

TRANSCRIPT LIST

\$450,000
Town of Elizabeth, West Virginia
Water Revenue Bond
Series 2002

Pre-Closing: February 4, 2002

A. BASIC

1. Grant Agreements.
2. Copy of the Authority for the Creation of the Town of Elizabeth, West Virginia (the "Issuer").
3. Oaths of Office of Members of Town Council.
4. Bond Ordinance of the Issuer enacted on June 28, 2001, and Supplemental Resolution approved on January 28, 2002.
5. Minutes of Meetings of City Council on First and Second Readings and Public Hearing with respect to Ordinance.
6. Notice of Public Hearing on Bond Ordinance and Affidavit of Publication.
7. Letter of Conditions from Rural Utilities Service.
8. Copy of Water Ordinance/Tariff.

B. CERTIFICATES AND RECEIPTS

9. General Certificate signed by the Mayor, Clerk/Recorder and Attorney of the Issuer.
10. Certificate of Consulting Engineer.
11. Certificate of Certified Public Accountant.
12. Certificate of Clerk/Recorder as to Truth and Accuracy of Documents Delivered.
13. Consent to Issuance of Parity Bonds.
14. Acceptance of Duties of Depository Bank.
15. Bond Registry Form.
16. Cross-Receipt for Bond and Bond Proceeds.

17. Financing Statement.

C. LEGAL OPINIONS

18. Opinion of Goodwin & Goodwin, LLP, Bond Counsel, on Series 2001 Bond.

19. Opinion of Theodore Davitan, Counsel to the Issuer.

20. Final Title Opinion of Issuer's Opinion.

D. MISCELLANEOUS

21. Municipal Bond Commission New Issue Report Form.

22. Public Service Commission Certificate of Convenience and Necessity.

23. West Virginia Infrastructure and Jobs Development Council approval letter.

24. Specimen Bond.

25. 1982 Bond Ordinance and Amendments Thereto.

26. Copy of Statutory Authority.

The Pre-Closing of the sale of \$450,000 in aggregate principal amount of Town of Elizabeth, Water Revenue Bond, Series 2002 will take place at the Elizabeth Baptist Church, 802 Mulberry Street, Elizabeth, West Virginia, at 10:00 a.m., Eastern Time, on February 4, 2002. No transaction shall be deemed to have been completed and no documents shall be deemed to have been delivered unless and until all transactions are complete and all documents are delivered. Any document, which references an Exhibit or Schedule to be attached thereto, shall be considered completed and attached if the referenced Exhibit or Schedule appears elsewhere in this Transcript.





STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

CECIL H. UNDERWOOD
GOVERNOR

September 13, 2000

The Honorable Lewis Full
Mayor
Town of Elizabeth
Post Office Box 478
Elizabeth, West Virginia 26143-0478

Dear Mayor Full:

On November 8, 1999, the town of Elizabeth received a commitment of \$1,175,000 in Small Cities Block Grant funds to connect to a new water source and extend water service to residents of Wirt County.

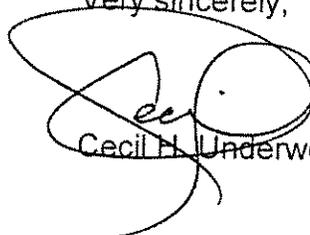
The Small Cities Block Grant award was based upon your immediate need for funds; and, therefore, only \$425,000 was made available from the fiscal year 1999 allocation, with a commitment to evaluate your progress and provide the remaining funding from future allocations.

Based upon the town of Elizabeth's ability to proceed with this worthwhile water project, I am committing the remaining \$750,000 from the fiscal year 2000 Small Cities Block Grant allocation. Your existing Small Cities Block Grant contract will be amended to include the additional funds.

The West Virginia Development Office reserves the ability to withdraw these funds if your project does not proceed on schedule. These funds would be replaced with a letter of intent for consideration from future allocations.

I am pleased to work with you to make this improvement a reality for the citizens of Elizabeth.

Very sincerely,


Cecil H. Underwood

CHU:ano

STATE OF WEST VIRGINIA



SMALL CITIES BLOCK GRANT AWARD

THIS IS TO CERTIFY THAT A GRANT OF \$750,000 HAS BEEN
AWARDED TO THE TOWN OF ELIZABETH TO COMPLETE
THE PALESTINE WATER EXTENSION PROJECT



CECIL H. UNDERWOOD
GOVERNOR

STATE OF WEST VIRGINIA
WEST VIRGINIA DEVELOPMENT OFFICE
NOTICE OF GRANT AWARD CHANGE

Fiscal Year 2001	Date 10/11/00	State Account # 8746-2001-0307-096-128	Agreement Date 01/07/00	Grant Number 00-287
Grantee Name & Address Town of Elizabeth Post Office Box 478 Elizabeth, West Virginia 26143-0478		F.E.I.N. 556-000-084	Purpose of Change: ADDITIONAL FUNDS	
			Program Name: SCBG	
			Project Name: PALESTINE WATER EXTENSION	
			Grant ID: B99DC540001 AND B00DC540001	
			Project Number: 99SCBG0047X	
Description of Change				
Change Order # <u>1</u>				
Justification for Change Additional funds needed to complete project.			Previous Total	\$425,000.00
			Increase	\$750,000.00
			Decrease	_____
			New Total	\$1,175,000.00

TERMS AND CONDITIONS OF ORIGINAL AGREEMENT ARE ON FILE IN THE WEST VIRGINIA DEVELOPMENT OFFICE AND AVAILABLE FOR INSPECTION. A COPY OF THE ORIGINAL AGREEMENT IS ATTACHED TO TRANSMITTAL _____ PROCESSED ON OR ABOUT _____ PAYMENT # _____

Approved

John R. Snider
Executive Director

Date 10/16/00

AUG 24 1998

Water and Waste System Grant Agreement
United States Department of Agriculture
Rural Utilities Service

COPY

THIS AGREEMENT dated August 13., 1998, between

Town of Elizabeth
 a public corporation organized and operating under

Chapter 8, Article 19, West Virginia Code
 (Authorizing Statute)

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

WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement, or capital improvement of a (water) (~~waste~~) system to serve the area under its jurisdiction at an estimated cost of \$ 2,500,000 and has duly authorized the undertaking of such project.

Grantee is able to finance not more than \$ 1,700,000 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 \$ 1,700,000 has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed \$ 800,000 or 75 percent of said project development costs, whichever is the lesser, subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the Conditions of the grant.

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

NOW, THEREFORE, in consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306(a) of The Consolidated Farm and Rural Development Act for the purpose only of defraying a part not to exceed 75 percent of the project development costs, as defined by applicable Rural Utilities Service instructions.

Grantee Agrees That Grantee Will:

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

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

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

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

[Revision 1, 04/17/1998]

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

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

Various improvements to the existing water distribution system, modifications and waterline extension that will enable the Town to purchase potable water from Claywood Park PSD and a waterline extension to the Palestine area of Wirt County which will provide water service to approximately 160 new users.

L. Abide by the following conditions pertaining to equipment which is furnished by the Grantor or acquired wholly or in part with grant funds. Equipment means tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.
[Revision 1, 04/17/1998]

1. Use of equipment.

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

(1) Activities sponsored by the Grantor.

(2) Activities sponsored by other Federal agencies.

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

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

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

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

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

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 or photo copies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

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

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

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

Termination of This Agreement

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

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

Mayor

attested and its corporate seal affixed by its duly authorized

Recorder

Attest:

Town of Elizabeth

By Lewis H. Full
Lewis H. Full

(Title) Mayor

By Penny L. McVay
Penny L. McVay

(Title) Recorder

Penny L. McVay

UNITED STATES OF AMERICA

RURAL UTILITIES SERVICE

By Virginia M. McDonald Rural Development Specialist
Virginia M. McDonald (Title)

February 6, 2002



The Town of Elizabeth

P. O. BOX 1107
ELIZABETH, WEST VIRGINIA 26143
PHONE: 275- 3200

Robert Snider
LARRY WILLIAMS
JERALD VLACH

HAROLD D. VILLERS, MAYOR

FRANK MUNDAY, JR.
LEWIS FULL
ERNIE F. CUMBRIDGE

THE TOWN OF ELIZABETH WAS ORGANIZED
UNDER CHAPTER 42--ACTS OF THE LEGISLATURE--1867
PASSED FEBRUARY 20, 1867

CHARTER OF THE TOWN OF ELIZABETH

Be it enacted by the Legislature of West Virginia:

- 1) The corporate limits and boundaries of the Town of Elizabeth in Wirt County shall be as follows: Beginning at the mouth of a small ravine near the house of Mrs. Nancy Petty, and running thence south ten degrees west eighty poles to a post; thence eastwardly a straight line to the Little Kanawha River at the mouth of Spring Run near the house of L.D. Woodyard; thence down said river with its meanders to the beginning.
- 2) The municipal authorities of said Town shall be a mayor and six councilmen, who shall together form a common council, one of which shall be selected by the board of councilmen to act as alderman, whose duty shall be to act as mayor in his absence.
- 3) The mayor and councilmen as soon as they have been elected and qualified as hereinafter provided, shall be a body corporate by the name of the "Town of Elizabeth", shall have perpetual succession and a common seal, and by that name may sue and be sued, implead and be impleaded, and may purchase and hold real estate necessary to enable them the better to discharge their duties and needful for the good order, government, and welfare of said Town.
- 4) All the corporate powers of said Corporation shall be exercised by the said council, or under their authority, except when otherwise provided.
- 5) There shall be a town clerk, a sergeant, a treasurer, and assessor appointed by the council to continue in office at its pleasure and perform the duties respectively as hereinafter prescribed or as may be required by the council.
- 6) The duties of the offices of clerk, treasurer, and assessor may be discharged by the same person, or otherwise, as the council may from time to time determine.

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FRANK MUNDAY, JR.
LEWIS FULL
ERNIE F. CUMBRIDGE

- 7) The qualified voters of said Town shall, on the second Monday in April, Eighteen Hundred and Sixty-Seven, elect a mayor and six councilmen to hold their offices as follows: the three councilmen receiving the highest number of votes shall serve for two years and the councilmen receiving the smallest number of votes shall serve but one year, or until their successors are elected and qualified; and thence annually thereafter there shall be elected three councilmen, each of whom shall hold his office for the term of two years, unless they shall become nonresidents of the Town. The mayor shall be elected annually. Vacancies in said board of councilmen shall be filled by said board. The first election under this act shall be held at the Courthouse of Wirt County (in said Town) and be conducted by the supervisors and inspectors of elections in the Township, and annually thereafter by three voters of said Town selected by the council.
- 8) All persons who have resided in said Town for thirty days next preceding the Town election at which they offer to vote, or who, though not residents of the Town, own a freehold therein, shall be entitled to vote at Town elections if they are qualified to vote at the general elections of State and County officers.
- 9) When a vacancy shall occur from any cause in the office of mayor, or in the council, the vacancy shall be filled by appointment by the council.
- 10) At all elections the vote shall be by ballot; and when two or more persons for the same office at any election shall have an equal number of votes, the persons conducting the election shall decide which of said persons shall be returned elected; and all contested elections shall be heard and determined by the council for the time being.
- 11) The mayor, councilmen, clerk, sergeant, treasurer, and assessor shall each before entering upon the duties of his office, and within ten days after being furnished with a certificate of his election, take and subscribe the oath of loyalty prescribed for County and Township officers, and to faithfully and impartially discharge the duties of their said offices respectively, to the best of their abilities. The clerk shall take the oath before some officer authorized to administer oaths, and thereupon he shall administer the oaths aforesaid to the other officers and councilmen; certificates of the said oaths shall be recorded in the journal of the proceedings of the council.

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- 12) When any four of the newly elected councilmen shall have been qualified, they shall enter upon their said offices and supersede the former trustees of said Town.
- 13) If any one elected mayor or councilman shall not have been eligible, or shall refuse or neglect to take the oath required under this act within the ten days aforesaid, such office shall be declared vacant, and the vacancy filled as hereinbefore provided, but in all cases from among the citizens of the Town eligible to such office under this act.
- 14) The council shall be presided over at all its meetings by the mayor, and in his absence, by the alderman, and in the absence of both by one of the councilmen, selected by a majority of the councilmen present, and a majority of the council shall be necessary to constitute a quorum to do business.
- 15) The council shall cause to be kept in a journal, an accurate record of all its proceedings, by-laws, acts, and orders, which shall be fully indexed and open to the inspection of the voters of the Town.
- 16) The proceedings of the last meeting shall be read to the council, corrected when necessary, and signed by the person presiding for the time being. Upon the call of any member the eyes and noses on any question shall be called and recorded in the journal; the mayor, in the case of a tie, shall have the casting vote.
- 17) The council, so constituted, shall have power within said Town to lay off, open, curb, and pave streets, alleys, walks, and gutters for the public use; to alter, improve, and light the same; to have them kept in good order and free from obstruction on or over them; to regulate the width of sidewalks and streets; to order the said walks, footways, and gutters to be curbed, paved, and kept in good order, free and clear, by the owners or occupants of the adjacent property; to lay off public grounds and provide, contract for, and take care of public buildings proper the Town; to prevent injury or annoyance to the public or individuals from any thing dangerous, offensive, or unwholesome; to abate or cause to be abated anything, which in the opinion of a majority of the whole council, shall be a nuisance; to regulate the keeping of gun powder or other combustibles; to provide for the burial of the dead, and for this purpose, may

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purchase and hold the necessary land for a cemetery, near or convenient to said Town, and provide for its improvement and security; to provide for the regular building of houses and other structures in or for said Town, for the making of division fences, and for shade and ornamental trees; to provide against damage or danger from fires or contagious diseases; to provide a revenue for the Town and appropriate the same; to provide for the annual assessment of taxable persons and property of the Town; to adopt rules for the transaction of business and the government regulations of its own body; to promote the general welfare of the Town and protect the property and preserve peace and good order therein; to keep a town guard, appoint and order out a patrol for the Town when deemed necessary; to appoint such officers as they may deem power, including a sergeant, assessor and treasurer; to define their powers, prescribe their duties, fix their terms of service and compensation, require and take from them bonds, with such security and in such penalties as the council may determine, conditioned for the true and faithful discharge of their duties, and remove them at pleasure (all bonds to be made payable to the Town by its corporate name); to erect, or authorize or prohibit the erection of gas works or water works in or near the Town; to prevent injuries to or pollution of the same; to regulate and provide for weighing and measuring of hay, coal, and other articles sold or for sale in said Town, and regulate the transportation thereof through the streets; and generally to do such things as the council may deem necessary for the interests, prosperity, peace, and good order of the citizens of said Town.

- 18) To carry into effect these enumerated powers and all others conferred upon said Town or its council, expressly or by implication in this or any other acts of the legislature, the council shall have to draft and enforce all needful orders, by laws and ordinances not contrary to the constitution and laws of this State, and to prescribe, impose, and enforce reasonable fines and penalties, including imprisonment for a term not exceeding thirty days, under the judgment and order of the mayor of said Town, or the person lawfully exercising his functions. The council, with the consent of the supervisors of Wirt County, entered of record, may have the right to use the jail of said County for any purpose necessary in the administration of its affairs.

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- 19) The annual levy ordered by the council may be upon male persons within said Town over the age of twenty-one years, dogs, hogs, and other animals, and on all real estate within said Town which is not exempt from State taxation, and all such other subjects in said Town as may at any time be assessed with State taxes; provided the taxes do not exceed one dollar on every hundred dollars of value of all the taxable real and personal property in said Town, or two dollars per head for each taxable person.
- 20) When anything for which a State license is required is to be done within said Town, the council may require a Town license to be had for doing the same, and may impose a tax thereon for the use of the Town; and the council may in any case require from the person or persons so licensed, a bond with sureties, in such penalty and with such conditions as it may determine; and the council may prohibit any theatrical or other performance, show, or exhibition it may deem injurious to the morals or good order of the Town.
- 21) The sergeant shall collect the Town taxes, fines, levies, and licenses, and within thirty days from the time he may receive the books of the assessor of said Town, may distrain and sell therefore in like manner as a sheriff may for State taxes, and shall in all respects have the same power as a sheriff to enforce the payment and collection thereof; and shall, within the corporate limits of the Town, exercise all the duties that a constable can legally exercise in regard to the collection of claims, execute and levy process, and shall be entitled to the same compensation therefore, and he and his sureties shall be liable to all the fines, penalties, and forfeitures that a constable is legally liable to, and for any failure or dereliction in said office, to be recovered in the manner and before the same tribunal that the same are now recovered against constables.
- 22) There shall be a lien for the Town taxes on the real estate therein, from the commencement of the year for which they are assessed, and the council may order and require the same to be sold or rented by the sergeant at public auction for the arrears, with interest thereon, with such per centum as the council may prescribe for charges and expenses thereof, and may regulate the terms upon and the time within which the same may be redeemed. No such sale or renting shall be ordered until such realty shall

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be returned delinquent, and the sale shall be after twenty days notice posted at the courthouse door, and at the post office in said Town.

- 23) The mayor shall be the chief executive officer of the Town; shall take care that the laws, ordinances, and orders of the council are faithfully executed; shall be ex officio a conservator and justice in the Town and shall, within the same, exercise all the powers and duties vested in justices, except that he shall have no jurisdiction in civil cases; shall have control of the police of the Town and may appoint special police officers; shall see that peace and good order are preserved and that the persons and property are protected in the Town; shall have power to issue executions for all fines and costs imposed by him, or may require the immediate payment thereof, and in default of such payment may commit the party in default to the jail of the county until the fine and costs be paid, (but the term of imprisonment in such case shall not exceed thirty days). He shall, from time to time, recommend to the council such measures as he may deem needful for the welfare of the Town; and shall receive a compensation for his services, to be fixed by the council, which shall not be increased or diminished for the term for which he was elected.
- 24) The clerk shall keep a journal of the proceedings of the council and have charge of and preserve the records of said town, and shall receive a compensation for his services to be fixed by the council, which shall not be increased or diminished for the term for which he was elected.
- 25) All moneys belonging to said Town shall be paid over to the treasurer, who shall pay out the same upon the order of the mayor, countersigned by the clerk, and not otherwise; and for any default or liability upon the part of the treasurer or sergeant, the council, in the corporate name of said Town, may on motion after ten days notice, obtain judgment before the circuit court of said county on account thereof, against them and their securities respectively, or any or either of them, or their heirs or legal representatives.
- 26) Said Town and taxable persons and property therein shall be exempt from all expenses or liability for the construction or repair of roads or bridges outside the corporate limits of said Town, provided that the said Town shall keep its streets and alleys in order.

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- 27) Any land included in the boundaries of said Town of more than one acre in quantity that is used for farming purposes shall not be taxed for the benefit of the Town when so used.

CHAPTER 55--ACTS OF THE LEGISLATURE--1870
PASSED FEBRUARY 28, 1870
AN ACT TO AMEND THE CHARTER OF
THE TOWN OF ELIZABETH IN THE COUNTY OF WIRT

Be it enacted by the Legislature of West Virginia:

- 1) The first and eighth sections of an act entitled 'An Act to Amend the Charter of the Town of Elizabeth in the County of Wirt' passed February twentieth, eighteen hundred and sixty-seven, be amended and re-enacted so as to read as follows:
- (1) The corporate limits and boundaries of the Town of Elizabeth, in Wirt County, shall be as follows: Beginning at a post on the bank of the Little Kanawha River at the mouth of a drain below the house of Mrs. Nancy Petty, and running thence south nineteen degrees west one hundred and thirteen poles to a stake; thence south eighty-two and one half degrees east seventy-eight poles, running with a line of L.C. Rogers' and S.P. Barnes' land to the northwest corner of a lot owned by S. Devies; thence south five and one half degrees west with a line of William Gibson's lot, thirty-four poles to a stake in L.D. Woodyard's line; thence south eighty-eight and one half degrees east seventy poles to the Little Kanawha River; thence to the opposite side thereof, thence down said river with the meanders thereof to a stake opposite the place of beginning; thence across said river to the place of beginning.
- (8) All persons who have resided in said Town for thirty days next preceding the Town election at which they offer to vote, or who, though not residents of the Town, own a freehold therein shall be entitled to vote at Town elections, if they are qualified to vote at the general elections for state and county officers, but no person who is not a resident of said Town shall be elected or appointed to any office therein.

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- 2) The twenty-seventh section of the act aforesaid is hereby repealed.

STATE OF WEST VIRGINIA,

COUNTY OF WIRT.

TOWN OF ELIZABETH. TO-WIT:

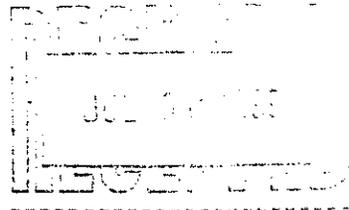
I. HUGH PRATHER, Mayor of the said Town of Elizabeth, do hereby certify that the foregoing is a true and correct copy of the Charter of the Town of Elizabeth in the County of Wirt, together with an amendment thereto.

Given under my hand this the 20th day of
October 1933.

(S) HUGH PRATHER, MAYOR
TOWN OF ELIZABETH

The Town of Elizabeth

P. O. BOX 1107
ELIZABETH, WEST VIRGINIA 26143
PHONE: 275- 3200



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November 28, 1977

TO WHOM IT MAY CONCERN:

The Town Charter of the Town of Elizabeth, which was passed February 20, 1867, amended February 28, 1870 and October 20, 1933, and notarized by Hugh Prather, Mayor of the Town of Elizabeth at that time, is legitimate as it now reads.

If any further reference or updating of the Town Charter should be required, this reference or updating will be found in Chapter 8 of the West Virginia Code, as amended in 1933.

The Handbook for West Virginia Mayors, which was published by the West Virginia Council of Towns and Cities (now the West Virginia Municipal League) of Charleston, West Virginia in April of 1975, is a revised copy of Chapter 8 of the West Virginia Code in layman's terms.

Karen Sue Dennis, Clerk
Town of Elizabeth

P.S. The above information was referred to us by:

Dennis R. Vaughn, Jr.
Attorney at Law
McKittrick, Vaughn & McCormick
Charleston, West Virginia



STATE OF WEST VIRGINIA
COUNTY OF WIRT, TO-WIT:

I, Lewis Full, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and the Ordinance of the Town of Elizabeth, and that I will faithfully and impartially discharge the duties of the office of Mayor for the Town of Elizabeth, West Virginia, to the best of my skill and judgment, during my continuance in the same.

SO HELP ME GOD.

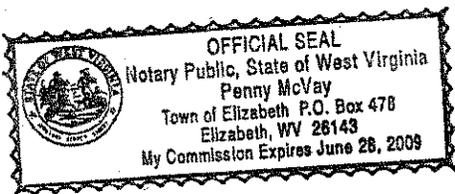
Lewis Full

Subscribed and sworn to before me Penny McVay

a Notary Public in and for Wirt county, West Virginia this

11 day of May, 2000.

My commission expires June 28, 2009



Penny McVay
Notary Public

STATE OF WEST VIRGINIA

COUNTY OF WIRT, TO-WIT:

I, James Cumberland, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and the Ordinance of the Town of Elizabeth, and that I will faithfully and impartially discharge the duties of the office of Council for the Town of Elizabeth, West Virginia, to the best of my skill and judgment, during my continuance in the same.

SO HELP ME GOD.

James Cumberland

Subscribed and sworn to before me Penny McVay
a Notary Public in and for Wirt county, West Virginia this
8 day of June, 2000.

My commission expires June 28, 2009

Penny McVay
Notary Public



STATE OF WEST VIRGINIA

COUNTY OF WIRT, TO-WIT:

I, Kenneth Stompuske do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and the Ordinance of the Town of Elizabeth, and that I will faithfully and impartially discharge the duties of the office of Council for the Town of Elizabeth, West Virginia, to the best of my skill and judgment, during my continuance in the same.

SO HELP ME GOD.

Kenneth Stompuske

Subscribed and sworn to before me

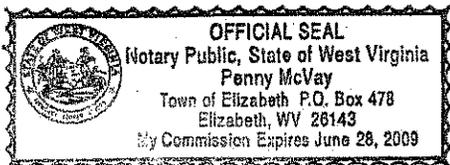
Penny McVay

a Notary Public in and for Wirt county, West Virginia this

11 day of May, 2000.

My commission expires

June 28, 2009



Penny McVay
Notary Public

STATE OF WEST VIRGINIA

COUNTY OF WIRT, TO-WIT:

I, Carl George, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State, of West Virginia, and the Ordinance of the Town of Elizabeth, and that I will faithfully and impartially discharge the duties of the office of Council for the Town of Elizabeth, West Virginia, to the best of my skill and judgment, during my continuance in the same.

