Borrower. Said Borrower has entered into certain further covenants with the owner of this Bond for the terms of which reference is made to said Ordinance. Remedies provided the owner of this Bond are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

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

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

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this

Bond, together with all other obligations of said Town, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that a sufficient amount of the Gross Revenues of the System of said Town have been pledged to and will be set aside into said special fund by said Town for the prompt payment of the principal of and interest on this Bond.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Rural Development Act of 1972. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

IN WITNESS WHEREOF, the said Town of East Bank has caused this Bond to be signed by its Mayor, attested by its Recorder and its corporate seal to be impressed hereon, all as of the date first written above.

TOWN OF EAST BANK

(Name of Borrower

"SPECIMEN"

(Signature of Executive Official)

Mayor

(Title of Executive Official)

P. O. Box 307

(Post Office Box No. or Street Address)

East Bank, West Virginia 25067

(City, State and Zip Code)

[CORPORATE SEAL]

ATTEST:

(Signature of Attesting Official)

Recorder

(Title of Attesting Official)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is the Bond described in the within-mentioned Ordinance and has been duly registered as of the date set forth below in the name of the United States of America, United States Department of Agriculture, Farmers Home Administration.

THE NATIONAL BANK OF COMMERCE  
OF BELLE,  
Registrar

By: **"SPECIMEN"**  
Its Authorized Officer

Dated: \_\_\_\_\_

RECORD OF ADVANCES

Date	Amount	Initialed By
(1)	\$	
(2)	\$	
(3)	\$	
(4)	\$	
(5)	\$	
(6)	\$	
(7)	\$	
(8)	\$	
(9)	\$	
(10)	\$	

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

Pay to the Order of \_\_\_\_\_

UNITED STATES OF AMERICA  
UNITED STATES DEPARTMENT OF AGRICULTURE  
FARMERS HOME ADMINISTRATION

By: \_\_\_\_\_  
\_\_\_\_\_  
(Title)

RECORD OF PAYMENTS

Date	Amount	Initialed By
(1)	\$	
(2)	\$	
(3)	\$	
(4)	\$	
(5)	\$	
(6)	\$	
(7)	\$	
(8)	\$	
(9)	\$	
(10)	\$	
TOTAL:	\$	

UNITED STATES OF AMERICA  
UNITED STATES DEPARTMENT OF AGRICULTURE  
FARMERS HOME ADMINISTRATION

By: \_\_\_\_\_  
\_\_\_\_\_  
(Title)

TOWN OF EAST BANK, WEST VIRGINIA

\$76,000 Town of East Bank  
Waterworks Revenue Bond,  
Series 1987

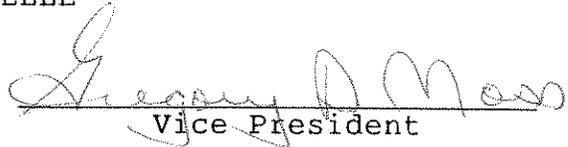
CERTIFICATE OF REGISTRATION OF BOND NO. R-1

I, Gregory D. Moss, Vice President of The National Bank of Commerce of Belle, as Registrar under the Ordinance providing for the \$76,000 aggregate principal amount of the Town of East Bank's (the "Issuer"), Waterworks Revenue Bond, Series 1987, hereby certify that on the 9th day of September, 1987, the single fully registered Series 1987 Bond of the Issuer in the principal amount of \$76,000 designated "Town of East Bank Waterworks Revenue Bond, Series 1987," numbered R-1, and dated of the date hereof was registered as to principal and interest in the name of "United States of America, United States Department of Agriculture, Farmers Home Administration" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of The National Bank of Commerce of Belle, as Registrar.

WITNESS my signature as of this 9th day of September, 1987.

THE NATIONAL BANK OF COMMERCE  
OF BELLE

By:

  
Vice President



**Consolidated Information Return for Small  
Tax-Exempt Governmental Bond Issues**

► Under Section 149(e)

► For calendar year ending 19.....

(Use Form 8038-G if issue price of the issue is \$100,000 or more.)

**Part I Reporting Authority** Check box if Amended Return

1 Issuer's name 2 Issuer's employer identification number  
 Town of East Bank 55-60013322

3 Number and street  
 2507 First Avenue

4 City or town, state, and ZIP code  
 East Bank, West Virginia 25067

**Part II Description of Bonds**

5 Total issue price of all bonds issued as part of an issue, the issue price of which is less than \$100,000

5 \$76,000

6 Check box that most nearly approximates the weighted average maturity of the bonds.

- a  Less than 5 years
- b  From 5 to 10 years
- c  More than 10 years

7 Check box that most nearly approximates the weighted average interest rate on the bonds:

- a  Less than 5%
- b  From 5% to 10%
- c  More than 10%

8 Total issue price of the bonds reported on line 5 that are:

- a Bonds issued in the form of a lease or installment sale
- b Bonds designated by the issuer under section 265(b)(3)(B)(ii)
- c Bonds issued to refund prior issues
- d Loans made from the proceeds of another tax-exempt bond issue

8a		
8b		
8c		
8d		

**Please  
Sign  
Here**

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

*Charles A. Blair*  
 Signature of officer

9/8/87  
 Date

Mayor  
 Title

**General Instructions**

(Section references are to the Internal Revenue Code unless otherwise noted.)