SO HELP ME GOD.

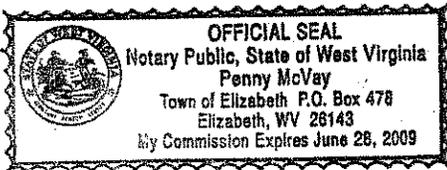
Carl George

Subscribed and sworn to before me Penny McVay

a Notary Public in and for Wirt county, West Virginia this

11 day of May, 2000.

My commission expires June 28, 2009



Penny McVay
Notary Public

STATE OF WEST VIRGINIA

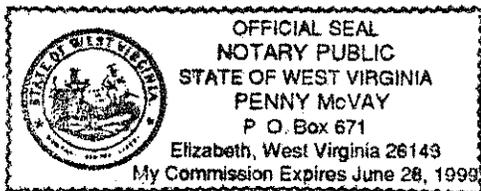
COUNTY OF WIRT, TO-WIT:

I, Anna Haney, do solemnly swear that I will support the Constitution of the United States, the constitution of the State of West Virginia, and the ordinance of the Town of Elizabeth, and that I will faithfully and impartially discharge the duties of the office of Council member for the Town of Elizabeth, West Virginia, to the best of my skill and judgement, during my continuance in the same.

SO HELP ME GOD.

Anna Haney

Subscribed and sworn to before me Penny McVay
a Notary Public in and for Wirt County, West Virginia, this
14 day of May, 1998.



Penny McVay
Notary Public

STATE OF WEST VIRGINIA

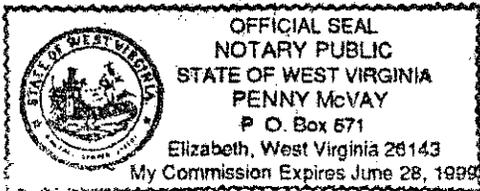
COUNTY OF WIRT, TO-WIT:

I, Dennis "Dex" Gage, do solemnly swear that I will support the Constitution of the United States, the constitution of the State of West Virginia, and the ordinance of the Town of Elizabeth, and that I will faithfully and impartially discharge the duties of the office of Council member for the Town of Elizabeth, West Virginia, to the best of my skill and judgement, during my continuance in the same.

SO HELP ME GOD.

Dennis M. Gage

Subscribed and sworn to before me Penny McVay
a Notary Public in and for Wirt County, West Virginia, this
14 day of May, 1998.



Penny McVay
Notary Public

STATE OF WEST VIRGINIA

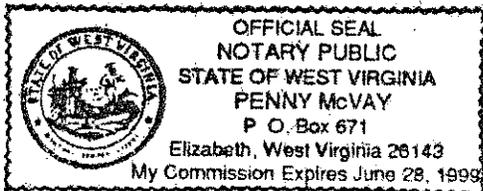
COUNTY OF WIRT, TO-WIT:

I, Edith Cumberledge, do solemnly swear that I will support the Constitution of the United States, the constitution of the State of West Virginia, and the ordinance of the Town of Elizabeth, and that I will faithfully and impartially discharge the duties of the office of Council member for the Town of Elizabeth, West Virginia, to the best of my skill and judgement, during my continuance in the same.

SO HELP ME GOD.

Edith L. Cumberledge

Subscribed and sworn to before me Penny McVay
a Notary Public in and for Wirt County, West Virginia, this
14 day of May, 1998.



Penny McVay
Notary Public

STATE OF WEST VIRGINIA

COUNTY OF WIRT, TO-WIT:

I, Penny McVay, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and the Ordinance of the Town of Elizabeth, and that I will faithfully and impartially discharge the duties of the office of Clerk/Recorder for the Town of Elizabeth, West Virginia, to the best of my skill and judgment, during my continuance in the same.

SO HELP ME GOD.

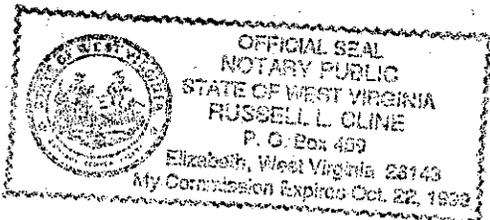
Penny McVay

Subscribed and sworn to before me Russell L. Cline

a Notary Public in and for Wirt county, West Virginia this

27th day of August, 1999.

My commission expires 10-22-99.



Russell L. Cline
Notary Public

TOWN OF ELIZABETH, WEST VIRGINIA

BOND ORDINANCE

ORDINANCE AUTHORIZING THE CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS FOR THE PUBLIC WATER SYSTEM OF THE TOWN OF ELIZABETH, WEST VIRGINIA; AND THE FINANCING OF A PORTION OF THE COST THEREOF THROUGH THE ISSUANCE BY THE TOWN OF NOT TO EXCEED \$450,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BOND, SERIES 2001, FOR THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PUBLIC WATER SYSTEM THROUGH FINANCING TO BE OBTAINED BY THE TOWN AT A COST ESTIMATED TO BE APPROXIMATELY \$2,500,000; WITH BOND PROCEEDS TO BE USED, ALONG WITH OTHER FUNDS AND MONEYS OF, OR AVAILABLE TO, THE TOWN OF ELIZABETH WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE OWNER OF SUCH BOND; PLEDGING NET REVENUES, ON A PARITY BASIS, AS SECURITY FOR THE BOND; PLACING LIMITATION ON SALE OF SYSTEM; AND AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BOND AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Ordinance") is adopted pursuant to the provisions of Chapter 8, Article 19 of the West Virginia Code of 1931, as amended (the "Act"), and other applicable provisions of law.

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

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

B. The Issuer now has a public water system and desires to improve and expand that system and it is deemed essential, convenient and desirable for the health, welfare, safety, advantage and convenience of the inhabitants of the Issuer and, accordingly, it is hereby ordered, that there be acquired and constructed certain additions, betterments and improvements to the existing public water system of the Issuer known as the "System" (sometimes referred to herein as the "System") so as to improve the public health, comfort and convenience of residents of the City,

including the construction and installation of all necessary appurtenant facilities (the "Project"), and generally described as water line extensions, pumps, pumping stations, water plant improvements and necessary appurtenances particularly described in and according to the plans and specifications prepared by the Consulting Engineer for the Project and heretofore filed in the office of the Clerk/Recorder of the City Council (the "Governing Body") of the Issuer. The construction and acquisition of the Project and the financing hereby authorized and provided for are public purposes of the Issuer and are ordered for the purpose of meeting and serving public convenience and necessity.

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

D. The Issuer is the beneficiary of a United States Department of Agriculture, Rural Utilities Service ("RUS") grant in the amount of \$800,000 and a HUD Small Cities Block Grant in the amount of \$1,250,000, the proceeds of which, together with the Bond proceeds, will be used to acquire, construct and equip the Project.

E. It is deemed necessary for the Issuer to issue its Water Revenue Bonds in the total aggregate principal amount of \$450,000 to finance the cost of the acquisition, construction and equipping of the Project.

F. The estimated maximum cost of the acquisition, construction and equipping of the Project is \$2,500,000, all of which will be obtained from the sale of the Bonds and from a grant or grants to be made available to the Issuer. The cost of such acquisition, construction and equipping shall be deemed to include but not limited to the cost of preparing drawings, plans and specifications detailing the Project and all attendant expenses; amounts which may be deposited in the Series 2001 Bond Reserve Account; engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, and the performance of the things herein required or permitted in connection with any thereof; provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Bonds or the repayment of indebtedness incurred by the Issuer for acquisition, construction and equipping purposes shall be deemed Costs of the Project, as hereinafter defined.

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

H. It is in the best interests of the Issuer that its Series 2001 Bonds be sold to the United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government").

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

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

K. The Issuer currently has outstanding its Water Revenue Bond, Series 1982 (the "Series 1982 Bonds" or the "Prior Bonds"), issued in the original principal amount of \$547,000. The Prior Bonds are registered to the Government. The Series 2001 Bonds will be issued on parity with the Series 1982 Bonds as to lien on the Net Revenues of the System. The additional bonds coverage and parity tests set forth in the ordinance authorizing the issuance of the Prior Bonds have been met.

With the exception of the revenue bonds described above, there are no other outstanding bonds or obligations of the Issuer, which will rank prior to or on parity with the Series 2001 Bond as to lien, pledge and/or source of and security for payment.

L. The Issuer is not in default under the terms of the 1982 Ordinance or any document in connection therewith, and has complied with all requirements of all the foregoing with respect to the issuance of parity bonds or has attained a sufficient and valid waiver thereof.

Section 1.03. Ordinance Constitutes Contract. In consideration of the acceptance of the Bonds by those who shall be the registered owners of the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the registered owners of any and all of such Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

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

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

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

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

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

"Bond" or "Series 2001 Bonds" means the not more than \$450,000 in aggregate principal amounts of Town of Elizabeth, Water Revenue Bonds, Series 2001 issued for the purpose of acquiring, constructing and equipping the Project, and any bonds on parity therewith authorized to be issued hereunder.

"Bonds" means the Bond and the 1982 Bonds.

"1982 Bond" means the outstanding bond of the Issuer dated June 2, 1982, described in Section 1.02 K herein.

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

"Closing Date" means the date upon which there is an exchange of the Bonds for the proceeds representing the purchase of the Bond by the Government.

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

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

"Construction Fund" means the Construction Fund established by Section 4.01 hereof.

"Consulting Engineers" means Thrasher Engineering, Inc., Clarksburg, West Virginia, or any engineer or firm of engineers that shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System.

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

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

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

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

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

"Governing Body" means the council of the Issuer or other legally constituted governing body of the Issuer, as may hereafter be constituted.

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

"Grant Agreement" means a written commitment for any Grant, specifying the amount of such Grant, the terms and conditions upon which such Grant is made and the date or dates or event or events upon which such Grant is to be paid to the Issuer.

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

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

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

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

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

"Issuer" means the Town of Elizabeth, in Wirt County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Mayor" means the Mayor of the Issuer.

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

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

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

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

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

"1982 Ordinance" means the ordinance providing for the 1982 Bond, adopted June 2, 1982.

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

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

"Prior Bonds" means the Issuer's outstanding Water Revenue Bond, Series 1982, issued in the original principal amount of \$547,000.

"Prior Ordinance" means the 1982 Ordinance.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, or in any activity carried on by a person other than a natural person, including all persons "related" to such person within the meaning of Section 144(a)(3) of the Code, excluding, however, use by a state or local governmental unit and use as a member of the general public. All of the foregoing shall be determined in accordance with the Code, including, without limitation, giving due regard to "incidental use," if any, of the proceeds of the issue and/or proceeds used for "qualified improvements," if any.

"Project" means the acquisition, construction and equipping of certain additions, betterments and improvements for water facilities of the Issuer, within or surrounding the Town of Elizabeth and all appurtenant facilities.

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

(a) Government Obligations;

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

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

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

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

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

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as Primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

(h) The West Virginia "consolidated fund" managed by the West Virginia Investment Management Board pursuant to Chapter 12, Article 6, of the West Virginia Code of 1931, as amended; provided, that investments by such fund on behalf of the Issuer shall be restricted to Qualified Investments other than that described in this paragraph (h); and

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

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

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

"Renewal and Replacement Fund" means the Renewal and Replacement Fund established by Section 4.01 hereof.

"Revenue" or "System Revenue Fund" means the Revenue or System Revenue Fund established by Section 4.01 hereof.

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

"Series 2001 Bond Reserve Account" means the Series 2001 Bond Reserve Account established in the Series 2001 Bond Sinking Fund pursuant to Section 4.02 hereof.

"Series 2001 Bond Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the 2001 Bond in the then current or any succeeding year.

"Series 2001 Bond Sinking Fund" means the Series 2001 Bond Sinking Fund established by Section 4.02 hereof.

"State" means the State of West Virginia.

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

"Surplus Revenues" means the Net Revenues not required by the Ordinance to be set aside and held for the payment of or security for the Prior Bond, the Bond, or any other obligations of the Issuer, including the Renewal and Replacement Fund, and the Series 2001 Bond Reserve Account, the proceeds of which Bond or other obligations are to be used to pay Costs of the Project.

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

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

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

ARTICLE II

AUTHORIZATION OF CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Construction of the Project. There is hereby authorized the acquisition, construction and equipping of the Project, at an estimated cost of \$2,500,000 in accordance with plans and specifications to be prepared by the Consulting Engineers and filed in the office of the Governing Body. The proceeds of the Bonds hereby authorized shall be applied as provided in Article IV hereof. The Issuer has received bids and has entered or will enter into contracts for the acquisition, construction and equipping of the Project, compatible with the financing plan submitted to RUS.

ARTICLE III

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

Section 3.01. Authorization of Bonds. For the purposes of paying for acquisition, construction and equipping of the Project not otherwise provided for and paying certain costs of issuance of the Bonds and related costs, or any other purposes as determined by a Supplemental Resolution, there shall be issued negotiable Bonds of the Issuer, in the aggregate principal amount of \$450,000 for acquisition, construction and equipping of the Project. Said Bond shall be issued and designated, "Water Revenue Bond, Series 2001", in the aggregate principal amount of \$450,000 and shall have such terms as set forth hereinafter or in a Supplemental Resolution. The proceeds of the Bond remaining after funding of the Series 2001 Bond Reserve Account (if funded from Bond proceeds) shall, subject to Section 5.02 hereof, be deposited in or credited to the Construction Fund established by Section 4.01 hereof.

Section 3.02. Terms of Bonds. The Bond shall be registered and numbered R-1. The Bond shall bear interest at a rate of 4.50% per annum. The Bond shall mature in not more than forty (40) years; and shall be redeemable in whole or in part, all as prescribed herein. The Bond shall be payable as to principal and interest monthly beginning _____ 1, 200_, at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Principal and interest on the Bond shall be paid by check or draft of the Paying Agent mailed to the registered owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Government is the Registered Owner thereof.

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

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

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

execution of such Bond shall hold the proper office in the Issuer, 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 Bonds shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Bond Registrar shall have manually executed the Certificate of Authentication and Registration on such Bonds, substantially in the form set forth in Section 3.09. Any such executed Certificate of Authentication and Registration upon any such Bonds shall be conclusive evidence that such Bonds have been authenticated, registered and delivered under this Ordinance. The Certificate of Authentication and Registration on any Bonds shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

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

So long as the Bond remains outstanding, the Bond Registrar shall keep and maintain books for the registration and transfer of the Bonds.

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

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

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the

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

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues, on parity with the Series 1982 Bonds, derived from the operation of the System as herein provided and amounts, if any, in the Series 2001 Bond Reserve Account. No holder or holders of any of the Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Bonds shall be secured by a lien on the Net Revenues derived from the System on parity with the Series 1982 Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and the Series 1982 Bonds and to make the payments into the Series 2001 Bond Sinking Fund, the Series 2001 Bond Reserve Account therein and the Renewal and Replacement Fund, hereinafter established, are hereby irrevocably pledged to the payment of the principal of and interest on the Bonds as the same become due.

Section 3.09. Form of Bond. The text of the Bond shall be in substantially the following forms, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution or Ordinance adopted prior to the issuance thereof:

(FORM OF SERIES 2001 BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
TOWN OF ELIZABETH
WATER REVENUE BOND,
SERIES 2001

No. R-1

\$450,000
Date: _____, 2001

KNOW ALL MEN BY THESE PRESENTS: That TOWN OF ELIZABETH, a municipality, public corporation and political subdivision of the State of West Virginia in Wirt County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the order of the United States of America (the "Government"), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the sum of Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000.00), or such lesser amount as set forth on the Record of Advances attached as Exhibit A hereto and incorporated herein by reference, plus interest on the unpaid principal balance at the rate of four and 50/100 percent (4.50%) per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing on the 30th day following delivery of the Bond and continuing on the corresponding day of each month for the first twenty-four (24) months after the date hereof, and \$2,066.00 covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of forty (40) years from the date of this Bond, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

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

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

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Issuer. Refunds and extra payments, as defined in the regulations of the Rural Utilities Service, according to the source of funds involved, shall, after payment of interest, be

applied to the installments last to become due under this Bond and shall not affect the obligation of Issuer to pay the remaining installments as scheduled herein.

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

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

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

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

This Bond is issued (i) to pay a portion of the costs of acquisition, construction and equipping of certain additions, betterments and improvements to the public water facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The water system of the Issuer, together with the Project, and any further extensions, additions, betterments or improvements thereto is herein called the "System". This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 of the West Virginia Code of 1931, as amended (the "Act"), and an Ordinance duly enacted by the Issuer and effective June 28, 2001 (the "Ordinance"), and is subject to all the terms and conditions thereof. The Ordinance provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bond under the Ordinance.

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Ordinance) to be derived from the operation of the System, from moneys in the Reserve Account created under the Ordinance for the Bonds (the "Series 2001 Bond Reserve Account") and

unexpended proceeds of the Bond, on parity with the Issuer's Water Revenue Bonds, Series 1982 (the "Prior Bonds"). Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Net Revenues, the moneys in the Series 2001 Bond Reserve Account and unexpended proceeds of the Bond. Pursuant to the Ordinance, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System and to leave a balance each year equal to at least one hundred fifteen percent (115%) of the maximum amount payable in any year for principal of and interest on the Bond and the Prior Bonds, and all other obligations secured by a lien on or payable from such net revenues prior to or on parity with the Bond, provided however, that so long as there exists in the Series 2001 Bond Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bond in the then current or any succeeding year and in the reserve account established for any other obligations outstanding prior to or on parity with the Bond, an amount at least equal to the requirement therefor, such percentage may be reduced to one hundred ten percent (110%).

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

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

This Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Bond Registrar.

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

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

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

THIS BOND IS ON PARITY AS TO LIEN AND SOURCE OF PAYMENT WITH THAT CERTAIN WATER REVENUE BOND, SERIES 1982, OF THE ISSUER DESCRIBED IN AN ORDINANCE ENACTED ON JUNE 2, 1982.

The initial address of Government for purposes of bond registration is Federal Building, Room 320, 75 High Street, Morgantown, WV 26505-7500.

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

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

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

IN WITNESS WHEREOF, TOWN OF ELIZABETH has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Clerk/Recorder and has caused this Bond to be dated _____, 2001.

TOWN OF ELIZABETH

[SEAL]

By: _____
Mayor

ATTEST:

Clerk/Recorder

ASSIGNMENT

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

Dated: _____, 200_.

(Assignor)

Witnessed in the presence of:

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$ __, __.00	_____, 2001	(6) \$	
(2) \$ _____		(7) \$	
(3) \$ _____		(8) \$	
(4) \$ _____		(9) \$	
(5) \$ _____		(10) \$	

TOTAL \$

Section 3.10. Sale of Bonds; Incorporation of Terms. The Series 2001 Bond shall be held to RUS pursuant to the terms and conditions of the Letter of Conditions from RUS dated July 24, 1998. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to accept the Letter of Conditions from RUS, with such changes, insertions and omissions as may be approved by the Mayor, the execution of which shall be conclusive evidence of such approval, and any such prior execution and delivery is hereby authorized, ratified and approved.

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

ARTICLE IV

FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

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

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

Section 4.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created or continued with the Commission:

- (1) Series 2001 Bond Sinking Fund;
 - (a) Within the Series 2001 Bond Sinking Fund, the Series 2001 Bond Reserve Account.

Section 4.03. System Revenues; Flow of Funds.

A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the System Revenue Fund established herein. The Revenue Fund shall constitute a trust fund for the purposes provided in this Ordinance and shall be kept separate and distinct from

all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided.

(1) The Issuer shall first each month transfer from the Revenue Fund to the Operation and Maintenance Fund the amount necessary and sufficient to pay current Operating Expenses.

(2) The Issuer shall next, each month, on or before the due date of payment of each installment on the Bonds, transfer from the Revenue Fund and remit to the National Finance Office designated in the Bond (or such other place as may be provided pursuant to the Bond), the amount required to pay the interest on the Bond, and to amortize the principal of the Bonds over the respective lives of each Bond issue. All payments with respect to principal of and interest on the Bonds shall be made on an equal pro rata basis in accordance with the respective aggregate principal amount thereof outstanding and on parity with each other. There is hereby created a sinking fund at the Depository Bank into which the Issuer shall deposit sufficient amounts from the Revenue Fund to pay the interest on the Bonds and to amortize the principal of the Bonds over the remaining respective lives of each Bond issue. As long as the Government owns the Bonds, such deposits can be replaced by the remittances described above.

(3) The Issuer shall next, on the first day of each month, commencing one (1) month prior to the first date of payment of principal and interest of the Bond, if not fully funded upon issuance of the Bond, apportion and set apart out of the Revenue Fund and remit to the Commission, on a pro rata basis with the Prior Bonds, for deposit into the Series 2001 Bond Reserve Account, an amount equal to .4167% of the Series 2001 Bond Reserve Requirement on parity with the Prior Bonds; provided, that no further payments shall be made into the Series 2001 Bond Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2001 Bond Reserve Requirement.

(4) From the moneys remaining in the Revenue Fund, the Issuer shall next, transfer to the Renewal and Replacement Fund .4167% of the amount of the Series 2001 Bond Reserve Requirement, exclusive of any payments into the Series 2001 Bond Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in the Series 2001 Bond Reserve Account [except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof,] shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

Moneys in the Series 2001 Bond Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, as the same shall become due. Moneys in the Series 2001 Bond Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the Bond, as the same shall come due, when other moneys in the attendant Series 2001 Bond Sinking Fund are insufficient therefor, and for no other purpose.

Except to the extent transferred to the Rebate Fund at the request of the Issuer, all investment earnings on moneys in the Series 2001 Bond Sinking Fund and Series 2001 Bond Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Construction Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payments, if any, due on the respective series of bonds, and then to the next ensuing principal payments due thereon.

Except with respect to transfers to the Rebate Fund permitted hereunder, any withdrawals from the Series 2001 Bond Reserve Account which result in a reduction in the balance of the Series 2001 Bond Reserve Accounts to below the Series 2001 Bond Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full, to the Series 2001 Bond Sinking Fund for payment of debt service on the Bond.

B. As and when additional bonds ranking on parity with the Bond and the Prior Bonds are issued, provision shall be made for additional payments into the Sinking Fund sufficient to pay the interest on such additional parity bonds and accomplish retirement thereof at maturity and to accumulate a balance in the appropriate reserve account in an amount equal to the maximum provided and required to be paid into the Sinking Fund in any year for account of the bonds of such series, including such additional bonds which by their terms are payable from such Sinking Fund.

The Issuer shall not be required to make any further payments into the Series 2001 Bond Sinking Fund or into the Series 2001 Bond Reserve Account therein when the aggregate amount of funds in said Series 2001 Bond Sinking Fund and Series 2001 Bond Reserve Account are at least equal to the aggregate principal amount of the Bond issued pursuant to this Ordinance then Outstanding and all interest to accrue until the maturity thereof.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2001 Bond Sinking Fund created hereunder, and all amounts required for said Series 2001 Bond Sinking Fund shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein.

The payments into the Series 2001 Bond Sinking Fund shall be made on the first day of each month, except that when the first day of any month shall be a Sunday or legal holiday then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Ordinance.

Moneys in the Series 2001 Bond Reserve Account shall be invested and reinvested by the Commission in accordance with Section 7.01 hereof.

The Series 2001 Bond Sinking Fund, including the Series 2001 Bond Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Bond and any additional bonds ranking on parity therewith that may be issued and Outstanding under the conditions and restrictions hereinafter set forth.

C. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in said Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into the Series 2001 Bond Sinking Fund, including the Series 2001 Bond Reserve Account therein and the Renewal and Replacement Fund during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Such Surplus Revenues shall be used to redeem the Bond or for any lawful purposes of the System.

D. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay the Commission's fees, the Registrar's fees, the Paying Agent's fees and the Depository Bank's charges then due.

E. WesBanco Bank Parkersburg, Elizabeth Branch, is hereby designated the Depository Bank. The Commission is hereby designated as Paying Agent for the Bond.

F. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in the Revenue Fund and the Renewal and Replacement Fund shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

G. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 4.03, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

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

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

J. All Tap Fees shall be deposited by the Issuer, as received, in the Construction Fund, and following completion of the Project, shall be deposited in the Revenue Fund and may be used for any lawful purpose of the System.

Section 4.04. Excess Bond Proceeds. The Issuer shall place any excess proceeds from the Bonds not required by the Project in the Series 2001 Bond Reserve Account or as otherwise directed by RUS.

ARTICLE V

BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 5.01. Application of Bond Proceeds. From the moneys received from time to time from the sale of the Bond, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Bond, there shall be deposited with the Commission in the Series 2001 Bond Reserve Account the sum, if any, required hereunder for funding the Series 2001 Bond Reserve Account.

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

C. The Depository Bank shall act as a trustee and fiduciary for the Bondholder with respect to the Construction Fund and shall comply with all requirements with respect to the disposition of the Construction Fund set forth in this Ordinance. Except with respect to any transfers to the Rebate Fund, moneys in the Construction Fund shall be used solely to pay Costs of the Project and, until so transferred or expended, are hereby pledged as additional security for the Bond.

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

On or before the Closing Date, the Issuer shall have delivered to RUS a report listing the specific purposes for which the proceeds of the Bond will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly.

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

- (1) a completed and signed "Payment Requisition Form," and
- (2) a certificate, signed by an Authorized Officer and the Consulting Engineers, stating:
 - (A) That none of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;

(B) That each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;

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

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

In case any contract provides for the retention of a portion of the contract price, the Depository Bank shall disburse from the Construction Fund only the net amount remaining after deduction of any such portion. All payments made from the Construction Fund shall be presumed by the Depository Bank to be made for the purposes set forth in said certificate, and the Depository Bank shall not be required to monitor the application of disbursements from the Construction Fund. The Consulting Engineers shall from time to time file with the Depository Bank written statements advising the Depository Bank of its then authorized representative.

Pending such application, moneys in the Construction Fund, including any accounts therein, shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

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

ARTICLE VI

ADDITIONAL COVENANTS OF THE ISSUER

Section 6.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Ordinance shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Bond. In addition to the other covenants, agreements and provisions of this Ordinance, the Issuer hereby covenants and agrees with the Holders of the Bond as hereinafter provided in this Article VI. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as said Bond or the interest thereon is Outstanding and unpaid.

Section 6.02. Bond Not to be Indebtedness of the Issuer. The Bond shall be or constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Ordinance. No Holder or Holders of the Bond shall ever have the right to compel the exercise of the taxing power of the Issuer to pay said Bond or the interest thereon.

Section 6.03. Bond Secured by Pledge of Net Revenues. The payment of the debt service of the Bond issued hereunder shall be secured forthwith on parity with the Net Revenues with the Series 1982 Bonds derived from the operation of the System including any other fees collected by the Issuer and imposed by the tariff approved by the Governing Body of the Issuer on November 6,

1998. The Revenues derived from the System, in amounts sufficient to pay the principal of and interest on the Bond and to make the payments into the Series 2001 Bond Sinking Fund, including the Series 2001 Bond Reserve Account therein, and all other payments provided for in the Ordinance and the tariff are hereby irrevocably pledged, in the manner provided herein, to the payment of the principal of and interest on the Bond as the same become due, and for the other purposes provided in the Ordinance.

Section 6.04. Rates. Prior to issuance of the Bond, equitable rates or charges for the proposed and/or actual use of and service rendered by the System have been or will be established, all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Clerk/Recorder, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from said System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such 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. The Issuer shall take the necessary actions with respect to the imposition of rates at such times and with such provisions with respect to interest rate and maturity of the Bond to finance the issuance of the Bond as the purchaser thereof shall require. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient (i) to provide for all reasonable expenses of operation, repair and maintenance of the System and (ii) to leave a balance each Fiscal Year equal to at least one hundred fifteen percent (115%) of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Bond and the Prior Bonds; provided that, in the event that amounts at least equal to or in excess of the Reserve Requirements are on deposit in the Series 2001 Bond Reserve Account and the Reserve Accounts for the Bond and the Prior Bonds are funded at least at the requirement provided for in the Ordinance, such balances each Fiscal Year need only equal at least one hundred ten percent (110%) of the maximum amounts required in any succeeding Fiscal Year for payment of principal of and interest on the Bond and the Prior Bonds.

Section 6.05. Completion, Operation and Maintenance; Schedule of Costs. The Issuer shall simultaneously with the delivery of the Bond or immediately thereafter enter into written contracts for the immediate acquisition or construction of the Project. The Issuer will expeditiously complete the Project and will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof from the revenues of said System in the manner provided in the Ordinance.

Section 6.06. Sale of the System. Except as otherwise required by state law, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Outstanding Bonds and effectively defease this Ordinance in accordance with Section 9.01 hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Outstanding Bonds, immediately be remitted to the Commission for deposit in the Series 2001 Bond Sinking Fund, and, with the written permission of the Government, or in the event the Government

is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal at maturity of and interest on the Outstanding Bonds. Any balance remaining after the payment of all the Outstanding Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$10,000, the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$10,000 but not in excess of \$50,000, the Issuer shall first, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of \$10,000 and not in excess of \$50,000, shall with the written consent of RUS, be remitted by the Issuer to the Commission for deposit in the Series 2001 Bond Sinking Funds and shall be applied only to the purchase of Bonds of the last maturities then Outstanding at prices not greater than the redemption price of such Bonds. Such payment of such proceeds into the Series 2001 Bond Sinking Funds or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Ordinance. No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of \$50,000 and insufficient to pay all Bonds then outstanding without the prior approval and consent in writing of RUS, of sixty-six and two-thirds percent (66 2/3%) in amount of the Bonds then outstanding. The Issuer shall prepare the form of such approval and consent for execution by RUS for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 6.07. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided in this Section 6.07 and in Section 6.08B, the Issuer shall not issue any obligations whatsoever with a lien on or otherwise payable from any source of payment pledged originally whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Bond. All obligations issued by the Issuer after the issuance of the Bond and payable from the revenues of the System, except such additional parity bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Bond; provided, that no such subordinate

obligations shall be issued unless all payments required to be made into the Series 2001 Bond Reserve Accounts and the Renewal and Replacement Fund at the time of the issuance of such subordinate obligations have been made and are current.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on parity with the lien of the Bond, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Bond and the interest thereon in this Ordinance, or upon the System or any part thereof. The Issuer will give RUS prior written notice of the issuance of other obligations to be used for the Project, payable from System revenues or grants for the Project.

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

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

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

No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Clerk/Recorder a written statement by the Independent Certified Public Accountants, based upon the necessary investigation and certification by the Consulting Engineers, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any twelve (12) consecutive months, within the eighteen (18) months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the three (3) succeeding years after the completion of the improvements to be financed by such Parity Bonds, shall not be less than one hundred fifteen percent (115%) of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

- (1) The Series 2001 Bond and Prior Bonds then Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and
- (3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the three (3) succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from (a) the improvements to be financed by such Parity Bonds and (b) any increase in rates adopted by the Issuer, the period for appeal of which has expired prior to the date of delivery of such Parity Bonds, and shall not exceed

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

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

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

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

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

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

No Parity Bonds shall be issued any time, however, unless all the payments into the respective funds and accounts provided for in this Ordinance with respect to the Bond then outstanding, and any other payments provided for in this Ordinance, shall have been made in full as required to the date of delivery of such Parity Bonds, and the Issuer shall then be in full compliance with all the covenants, agreements and terms of this Ordinance.

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

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

Section 6.09. Books and Records. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, the costs of acquiring the Project site, construction, and installing the Project, and RUS shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The Issuer shall keep complete and accurate records of the costs of designing the System, acquiring the Project site and acquiring, constructing and installing the Project. The Issuer shall permit RUS, or its agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to RUS such documents and information as it may reasonably require in connection with the design, acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

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

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

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

The Issuer shall file with the Consulting Engineers and RUS and shall mail in each year to any Holder or Holders of Bonds requesting the same, an annual report containing the following:

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

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Ordinance with respect to said Bonds and the status of all said funds and accounts.

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

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants in compliance with the applicable OMB Circular, or any successor thereto, and the Single Audit Act, or any successor thereto, and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to the Holder of the Bond and shall submit said report to RUS. Such audit report submitted to RUS shall include a statement that the Issuer is in compliance with the terms and provisions of this Ordinance and the Act and that Gross Revenues are adequate to meet operation/maintenance expenses and debt service requirements.

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

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

Section 6.11. Operating Budget and Audit. The Issuer shall annually, at least forty-five (45) days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated reserves and expenditures for operation and maintenance of the System during the succeeding Fiscal Year. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by the Consulting Engineers, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of ten percent (10%) of the amount of such budget shall be made except upon the further certificate of the Consulting Engineers that such increased expenditures are necessary for the continued operation of the System. The Issuer shall, within thirty (30) days of the adoption thereof, mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to RUS and to any Holder of the Bond, who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all

resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to RUS, or anyone acting for and on behalf of such Holder of the Bond.

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

Section 6.12. Engineering Services and Operating Personnel. The Issuer shall provide and maintain competent and adequate resident engineering services satisfactory to RUS covering the supervision and inspection of the construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such resident engineer shall certify to RUS and the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer shall require the Consulting Engineers to submit the As-Built Plans to it within sixty (60) days of the completion of the Project.

Section 6.13. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 6.14. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of thirty (30) days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid, to the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia. Rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System and any services and facilities of the water system, if so owned by the Issuer, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of either system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law.

Section 6.15. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

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

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

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKERS' COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in

the amounts of one hundred percent (100%) of the construction contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

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

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

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

C. The Issuer shall also require all contractors engaged in the construction of the Project to carry such Workers' Compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project. Such insurance shall be made payable to the order of RUS, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 6.17. Completion of Project; Permits and Orders. The Issuer will complete the Project as promptly as possible and operate and maintain the System in good condition and in compliance with all federal and State requirements and standards.

The Issuer will obtain all permits required by State and federal laws for the acquisition and construction of the Project and all orders and approvals from the West Virginia Public Service Commission necessary for the acquisition and construction of the Project and the operation of the System.

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

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

B. PRIVATE ACTIVITY BOND COVENANT. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bond from the treatment afforded by Section 103(a) of the Code by reason of the classification of the Bond as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code in order to assure the tax-exempt status of the Bond.

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

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

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

F. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it (including those deemed necessary by RUS) so that the interest on the Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions (including those determined by RUS) which would adversely affect such exclusion.

Section 6.19. Rebate Covenant. The Issuer is a governmental unit with general taxing powers to finance operations of or facilities of the nature of the Project and the System. As covenanted above, the Bond is not a private activity bond within the meaning of the Code, and ninety-five percent (95%) or more of the net proceeds (as defined with respect to the Code) of the Bond will be used for local governmental activities of the Issuer. The Issuer reasonably expects it and all its 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 2001, in which the first series of bonds are to be issued. Therefore, the Issuer believes that it is excepted from the rebate requirements of Section 148(f) of the Code. Notwithstanding the foregoing, if the Issuer is in fact subject to such rebate requirements, the Issuer hereby covenants to rebate to the United States the amounts required by the Code and to take all steps necessary to make such rebates as further described in Section 7.03. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and obtain a waiver from the Internal Revenue Service in order to maintain the tax-exempt status of interest on the Bonds.

Section 6.20. Securities Law Compliance. The Issuer will provide RUS, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 6.21. Public Service Commission Approval. The Issuer shall obtain all requisite orders of and approvals from the Public Service Commission of West Virginia necessary for the construction of the Project and operation of the System, and RUS shall receive an opinion of counsel to the Issuer to such effect.

Section 6.22. Compensation of Members of Governing Body. The Issuer hereby covenants and agrees that no compensation for policy direction shall be paid to the members of the Governing Body in excess of the amount permitted by the Act. Payment of any compensation to any such member for policy direction shall not be made if such payment would cause the Net Revenues to fall below the amount required to meet all payments provided for herein, nor when there is default in the performance of or compliance with any covenant or provision hereof.

Section 6.23. Statutory Mortgage. For the further protection of the holders of the Bond, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding and shall take effect immediately upon delivery of the Bonds.

Section 6.24. Restrictions on Use of Bond Proceeds. The Issuer agrees that it will be in default hereunder if any Bond proceeds are used for a purpose that contributes to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

ARTICLE VII

INVESTMENT OF FUNDS; NON ARBITRAGE

Section 7.01. Investments. Any moneys held as a part of the funds and accounts created by this Ordinance, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 7.01 and in Section 7.02 and 7.03.

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

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, a summary of such funds,

accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as the Bond is outstanding.

Section 7.02. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Bond in such manner and to such extent as may be necessary, in view of the Issuer's reasonable expectations at the time of issuance of the Bond, so that the Bond will not constitute "arbitrage bonds" under Section 148 of the Code and Regulations, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a Federal Information Return with respect to the Bond) so that the interest on the Bond will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 7.03. Tax Certificate and Rebate. The Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Bond. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Bond as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Ordinance.

If it is determined that the Issuer does not qualify for an exception to Section 148 of the Code or the Issuer is otherwise subject to rebate in connection with the Bond, the Issuer shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, unless otherwise agreed by the Government, the Issuer shall deposit, or cause to be deposited, in the Rebate Fund such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder, and used only for payment of rebatable arbitrage to the United States. The Issuer shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be from time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States, which are required, the Issuer shall assure that the Issuer makes such payments to the United States, on a timely basis, from any funds lawfully available therefor. In addition, the Issuer shall cooperate with the Government in preparing rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates at the expense of the Issuer. The Issuer and the Depository Bank (at the expense of the Issuer) may provide for the employment of

independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer or the Depository Bank may deem appropriate in order to assure compliance with this Section 7.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 7.03 in accordance with the requirements of Section 148(f) of the Code or such Regulations. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

The Issuer shall submit within fifteen (15) days following the end of each Bond Year a certified copy of its rebate calculation and certificate with respect thereto or, if the Issuer qualifies for the small governmental issue exception to rebate, or any other exception thereto, then the Issuer shall submit a certificate stating that it is exempt from such rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Bonds subject to rebate. The Issuer shall furnish such information with respect to earnings on all moneys constituting "Gross Proceeds" of the Bonds (as such term is defined in the Code) from time to time as requested. The Issuer shall also furnish such additional information relating to rebate as may be reasonably requested, including information with respect to earnings on all funds constituting "gross proceeds" of the Bond (as defined in the Code).

The Issuer shall furnish, annually, at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested and shall furnish such information with respect to earnings on all funds constituting "gross proceeds" of the Bonds (as that term is defined in the Code) from time to time as requested.

Section 7.04. Restriction of Yield and Bond Proceeds. The Issuer shall comply with the yield restriction on Bond proceeds as set forth in Section 148 of the Code.

ARTICLE VIII

DEFAULT AND REMEDIES

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

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

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Bond set forth in this Ordinance, any Supplemental Resolution or the Bond or in the Prior Bonds or the ordinance and resolution which authorized the Prior Bonds, and such default shall have continued for a period of thirty (30) days after the Issuer shall have been given written notice of such

default by the Commission, the Depository Bank, Registrar or any other Paying Agent or a Holder of the Bond or the Prior Bonds; or

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

Section 8.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of Outstanding Bonds may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Ordinance relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Outstanding Bonds, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Outstanding Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Ordinance with respect to the Outstanding Bonds, or the rights of such Registered Owners. Any such remedies shall be exercised in a manner benefiting the holder of the Series 2001 Bond and the Prior Bonds on a parity basis.

Section 8.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Ordinance and the Act, including, after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bond any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bond and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Ordinance and the Act.

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

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

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

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

ARTICLE IX

DEFEASANCE

Section 9.01. Defeasance of Bond. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holder of the Bond, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Ordinance, then with respect to the Bond only the pledge of Net Revenues and other moneys and securities pledged under this Ordinance and all covenants, agreements and other obligations of the Issuer to the Registered Owner of the Bond shall thereupon cease, terminate and become void and be discharged and satisfied.

Outstanding Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due either at maturity or at the next redemption date, the principal installments of and interest on such Bond shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. The Bond shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments of and interest due and to become due on said Bond on and prior to the next redemption date or the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn

or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of and interest on said Bond provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of and interest to become due on said Bond on and prior to the next redemption date or the maturity dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Commission or its agent, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

ARTICLE X

RATES, RULES, COVENANTS, ETC.

Section 10.01. Initial Schedule of Rates and Charges.

A. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in a Tariff on file with the Public Service Commission effective October 15, 1998, which Tariff is incorporated herein by reference and is made a part hereof.

B. The Issuer hereby ratifies a Rate Ordinance enacted on November 6, 1998, which sets forth the rates and charges as set out in the above-referenced order and included on the tariff sheet filed with the Public Service Commission.

Section 10.02. Further Covenants.

The Issuer hereby further covenants and agrees as follows:

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

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

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

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

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

ARTICLE XI

MISCELLANEOUS

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

Section 11.02. Delivery of Bonds. The Mayor and Clerk/Recorder of the Governing Body are hereby authorized and directed to cause the Bond, numbered R-1, hereby awarded to the Purchaser pursuant to prior agreement, to be delivered to the Purchaser as soon as the Purchaser will accept such delivery.

Section 11.03. Severability of Invalid Provision. If any one or more of the covenants, agreements or provisions hereof should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions hereof, and shall in no way affect the validity of all the other provisions hereof or the Bond.

Section 11.04. Amendment or Modification of Ordinance. No material modification or amendment of this Ordinance, or of any ordinance or resolution amendatory or supplemental hereto, that would materially and adversely affect the respective rights of Registered Owner of the Bond shall be made without the consent in writing of the Registered Owners of 66 2/3% or more in principal amount of the Bond so affected and then Outstanding; provided, that no change shall be made in the maturity of the Bond or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein respectively pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Bond required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Ordinance may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code as may be necessary to assure the excludability of interest on the Bond from gross income of the holder thereof.

Section 11.05. Ordinance Constitutes Contract. The provisions of this Ordinance shall constitute a contract between the Issuer and the Registered Owner of the Bond, and no change, variation or alteration of any kind of the provisions of this Ordinance shall be made in any manner, except as in this Ordinance provided.

Section 11.06. Conflicting Provisions Repealed. All ordinances and orders, or parts thereof, in conflict with the provisions hereof are, to the extent of such conflicts, hereby repealed except the 1982 Ordinance.

Section 11.07. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 11.08. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State applicable thereto; and that the Mayor, Clerk/Recorder and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.09. Supplemental Resolutions. The Issuer may pass such supplemental resolutions, if necessary, to effectuate the purposes and intent of this Ordinance.

Section 11.10. Effective Time. This Ordinance shall take effect immediately upon its adoption.

Section 11.11. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Bond Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for two (2) successive weeks within a period of fourteen (14) consecutive days, with at least six (6) full days intervening between each publication, in a qualified newspaper published and of general circulation in the Town of Elizabeth, together with a notice stating that this Bond Ordinance has been adopted and that the Issuer contemplates the issuance of the Bonds, and that any person interested may appear before the Town Council upon a date certain, not less than ten (10) days subsequent to the date of the first publication of such abstract of this Bond Ordinance and notice, and present protests, and that a certified copy of the Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard, and the Governing Body shall take such action as it shall deem proper in the premises.

First Reading – June 14, 2001

Second Reading – June 28, 2001

Enacted Following Public Hearing – June 28, 2001

TOWN OF ELIZABETH, WEST VIRGINIA

By: Lewis Field
Mayor

[SEAL]

ATTEST:

Penny McVay
Clerk/Recorder

CERTIFICATION

The undersigned does hereby certify that the attached Ordinance is a true and accurate copy of an Ordinance duly enacted by the Council of the TOWN OF ELIZABETH, WEST VIRGINIA on and effective on June 28, 2001, and that the foregoing document remains in full force and effect and has not been amended.

Dated: June 28, 2001.

[SEAL]

Penny McVay
Clerk/Recorder

TOWN OF ELIZABETH
WATER REVENUE BOND, SERIES 2002

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING FOR
DATE OF ISSUANCE OF BOND AND AMENDMENT OF PRIOR ORDINANCE

WHEREAS, the Town of Elizabeth (the "Issuer") has previously authorized the issuance of its Water Revenue Bond, Series 2001, by a Bond Ordinance enacted on June 28, 2001, in the original aggregate principal amount of \$450,000 (the "Bond"), and to be purchased by the United States Department of Agriculture (the "Purchaser");

WHEREAS, the Bond will be issued during the 2002 calendar year and shall be designated as the Town of Elizabeth, Water Revenue Bond, Series 2002;

WHEREAS, the Bond Ordinance may be amended by supplemental resolution adopted by the Issuer; and

WHEREAS, the Council of the Town of Elizabeth deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted,

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF
THE TOWN OF ELIZABETH:**

Section 1. The Bond Ordinance is amended, as necessary, to reflect the change in the date of issuance of the Bond and its redesignation as the Town of Elizabeth, Water Revenue Bond, Series 2002.

Section 2. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 28th day of January, 2002.

TOWN OF ELIZABETH

By: Lewis Full
Mayor

ATTEST:

Penny McVay
Clerk/Recorder

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of the Town of Elizabeth on this 28th day of January, 2002.

Dated: January 28, 2002.

[SEAL]



Clerk/Recorder

C

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OFFICIAL MINUTES
of
TOWN OF ELIZABETH
Elizabeth, West Virginia

The Elizabeth Town Council met in regular session on June 14, 2001 at 7 p.m. at the Elizabeth Municipal Building.

Those present were: Lewis Full, Ken Stempowski, Bud George, Edith Cumberledge, Jim Cumberledge, Anna Haney, and Sharon Jones.

Those Absent were: Dennis Gage

Mayor Full called the meeting to order. Bud George made a motion to dispense with the reading of the minutes, Jim Cumberledge seconded the motion, all in favor, motion passed.

Old Business: The Mayor advised council that we are on the schedule with Nichols Heating and Cooling for the replacement of the furnace and air conditioning.

The sewer line at the Elizabeth Baptist Church is not done yet they are still waiting on Charles Hennen to dig the ditch.

New Business: The floating pump at the water plant broke on June 13. The town has borrowed a pump from the City of Parkersburg to get back into operation. The floating pump is in the process of being repaired.

Bud George reported a leak at the baseball field. Council also discussed the amount of water used at the swimming pool. The council agreed to donate the water used to fill the pool as they have done in the past. Anna Haney reminded council that when the Town starts purchasing water from Claywood the Development Authority will have to pay for the water used at the pool including the initial fill up. Also the Mayor advised the fire department will have to start paying for the water used at the fire station also and has advised them of this.

Lewis Full Mayor

Larry McVay Clerk

OFFICIAL MINUTES
of
TOWN OF ELIZABETH
Elizabeth, West Virginia

At this time the Mayor advised council that this was the first public hearing on the Bond Ordinance needed for the Water revenue Bond for the Palestine Water Extension Project in the amount of \$450,000.00. At this time the Mayor asked the clerk to read the Ordinance by title.

Ken Stempowski made a motion to pass the Bond Ordinance in the amount of \$450,000.00. Bud George seconded the motion, all in favor, motion carried. A Public Hearing for the second reading and passage on this ordinance will be held June 28, 2001 at 7 p.m.

Council discussed getting someone part to help with the mowing and will advise Kevin Merrill to hire someone at minimum wage.

Bud George made a motion to pay the bills, Ann Haney seconded the motion, all in favor, motion carried.

Bud George made a motion to adjourn, Edith Cumberledge seconded the motion, all in favor, meeting adjourned.

Lewis Full Mayor

Lenny McVay Clerk

OFFICIAL MINUTES
of
TOWN OF ELIZABETH
Elizabeth, West Virginia

The Elizabeth Town Council met in special session on June 28, 2001 at 7 p.m. at the Elizabeth Municipal Building.

Those present were: Lewis Full, Ken Stempowski, Bud George, Edith Cumberledge, Jim Cumberledge, William Bragg and Penny McVay.

Those Absent were: Dennis Gage and Anna Haney

Mayor Full called the meeting and Public Hearing to order. Clerk Penny McVay gave the second reading by title of the ordinance. The Mayor opened the floor for any public input. Since no public was present the Mayor announced the passage of the Bond Ordinance.

Ken Stempowski made a motion to adjourn the Public Hearing, Edith Cumberledge seconded the motion, all in favor, meeting adjourned.