**Changes You Should Note**

All issuers of tax-exempt bonds must report certain information about bonds they issue. Issuers should use Form 8038-GC only if the issue price of the issue is under \$100,000. If the issue price is \$100,000 or more, issuers should use Form 8038-G, Information Return for Tax-Exempt Governmental Bond Issues. For private activity bonds, issuers should use Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues.

**Paperwork Reduction Act Notice**

We ask for this information to carry out the Internal Revenue laws of the United States. We need it to ensure that you are complying with these laws. You are required to give us this information.

**Purpose of Form**

Form 8038-GC is to be used by issuers of tax-exempt governmental bonds to provide IRS with the information required by section 149(e) and to monitor the requirements of sections 141 through 150.

**Who Must File**

Each issuer must file a single Form 8038-GC for all tax-exempt governmental bond issues issued after December 31, 1986, with issue prices of less than \$100,000. Form 8038-G is filed to report each issue of governmental bonds with issue prices of \$100,000 or more.

**When To File**

File Form 8038-GC on or before February 15th after the close of the calendar year in which the issue is issued. Form 8038-GC must be completed based on the facts as of the close of the calendar year.

**Where To File**

File Form 8038-GC with the Internal Revenue Service Center, Philadelphia, PA 19255.

**Definitions**

• A tax-exempt bond is an obligation issued as part of an issue the interest on which is exempt from tax under the Internal Revenue Code.

• A tax-exempt governmental bond is a tax-exempt bond that is not a private activity bond.

• A private activity bond is generally a bond issued as part of an issue of which:

- (1) more than 10% of the proceeds are to be used for any private business use, and
- (2) more than 10% of the payment of the principal or interest either is secured by an interest in property to be used for a private business use (or payments in respect of such property) or is to be derived from payments in respect of property (or borrowed money) used for a private business use. A bond will also be considered a private activity bond if the amount of the proceeds to be used to make or finance loans (other than loans



TOWN OF EAST BANK, WEST VIRGINIA

\$76,000 Town of East Bank  
Waterworks Revenue Bond,  
Series 1987

RECEIPT FOR BOND NO. R-1

The undersigned, on behalf of the Farmers Home Administration of the United States Department of Agriculture, hereby certifies as follows:

1. On the 9th day of September, 1987, in Charleston, West Virginia, the undersigned received for and on behalf of the Farmers Home Administration the Waterworks Revenue Bond, Series 1987 (the "Bond"), of the Town of East Bank, West Virginia (the "Town"), authorized to be issued by an ordinance passed by the Council of the Town on the 18th day of August, 1987 (the "Ordinance"); in the principal amount not to exceed \$76,000, which shall be evidenced by the record of advances when funds are drawn down; dated the 9th day of September, 1987; and issued in the form of one Bond, fully registered to the United States of America, United States Department of Agriculture, Farmers Home Administration, and numbered R-1. The Bond bears interest at the rate of 5% per annum, payable in monthly installments for the first 2 years from the date of the Bond, and thereafter monthly installments of interest and principal are payable in the aggregate sum of \$374 for each installment, the final payment forty years after the date of the Bond to be in the sum of the unpaid principal and interest thereon to the date of such payment. The Bond represents all maturities of the above-captioned bond issue.

2. At the time of such receipt of said Bond, it had been executed by Charles A. Blair II, as Mayor of the Town, by his manual signature, and attested by James E. Pyles, as Recorder of the Town, by his manual signature, and the official seal of said Town had been impressed upon said Bond.

IN WITNESS WHEREOF, said Farmers Home Administration has duly signed and delivered this Receipt for Bond No. R-1 on this 9th day of September, 1987.

UNITED STATES DEPARTMENT OF AGRICULTURE,  
FARMERS HOME ADMINISTRATION

By:

*James H. Anderson*

Its:

*District Loan Specialist*

TOWN OF EAST BANK, WEST VIRGINIA

\$76,000 Town Of East Bank  
Waterworks Revenue Bond, Series 1987

RECEIPT FOR TRANSCRIPTS

The undersigned, on behalf of the Farmers Home Administration of the United States Department of Agriculture, hereby certifies that the undersigned has received three sets of bond transcript documents.

IN WITNESS hereof, said Farmers Home Administration has duly signed and delivered this receipt for the transcripts on this 9th day of September, 1987.

UNITED STATES DEPARTMENT OF AGRICULTURE  
FARMERS HOME ADMINISTRATION

By



Its

District Loan Specialist