Lewis Full Mayor

Penny McVay Clerk



Wirt County Journal

Ph. or Fax 304-275-8981

714 Washington Street

P.O. Box 309, Elizabeth, WV 26143

FEDERAL I.D. NO. 55-0626414

STATE OF WEST VIRGINIA

COUNTY OF WIRT, to wit:

James McGoldrick

being first duly sworn upon my oath, do depose and say:

- that I am Manager of the Wirt County Journal, a Democratic newspaper,
- that I have been duly authorized to execute this affidavit,
- that such newspaper is regularly published weekly for at least fifty weeks during the calendar year, in the municipality of Elizabeth, Wirt County, West Virginia.
- that such newspaper is a newspaper of "general circulation" as defined in Art. 3, Chap. 59 of the Code of West Virginia 1931 as amended, within Elizabeth and Wirt County;
- that such newspaper averages in length four or more pages, exclusive of any cover, per issue;
- that such newspaper is circulated to the general public at a definite price or consideration;
- that such newspaper is a newspaper to which the general public resorts for passing events or a political, religious, commercial and social nature and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices;
- and that the annexed notice described as follows:

Abstract of Ordinance

AS PUBLISHED IN SAID NEWSPAPER AS FOLLOWS:

TIMES	DATES
Two	June 13 and June 27, 2001

PUBLICATION

CHARGES \$136.30

CERTIFICATE TO

Town of Elizabeth

P.O. Box 478

Elizabeth, WV 26143-0478

signed) *James E. McGoldrick*

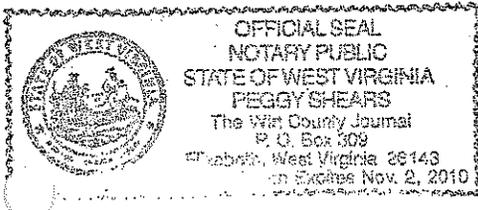
NOTARIZATION

then, sworn to and subscribed before me this 12

of July, 20 01

Peggy Shears

Notary Public



ABSTRACT OF ORDINANCE AND NOTICE OF PUBLIC HEARING

Pursuant to the provisions of West Virginia Code, Chapter 6, Article 9A, Section 6 and Chapter 8, Article 19, as amended, you hereby notified that a public hearing before the Town Council (the "Council") of the Town of Elizabeth (the "Town") will be held on the 28th day of June, 2001, at which public hearing the Council will consider for final adoption an Ordinance entitled:

ORDINANCE AUTHORIZING THE CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS FOR THE PUBLIC WATER SYSTEM OF THE TOWN OF ELIZABETH, WEST VIRGINIA, AND THE FINANCING OF A PORTION OF THE COST THEREOF THROUGH THE ISSUANCE BY THE TOWN OF NOT TO EXCEED \$450,000 IN AGGREGATE PRINCIPAL AMOUNT OF ITS WATER REVENUE BOND, SERIES 2001, FOR THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PUBLIC WATER SYSTEM THROUGH FINANCING TO BE OBTAINED BY THE TOWN AT A COST ESTIMATED TO BE APPROXIMATELY \$2,500,000, WITH BOND PROCEEDS TO BE USED ALONG WITH OTHER FUNDS AND MONEYS OF OR AVAILABLE TO THE TOWN OF ELIZABETH WHICH MAY BE LAWFULLY EXPENDED FOR SUCH PURPOSES, AND TO PAY OTHER COSTS IN CONNECTION THEREWITH, PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE OWNER OF SUCH BOND, PLEDGING NET REVENUES, ON A PARITY BASIS, AS SECURITY FOR THE BOND, PROVIDING FOR INTERIM CONSTRUCTION FINANCING, REPLACING LIMITATION ON SALE OF SYSTEM, AND AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BOND, AND ADOPTING OTHER PROVISIONS RELATING THERETO.

The Ordinance has been or will be read and approved by the Council on first reading on June 14, 2001, and will be considered on second reading on June 28, 2001. The Ordinance would authorize the issuance of the Town's \$450,000 Water Revenue Bond, Series 2001 (the "Bond"). The Bond would provide a portion of the fund to acquire, construct and equip certain betterments and improvements to the

Town's water system (the "System"). The entire amount of the principal of and interest on the Bond would be paid from revenues generated from the operation of the System. The Ordinance further provides as follows:

1. The debt service on the Bond would be payable from the revenues of the System.
2. The Town has the authority under Chapter 8, Article 19 of the Code of West Virginia of 1931, as amended, to

finance the operations of the System.

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

4. The Ordinance provides that it is in the best interests of the Town to sell the Bond at an annual interest rate of 4.50% and in the principal amount of \$450,000 to the United States of America, United States Department of Agriculture, Rural Utilities Service. The Bond shall mature not more than 40 years from their date of issuance.

5. The Ordinance provides that the Mayor shall execute the Bond in the name of the Town, and the seal of the Town shall be affixed thereto or imprinted thereon and attested by the Clerk/Recorder. The West Virginia Municipal Bond Commission shall serve as the Paying Agent of the Series 2001 Bond.

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

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

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

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

A copy of the Ordinance is available for examination by any interested person at Town Hall during regular office hours of such office, which are 8:30 a.m. to 4:30 p.m., Monday through Friday.

The Town contemplates the issuance of the Bond described in and under the conditions set forth in the Ordinance abstracted above. The public hearing will be held at Council Chambers, Elizabeth Town Hall, 200 Beverly Street, Elizabeth, West Virginia, on the 28th day of June, 2001, at 7:00 p.m., and any person or persons interested may appear before Council and be heard and may present protests and objections to the passage of the Ordinance and the issuance of the Bonds.

Dated this 1st day of June, 2001.
TOWN OF ELIZABETH, WIRT COUNTY,

WEST VIRGINIA
Lewis Full, Mayor
Penny McVay, Clerk/Recorder

6-13-11-c

PLEASE RETURN A COPY OF THIS VOICE WITH YOUR PAYMENT TO: P.O. BOX 309, ELIZABETH, WV 26143



United States
Department of
Agriculture
Rural Development

Federal Building, Room 320
75 High Street
Morgantown, WV 26505
Telephone: (304) 291-4796
Fax: (304) 291-4159
TTY/TDD: (304) 284-5941

July 24, 1998

The Honorable Lewis H. Full
Mayor, Town of Elizabeth
P.O. Box 478
Elizabeth, WV 26143

RECEIVED
AUG 24 1998

Thatcher Engineering, Inc.

Dear Mayor Full:

This letter, with Attachments 1 through 11 and enclosures, establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by the Rural Utilities Service (RUS) by written amendment to this letter. Any changes not approved by RUS shall be cause for discontinuing processing of the application.

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

This letter is not to be considered as loan and grant approval or as representation to the availability of funds. The docket may be completed on the basis of an RUS loan in the amount of \$450,000, an RUS grant in the amount of \$800,000, and other funding in the amount of \$1,250,000, for a total project cost of \$2,500,000. The other funding is planned in the form of a grant from the HUD Small Cities Block Grant program.

The loan will be considered approved on the date a signed copy of Form RD 1940-1, "Request for Obligation of Funds," is mailed to you. The interest rate will be the lower of the rate in effect at the time of loan approval or the time of loan closing.

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

- Attachment No. 1 - Project Construction Budget (All Copies)
- Attachment No. 2 - Water and Waste Processing Checklist (All Copies)
- Attachment No. 3 - RUS Instruction 1780, Subparts A and B (Applicant Copy)

Rural Development is an Equal Opportunity Lender. Complaints of discrimination should be sent to: Secretary of Agriculture, Washington, DC 20250.



- Attachment No. 4 - RUS Instruction 1780, Subpart C (Engineer Copy)
- Attachment No. 5 - RUS Instruction 1780, Subpart D (Attorney and Bond Counsel Copies)
- Attachment No. 6 - Agreement (RUS Bulletin 1780-13) (Engineer Copy)
- Attachment No. 7 - Supplemental General Conditions (RUS Bulletin 1780-14) (Engineer Copy)
- Attachment No. 8 - Government Auditing Standards (Revision 1994) (Accountant Copy)
- Attachment No. 9 - Water Users Agreement (Applicant and Attorney Copies)
- Attachment No. 10 - Declination Statement (Applicant and Attorney Copies)
- Attachment No. 11 - Various other RD Forms as identified on Attachment No. 2

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

The conditions referred to above are as follows:

1. Loan Repayment - The loan will be scheduled for repayment over a period of 40 years. The payments due the first 24 months will consist of interest only. Payments for the remaining 456 months will be equal amortized monthly installments. For planning purposes use a 4.5% interest rate and a monthly amortization factor of 0.00459, which provides for a monthly payment of \$2,066.00. You have the option of participating in the PREAUTHORIZED DEBIT (PAD) payment process. It will allow for your payment to be electronically debited from your account on the day your payment is due. Your authority must establish and fund monthly a debt service reserve account and a depreciation reserve account, which together equal 10% of the annual debt service each year for the life of the loan. Five percent (5%) will be deposited into both accounts until an annual debt payment has been accumulated. Thereafter, the entire 10% will be deposited into the depreciation reserve account.

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

2. Security - The loan must be secured by a statutory lien of equal priority with the Town's Series 1982 Water Revenue Bond, a pledge of the system's revenues and other agreements between you and RUS as set forth in the bond ordinance which

must be properly adopted and executed by the appropriate officials of your organization. Additional security requirements are contained in RUS Bulletin 1780-12 and RUS Bulletin 1780-27 which are mentioned later.

3. Users - This conditional commitment is based upon you providing evidence that you will have at least 662 bona fide users on the proposed system when it has been completed and is placed in operation. This evidence will consist of 160 signed users agreements and a certification from you that identifies and attests to the number of users actually connected to and using the Town's existing water system, which is to be partially replaced by the new system, at the time you request authorization to advertise the proposed project for construction bids.

The enclosed Water Users Agreement (RUS Bulletin 1780-9) will be used. Each user signing an agreement must make a users contribution of \$100.00. Each potential user who is located along planned lines and declines the offered service will be provided an opportunity to sign a "Service Declination Statement." A guide "Service Declination Statement" is attached for your use. If a potential user refuses to sign either a users agreement or a declination statement, the individual making the contact for the Town should complete the declination statement for that potential user and note thereon his/her visit with the potential user, the potential user's refusal to sign, and the reason therefore. The declination statement should also be dated and signed by the individual making the contact.

Before RUS can agree to the project being advertised for construction bids, you must provide evidence that the total required number of bona fide users has been acquired and that all potential users have been offered the proposed service.

Information and material evidencing compliance with this requirement must consist of (1) your certification (written) as to the number of users connected to and using the water service of the existing system (paying monthly bills), (2) signed users agreements, (3) signed service declination statements, (4) records evidencing users contributions having been paid, (5) a map locating each potential users property in the new service area identifying it by number, (6) a list of all signed bona fide users numbered so as to be a cross-reference with the map, and (7) a list of all declination statements numbered so as to be a cross-reference with the map.

4. Bond Counsel - The services of a recognized bond counsel are required. The bond counsel will prepare the form of ordinance to be used, in accordance with Subpart D of RUS Instruction 1780. You should immediately provide your bond counsel with a copy of this letter of conditions, its attachments and enclosures.
5. Engineering Services - It will be necessary for you to obtain the services of an engineer. For your convenience, either Form RD 1942-19, "Agreement for Engineering Services," or EJCDC No. 1910-1, "Standard Form of Agreement

between Owner and Engineer for Professional Services” may be used to obtain the services of an engineer. Form RD 1942-19 is enclosed for your use.

6. Legal Services - You must obtain the services of a local attorney. For your convenience RUS Bulletin 1780-7, “Legal Services Agreement” is enclosed for your use.
7. Accounting Services - You must obtain the services of a qualified accountant. The accountant must agree to develop and provide the following:
 - a. All necessary accounting material required by the Public Service Commission of West Virginia (Rule 42 Exhibit).
 - b. Prior to the advertisement of bids, your accountant must certify that the accounts and records as required by your bond ordinance have been established and are operational.

The Accountant’s Agreement should be submitted to RUS for review.

Compensation in the contract should include only those services identified above and not include payment for construction management services from the accountant unless RUS concurrence is obtained.

RUS regulations (Attachment No. 3) outline requirements for the submission of management reports and audits. Appropriate state statutes place certain audit requirements for your Town. The attached booklet, “Government Auditing Standards (Revised 1994)” (Attachment No. 8) outlines audit requirements. You are reminded that certain provisions of the Office of Management and Budget Circular A-133 are applicable to any public body or nonprofit association that expends \$300,000 or more in federal funds in any one fiscal year. You must enter into an agreement annually with an accountant (or the State Tax Department) to perform the audit. The agreement must be in accordance with the requirements of the State Tax Commissioner of West Virginia. Compensation for preparation of the A-133 audit or your annual audit are not included in project funds and should be paid from the operational revenues generated from your system operation.

8. Facility Control - Prior to advertisement for construction bids, you must furnish satisfactory evidence that you have or can obtain adequate continuous and valid control over the lands and rights needed for the project. Such evidence must be in the following form:
 - a. A right-of-way map showing clearly the location of all lands and rights needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.

- b. A copy of deeds, contracts or options for any lands needed other than rights-of-way, along with a preliminary title opinion covering such lands. Form RD 1927-9, "Preliminary Title Opinion" may be used. In the case of your existing system or where the Town already acquired real property (land or facilities), a preliminary title opinion(s) concerning all such property(s) will be provided.
 - c. A narrative opinion from your attorney concerning all permits, certifications and other items necessary to show that all legal requirements can be met and stating how they will be met. This narrative should also identify any condemnation proceedings that are anticipated and state how they will be handled.
 - d. A certification and legal opinion relative to title to rights-of-way and easements. Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way," may be used. This form may contain a few exceptions such as properties that must be condemned; however, prior to the start of construction or loan closing, whichever occurs first, a new Form RD 442-22, must be provided which does not provide for any exceptions.
 - e. On the day of loan closing, the Town's attorney must furnish final title opinions on all land(s) being acquired. Form RD 1927-10, "Final Title Opinion" may be used. In the case of your existing system 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.
9. Permits - Copies of all permits needed for the project must be provided for review prior to advertisement for construction bids. Such permits will include but are not limited to the following:
- West Virginia Department of Highways
 - State Department of Health
 - Department of Environmental Protection
 - Corps of Engineers
 - Public Land Corporation
10. Public Service Commission Approvals - You must obtain the following from the Public Service Commission of West Virginia:
- a. A Certificate of Convenience and Necessity.
 - b. Approval of user charges that are acceptable to you and the Rural Utilities Service.

- c. Approval of financing for the project's proposed financing arrangements.

The "Rule 42" Exhibit to be attached to the Public Service Commission application must contain at least the information shown in Attachment No. 1. A copy of the Public Service Commission application and its "Rule 42" Exhibit must be provided for review.

11. Insurance and Bonding Requirements -

Prior to preliminary loan closing, you must acquire the following insurance and bond coverage:

- a. Liability Insurance - Personal Liability - \$500,000; Property Damage - \$200,000 - \$200,000. The limits of liability coverage noted herein should be considered as suggested amounts only. RUS recommends that you consider analyzing your actual needs in detail before you obtain coverage in a specific amount.
- b. Workers' Compensation - In accordance with appropriate State laws.
- c. Position Fidelity Bond(s) - All positions occupied by persons entrusted with the receipt and/or disbursement of funds must be bonded. As a good business practice you will probably wish to have each position bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time. The minimum coverage acceptable to RUS will be for each position to be bonded for an amount at least equal to one annual installment on your loan(s).
- d. 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:
 - (1) If flood insurance is available, you must purchase a flood insurance policy at the time of loan closing.
 - (2) 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.
- e. Real Property Insurance - Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all above-ground structures, to include machinery and equipment housed therein. This does not apply to water reservoirs,

standpipes, elevated tanks or noncombustible materials used in treatment plants, clearwells, filters and the like.

12. Contract Documents, Final Plans and Specifications -

- a. The contract documents should consist of the following:
 - (1) "Agreement" (RUS Bulletin 1780-13) and Attachments 1 through 9, or other agreement approved by RUS. One copy of this item is attached hereto (Attachment No. 6).
 - (2) "Supplemental General Conditions" (RUS Bulletin 1780-14). One copy of this item is attached hereto (Attachment No. 7). 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. RUS Bulletin 1780-13, Attachment 9, suggests certain limits of liability for insurance coverage. Those limits should be considered as minimum requirements only. It is recommended you consider increasing the given limits of liability after analyzing your specific needs.
 - (2) Builder's Risk Insurance - On all structures and mechanical and electrical equipment in place or stored on the site to the full insurable value thereof.
 - (3) Workers' Compensation - In accordance with applicable State laws.
- c. The contract documents and final plans and specifications must be submitted to RUS for approval.
- d. The project must be designed in compliance with Section 504 of the Rehabilitation Act of 1973.

13. Disbursement of Funds - The RUS funds will be advanced as they are needed in the amount(s) necessary to cover the RUS proportionate share of any disbursements required of your Town, over 30 day periods. Any funds not disbursed immediately upon receipt must be deposited in an interest bearing account in accordance with OMB Circular A-133. Interest earned on these funds must be remitted promptly, at least quarterly, to the Rural Utilities Service. The Town must assure that all project funds are expended only for the eligible items included in the final project budget or as may be later approved by RUS.

14. Water Purchase Contract - You propose to purchase treated water from Claywood Park Public Service District; therefore, you must enter into a Water Purchase Contract. Form RD 442-30 must be used unless you receive an exception from RUS.
15. Other Grants - Prior to advertisement for construction bids, you must provide evidence showing the approval of the other grants. This evidence should include a copy of the grant award. Prior to award of the contract(s) to the contractor(s), you must provide evidence that the "other" grant funds are available for expenditure. This evidence should consist of at least a letter from the grantor stating the funds are available for expenditure.
16. At a properly called meeting, you must adopt and properly execute the following forms, and minutes showing the adoption must be provided:
 - Form RD 442-7 - "Operating Budget"
 - Form RD 1940-1 - "Request for Obligation of Funds"
 - RUS Bulletin 1780-12 - "Water or Waste System Grant Agreement"
 - RUS Bulletin 1780-27 - "Loan Resolution (Public Bodies)"
 - Form RD 400-1 - "Equal Opportunity Agreement"
 - Form RD 400-4 - "Assurance Agreement"
 - Form AD 1047 - "Certification Regarding Debarment - Primary"
 - Form AD 1049 - "Certification Regarding Drug-Free Workplace"
 - Form RD 1910-11 - "Applicant Certification, Federal Collection Policies"
 - FmHA Instruction 1940-Q, Exhibit A-1, "Certification for Contracts, Grants and Loans"
 - Standard Form LLL - "Disclosure of Lobbying Activities" (If Applicable)
17. The enclosed Water and Waste Processing Checklist (Attachment No. 2) outlines the items needed to complete the loan and grant docket. All the items listed must be included in the loan and grant docket when it is forwarded to the USDA - Rural Development State Office with a request for loan closing instructions to be issued.
18. Upon receipt of the loan and grant docket, which contains all the items required above, RUS 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 RUS with (a) a bid tabulation, (b) recommendations from you and your engineer as to the acceptability of the bids received, and (c) your recommendations for contract awards. If all parties then agree the construction bids received are acceptable, it is determined that adequate funds are available to cover the total facility costs, and that all the administrative conditions of loan approval have been satisfied, loan closing instructions will be issued. The closing instructions, a copy of which will be forwarded to you, will set forth any further requirements that must be met before the loan can be closed.

When all parties agree that the closing requirements can be met, a mutually acceptable date for the loan closing will be scheduled.

Attached is a copy of RUS Bulletin 1780-12, "Water and Waste System Grant Agreement," for your review. You will be required to execute a completed form at the time of grant closing.

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

In accordance with the intent of Congress as expressed in the FY 1997 Appropriations Act, recipients of water and waste assistance provided by the Rural Utilities Service are encouraged, in expending the assistance, to purchase only American-made equipment and products.

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

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

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

Sincerely yours,



BOBBY LEWIS
State Director

Enclosures

cc: See Page 10

cc: Administrator, RUS
ATTN: Water and
Environmental Programs
Washington, DC

Rural Development Specialist
Parkersburg, WV

Accountant

Theodore Davitian
Attorney at Law
Parkersburg, WV

Bond Counsel

Thrasher Engineering, Inc. ✓
Clarksburg, WV

Attachment No. 1 to Letter of Conditions
 Elizabeth, Town (Water)

Project Construction Budget

<u>Project Cost</u>	<u>SCB</u> <u>Grant</u>	<u>RUS</u> <u>Grant</u>	<u>RUS</u> <u>Loan</u>	<u>Total</u>
Construction	1,220,000	\$ 508,300	\$257,300	1,985,600
Construction Contg.		66,700	33,700	100,400
Land and Rights		3,300	1,700	5,000
Legal Fees		10,000	5,000	15,000
Engineering Fees		163,000	82,500	245,500
Basic \$135,500				
Inspection \$100,000				
Special \$10,000				
Bond Counsel		5,000	2,500	7,500
Interest			45,000	45,000
Project Contg.		10,500	5,500	16,000
Administration	30,000			30,000
Equipment		33,200	16,800	50,000
Total	\$ 1,250,000	\$ 800,000	\$450,000	\$2,500,000

Rates

Available for general domestic, commercial and industrial service.

First	2,000 gals. @	\$6.76 per M gals.
Next	5,000 gals. @	\$6.27 per M gals.
Next	5,000 gals. @	\$6.13 per M gals.
Next	5,000 gals. @	\$5.27 per M gals.
Next	5,000 gals. @	\$4.44 per M gals.
Next	10,000 gals. @	\$4.10 per M gals.
Next	30,000 gals. @	\$3.58 per M gals.
Next	40,000 gals. @	\$2.95 per M gals.
Over	102,000 gals. @	\$2.43 per M gals.

Minimum Charge

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

5/8" x 3/4" meter -	\$13.52 per month
3/4" meter -	\$20.28 per month
1" meter -	\$33.80 per month
1 1/2" meter -	\$67.60 per month
2" meter -	\$108.16 per month
3" meter -	\$202.80 per month
4" meter -	\$338.00 per month
6" meter -	\$676.00 per month
8" meter -	\$1,081.60 per month

Minimum Monthly Bill \$13.52 for 2,000 gallons

Delayed Payment Penalty

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

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

Connection Charge

Prior to Construction - \$100.00

After the start of construction, there shall be a charge of \$250.00 for connection to the system.

Reconnection Charge

\$20.00

Use and Income Analysis

207	users @	2,000	gallons @	\$ 13.52	per user =	\$2,798.64	monthly
138	users @	3,000	gallons @	\$ 19.79	per user =	\$2,731.02	monthly
113	users @	4,000	gallons @	\$ 26.06	per user =	\$2,944.78	monthly
78	users @	5,000	gallons @	\$ 32.33	per user =	\$2,521.74	monthly
55	users @	6,000	gallons @	\$ 38.60	per user =	\$2,123.00	monthly
20	users @	7,000	gallons @	\$ 44.87	per user =	\$897.40	monthly
8	users @	8,000	gallons @	\$ 51.00	per user =	\$408.00	monthly
10	users @	9,000	gallons @	\$ 57.13	per user =	\$571.30	monthly
7	users @	10,000	gallons @	\$ 63.26	per user =	\$442.82	monthly
8	users @	11,000	gallons @	\$ 69.39	per user =	\$555.12	monthly
4	users @	12,000	gallons @	\$ 75.52	per user =	\$302.08	monthly
4	users @	13,000	gallons @	\$ 80.79	per user =	\$323.16	monthly
2	users @	16,000	gallons @	\$ 96.60	per user =	\$193.20	monthly
2	users @	21,000	gallons @	\$ 119.63	per user =	\$239.26	monthly
1	users @	35,000	gallons @	\$ 175.81	per user =	\$175.81	monthly
1	users @	37,000	gallons @	\$ 182.97	per user =	\$182.97	monthly
2	users @	44,000	gallons @	\$ 208.03	per user =	\$416.06	monthly
2	users @	76,000	gallons @	\$ 313.77	per user =	\$627.54	monthly

662 Total Users

\$18,453.90 Monthly Revenue x 12 = \$221,446 Annual Revenue

Budget

Income		\$221,446
Expenses		
O & M	\$158,700	
*Debt Service	57,024	
**Reserve	5,702	
		\$221,426
Balance and Depreciation		\$ 20

Operating and Maintenance Expenses

Purchased Water	\$61,500
Pumping	47,000
Transmission and Distribution	7,000
Administrative and General	42,000
Miscellaneous	1,200
TOTAL	\$158,700

*Existing Debt Service - \$32,232
Proposed Debt Service - \$24,792

Total Debt Service - \$57,024

**Existing Debt Service Reserve - \$3,223
Proposed Debt Service Reserve - \$2,479

Total Debt Service Reserve - \$5,702

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE
Water and Waste Processing Checklist

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Provided by</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
SF 424.2	Application for Federal Assistance	3	1780.31(b)	App.		Have	3
	Public Notice of Intent to File App. / Environ. Notice	1	1780.19(a) 1940-G	App.		Have	3
	Regional Planning & Development Council Review	2	1780.33(b)	App.		Have	3
	State Clearing-house Review or IJDC Review	2	1780.33(b)	App.		Have	3
Bulletins 1780-2 1780-3	Preliminary Engineering Report	2	1780.33(c)	Eng. <u>DONE</u>		Have	6
	Bond Ordn. or Resol. on Outstanding Debts	1	1780.33(e)	App./Att.		Have	2
	Bonds or Notes Outstanding Debts	1	1780.33(e)	App./Att.		Have	2
	Audit for last year of operation	1	1780.33(e)	App./Acct.		Have	1
AD 1049	Certification Regarding Drug-Free Workplace	1	1780.33(h)	App.		Have	5

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Provided by</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
	Minutes Adopting Drug-Free Workplace Program	1	LOC	App.		Have	5
RD 1940-20	Request for Env. Info/ Attachments	2	1780.33(f)	App./Eng.	<u>DONE</u>	Have	3
Bulletin 1780-22	Applicant Eligibility Certification/ Other Credit Certification	1	1780.33(d)	App.			3
	Env. Assessment for Class II Actions (Exhibit H, 1940-G)	2	1940-G	RUS/Eng.	<u>DONE</u>	Have	3
	Site Visit		S.I. 1780-2	RUS		Have	3
	Statement from Historical Preservation Office	2	Exhibit H 1940-G	App.		Have	3
	Comments from Dept. of Commerce, Labor & Environ. Resources (DEP)	2	Exhibit H 1940-G	App.		Have	3
	Comments from U.S. Fish and Wildlife Service (Endangered Species)	2	Exhibit H 1940-G	App.		Have	3
	Comments from U.S. Forest Service (Wild & Scenic Rivers)	2	Exhibit H 1940-G	App.		Have	3

Form No.	Document or Action	No. Needed	Proced. Ref.	Provided by	Target Date	Date Rec'd	File Pos.
	Farmland Conversion Impact Rating	1	Exhibit H 1940-G	RUS/ NRCS		Have	3
	FONSI / Evidence of Publication	1	Exhibit 1 RD 1940-G News Ad	RUS/App.		Have	3
	Copy of Existing Rate Tariff	2	1780.33	App.		Have	8
	Applicant's IRS Tax Number (TIN)	1	1780.33(g)	App.		Have	3
	Agency Determination on the Availability of "Other Credit" with Documentation	1	1780.7(d)	RUS		Have	3
	Staff Engineer PER Review	1	1780.33(c)	RUS			6
	Bill Analysis for existing system(s)	2	1780.33(c)	App./Eng.	<i>DONE</i>	Have	8
	Projected Bill Analysis for New Users	2	1780.33(c)	App./Eng.	<i>DONE</i>	Have	8
	Statement reporting the total number of potential users		1780.33(c)	App. (Eng.)		Have	8
RD 1942-19 or other approved	Agreement between Owner & Engineer	3	1780.39(b)	App./Eng.	<i>IN RUS'S HANDS @ 4/19/01</i>		6
Bulletin 1780-7 or other approved	Legal Services Agreement with Local Attorney	3	1780.39 (b)(2)	App./Att.		Have	5

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Provided by</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
	Legal Services Agreement with Bond Counsel	1	1780.39 (b)(3)	App./ Bond Counsel			5
	Agreement for Accounting Services	1	1780.39 (b)(2)	App./Acct.			5
	Documentation on Service Area	1	1780.11	RUS		Have	3
Auto. Form	Grant Determination	3	1780.35(b)	RUS		Have	
RD 1942-45	Project Summary	3	1780.41(a)	RUS		Have	1
RD 442-7	Operating Budget	3	1780.33(h)	App.			3
RD 1942-14	Project Fund Analysis	3	1780.41(a)	RUS		Have	2
Bulletin 1780-1	Project Selection Criteria	2	1780.17	RUS		Have	1
	Letter of Conditions	7	1780.41 (a)(5)	RUS		Have	3
RD 1942-46	Letter of Intent to Meet Conditions	2	1780.41 (a)(6)	App.			3
RD 1940-1	Request for Obligation of Funds	4	1780.41(a)	RUS/App.			2
Bulletin 1780-12	Association Water or Sewer System Grant Agreement	2	1780.45(c)	RUS/App.			2

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Provided by</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
	Evidence of "Other Funds"	1	1780.44(f)	App.			2
Bulletin 1780-12	Water Users Agreement (Copy)	1	1780.39(c)	App.			5
AD 1047	Certification Regarding Debarment (Primary)	1	1780.33(h)	App.		Have	5
AD 1048	Certification Regarding Debarment (Contractor)	1 ea.	1780.33(h)	All Appropriate Vendors			5
RD 1910-11	Applicant Certification, Federal Collection Policies	1	1780.33(h)	App.		Have	3
	Evidence of Users:						
	1. Map of Users with each identified by number	1	LOC	App.			Sep. File
	2. List of Signed Users Numbered to Map	1	LOC	App.			5
	3. List of Declination Statement Numbered to Map	1	LOC	App.			5
	4. Evidence of Tap Fees Being Paid	1	LOC	App.			5

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Provided by</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
	5. Having Users Agreements and Declination Statements Available		LOC	App.			
	Positive Program to Encourage Connections when Completed	1	1780.39 (c)(5)	App.			5
	Verification of Users	1	1780.44(b)	RUS			3
	Preliminary Bond Transcript Documents w/o Defeasance Provisions	2	1780.83	Bond Counsel			2
	Right-of-Way Map	1	1780.44(g)	Eng.			Sep. File
	Deeds and/or Options		1780.44(g)	App./Att.			
RD 1927-9	Preliminary Title Opinion	1	1780.44 (g)(2)	App./Att.			5
RD 1927-10	Final Title Opinion	1	1780.44 (g)(2)	App./Att.			5
	Narrative Opinion from Attorney	1	1780.44(g)	Att.			5
	Waiver of Title Defects Letter	1	1780.44 (g)(2)(ii)	RUS			
RD 442-22	Opinion of Counsel Relative to R/Ways		1780.44 (g)(1)	Att.			5

Form No.	Document or Action	No. Needed	Proced. Ref.	Provided by	Target Date	Date Rec'd	File Pos.
RD 1942-47	Loan Resolution	1	1780.45 (a)(2)	App.			5
	Copy of PSC Rule 42 Exhibit	1	State	Att./Acct.			3
	Agreement with Accountant	1	1780.39 (b)(2)	App./Acct.			6
Lender Agrmnt/ Bulletin 1780-10/ 1780-10a	Interim Financing Documentation	1	1780.39(d)	App./RUS			1
RD 400-1	Equal Opportunity Agreement	1	1901-E	App.		Have	6
RD 400-4	Assurance Agreement	1	1901-E	App.		Have	3
	Bond Transcript Documents w/o Defeasance Provisions	3	1780.83	Bond Counsel			Sep. File
	OGC Closing Instructions	1	1780.44(h)	RUS			5
	S/O Closing Instructions	1	1780.44(h)	RUS			5
	DOH Permit	1	1780.15(d)	App.			6
	Public Land Corp. Permit	1	1780.15(d)	App.			6
	Corps of Engineers Permit	1	1780.15(d)	App.			6
	Contract Documents, Plans and Specifications	2		Eng.			Sep. File

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Provided by</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
	Dept. of Health Approval	1	1780.15(d)	Eng.			6
	Dept. of Environmental Protection Permit	1		Eng. N/A			6
400-8	Comp. Review	1	1901-H 1901.204	RUS			5
1924-16	Record of PreConstruction Conference	1	1780.76(a)	RUS/Eng.			6
	Bid Tabulation	1	1780.61(b)	Eng.			6
	Resume' of Inspector	1	1780.76(c)	Eng.			6
	Liability Insurance		1780.39(g)	App.			7
	Workers' Compensation Certificate	1	1780.39(g)	App.			7
	Flood Insurance Policy	1	1780.39(g)	App.			7
440-24	Fidelity Bond	1	1780.39(g)	App.			7
	OGC Final Opinion	1	1780.45(g)	RUS			5

NOV 16 1998

Special Studies Section
P.S.C. W. Va. No. 11
Canceling P.S.C. W. Va. No. 10

TOWN OF ELIZABETH, a municipal corporation
OF
ELIZABETH, WEST VIRGINIA
RATES, RULES AND REGULATIONS FOR FURNISHING
WATER
AT
Elizabeth and vicinity, Wirt County, West Virginia
Filed with THE PUBLIC SERVICE COMMISSION
of
WEST VIRGINIA

Issued November 6, 1998

Effective October 15, 1998
or as otherwise provided herein

Passed by Town Council

RECEIVED

NOV 16 1998

Public Service Commission of W.Va.
Office of Tariffs
Special Studies Section

Issued by TOWN OF ELIZABETH, a municipal corporation

By Lewis Full

Mayer
Title

RULES AND REGULATIONS

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

APPLICABILITY

Applicable in entire territory served

AVAILABILITY OF SERVICE

Available for general domestic, commercial and industrial service

RATES

First	2,000	gallons used per month	\$6.01 per 1,000 gallons
Next	5,000	gallons used per month	\$5.57 per 1,000 gallons
Next	5,000	gallons used per month	\$5.45 per 1,000 gallons
Next	5,000	gallons used per month	\$4.68 per 1,000 gallons
Next	5,000	gallons used per month	\$3.95 per 1,000 gallons
Next	10,000	gallons used per month	\$3.64 per 1,000 gallons
Next	30,000	gallons used per month	\$3.18 per 1,000 gallons
Next	40,000	gallons used per month	\$2.62 per 1,000 gallons
All over	102,000	gallons used per month	\$2.16 per 1,000 gallons

MINIMUM RATE

The minimum monthly charge shall be \$12.02 per month

3/4	inch meter	\$ 18.05 per month
1	inch meter	\$ 30.05 per month
1- 1/2	inch meter	\$ 60.03 per month
2	inch meter	\$ 96.13 per month
3	inch meter	\$180.03 per month
4	inch meter	\$300.13 per month
6	inch meter	\$601.10 per month
8	inch meter	\$960.38 per month

DELAYED PAYMENT PENALTY

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

(A) TAP FEE

The charge for installing a meter and making a tap for service connection is \$350.00 or cost, whichever is greater.

RECONNECTION SERVICE CHARGE

If water service is terminated for violation of the Rules of The Town of Elizabeth or The Public Service Commission, non-payment of bills, fraudulent use of water or on request of the customer, the reconnection charge will be \$20.00

(A) Indicates increase



\$450,000
TOWN OF ELIZABETH
WATER REVENUE BOND
SERIES 2002

GENERAL CERTIFICATE

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES
6. INCUMBENCY AND OFFICIAL NAME
7. PUBLIC SERVICE COMMISSION ORDER
8. LAND AND RIGHTS-OF-WAY
9. MEETINGS
10. INSURANCE
11. RATES
12. TRUTH AND ACCURACY
13. SPECIMEN BOND
14. BOND PROCEEDS
15. PRIVATE USE OF FACILITIES
16. NO FEDERAL GUARANTY
17. CONFLICT OF INTEREST
18. CLEAN WATER ACT
19. COUNTERPARTS

We, the undersigned MAYOR and CLERK/RECORDER of the TOWN OF ELIZABETH, Wirt County, West Virginia (the "Town"), and the undersigned ATTORNEY for said Town, hereby certify in connection with the Town of Elizabeth, Water Revenue Bond, Series 2002 (the "Bond"), in the aggregate principal amount of \$450,000, numbered R-1, dated the date hereof and bearing interest at the rate of four and 50/100 percent (4.50 %) as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning as in the Ordinance enacted by the Town Council (the "Council") and effective on June 28, 2001 (the "Ordinance").

2. NO LITIGATION: No controversy or litigation of any nature is now pending, or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting the issuance and delivery of the Bond; nor questioning the proceedings and authority by which the Council authorized the issuance and sale of the Bond; nor affecting the validity of the Bond or any provisions made or authorized for the payment thereof, including, but not limited to the pledge of Net Revenues of the System for such payment; nor questioning the existence of the Town or the title of the members or officers of the Town or the Council to their respective offices; nor questioning the acquisition, construction and equipping of certain additions, betterments and

improvements to the water system facilities of the Town (the "System"), which is being financed out of the proceeds of sale of the Bond.

3. GOVERNMENTAL APPROVALS AND BIDDING: All applicable approvals and certificates required by law for the acquisition, construction and equipping of the Project, the operation of the System and the issuance of the Bond have been or will be duly and timely obtained and remain in full force and effect, including approval by the Public Service Commission of West Virginia. Competitive bids for construction of the Project will be solicited in accordance with West Virginia law. The Issuer has procured the services of the Consulting Engineers in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended.

4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the Town or the System since the approval of the Ordinance. There has been no adverse change in the financial condition of the Town or the System since the approval by the Government of a loan to assist in the acquisition, construction and equipping of the Project. Upon issuance and delivery of the Bond, the Town will have the Bond and its Water Revenue Bond, Series 1982 (the "Prior Bonds") as debt outstanding, both of which constitute a first parity lien on the Net Revenues of the System. The Town has obtained the consent of the holder of the Prior Bonds to the issuance of the Bond.

5. SIGNATURES: The undersigned MAYOR and CLERK/RECORDER are the duly elected or appointed, qualified and serving officials as indicated by the official titles opposite their signatures below, are duly authorized to execute and seal the Bond for the Town, and on the date hereof have signed and sealed the Bond for the Town. The seal appearing hereon and on the Bond is the only official seal of the Town.

6. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Town is "Town of Elizabeth", and it is a municipality, public corporation and political subdivision duly created under the laws of the State of West Virginia in Wirt County of said State. The governing body of the Town is the Mayor, Clerk/Recorder and the Town Council of five (5) council members, whose names, terms and offices are as follows:

<u>Name</u>	<u>Date of Termination of Office</u>	<u>Office</u>
Lewis Full	April 8, 2002	Mayor
Penny McVay	Appointed	Clerk/Recorder
Edith Cumberledge	April 8, 2002	Council Member
Anna Haney	April 8, 2002	Council Member
Dennis Gage	April 8, 2002	Council Member
Kenneth Stempowski	April 12, 2004	Council Member
Carl George	April 12, 2004	Council Member
James Cumberledge	April 12, 2004	Council Member

The duly appointed and acting Attorney for the Town is Theodore Davitan, Parkersburg, West Virginia.

7. PUBLIC SERVICE COMMISSION ORDER: The Town covenants that it has filed any information with the PSC and taken any other actions required to maintain the PSC Commission Order entered on January 18, 2002, in Case No. 01-0368-W-CN-PC, in full force and effect, with the time for rehearing and appeal having expired.

8. LAND AND RIGHTS-OF-WAY: All land in fee simple and all rights-of-way and easements necessary for the construction, operation and maintenance of this System have been acquired or can and will be acquired by purchase, or, if necessary, by condemnation by the Town and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions which would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties which may have to be acquired by condemnation are, in the opinion of all the undersigned, within the ability of the Town to pay for the same without jeopardizing the security of or payments on the Bond.

9. MEETINGS: All actions, ordinances, Ordinances, orders and agreements taken, adopted and entered into by or on behalf of the Town in any way connected with the acquisition, construction, equipping and financing of the Project and the operation of the System were authorized or adopted at meetings of the Council duly called and held pursuant to all applicable statutes and the customary procedure of the Council, and a quorum of duly appointed, qualified and acting members of the Council was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

10. INSURANCE: The Town will maintain or, as appropriate, will require all contractors to maintain Workers' Compensation, public liability and property damage insurance, standard hazard insurance, builder's risk insurance, flood insurance and business interruption insurance, where applicable, in accordance with the Ordinance.

11. RATES: Based upon information submitted by the Consulting Engineers and an independent Certified Public Accountant, the rates and charges for the System which were authorized on November 6, 1998, and remain in full force and effect, will, so long as the Bond is outstanding, provide Net Revenues sufficient to pay (a) the interest upon the Bond and the Prior Bonds, (b) the necessary fiscal agency charges, (c) the principal amount of the Bond and the Prior Bonds at or before its maturity, (d) a margin of safety or reserve for such Bond and the Prior Bonds and for the payment into the reserve account created on account of the Bond, and (e) meet the requirements set forth in the Ordinance.

12. TRUTH AND ACCURACY: As of the date hereof, Lewis Full, Mayor, and Penny McVay, Clerk/Recorder, hereby certify that the copies of documents previously or on the date hereof certified by them as being true and accurate are true and accurate as of the date hereof and that none of such documents have been repealed, rescinded, amended or otherwise modified.

13. SPECIMEN BOND: Attached hereto as Exhibit A is a specimen of the Bond which, except as to execution and authentication, is identical in all respects with such Bond this day delivered to the Government and being substantially in the form prescribed in the Ordinance.

14. BOND PROCEEDS: On the date hereof, the Town received \$175,000.00 from the Government, being a portion of the principal amount of the Bond and more than a de minimis amount of the proceeds of the Bond. The balance of the principal amount of the Bond will be advanced to the Town as acquisition, construction and equipping of the Project progresses.

15. PRIVATE USE OF FACILITIES: The Town shall at all times take, and refrain from taking, and shall not fail to take, any and all actions necessary in order to assure the initial and continued tax-exempt status of the Bond and the interest thereon. Less than ten percent (10%) of the proceeds of the Bond will be used, directly or indirectly, for any private business use, and less than ten percent (10%) of the payment of principal of, or the interest on, such issue, under the terms of such issue or any underlying arrangement, is, directly or indirectly, secured by any interest in property used or to be used for a private business use, payments in respect of such property, or to be derived from payments (whether or not to the Town) in respect of property, or borrowed money, used or to be used for a private business use. None of the proceeds of the Bond will be used, directly or indirectly, for any private business use which is not related to the governmental use of the proceeds of the Bond, including the disproportionate related business use of the proceeds of the Bond, and none of the payment of principal on, or the interest on, such issue, under the terms of any underlying arrangement, is, directly or indirectly, secured by any interest in property used, or to be used for a private business use, payments in respect of such property or to be derived from payments (whether or not to the Issuer) in respect of property, or borrowed money, used or to be used for a private business use with respect to such private business use, which is not related to any government use of such proceeds, including the disproportionate business use of the issue of the Bond. None of the proceeds of the issue of the Bond will be used, directly or indirectly, to make or finance loans to persons other than governmental units. For purposes of this paragraph, private business use means use, directly or indirectly, in a trade or business carried on by any person, including related persons, other than a governmental unit or other than use as a member of the general public. All of the foregoing shall be determined in accordance with and within the meaning of the Internal Revenue Code of 1986, as amended, including any successor provisions and rules and regulations thereunder (the "Code").

16. NO FEDERAL GUARANTY: The Bond is not and will not be, in whole or part, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

17. CONFLICT OF INTEREST: No officer or employee of the Town has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Town or in the sale of any land, materials, supplies or services to the Town or to any contractor supplying the Issuer, relating to the Bond, the Ordinance, and/or the Project, including, without limitation, with respect to the Depository Bank. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than five percent (5%) of the particular business enterprise or contract.

18. CLEAN WATER ACT: The project as described in the Ordinance complies with Sections 208 and 303(e) of the Clean Water Act.

19. COUNTERPARTS: This Certificate may be executed in counterpart, and such parts shall be deemed to be the Certificate.

WITNESS our signatures and the official seal of the Town of Elizabeth as of the 6th day of February, 2002.

SIGNATURE

OFFICIAL TITLE



Lewis Full

Mayor



Penny McVay

Clerk/Recorder



Theodore Davitan

Attorney

Exhibit A

(Specimen Bond-See Tab 24)

\$450,000
TOWN OF ELIZABETH
WATER REVENUE BOND
SERIES 2002

CERTIFICATE OF CONSULTING ENGINEER

I, H. Wood Thrasher, Registered Professional Engineer, of Thrasher Engineering, Inc., Clarksburg, West Virginia, West Virginia License No. 9478, hereby certify that I am the engineer for the acquisition, construction and equipping of certain additions, betterments and improvements to the water system (herein called the "Project") of the Town of Elizabeth (the "Issuer"), located in Wirt County, West Virginia, which acquisition, construction and equipping cost is being financed by the above-captioned bond (the "Bond") of the Issuer. Capitalized terms used and not otherwise defined herein shall have the meaning assigned to such terms in the Ordinance enacted by the Town Council of the Issuer and effective on June 28, 2001 (the "Ordinance").

1. The Bond is being issued for the purpose of financing a portion of the costs of the Project.

2. The undersigned hereby certifies that to the best of his knowledge after due inquiry (i) the Project will consist of the acquisition, construction and equipping of water system improvements based upon approved plans, specifications and designs which will be prepared by my firm and which have been or will be approved by all necessary governmental bodies, (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least forty (40) years, if properly constructed, operated and maintained, excepting anticipated replacements due to normal wear and tear, (iii) the Issuer has received bids for the construction of the Project which are in an amount and otherwise compatible with the plan of financing, and my firm has ascertained that all contractors have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified by my firm for accuracy, (iv) the chosen bidder received any and all addenda to the original bid documents, (v) the bid documents reflect the Project as approved by all required governmental agencies; (vi) the chosen bid includes every construction item necessary to complete the Project, or explains any deviation thereof, (vii) the uniform bid procedures were followed, (viii) the Issuer has obtained or will obtain all permits required by the laws of the State and the federal government necessary for the construction of the Project, (ix) in reliance upon the certificate of Howard M. Cloke, III, CPA, as of the effective date thereof, the rates and charges for the System, as approved by the Public Service Commission of West Virginia and as adopted by the Council of the Issuer, will be sufficient to comply with the provisions of the Ordinance, (x) the net proceeds of the Bond, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, are or will be sufficient to pay the costs of acquisition, construction and equipping of the Project, and (xi) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project and Sources of Funds" for the Project.

WITNESS my signature as of the 6th day of February, 2002.

THRASHER ENGINEERING, INC.

[SEAL]

By:



West Virginia License No. 9478

EXHIBIT A

Schedule A - Total Cost of Project and Source of Funds

TOTAL COST OF PROJECT

Interest During Construction	\$ 45,000.00
Acquisition, Construction and Equipping	\$2,061,000.00
Engineering – Design Phase	\$ 135,500.00
Engineering – Special Services	\$ 10,000.00
Inspection	\$ 100,000.00
Administration	\$ 30,000.00
Legal	\$ 20,000.00
Bond Counsel	\$ 7,500.00
Project Contingency	<u>\$ 16,000.00</u>
TOTAL PROJECT COST	\$2,425,000.00

SOURCE OF FUNDS

Rural Utilities Service loan in the amount of \$450,000 at 4.50% for a term not to exceed 40 years, an RUS grant in the amount of \$800,000, and a HUD Small Cities Block Grant in the amount of \$1,175,000.

HOWARD M. CLOKE III
Certified Public Accountant
P. O. Box 513
Barboursville, West Virginia 25504
TEL & FAX 304-736-8162

\$450,000
TOWN OF ELIZABETH
WATER REVENUE BOND
SERIES 2002

CERTIFIED PUBLIC ACCOUNTANT'S CERTIFICATE

I, Howard M. Cloke III, a Certified Public Accountant, License No. 1181, Barboursville, West Virginia, have reviewed the water service rates, which were enacted by the Town of Elizabeth (the "Town"), by a Rate Ordinance enacted on November 6, 1998, and customer usage, revenues and expenses. It is my opinion that the schedule of rates set forth in the Rate Ordinance are adequate to pay operation and maintenance expenses of the System, as defined in the Bond Ordinance, hereinafter described, to pay the principal of and interest, if any, on the 2001 Bond and the Prior Bonds, as defined in the Bond Ordinance, and to meet the one hundred fifteen percent (115%) debt service coverage requirement of the Prior Bonds and the 2002 Bond and the Bond Ordinance enacted by the Town Council of the Town and effective on June 28, 2001. It is my further opinion that the Net Revenues actually derived from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of the 2002 Bond, plus the estimated average increased annual Net Revenues to be received in each of the three succeeding years after the completion of the improvements to be financed by the 2002 Bond, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding fiscal year for principal of and interest on the 2002 Bond and Prior Bonds.

WITNESS by signature as of this 4th day of February, 2002.



Certified Public Accountant

\$450,000
TOWN OF ELIZABETH
WATER REVENUE BOND
SERIES 2002

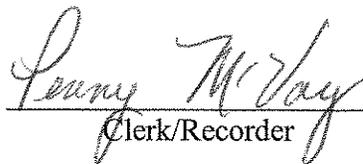
CERTIFICATE OF CLERK/RECORDER AS TO TRUTH
AND ACCURACY OF DOCUMENTS DELIVERED

I, Penny McVay, the duly appointed Clerk/Recorder of the Town of Elizabeth (the "Issuer"), hereby certify that the copies of the following documents being delivered in connection with the closing of the sale of the \$450,000 Town of Elizabeth, Water Revenue Bond, Series 2002 (the "Bond"), are, as of the date hereof, true and accurate copies of the originals of those documents maintained on file with the Issuer and delivered in the transcript of proceedings, and that said documents are still in full force and effect as of the date hereof and have not been repealed, rescinded, superseded, amended or modified in any way unless the document effecting such repeal, rescission, supersession, amendment or modification is also listed below:

1. Charter of the Issuer.
2. Oaths of Office of the Mayor, Clerk/Recorder and Members of the Council (the "Council").
3. Water Rate Tariff authorized on November 6, 1998.
4. Minutes of the meeting of the Council wherein the Water Rate Tariff was adopted..
5. Bond Ordinance (the "Ordinance") enacted on June 28, 2001, and Supplemental Resolution adopted on January 28, 2002.
6. Minutes of the June 14 and June 28, 2001 meetings and the June 28, 2001 public hearing of the Council wherein the Ordinance was read and approved.
7. Affidavit of publication of the abstract and notice of meeting on the Ordinance published in *The Wirt County Journal*.
8. Recommended Decision of the Public Service Commission of West Virginia entered on January 18, 2002, in Case No. 01-0368-W-CN-PC.
9. Approval Letter from the West Virginia Infrastructure and Jobs Development Council dated July 9, 1999.

WITNESS my signature and the official seal of the Town of Elizabeth as of the 6th day of February, 2002.

(SEAL)


Clerk/Recorder



United States Department of Agriculture

Rural Development

75 High Street, Room 320
Morgantown, WV 26505-7500
(304) 284-4860
FAX (304) 284-4893
TDD (304) 284-5941
(For the Deaf or Hard of Hearing)

**\$450,000
TOWN OF ELIZABETH
WATER REVENUE BOND
SERIES 2002**

CONSENT TO ISSUANCE OF PARITY BOND AND PARITY LIEN

United States of America, Rural Development (the "Government") represents that it is the sole and only registered owner of the outstanding Water Revenue Bond, Series 1982, dated June 2, 1982 (the "1982 Bond"), of the Town of Elizabeth, Wirt County, West Virginia (the "Town"). The Government does hereby consent to the issuance by the Town of its parity Water Revenue Bond, Series 2002, in the amount of \$450,000 (the "Series 2002 Bond") to be sold to the Government. The Government hereby further consents that the series 2002 Bond may be payable from the revenues of the water system of the Town and otherwise secured on a parity basis with the 1982 Bond.

By the execution of this consent, the undersigned hereby certifies that she is fully empowered and authorized to execute this consent on behalf of the Government.

WITNESS my signature this 28th day of January, 2002.

UNITED STATES OF AMERICA,
RURAL DEVELOPMENT

By: Jenny D Phillips
State Director, USDA-Rural Development

\$450,000
TOWN OF ELIZABETH
WATER REVENUE BOND
SERIES 2002

ACCEPTANCE OF DUTIES AS DEPOSITORY BANK

WesBanco Bank, Inc., Elizabeth Branch, a state banking corporation, at its office located in Elizabeth, Wirt County, West Virginia, hereby accepts appointment as Depository Bank in connection with an Ordinance of the Town of Elizabeth (the "Town") duly enacted by the Town Council of the Town and effective on June 28, 2001 (the "Ordinance"), authorizing issuance by the Town of its Water Revenue Bond, Series 2002, dated February 6, 2002, in the aggregate principal amount of \$450,000, and agrees to perform all duties of Depository Bank as set forth in the Ordinance.

Witness my signature as of the 6th day of February, 2002.

WesBanco Bank Inc., Elizabeth Branch

By: _____


Vice President



BOND REGISTRY

\$450,000
TOWN OF ELIZABETH
WATER REVENUE BOND
SERIES 2002

<u>BOND NO.</u>	<u>AMOUNT</u>	<u>HOLDER</u>	<u>DATE ACQUIRED</u>
R-1	\$450,000	United States of America United States Dept. of Agriculture, Rural Utilities Service Federal Building, Room 320 75 High Street Morgantown, WV 26505	February 6, 2002

ALL ASSIGNMENTS OR CHANGES OF OWNERSHIP OF THIS BOND MUST BE REPORTED ON THIS REGISTRY PURSUANT TO SECTION 3.05 OF THE BOND ORDINANCE.

\$450,000
TOWN OF ELIZABETH
WATER REVENUE BOND
SERIES 2002

CROSS-RECEIPT FOR BOND AND BOND PROCEEDS

The undersigned Virginia M. McDonald, Rural Development Specialist for the United States Department of Agriculture, Rural Utilities Service ("RUS"), and Lewis Full, Mayor of the Town of Elizabeth, Wirt County, West Virginia (the "Issuer"), hereby certify as follows:

1. On the ~~4~~⁶th day of February, 2002, RUS received the entire original issue in aggregate principal amount of \$450,000 of the Water Revenue Bond, Series 2002, of the Issuer (the "Bond"). The Bond, as so received on original issuance, is dated February 6, 2002, and is issued as Bond Number R-1, in the denomination of \$450,000.
2. At the time of such receipt of the Bond, Lewis Full, as Mayor of the Issuer, had executed the Bond by his manual signature, and by Penny McVay, as Clerk/Recorder of the Issuer, by her manual signature, and the official seal of the Issuer had been imprinted upon the Bond.
3. The Issuer has received and hereby acknowledges receipt from RUS, as the original purchaser of the Bond, of \$175,000.00, being more than a de minimus portion of the proceeds of the Bond. The balance will be advanced from time to time to pay costs of the Project.

IN WITNESS WHEREOF, this receipt has been signed and delivered on behalf of the United States Department of Agriculture, Rural Utilities Service, and the Town of Elizabeth, Wirt County, West Virginia, has caused this receipt to be executed by its Mayor, as of the 6th day of February, 2002.

UNITED STATES DEPARTMENT OF AGRICULTURE,
Rural Utilities Service

By: Virginia M. McDonald
Rural Development Specialist

TOWN OF ELIZABETH

By: Lewis Full
Mayor

200200030530

Feb 05 2002 02:51PM

WV SECRETARY OF STATE

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)	
William K. Bragg, Jr.	304-346-7000
B. SEND ACKNOWLEDGMENT TO: (Name and Address)	
<div style="border: 1px solid black; padding: 5px;"> William K. Bragg, Jr. Goodwin & Goodwin, LLP 300 Summers Street, Suite 1500 Charleston, WV 25301-1678 </div>	

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME -- Insert only one debtor name (1a or 1b) -- do not abbreviate or combine names

1a. ORGANIZATION'S NAME						
Town of Elizabeth						
O R	1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
1c. MAILING ADDRESS			CITY	STATE	POSTAL CODE	COUNTRY
P.O. Box 478			Elizabeth	WV	26143	USA
1d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION	1g. ORGANIZATIONAL ID #, if any		X NONE
55-6001084		Municipality	West Virginia			

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME -- Insert only one debtor name (2a or 2b) -- do not abbreviate or combine names

2a. ORGANIZATION'S NAME						
O R	2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
2c. MAILING ADDRESS			CITY	STATE	POSTAL CODE	COUNTRY
2d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any		<input type="checkbox"/> NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) -- Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME						
United States Department of Agriculture, Rural Utilities Service						
O R	3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
3c. MAILING ADDRESS			CITY	STATE	POSTAL CODE	COUNTRY
P.O. Box 303			Parkersburg	WV	26102	USA

4. This FINANCING STATEMENT covers the following collateral:

Statutory mortgage lien on accounts, revenues, water system and other property as provided by Bond Ordinance authorizing the issuance of \$450,000 Town of Elizabeth, Water Revenue Bond, Series 2002, and by Chapter 8, Article 19 of the Code of West Virginia of 1931, as amended.

This Financing Statement is filed in connection with a public-finance transaction of the Town of Elizabeth, Wirt County, West Virginia. Pursuant to the provisions of Section 46-9-515(b) of the Code of West Virginia of 1931, as amended, this financing statement shall be effective for a period of forty (40) years from its date of filing, unless the underlying debt is repaid sooner.

5. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> LESSEE/LESSOR <input type="checkbox"/> CONSIGNEE/CONSIGNOR <input type="checkbox"/> BAILEE/BAILOR <input type="checkbox"/> SELLER/BUYER <input type="checkbox"/> AG. LIEN <input type="checkbox"/> NON-UCC FILING			
6. <input type="checkbox"/> This FINANCING STATEMENT is to be filed (for record)(or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)		7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (OPTIONAL FEE) <input type="checkbox"/> All Debtors <input type="checkbox"/> Debtor 1 <input type="checkbox"/> Debtor 2	
8. OPTIONAL FILER REFERENCE DATA			



LAW OFFICES

GOODWIN & GOODWIN, LLP

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(304) 485-2345

P.O. Box 349
500 CHURCH STREET
RIPLEY, WEST VIRGINIA 25271
(304) 372-2651

Charleston

February 6, 2002

United States of America
United States Department of Agriculture,
Rural Utilities Service
P.O. Box 303
Parkersburg, WV 26102

Re: \$450,000 Town of Elizabeth
Water Revenue Bond, Series 2002

Gentlemen:

We are bond counsel to the Town of Elizabeth, West Virginia (the "Town"), a municipal corporation located in Wirt County, West Virginia.

We have examined a certified copy of proceedings and other papers relating to (i) the issuance of the Letter of Conditions dated July 24, 1998, including all schedules and exhibits attached thereto (the "Letter of Conditions"), from the United States Department of Agriculture, Rural Utilities Service ("RUS") to the Town and (ii) the issuance of \$450,000 in aggregate principal amount of Water Revenue Bond, Series 2002 of the Town, dated February 6, 2002 (the "Series 2002 Bond"), to be purchased by RUS in accordance with the provisions of the Letter of Conditions. The Series 2002 Bond is in the principal amount of \$450,000 and is issued in the form of one bond registered as to principal and interest to the United States of America.

Interest on the Bonds shall be paid on the unpaid principal balance of the Series 2002 Bond at four and 50/100 percent (4.50%) per annum for the first twenty-four (24) months of the term. Principal and interest on the Series 2002 Bond is payable in monthly installments of \$2,066.00 commencing March 6, 2004, as set forth on the "Debt Service Schedule" attached as Exhibit B to the bond. The final installment of principal and interest on the Series 2002 Bond shall be paid at the end of thirty-eight (38) years from the date principal first becomes due and payable on the Series 2002 Bond.

GOODWIN & GOODWIN, LLP

February 6, 2002

Page 2

The Series 2002 Bond is issued for the purpose of financing a portion of the costs of constructing certain additions, betterments and improvements for an existing water system, and paying certain issuance and other costs in connection therewith (the "Project").

We have also examined the applicable provisions of Chapter 8, Article 19 of the Code of West Virginia of 1931, as amended (the "Act"), and the Series 2002 Bond has been authorized by a Bond Ordinance duly enacted by the Council of the Town ("Council") effective on June 28, 2001 (the "Ordinance"), pursuant to and under which Act and Ordinance the Series 2002 Bond is authorized and issued, and the Letter of Conditions has been undertaken. The Series 2002 Bond is subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Ordinance.

In rendering this opinion, we have relied, in part, upon the opinion of Theodore Davitan, as the Town's Counsel, for the proper enactment of the Bond Ordinance and the Rate Ordinance, water rates, matters related to the valid existence of the Town and other issues.

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

1. The Letter of Conditions has been duly accepted by and on behalf of the Town.
2. The Town is a duly organized and presently existing municipal corporation of the State of West Virginia, with full power and authority to construct the Project and to operate and maintain the System referred to in the Ordinance and to issue and sell the Series 2002 Bond, all under the Act and other applicable provisions of law. The Town has taken all legal action necessary to operate a water system.
3. The Town has legally and effectively enacted the Ordinance and has satisfied all other necessary requirements in connection with the issuance and sale of the Series 2002 Bond on parity with the Prior Bonds, as described in the Ordinance.
4. The Series 2002 Bond is a valid and legally enforceable special obligation of the Town, payable from the Net Revenues of the System referred to in the Ordinance and secured by a parity lien on and pledge of the net revenues of said System, all in accordance with the terms of the Series 2002 Bond, the Ordinance and the Rate Ordinance adopted on November 6, 1998, and have been duly issued and delivered to RUS. The Town has reserved the right to issue additional bonds ranking on parity basis with the Series 2002 Bond and the Prior Bonds, as provided in the Ordinance. The Town has certified, and an independent certified public accountant has verified, that the rates and charges generated by

GOODWIN & GOODWIN, LLP

February 6, 2002

Page 3

the Rate Ordinance are sufficient to pay the principal of and interest on the Series 2002 Bond and the Prior Bonds, when due. The Ordinance requires that such schedule of rates and charges be changed and readjusted whenever necessary so that the aggregate of such rates and charges will be sufficient for such purposes.

5. Under existing statutes and court decisions, as presently written and applied, interest on the Series 2002 Bond is excludable from the gross income of the owners thereof for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and such interest will not be treated as a preference item for purposes of the alternative minimum tax imposed under the Code with respect to individuals and corporations. Under the Code, however, such interest is included in the adjusted current earnings of a corporation for purposes of computing the alternative minimum tax. The opinions set forth in the preceding sentences are subject to the condition that the Town comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Series 2002 Bond in order that interest thereon be, or continue to be, excludable from gross income for federal income tax purposes. The Town has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the interest on the Series 2002 Bond to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Series 2002 Bond. We express no opinion herein regarding other tax consequences arising with respect to the Series 2002 Bond.

6. Under the Act, as presently written and applied, the Series 2002 Bond and the income thereon are exempt from taxation by the State of West Virginia pursuant to the provisions of Section 8-19-4 of the Code of West Virginia of 1931, as amended.

No opinion is given herein as to the effect upon enforceability of the Series 2002 Bond of bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or in the exercise of judicial discretion in appropriate cases.

We have examined an executed and authenticated Bond numbered R-1, and in our opinion, the form of the Series 2002 Bond and its execution and authentication are regular and proper.

Respectfully submitted,

Goodwin + Goodwin, LLP
GOODWIN & GOODWIN, LLP



Davitian & Davitian
Attorneys at Law
410 Market Street
Parkersburg, West Virginia 26101
Telephone (304) 428-8207

Theodore Davitian
Louie S. Davitian (1935-2001)

Fax (304) 485-3825

Of Counsel
Nicole Di Cuccio

February 6, 2002

United States Department
of Agriculture
Rural Utilities Service
P.O. Box 303
Parkersburg, WV 26102

Goodwin & Goodwin
P.O. Box 2107
Charleston, WV 25328

RE: \$450,000 Town of Elizabeth
Water Revenue Bond, Series 2002

Ladies and Gentlemen:

I am counsel to the Town of Elizabeth (the "Town"). I have reviewed various documents relating to the above-captioned bonds of the Town (the "Bond"), and an Ordinance duly enacted by the Council of the Town (the "Council") and effective on June 28, 2001 (the "Ordinance"), and other documents relating to the Bond. Terms used in this opinion and not otherwise defined herein shall have the same meanings as contained in the Ordinance. I am of the opinion as follows:

1. The Town is a duly organized and presently existing municipality, with full power and authority to acquire and construct the Project referred to in the Ordinance and to issue and sell the Bond, all under the Ordinance and other applicable provisions of law.

2. The members of the Town Council were duly and properly elected or appointed and are thereby authorized to act on behalf of the Town.

3. The Ordinance has been duly enacted by the Council and is in full force and effect.

4. The execution and delivery of the Bond and the consummation of the transactions contemplated by the Ordinance and the carrying out of the terms thereof do not and will not in any material respect conflict with or

constitute on the part of the Town a breach of or default under any agreement or other instrument to which the Town is a party or any existing law, regulation, court order or consent decree to which the Town is subject.

5. The Town has received all necessary permits, licenses, approvals and authorizations that are presently obtainable to acquire and construct and to finance the Project including a letter from the West Virginia Infrastructure and Jobs Development Council and approval by the Public Service Commission of West Virginia.

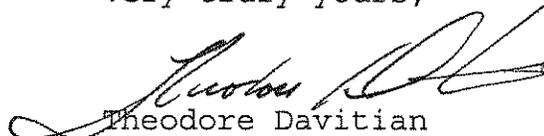
6. The Town has obtained from the West Virginia Public Service Commission a valid, final and non-appealable Commission Order in Case No. 01-0368-W-CN-PC, which lawfully authorizes the Town to proceed with the acquisition and construction of the Town's water system extension and approval of issuance of the above-captioned bond.

7. 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 revenues.

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

The foregoing opinion is qualified to the extent that the enforceability of the liens, pledges and terms set forth in the Bond and in the Ordinance may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally.

Very truly yours,


Theodore Davitian

TD/nm/f0419

FINAL TITLE OPINION

LOAN APPLICANT Town of Elizabeth	ADDRESS OR PROPERTY COVERED BY THIS OPINION See Attachments (Acquired Property)	
APPLICANT FOR TITLE EXAMINATION Town of Elizabeth	COUNTY Wirt	STATE West Virginia

I. I have examined title to the property described in the security instrument described in paragraph II. B. below. My examination covered the period from the time of termination of title search covered by my Preliminary Title Opinion on Form RD 1927-9; or the time of recordation of the initial loan security instrument if this opinion covers land already owned by the loan applicant in a subsequent loan case, to February 6, 2002, at 4:00 ~~am~~ (including the time of filing the current security instrument).
(Date) p.m.

II. Based on said title examination, my preliminary title examination if any, and any additional information concerning the title which has come to my attention, it is my opinion that:

A. Good and marketable title, in accordance with title examination standards prevailing in the area, to said property (real estate and any water rights offered as security) is now vested in Town of Elizabeth

as Fee Simple-owner
(Joint tenants, tenants by the entirety, etc.)

B. The United States of America holds a valid Statutory lien on said property as required by Rural
(Priority) (Mortgage, etc.)

Development or the Farm Service Agency, or their successor (Agency), which lien was filed for record on _____,
(Date)
_____, at _____ a.m. and is recorded in N/A
p.m. (Book, page, and office)

C. Said property and lien are subject only to encumbrances, reservations, exceptions, and defects which were approved by written administrative waivers of the Agency attached hereto or to my Preliminary Title Opinion.

III. If a water right is involved and is not covered by the current security instrument, it is subject only to the encumbrances, reservations, exceptions, and defects set forth in said administrative waivers and was made available as security in the following manner (Water stock would normally be reissued in the names of said land owners and the United States of America and delivered to the Agency Official at the time of loan closing):

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0147. The time required to complete this information collection is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

- IV. The term "encumbrances, reservations, exceptions, and defects" means all matters which would prevent the United States from obtaining the required lien on the property identified in paragraph I, including but not limited to (a) mortgages, deeds of trust, and vendors', mechanics', materialmen's, and all other liens, including any provisions thereof for future advances which could take priority over the said lien to the United States, (b) Federal, State, and local taxes, including county, school, improvement, water, drainage, sewer, inheritance, personal property, and income, (c) State and Federal bankruptcy, insolvency, receivership, and probate proceedings, (d) judgments and pending suits, in State and Federal courts, (e) recorded covenants; conditions; restrictions; reservations; liens; encumbrances; easements; rights-of-way; leases; mineral, oil, gas, and geothermal rights (regardless of the right of surface entry); timber rights; water rights; pending court proceedings and other matters of record which affect the title of the property or the ability of the buyer or seller to convey or accept title.
- V. This opinion is issued expressly for the benefit of the above-named applicant for title examination and the United States of America acting through the United States Department of Agriculture Agency which provided the assistance, and I assume liability to each hereunder.

February 6, 2002
(Date)

Attachments


THEODORE DAVITIAN (Attorney's signature)
410 Market Street
Parkersburg, WV 26101

(Address, include ZIP Code)

DESCRIPTION OF SURVEY
for
A (PROPOSED) TANK SITE
on the lands of
Oak Hill Pizza, Inc.

A certain parcel of land on a ridge east of County Route 35/2, (commonly known as Fish Hatchery Road), south of Two Ripple Run, in Elizabeth District, Wirt County, West Virginia, more particularly bounded and described as follows:

Beginning at a ¾ inch rebar (set) on a ridge, the northerly most corner of the herein described parcel, said rod bears South 33°22' 22" West a distance of 2721.14 feet from the center of the bridge over Two Ripple Run and also bears South 35° 53' 30" West a distance of 2965.29 feet from the corner fence post 26.75 feet east of County Route 35/2;

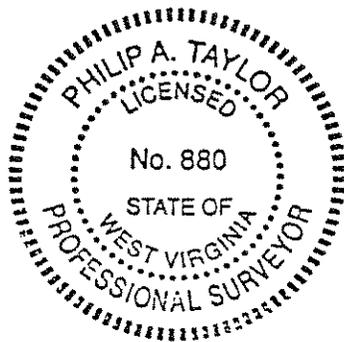
Thence, with 4 new lines through Oak Hill Pizza, Inc South 47° 22' 38" East, a distance of 100.00 feet to a ¾" rebar (set);

Thence, South 50° 49' 19" West, a distance of 100.00 feet to a ¾" rebar (set);

Thence, North 47° 22' 38" West a distance of 100.00 feet to a ¾" rebar (set);

Thence, North 50° 49' 19" East, a distance of 100.00 feet to the **Place of Beginning**, containing 9,897.79 square feet or 0.227 acres, **More or Less**, as surveyed under the supervision of Philip A. Taylor, P.S. and shown on a plat attached hereto and made a part of this description.

The tract or parcel of land and herein described being a part of the same lands conveyed to Oak Hill Pizza, Inc. from Dorothy Parks Roberts and Thorn C. Roberts, as recorded in Deed Book 189 at Page 845 in the Office of the Clerk of Wirt County, West Virginia.



A handwritten signature in cursive script that reads "Philip A. Taylor".

Philip A. Taylor, P.S. 880

October, 2000

DESCRIPTION OF SURVEY
for
A (PROPOSED) BOOSTER STATION
on the lands of
Earl E. Westfall

A certain tract or parcel of land, on the waters of the Little Kanawha River near Elizabeth, situate in Elizabeth District, Wirt County, West Virginia, more particularly bounded and described as follows:

Beginning at a point in Wirt County Route 35/17, said point bears South $13^{\circ} 39' 10''$ West 184.76 feet from a 36" maple (found) in the line of Earl E. Westfall (Tax. Map 08 Parcel 30, Deed Book 207 page 759)

Thence with a new line through said Westfall, South $76^{\circ} 23' 00''$ East, passing a $\frac{3}{4}$ " rebar (set) at 24.93 feet, and also passing a $\frac{3}{4}$ " rebar (set) at 73.75 feet, a total distance of 95.11 to a point in West Virginia State Route 53;

Thence with an original line of said Westfall (in said State Route 53), South $33^{\circ} 09' 00''$ West, a distance of 9.26 feet to a point;

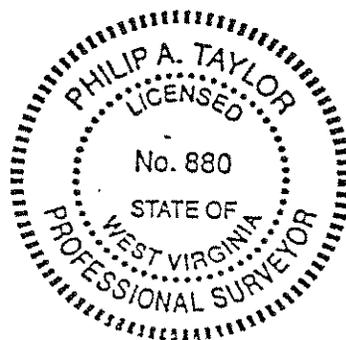
Thence, South $28^{\circ} 46' 00''$ West, a distance of 288.00 feet to a point at the junction of the center of Wirt County Route 35/17;

Thence with the westerly original line of said Westfall and Wirt County Route 35/17, North $14^{\circ} 15' 00''$ East, a distance of 156.34 feet to a point;

Thence, North $08^{\circ} 07' 00''$ East, a distance of 87.90 feet to a point;

Thence, North $00^{\circ} 26' 00''$ East, a distance of 44.06 feet, to the Place of Beginning, containing 11,718.21 square feet or 0.2690 acres, More or Less, as shown on a plat attached hereto and made a part of this description.

The tract or parcel of land and herein described being part of the same lands conveyed to Earl E. Westfall from Earl E. Westfall and Carol Lee Westfall, as recorded in Deed Book 207 at Page 759 in the Office of the Clerk of Wirt County, West Virginia.



Philip A. Taylor
Philip A. Taylor, P.S. 880
September, 2000

FINAL TITLE OPINION

LOAN APPLICANT Town of Elizabeth		ADDRESS OR PROPERTY COVERED BY THIS OPINION See Attachments (Existing Property)	
APPLICANT FOR TITLE EXAMINATION Town of Elizabeth		COUNTY Wirt	STATE West Virginia

I. I have examined title to the property described in the security instrument described in paragraph II. B. below. My examination covered the period from the time of termination of title search covered by my Preliminary Title Opinion on Form RD 1927-9; or the time of recordation of the initial loan-security instrument if this opinion covers land already owned by the loan applicant in a subsequent loan case, to February 6, 2002, at 4:00 ~~am~~ (including the time of filing the current security instrument).
(Date) p.m.

II. Based on said title examination, my preliminary title examination if any, and any additional information concerning the title which has come to my attention, it is my opinion that:

A. Good and marketable title, in accordance with title examination standards prevailing in the area, to said property (real estate and any water rights offered as security) is now vested in Town of Elizabeth

as Fee Simple-owner
(Joint tenants, tenants by the entirety, etc.)

B. The United States of America holds a valid Statutory lien on said property as required by Rural
(Priority) (Mortgage, etc.)

Development or the Farm Service Agency, or their successor (Agency), which lien was filed for record on _____,
_____, at _____ a.m. and is recorded in N/A _____ (Date)
p.m. (Book, page, and office)

C. Said property and lien are subject only to encumbrances, reservations, exceptions, and defects which were approved by written administrative waivers of the Agency attached hereto or to my Preliminary Title Opinion.

III. If a water right is involved and is not covered by the current security instrument, it is subject only to the encumbrances, reservations, exceptions, and defects set forth in said administrative waivers and was made available as security in the following manner (Water stock would normally be reissued in the names of said land owners and the United States of America and delivered to the Agency Official at the time of loan closing):

IV. The term "encumbrances, reservations, exceptions, and defects" means all matters which would prevent the United States from obtaining the required lien on the property identified in paragraph I, including but not limited to (a) mortgages, deeds of trust, and vendors', mechanics', materialmen's, and all other liens, including any provisions thereof for future advances which could take priority over the said lien to the United States, (b) Federal, State, and local taxes, including county, school, improvement, water, drainage, sewer, inheritance, personal property, and income, (c) State and Federal bankruptcy, insolvency, receivership, and probate proceedings, (d) judgments and pending suits, in State and Federal courts, (e) recorded covenants; conditions; restrictions; reservations; liens; encumbrances; easements; rights-of-way; leases; mineral, oil, gas, and geothermal rights (regardless of the right of surface entry); timber rights; water rights; pending court proceedings and other matters of record which affect the title of the property or the ability of the buyer or seller to convey or accept title.

V. This opinion is issued expressly for the benefit of the above-named applicant for title examination and the United States of America acting through the United States Department of Agriculture Agency which provided the assistance, and I assume liability to each hereunder.

February 6, 2002

(Date)

Attachments

THEODORE DAVITIAN *(Attorney's signature)*

410 Market Street
Parkersburg, WV 26101

(Address, include ZIP Code)

DEED BOOK 84
Page 77

BEGINNING at a point in the E.N. Davis line where the Courtney Ridge Road crosses said line, and running thence S. 70 39E. with said Davis line 127 feet to a stake in said line; thence S. 18 21E. 60 feet to a stake; thence S. 65 52 W. 64.2 feet to the road aforesaid; thence with said road N. W. 132 to the place of beginning containing one fifth of one acre more or less. Said parties of the first part do further grant unto said Town of Elizabeth a right-of-way for an 8 inch water main from State Highway No. 14 through the land from which the above tract is conveyed, in the most direct and practical route to the lot above described for an eight inch water main, which main is to be kept and maintained by said town for the purpose of pumping water into a water tank located on said lot as a part of a water system for said Town of Elizabeth.

Schedule "A"

BEGINNING at an iron pipe (set) which is a corner with the Faustine Huffman property in the northern right-of-way line of Harriet Street, said iron pipe being located 295.0 feet in an easterly direction along the Harriet Street line from the intersection of the Harriet Street line and the Mulberry Street line; thence N. $41^{\circ}05'$ 145.00 feet leaving the Harriet Street line and running with the Huffman boundary to an iron pipe (set) in the southern right-of-way line of Market Street; thence N. $48^{\circ}55'$ E. 105.78 feet with the Market Street line to a point in the edge of Little Kanawha River; thence S. $45^{\circ}00'$ E. 145.34 feet with the edge of Little Kanawha River to a point in the northern right-of-way line of Harriet Street thence S. $48^{\circ}55'$ W. 115.70 feet leaving the River and running with the Harriet Street line to the point of beginning, containing an area of 0.37 acres, more or less, situate on the waters of the Little Kanawha River, in Elizabeth Corporation District, Wirt County, West Virginia.

Schedule "A"

DEED BOOK 165
Page 125

BEGINNING at a point described in the access and pipeline easement as "Beginning Point For Tank Site Boundary Description"; thence S. 51° 20' W, 20.00 feet to an iron pipe (set); thence N. 38° 40' W, 150.00 feet to a point; thence N. 51° 20' E, 130.00 feet to a point; thence S. 38° 40' E, 150.00 feet to an iron pipe set; thence S 51° 20' W, 110.00 feet to the Point of Beginning, containing an area of 0.45 acre from Wirt County Development Authority & Self Help Study Property.

Schedule "A"

FINAL TITLE OPINION

LOAN APPLICANT Town of Elizabeth	ADDRESS OR PROPERTY COVERED BY THIS OPINION .2284 Acres Route 14	
APPLICANT FOR TITLE EXAMINATION Town of Elizabeth	COUNTY Wirt	STATE West Virginia

- I. I have examined title to the property described in the security instrument described in paragraph II. B. below. My examination covered the period from the time of termination of title search covered by my Preliminary Title Opinion on Form RD 1927-9; or the time of recordation of the initial loan security instrument if this opinion covers land already owned by the loan applicant in a subsequent loan case, to February 6, 2002, at 4:00 ~~3:00~~ (including the time of filing the current security instrument).
(Date) p.m.
- II. Based on said title examination, my preliminary title examination if any, and any additional information concerning the title which has come to my attention, it is my opinion that:
- A. Good and marketable title, in accordance with title examination standards prevailing in the area, to said property (real estate and any water rights offered as security) is now vested in Imogene Watson - Explanatory letter
attached
as _____
(Joint tenants, tenants by the entirety, etc.)
- B. The United States of America holds a valid Statutory lien on said property as required by Rural Development or the Farm Service Agency, or their successor (Agency), which lien was filed for record on _____, at _____ a.m. and is recorded in N/A
(Priority) (Mortgage, etc.) (Date)
(Book, page, and office)
- C. Said property and lien are subject only to encumbrances, reservations, exceptions, and defects which were approved by written administrative waivers of the Agency attached hereto or to my Preliminary Title Opinion.
- III. If a water right is involved and is not covered by the current security instrument, it is subject only to the encumbrances, reservations, exceptions, and defects set forth in said administrative waivers and was made available as security in the following manner (Water stock would normally be reissued in the names of said land owners and the United States of America and delivered to the Agency Official at the time of loan closing):

- IV. The term "encumbrances, reservations, exceptions, and defects" means all matters which would prevent the United States from obtaining the required lien on the property identified in paragraph I, including but not limited to (a) mortgages, deeds of trust, and vendors', mechanics', materialmen's, and all other liens, including any provisions thereof for future advances which could take priority over the said lien to the United States, (b) Federal, State, and local taxes, including county, school, improvement, water, drainage, sewer, inheritance, personal property, and income, (c) State and Federal bankruptcy, insolvency, receivership, and probate proceedings, (d) judgments and pending suits, in State and Federal courts, (e) recorded covenants; conditions; restrictions; reservations; liens; encumbrances; easements; rights-of-way; leases; mineral, oil, gas, and geothermal rights (regardless of the right of surface entry); timber rights; water rights; pending court proceedings and other matters of record which affect the title of the property or the ability of the buyer or seller to convey or accept title.
- V. This opinion is issued expressly for the benefit of the above-named applicant for title examination and the United States of America acting through the United States Department of Agriculture Agency which provided the assistance, and I assume liability to each hereunder.

February 6, 2002
(Date)


THEODORE DAVITIAN (Attorney's signature)

410 Market Street
Parkersburg, WV 26101

(Address, include ZIP Code)

Attachments

DESCRIPTION OF SURVEY
for
A (PROPOSED) TANK SITE
on the lands of
Imogene Watson

A certain tract or parcel of land, on Elizabeth Hill north of Elizabeth, in Elizabeth District, Wirt County, West Virginia, more particularly bounded and described as follows:

Beginning at a ¾ inch rebar (set) on a knob east of the Bethel Cemetery, said rebar bears North 04° 01' 39" West a distance of 380.03 feet from a 20" red oak at a fence intersection and also bears North 08° 44' 59" West a distance of 43.73 feet from a utility pole in the saddle of the ridge;

Thence with 4 new lines through Imogene Watson, North 21° 58' 04" West, a distance of 100.00 feet, to a ¾" rebar (set);

Thence, North 73° 44' 21" East, a distance of 100.00 feet, to a ¾" rebar (set);

Thence, South 21° 58' 04" East, a distance of 100.00 feet, to a ¾" rebar (set);

Thence, South 73° 44' 31" West, a distance of 100.00 feet, to the Place of Beginning, containing 9,950.39 square feet or 0.2284 acres, More or Less, as surveyed under the supervision of Philip A. Taylor, P.S. and shown on a plat attached hereto and made a part of this description.

15 Foot Permanent Access Easement

A certain strip of land, 15 feet in width, on Elizabeth Hill, north of Elizabeth, in Elizabeth District, Wirt County, West Virginia, the center of which being more particularly described as follows:

Beginning at a point on the easterly right of way of Wirt County Route 14/20, said point being approximately 600 feet southwest of the intersection of Wirt County Route 14/20 and (relocated) West Virginia State Route 14 near the top of what is known as Elizabeth Hill;

Thence through Imogene Watson, following an existing access and the ridge, North 80° 10' 09" East, a distance of 16.07 feet to a point;

Thence, North 57° 41' 31" East, a distance of 88.29 feet to a point;

Thence, North 50° 33' 04" East, a distance of 49.73 feet to a point;

Thence, North 88° 06' 20" East, a distance of 14.49 feet to a point;

Thence, South 17° 42' 22" East, a distance of 21.17 feet to a point;

Thence, South 23° 10' 43" West, a distance of 102.88 feet to a point;

Thence, South 18° 17' 52" West, a distance of 66.31 feet to a point;

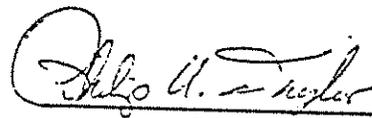
Thence, South 01° 58' 05" East, a distance of 29.80 feet to a point;

Thence, South 14° 02' 53" East, a distance of 56.18 feet to a point;

Thence, South 26° 37' 49" East, a distance of 95.73 feet to a point;

Thence, South 28° 41' 46" East, a distance of 73.98 feet to a point on the northerly, proposed Tank Site line, and 42.08 feet east of the northwest corner, as surveyed under the supervision of Philip A. Taylor, P.S. and shown on a plat attached hereto and made a part of this description.

The tract or parcel of land and strip herein described, being part of the same lands conveyed to Imogene Watson from Carlos Watson, as recorded in Deed Book 138 at Page 47 in the Office of the Clerk of Wirt County, West Virginia.



Philip A. Taylor, P.S. 880
September, 2000

Davitian & Davitian
Attorneys at Law
410 Market Street
Parkersburg, West Virginia 26101

Telephone (304) 428-8207

Fax (304) 485-3825

February 6, 2002

Theodore Davitian
Louis S. Davitian (1935-2004)

Of Counsel
Nicole Di Cuccio

RE: Imogene Watson Property
Eminent Domain Suit

To Whom It May Concern:

The Town of Elizabeth has filed a petition seeking to take the above-referenced tract of land. The Court has granted the Town of Elizabeth a Right of Entry onto the subject property which will permit construction to begin. A copy of the Order permitting the Town access to said property is attached hereto.

Very truly yours,


Theodore Davitian

TD/nm/f0424

OPINION OF COUNSEL RELATIVE TO RIGHTS-OF-WAY

Date February 6, 2002

Dear Sir:

I have reviewed the action taken by Town of Elizabeth
(hereinafter called the "Corporation") in obtaining a right-of-way for the construction, operation, and maintenance of the facilities to be installed, repaired, or enlarged with the proceeds of a loan made or insured by, and/or a grant from Rural Development to the Corporation. I have examined the right-of-way instruments, permits, or licenses obtained from landowners, public bodies, and public utilities and made such searches of the public records necessary to determine the legal sufficiency of the instruments covered by the "Right-of-way Certificate," executed by the Corporation on N/A, 19____. I also have examined the "Right-of-way Map" to determine whether continuous and adequate land and rights-of-way are owned or have been acquired by the instruments covered in the "Right-of-way Certificate."

Based on the foregoing examination, and to the best of my knowledge, information, and belief, I am of the opinion that:

- A. The legal instruments by which the Corporation has acquired said rights-of-way (a) are in appropriate and due legal form and adequately confer upon the Corporation the necessary rights-of-way for the construction, operation, and maintenance of its facilities in their present or proposed location, and such omissions or defects as may exist will in no substantial way or manner endanger the value or operation of the facilities, and (b) have each been properly recorded in the appropriate public land records of each County in which any of the land affected thereby is situated. Such consents, releases, or subordinations from lienholders recommended by me or required by Rural Development have been obtained.
- B. The legal instruments referred to above give unto the Corporation a continuous and adequate right-of-way to permit the construction, operation, and maintenance of the Corporation's facilities except as below noted.
- C. Exceptions: no exceptions.

Very truly yours,


THEODORE DAVITIAN

Attorney for Town of Elizabeth
410 Market Street
Parkersburg, WV 26101

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to U.S. Department of Agriculture, Clearance Officer, STOP 7602, 1400 Independence Avenue, S.W., Washington, D.C. 20250-7602. Please DO NOT RETURN this form to this address. Forward to the local USDA office only. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

Certificate of Owner's Attorney.

I, the undersigned, Theodore Davitian, the duly authorized and acting legal representative of the Town of Elizabeth, do hereby certify as follows:

I have examined the attached contract(s) and performance and payment bond(s) and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements are adequate and have has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions, and provisions thereof.



THEODORE DAVITIAN

Date: February 6, 2002

WV MUNICIPAL BOND COMMISSION
8 Capitol Street, Suite 500
Charleston, WV 25301
(304) 558-3971

NEW ISSUE REPORT FORM
Date of Report: January 29, 2002
(See Reverse for Instructions)

ISSUE: Town of Elizabeth, Water Revenue Bond, Series 2002
ADDRESS: P.O. Box 478
Elizabeth, WV 26143 COUNTY: Wirt
PURPOSE: New Money X
OF ISSUE: Refunding ___ Refunds issue dated: N/A
ISSUE DATE: February 6, 2002 CLOSING DATE: February 6, 2002
ISSUE AMOUNT: \$450,000 RATE: 4.50%
1ST DEBT SERVICE DUE: March 6, 2002 1ST PRINCIPAL DUE: March 6, 2004
1ST DEBT SERVICE AMT.: \$ _____* PAYING AGENT: Municipal Bond Comm.**

BOND COUNSEL: Goodwin & Goodwin, LLP LENDER: US Dep't. of Agriculture
Contact Person: W.K. Bragg, Jr. Contact Person: Virginia M. McDonald
Phone 346-7000 Phone: (304) 420-6666

KNOWLEDGEABLE ISSUER CONTACT:
Contact Person: Lewis Full
Position: Mayor
Phone: (304) 275-3200

-----DEPOSITS TO MBC AT CLOSE:
By ___ Wire ___ Accrued Interest: \$ ___ 0
___ Check ___ Capitalized Interest: \$ ___ 0
___ Reserve Account: \$ ___ 0
___ Other: _____ \$ _____

-----REFUNDS & TRANSFERS BY MBC AT CLOSE:
By ___ Wire ___ To Escrow Trustee: \$ ___ N/A
___ Check ___ To Issuer: \$ ___ N/A
___ IGT ___ To Cons. Invest. Fund: \$ ___ N/A
___ Other: _____ \$ _____

Notes: * Subject to actual amount advanced at closing.
** Only if Lender no longer owns the Bond.

Notes: _____
FOR MUNICIPAL BOND COMMISSION USE ONLY:
DOCUMENTS
REQUIRED: _____
TRANSFERS
REQUIRED: _____

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 18th day of January, 2002.

CASE NO. 01-0368-W-CN-PC

ELIZABETH MUNICIPAL WATER DEPARTMENT,
a municipal corporation.

Application for a certificate of convenience and necessity to replace and extend potable water lines to Palestine, Wirt County Routes 53 and 5 around Two Ripple Run, and to construct a water transmission line on State Route 14 North for Elizabeth to purchase its potable water in the future from the Claywood Park Public Service District and other necessary appurtenances.

COMMISSION ORDER

On March 16, 2001, Elizabeth Municipal Water Department (Town or Applicant), a municipal corporation, filed an application for a certificate of convenience and necessity to replace and extend potable water lines to Palestine, Wirt County Routes 53 and 5 around Two Ripple Run, and to construct a water transmission line on State Route 14 North for Elizabeth to purchase its potable water in the future from the Claywood Park Public Service District and other necessary appurtenances.

The Town originally estimated that the proposed construction would total \$2,500,000. It proposed to finance construction of the project with a Small Cities Block Grant in an amount not to exceed \$1,250,000; a USDA Rural Development Loan in an amount not to exceed \$450,000, at an interest rate not to exceed 5%, for a period of time not to exceed forty (40) years; and a USDA Rural Development Grant in an amount not to exceed \$800,000. The Town did not propose to increase rates.

By Notice of Filing Order entered on March 19, 2001, the Applicant was directed to give notice of the filing of said application by publishing a copy of the Notice of Filing, once, in a newspaper, duly qualified by the Secretary of State, published and of general

circulation in Wirt County. The Notice of Filing provided that, if no public protests were timely filed in response to the published Notice, the Commission was authorized to render a decision without a hearing, by virtue of the provisions of West Virginia Code §24-2-11.

On April 24, 2001, an affidavit of publication was filed indicating that publication was made on April 4, 2001, in the Wirt County Journal, a newspaper of general circulation in Wirt County. Anyone objecting to the proposed application was given thirty days to file a protest with the Commission. The protest period expired on May 4, 2001. No protests were filed.

On April 27, 2001, Commission Staff (Staff) filed an Initial Joint Staff Memorandum. According to Staff, the project would accomplish four objectives: (1) to extend water to the unserved community of Palestine, including Wirt County Route 5 and Route 14 South, at a cost of \$772,380; (2) to extend water along Neward Road in Wirt County, approximately 10,500 linear feet at a cost of \$157,975; (3) to construct improvements to the Town's distribution system, in order to connect with Claywood Park Public Service District (Claywood) to purchase water under a contractual agreement, at a cost of \$512,470; and (4) to upgrade the Town's distribution system, including 18,000 linear feet of various size water lines, 175 meter services and fire hydrants, and repainting two existing water storage tanks, all at a project cost of \$609,175. Staff noted that the Town serves approximately 502 customers and that the proposed extension would serve approximately 160 of 200 potential customers in the outlying areas.

On June 1, 2001, Staff filed a Further Joint Staff Memorandum. Staff stated that the Town's publication indicated that a \$1,250,000 Small Cities Block Grant was to be part of the project financing. However, the letter committing the grant was for \$1,175,000. The Town indicated to Staff that it would seek additional funding.

Staff also discussed the fact that the Town intended to purchase bulk water from Claywood under contractual agreement. On June 25, 2001, Theodore Davitian, Esquire, on behalf of the Town, filed a contract between the Town of Elizabeth and Claywood Park Public Service District, for the purchase of water by the Town from the District.

On September 19, 2001, Staff filed its Final Joint Staff Memorandum. Staff explained that it had been withholding a final recommendation in this case until the Town bid the project. Staff stated that the Town had a funding shortfall and hoped to receive a bid that would be less than the available \$1,175,000 Small Cities Block Grant. Staff had spoken with Virginia McDonald of Rural Utilities Service in Parkersburg who informed Staff that the agency had not released the project for bid, due to several concerns over the plans and specifications which have been sent to the project engineer to address. In light of the fact that the ALJ's decision due date was October 12, 2001, and the fact that the

bidding process would not be completed by that date, Staff recommended that this case be dismissed, without prejudice, and that the Town be permitted to refile the case when it had accepted bids for the project.

By Recommended Decision issued October 2, 2001, which became a final order of the Commission on October 22, 2001, the Administrative Law Judge dismissed this case without prejudice.

On January 4, 2002, the Town filed a letter stating that it had finalized the financing for its project. The Town requested that the Commission reopen this case and issue a final order prior to January 23, 2002, to allow the Town to meet its loan closing schedule.

On January 10, 2002, Staff filed an Initial and Final Joint Staff Memorandum explaining that the Town has accepted a construction bid of \$1,777,365. Total project costs are now projected to be \$2,225,365. Staff noted that the Town has available funding of \$2,425,000, which is in excess of the total project costs. With regard to the convenience and necessity of the project, Staff opined that the project is necessary to provide potable water to new customers, as well as to provide needed main replacements in the existing system. Staff noted that the Town's current unaccounted for water losses are 33%. Staff opined that the Town has shown that connection to Claywood Park Public Service District (Claywood) is the most feasible alternative for the Town. Claywood has provided written certification that it has the capacity to meet the Town's water needs.

Staff opined that the water purchase agreement between the Town and Claywood is reasonable and noted that the resale rate of \$1.57 per Mgal was approved for Claywood by Commission Order in Case No. 01-0252-PWD-42A. Under the contract, the Town is to pay \$84,500 to the District up-front to construct a booster pump station from which Claywood will supply water for the Town. The District will then repay the Town for its contribution in aid of construction by way of a \$0.19 per Mgal rate discount. The discount will discontinue once it has totaled \$84,500, and the Town has been paid in full. Staff recommended that the Commission approve the water purchase contract.

Staff explained that current construction plans include 960' of 8", 65,602' of 6", and 11,200' of 2" water lines; three booster stations; a 100,000 gallon storage tank; and a 156,000 gallon storage tank. The project will serve approximately 145 new customers and approximately 509 existing customers. Operation and maintenance costs are expected to increase by \$27,386 annually, which Staff believes are reasonable.

Staff noted that the State Health Department has issued permit #14,751 for the project.

Finally, Staff opined that the Town's existing revenues can support the project and provide a cash surplus of \$15,711 annually.

In summary, Staff recommended that the Commission (1) issue the Town a certificate of convenience and necessity for this project; (2) approve the total funding package of \$2,425,000, consisting of a Small Cities Block Grant of \$1,175,000, a USDA Rural Development grant of \$800,000 and a Rural Development Loan of \$450,000 at 4.5% interest for a forty-year term; (3) approve the water purchase agreement between the Town and Claywood; and (4) require the Town to petition to reopen this case in the event of changes in project scope or financing.

DISCUSSION

Upon consideration of all of the foregoing, the Commission finds that the public convenience and necessity require the proposed project. Accordingly, the Commission will issue the certificate; approve the associated funding more specifically set forth above, and approve the water purchase contract between the Town and Claywood. Pursuant to *W. Va. Code* §24-2-12, the Commission finds that the terms and conditions of the contract are reasonable, that neither party will be unduly advantaged under the contract, and that it does not adversely affect the public.

The Commission's approval will, however, be contingent upon the parties' filing of a revised water purchase contract reflecting the Commission's approval of Claywood's new resale rate. The revised contract should be filed with the Commission within twenty (20) days of the date of this Order.

FINDINGS OF FACT

1. The Town seeks a certificate of convenience and necessity to replace and extend potable water lines to Palestine, Wirt County Routes 53 and 5 around Two Ripple Run, and to construct a water transmission line on State Route 14 North for Elizabeth to purchase its potable water in the future from the Claywood Park Public Service District pursuant to a water purchase contract, and other necessary appurtenances. (Original application filed March 16, 2001).

2. Whereas the Town originally estimated that total project costs would be \$2,500,000, current projections and financing are for total project costs of \$2,225,365. (Original application filed March 16, 2001; Petition to reopen filed January 4, 2002).

3. The Town proposes to finance the project with a Small Cities Block Grant of \$1,175,000, a USDA Rural Development grant of \$800,000 and a Rural Development

Loan of \$450,000 at 4.5% interest for a forty-year term. (January 10, 2002, Initial and Final Joint Staff Memorandum).

4. The Town does not propose to increase rates in connection with the project. (Original application filed March 16, 2002).

5. The Town published notice of its certificate application on April 4, 2001, in the Wirt County Journal, a newspaper of general circulation in Wirt County. Anyone objecting to the proposed application was given thirty days to file a protest with the Commission. The protest period expired on May 4, 2001. No protests were filed.

6. The Town filed an affidavit evidencing the above publication on April 24, 2001.

7. This case was originally dismissed without prejudice due to a funding shortfall and related delays in the bidding process. (Recommended Decision issued October 2, 2001).

8. On January 4, 2002, the Town filed a letter stating that it had finalized the financing for its project. The Town requested that the Commission reopen this case and issue a final order on or before January 23, 2002, to allow the Town to meet its loan closing schedule. (Petition to reopen filed January 4, 2002).

9. The Town has accepted a construction bid of \$1,777,365. Total project costs are now projected to be \$2,225,365. The Town has available funding of \$2,425,000, which is in excess of the total project costs. (January 10, 2002, Initial and Final Joint Staff Memorandum).

10. Staff believes that the project is necessary to provide potable water to new customers, as well as to provide needed main replacements in the existing system. Staff noted that the Town's current unaccounted for water losses are 33%. (Id.)

11. Staff believes that the Town has shown that connection to Claywood Park Public Service District (Claywood) is the most feasible alternative for the Town. Claywood has provided written certification that it has the capacity to meet the Town's water needs. (Id.)

12. Staff opined that the water purchase contract between the Town and Claywood is reasonable. (Id.). Under the contract, the Town is to pay \$84,500 to the District up-front to construct a booster pump station from which Claywood will supply water for the Town. The District will then repay the Town for its contribution in aid of construction by way of a \$0.19 per Mgal rate discount. The discount will discontinue once it has totaled

\$84,500, and the Town has been paid in full. (Contract filed June 25, 2001; January 10, 2002, Initial and Final Joint Staff Memorandum).

13. Current construction plans include 960' of 8", 65,602' of 6", and 11,200' of 2" water lines, three booster stations, a 100,000 gallon storage tank, and a 156,000 gallon storage tank. The project will serve approximately 145 new customers and approximately 509 existing customers. Operation and maintenance costs are expected to increase by \$27,386 annually, which Staff believes are reasonable. (January 10, 2002, Initial and Final Joint Staff Memorandum).

14. The State Health Department issued permit #14,751 for the project. (Id.)

15. Finally, Staff believes that the Town's existing revenues can support the project and provide a cash surplus of \$15,711 annually. (Id.)

CONCLUSIONS OF LAW

1. This certificate application has been properly noticed to the public.
2. The public convenience and necessity require the proposed project.
3. The total project costs of \$2,425,000, to be funded with a Small Cities Block Grant of \$1,175,000, a USDA Rural Development grant of \$800,000 and a Rural Development Loan of \$450,000 at 4.5% interest for a forty-year term, should be approved.
4. Pursuant to *W. Va. Code* §24-2-12, the Commission finds that the terms and conditions of the water purchase contract between the Town and Claywood are reasonable, that neither party will be unduly advantaged under the contract, and that it does not adversely affect the public. The Commission's approval of the contract will be contingent upon the parties' filing of a revised contract which reflects the Commission's approval of Claywood's new resale rate.

ORDER

IT IS THEREFORE ORDERED that the Elizabeth Municipal Water Department's application for a certificate of convenience and necessity to replace and extend potable water lines to Palestine, Wirt County Routes 53 and 5 around Two Ripple Run, and to construct a water transmission line on State Route 14 North for Elizabeth to purchase its potable water in the future from the Claywood Park Public Service District and other necessary appurtenances, is hereby granted.

IT IS FURTHER ORDERED that total project costs of \$2,425,000, to be funded with a Small Cities Block Grant of \$1,175,000, a USDA Rural Development grant of \$800,000 and a Rural Development Loan of \$450,000 at 4.5% interest for a forty-year term, are hereby approved.

IT IS FURTHER ORDERED that the water purchase contract between the Town and Claywood is hereby approved pursuant to *W. Va. Code* §24-2-12.

IT IS FURTHER ORDERED that the Commission's approval of the water purchase contract is contingent upon the parties' filing, within twenty (20) days of the date of this Order, of a revised contract reflecting Claywood's current Commission-approved resale rate.

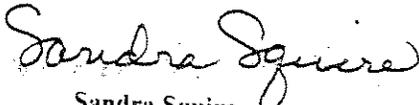
IT IS FURTHER ORDERED that if the scope of the project or the terms of the financing for the project change, the Town shall request that this case be reopened for adjustments and approval by the Commission.

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

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

JML/ljm
010368ca.wpd

A True Copy, Teste:


Sandra Squire
Executive Secretary



10-152 Ra Kh

West Virginia Infrastructure & Jobs Development Council

Public Members:

James D. Williams, Chairman
St. Albans

James L. Harrison, Sr., Vice Chairman
Princeton

Lloyd P. Adams, P.E.
Wheeling

Sheirl L. Fletcher
Morgantown

RECEIVED
JUL 13 1999

980 One Valley Square
Charleston, West Virginia 25301
Telephone: (304) 558-4607
Facsimile: (304) 558-4609

Susan J. Riggs, Esquire
Executive Secretary

Thrasher Engineering, Inc.

July 9, 1999

Wm. Randy Watson
Thrasher Engineering, Inc.
30 Columbia Boulevard
Clarksburg, West Virginia 26301

Re: Town of Elizabeth (Resubmittal)
Water System Improvements and Extension Project 97W-323

Dear Mr. Watson:

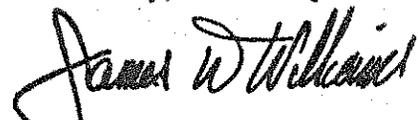
The West Virginia Infrastructure and Jobs Development Council (the "Council"), at its July 7, 1999 meeting, reviewed the Town of Elizabeth's (the "Town") resubmitted preliminary application regarding its proposed project to connect to the Claywood Park Public Service District for water purchases, and extend the distribution system to serve approximately 160 new customers. Based on the findings of the Water Technical Review Committee, the Council has determined that the project is technically feasible within the guidelines of the Infrastructure and Jobs Development Act. The Town should carefully review the enclosed comments of the Water Technical Review Committee. The Town may need to address certain issues raised in said comments as it proceeds with the project.

Upon consideration of the Town's preliminary application, the Council recommends that the Town utilize the USDA-Rural Utilities Service ("RUS") loan of \$450,000 and RUS grant of \$800,000 previously committed to the project, and also pursue a Small Cities Block Grant of \$1,250,000. Please contact the West Virginia Development Office at 558-4010 for specific information on the steps the Town needs to follow to apply for the Small Cities Block Grant. **Please note that this letter does not constitute funding approval from the West Virginia Development Office.**

Wm. Randy Watson
July 8, 1999
Page 2

If you have any questions regarding this matter, please contact Susan J. Riggs at the above-referenced telephone number.

Sincerely,



James D. Williams

JDW/tb

Enclosure

cc: Debbie Legg
Jim Anderson
Randy Plum
James Mylott



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Cecil H. Underwood
Governor

Joan Ohl
Secretary

MEMORANDUM

TO: Bernie Yonkosky, Funding Committee
WV Infrastructure and Jobs Development Council

FROM: Katy Mallory, P.E.
Water Technical Review Committee

DATE: June 18, 1999

SUBJECT: Preliminary Application 97W-323 Resubmittal
Town of Elizabeth
Wirt County

1. The Committee has reviewed the pre-application and preliminary engineering report submitted for the above referenced project in accordance with Chapter 31, Article 15-A. It has been determined that the project is:
 - a. ___ Consistent with the intent of the Infrastructure and Jobs Development Act and is the most cost-effective and environmentally sound alternative for solving the drinking water needs in this area.
 - b. ___ Consistent with the Act but may not be the most cost-effective and environmentally sound alternative for solving the drinking water needs in this area.
 - c. Consistent with the intent of the Act and most cost-effective and environmentally sound alternative for solving the drinking water needs in this area except that certain issues need to be addressed prior to design and construction as the attached comments indicate.
2. Our recommendation is that:
 - a. The Funding Committee needs to review the proposed sources of funding to determine the best mix of grant and/or loan funds in accordance with applicable guidelines.

B. Yonkosky
June 18, 1999
Page 2 (97W-323)

- b. ___ The Funding Committee should recommend that Council approve the proposed project and its funding plan.
 - c. ___ The Funding Committee does not need to review the funding assumptions on this project because of deficiencies in the engineering report. The proposed project funding should be denied until technical comments have been resolved.
 - d. ___ The project be referred to the Consolidation Committee.
3. Other remarks:

Technical comments are attached.


Water Technical Review Committee

Attachments

pc: Susan Riggs, LJDC
C. Russell Rader, Director, OEHS
Saint Albans District Office
To be distributed at the Funding Committee meeting

t:\wp60win\kml\infra\1999\elizabeth.618



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Cecil H. Underwood
Governor

Joan E. Ohl
Secretary

MEMORANDUM

TO: Katy Mallory, P.E.
Office of Environmental Health Services

FROM: Charles Robinette, P.E., Supervising Engineer *CR*
Saint Albans District Office

DATE: June 10, 1999

RE: Application 97W-323 — Town of Elizabeth — Wirt County

I have reviewed the above-referenced application. The original application was not available for my review. Based upon the information submitted, the proposed application cost exceeds the original application by approximately \$500,000. Based upon this limited information, the upgrade of the plant appears to be the most economical.

My major concerns with this "overview" are: (1) A true cost comparison should consider O&M costs for some period in the future. There is not enough information available to this office to determine the most economical alternative; and (2) Was the original proposal limited to the pre-sedimentation basin? Based on recently issued regulations, additional modifications may be necessary in the plant to meet these new rules. If these were not addressed in the original application, the cost in the original application may be underestimated.

Also, no documentation is made showing that Claywood Park has the capacity to supply Elizabeth in conjunction with approximately 160 new customers. It is unclear if any additional modifications will be needed to the existing Claywood Park PSD besides an additional booster station. There is no documentation in the application verifying that Claywood Park has agreed to pay back for the cost of the additional booster station. Since this is a significant cost, some documentation should be required.

It is my opinion that an ideal situation for Elizabeth would be both an upgrade of the water plant and connection to Claywood Park PSD. Elizabeth could then produce their own water, and would have a connection to an alternate source, in case of emergency.

CHR:llg
pc: C. Russell Rader, Jr., P.E.
O:\WPWIN61\CHR\MEMOS\INFRASTR\KATY.MEM

BUREAU FOR PUBLIC HEALTH
Office of Environmental Health Services
SAINT ALBANS DISTRICT OFFICE
808 "B" Street, Suite G
St. Albans, West Virginia 25177
Telephone (304) 722-0611 FAX (304) 722-0615



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Cecil H. Underwood
Governor

MEMORANDUM

Joan Ohl
Secretary

TO: Katy Mallory, P.E.

FROM: *Walt* Walter M. Ivey, P.E.

DATE: June 10, 1999

RE: Preliminary Application - Town of Elizabeth
No.: 97W-323
County: Wirt

Based upon my review of the above referenced project, the project consist of work as follows:

1. The Town of Elizabeth will extend service to 160 new customers in the Palestine and Two Ripple Run areas. These residents currently are on individual wells. Many of the wells do not meet minimum construction standards and produce limited quality and quantity of water. Many of the wells are bacteriologically contaminated. The project will include line extensions and installation of a 100,000 gallon storage tank.
2. The Town of Elizabeth desires to improve their existing distribution system. The replacement of these water lines, meter services, gate valves, and fire hydrants should control the water loss. Presently the Town is losing 33% of the water in their system. These improvements will also help with problems of low distribution pressures caused when leaks or fire flows create low pressures. These low pressures are conducive to back siphonage and backflow of contaminated water into the system. This part of the project will include line replacements, and repainting of the two water storage tanks.
3. The Town of Elizabeth will install a connector line to purchase water from Claywood Park PSD. This will allow the Town to abandon their existing water treatment plant. The treatment plant currently has problems with their intake

Memo To: Katy Mallory, P.E.
RE: 97W-323
Date: June 10, 1999
Page Two

structure during high water levels and would be required to upgrade their plant due to recent regulations. This part of the project will include line extensions, installation of two 200-gpm booster station, and installation of a 150,000 gallon storage tank.

I spoke to Randy Watson of Thrasher Engineering about some concerns in the application. He responded to me as follows:

1. The change from the upgrade of the treatment plant to the connection of the Claywood Park PSD came from comments from RUS. A meeting was held between Claywood Park, the Town of Elizabeth and it was determined that water could be sold to the town. He will obtain a letter from Claywood Park PSD stating that they will sell water to the Town of Elizabeth and the rates that will be charged.
2. He stated that he will send me the cost comparison for the upgrade of the treatment plant versus the connection to Claywood Park PSD.
3. The 5% contingencies in the cost estimate was to be for rural areas that consist of mostly line work. His reasoning was that the cost estimate was close enough for this type of work and did not need the 10% contingency.
4. The second booster station is in the cost estimate under "Additional Project Cost," as a Tap Fee.

If you have any questions, please do not hesitate to contact me.

WMI



Office of Abandoned Mine Lands and Reclamation
10 McJunkin Road
Nitro, West Virginia 25143-2506
Ph. (304) 759-0521
Fax: (304) 759-0527

West Virginia Division of Environmental Protection

Cecil H. Underwood
Governor

Michael P. Miano
Director

MEMORANDUM

TO: Katy Mallory, P.E.
Bureau for Public Health
Office of Environmental Health Services

FROM: Patrick Park, Asst. Chief 
Office of Abandoned Mine Lands and Reclamation

DATE: June 9, 1999

RE: Application #97W-323 – Town of Elizabeth
Wirt County

I have reviewed the above Preliminary Applications submitted for the referenced projects in accordance with Chapter 31, Article 15A. The Division of Environmental Protection, Office of Abandoned Mine Lands and Reclamation determines that the Preliminary Applications for the referenced projects are:

1. X technically feasible and recommends the application be sent to the Funding Committee.
2. _____ technically nonfeasible and do not recommend the application be sent to the Funding Committee for review.
3. _____ to be submitted to the Project Sponsor for the additional information and/or clarification of the application.

PCP/bst



WEST VIRGINIA DEVELOPMENT OFFICE

1900 KANAWHA BOULEVARD, EAST
CHARLESTON, WV 25305-0311

Cecil H. Underwood, Governor

MEMORANDUM

TO: Katy Mallory

FROM: Debbie Legg *DL*

DATE: June 9, 1999

RE: Preliminary Application for the Town of Elizabeth (97W-323)

We have reviewed the above-captioned project and offer the following comments.

Project Funding Proposed

SCBG	\$1,250,000
USDA Rural Dev. Loan	450,000
USDA Rural Dev. Grant	<u>800,000</u>
Total	\$2,500,000

- The project is a resubmittal to address cost increase and proposed project funding.
- RUS has been committed to the project.
- The town of Elizabeth is eligible to apply for SCBG funding.

DL:ca

Public Service Commission

Meyishi Blair, Staff Attorney

201 BROOKS STREET, P. O. BOX 812
CHARLESTON, WEST VIRGINIA 25323

PHONE: (304) 340-0487
FAX: (304) 340-0372



June 11, 1999

Katy Mallory, P.E.
Environmental Health Services
815 Quarrier Street, Suite 418
Charleston, WV 25301
FAX: 558-0691

Re: Public Service Commission Staff Review Comments
97W-323 (Resubmittal) Town of Elizabeth
Infrastructure Preliminary Application

Dear Ms. Mallory:

Attached please find the Public Service Commission Staff technical review comments regarding the Town of Elizabeth's preliminary application to the Infrastructure Council.

Please let me know if you have any questions regarding this matter. Thank you for your attention.

Sincerely,

A handwritten signature in cursive script that reads "Meyishi Blair".

MEYISHI BLAIR
Staff Attorney

MB/cg
Attachments

**PUBLIC SERVICE COMMISSION STAFF
TECHNICAL REVIEW**

DATE: June 11, 1999

PROJECT SPONSOR: TOWN OF ELIZABETH

PROJECT SUMMARY: Water system extension and upgrade

PROPOSED FUNDING:	Small Cities Block	Grant	\$ 1,250,000
	USDA RUS Loan	4.5%, 40yrs.	450,000
	USDA RUS	Grant	<u>800,000</u>
	Total		\$ 2,500,000

PROPOSED RATES: Approximately \$ 29.20

Application Number: 97W-323 (Resubmittal)

FINANCIAL: Geert Bakker

1. Proposed rates (average \$29.20 for 4500 gallons) are higher than the average rates attributable to 1% of the Median Household Income (MHI) of \$14.13 per 4500 gallons and the average rates attributable to 1.5% of the MHI of \$21.19.
2. The Town's revenue projection is supported by a bill analysis. Average consumption is less than the 4500 gallons per month per customer.

ENGINEERING: James W. Ellars, P.E.

1. This project will require a certificate of convenience and necessity from the PSC.
2. Customer Density: Palestine Extension: 18.77 customers/mile
Newark Road: 11.56 customers/mile

Cost Per Customer: Palestine Extension: \$5,637.81 per customer
Newark Road: \$6,868.47 per customer

The customer densities are somewhat low, while the cost per customer ratios are good.

3. Project Feasibility:

The project is technically feasible provided that Claywood Park PSD has the necessary capacity.

4. Alternatives to Project:

The selected alternative appears to be the best choice.

Town of Elizabeth
June 11, 1999
97W-323 (Resubmittal)
Page 2

5. Consolidation:

There are no consolidation issues which immediately affect this utility.

6. Inconsistencies:

None.

7. Operation and Maintenance Costs:

Appear adequate for this project.

8. Engineering Agreement:

Not applicable.

TOWN OF ELIZABETH
 CASH FLOW ANALYSIS
 YEAR ENDED June 30, 1998
 97W-323

04-Jun-99

	Per Application Before Project	Per Applicatio with Project	** adjustment	Per Staff Analysis
	1	2		3
	\$	\$	\$	\$
<u>AVAILABLE CASH</u>				
Operating Revenues	162,257	221,446		221,446
Other operating Revenue	7,244	7,244		7,244
Interest Income & Other Miscell.				
Total Cash Available	169,501	228,690		228,690
<u>OPERATING DEDUCTIONS</u>				
Operating Expenses	117,642	151,975		151,975
Taxes				
Total Cash Requirements Before Debt Service	117,642	151,975		151,975
Cash Available for Debt Servi (A)	51,859	76,715		76,715
<u>DEBT SERVICE REQUIREMENTS</u>				
Interest on Long Term Debt				
Bond Retirement				
Principal & Interest	37,128	61,582		61,582
Subtotal (B)	37,128	61,582		61,582
Reserve Account @ 15%		3,668		3,668
Renewal & Replacement Fund (2.5%)				
Total Debt Service Requirement	37,128	65,251		65,251
Remaining Cash	14,731	11,464		11,464
Percent Coverage (A) / (B)	139.68%	124.57%		124.57%



DIVISION OF ENVIRONMENTAL PROTECTION
1201 Greenbrier Street
Charleston, WV 25311-1088

CECIL H UNDERWOOD
GOVERNOR

MICHAEL P. MIANO
DIRECTOR

MEMORANDUM

MEMO TO: Katy Mallory, P.E.
Environmental Engineering Division
Bureau of Public Health

FROM: 
Jerry L. Ray
Assistant Chief, Permits
Office of Water Resources

DATE: June 17, 1999

SUBJECT: **Resubmittal** - Preliminary Application (97W-323) for the Town of Elizabeth water system upgrade, Wirt County.

We have reviewed the above referenced project application. A review of this resubmittal application yielded no information that would change our original comments dated June 12, 1997 (a copy is enclosed) concerning NPDES permits needed for this project.

The preliminary application does not indicate the amount of land which will be disturbed due to the proposed improvements. For your information, if the project has less than three(3) acres of disturbed area, an approved Construction Storm water sediment and erosion control plan with the local soil conservation district is required. For Wirt County, this would be the:

Little Kanawha Soil Conservation District
P.O. Box 173
Elizabeth, WV 26143
(304) 275-3665

Should the disturbed area be three (3) acres or greater, they will need to submit an actual Construction Storm water NPDES Permit Application to the Office of Water Resources. For more information, they may contact Mr. Bob Weiford at (304) 757-1693.

Further, the preliminary application indicates the need for stream crossings. As such, it is assumed that the appropriate organizations will be contacted, as necessary.

In light of the above, we have no objections to this project as long as the appropriate provisions are taken to assure compliance with Chapter 22, Article 11, of the Code of West Virginia and any associated regulations. The responsible party may contact Mr. Clifton D. Brown at (304) 558-4086, or our TDD number (304) 558-2751, should additional information be required.

JLR:tdb



\$450,000
TOWN OF ELIZABETH
WATER REVENUE BOND
SERIES 2002

No. R-1

Date: February 6, 2002

FOR VALUE RECEIVED, the TOWN OF ELIZABETH, a municipal corporation and political subdivision of the State of West Virginia in Wayne County of said State (herein called "Issuer"), hereby promises to pay to the order of the United States of America (the "Government"), or its registered assigns at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000.00), plus interest on the unpaid principal balance at the rate of four and 50/100 percent (4.50%) per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing on the 30th day following delivery of the Bond and continuing on the corresponding day of each month for the first twenty-four (24) months after the date hereof, and \$2,066.00 covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of forty (40) years from the date of this Bond, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

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

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

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

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

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

SPECIMEN

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

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

This Bond, together with any additional bonds ranking on parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of construction of improvements to a water system (the "System") of the Issuer, is payable solely from the revenues to be derived from the operation of the System after there have been first paid from such revenues the reasonable current costs of operation and maintenance of the System. This Bond does not in any manner constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation.

SPECIMEN

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

This Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Bond Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Article 19 of Chapter 8 of the West Virginia Code (herein called the "Act").

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

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

THIS BOND IS ON PARITY AS TO LIEN AND SOURCE OF PAYMENT WITH THAT CERTAIN WATER REVENUE BOND, SERIES 1982, OF THE ISSUER DESCRIBED IN AN ORDINANCE ENACTED ON JUNE 2, 1982.

The initial address of Government for purposes of bond registration is Federal Building, Room 320, 75 High Street, Morgantown, WV 26505-7500.

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

IN WITNESS WHEREOF, the TOWN OF ELIZABETH has caused this Bond to be executed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Clerk/Recorder, all as of the date hereinabove written.

(SEAL)

SPECIMEN
TOWN OF ELIZABETH

By: Laurin Full
Mayor
P.O. Box 478
Elizabeth, WV 26143

ATTEST:

By: Rennie M. Jay
Clerk/Recorder

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
(1) \$ 175,000.00	2/6/02	(6) \$	
(2) \$		(7) \$	
(3) \$		(8) \$	
(4) \$		(9) \$	
(5) \$		(10) \$	

SPECIMEN

TOTAL \$ _____

ASSIGNMENT

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

SPECIMEN

DATED: _____, 200_

(Assignor)

Witnessed in the presence of:

THE TOWN OF ELIZABETH

Water Revenue Bond, Series 1982

BOND ORDINANCE

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05/12/82
ELIZA-L

THE TOWN OF ELIZABETH

ORDINANCE AUTHORIZING THE ISSUANCE OF \$547,000
WATER REVENUE BOND, SERIES 1982, OF THE TOWN OF
ELIZABETH TO FINANCE ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS FOR THE EXISTING WATERWORKS OF THE TOWN; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BOND; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES AND SECURITY OF THE HOLDERS OF THE BOND; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT

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

ARTICLE I

STATUTORY AUTHORITY, FINDINGS
AND DEFINITIONS

Section 1.01. Authority for This Ordinance. This Ordinance is adopted pursuant to the provisions of Article 19, Chapter 8 of the West Virginia Code (the "Act") and other applicable provisions of law.

Section 1.02. Findings and Determinations. It is hereby found, determined and declared as follows:

(A) The Town of Elizabeth (the "Issuer"), in the County of Wirt, State of West Virginia, is now served by a waterworks system (which system, as expanded by the Project and all future improvements is called the "System"), but such System is not adequate, and it is necessary that the System be improved by the Issuer. The inhabitants of the Issuer and surrounding area served by the System urgently require that the System be improved as herein provided.

(B) It is deemed essential, convenient and desirable for the health, welfare, safety, advantage and convenience of the inhabitants of the Issuer and, accordingly, it is hereby ordered, that there be acquired and constructed certain additions, extensions and improvements to the existing waterworks system consisting of a water treatment facility, including two storage tanks, with all necessary appurtenant facilities (the "Project"), particularly

described in and according to the plans and specifications prepared by the Consulting Engineer and heretofore filed in the office of the Recording Officer of the Issuer. The acquisition and construction of the Project and the financing hereby authorized and provided for are public purposes of the Issuer and are ordered for the purpose of meeting and serving public convenience and necessity.

(C) It is necessary for the Issuer to issue its revenue bond in the principal amount of \$547,000 to finance a portion of the cost of the Project in the manner hereinafter provided.

(D) The estimated maximum cost of acquisition and construction of the Project is \$1,541,750 of which \$547,000 will be obtained from the proceeds of sale of the Bond herein authorized, and the balance from grants, \$600,000 from Farmers Home Administration, \$238,000 from the State through the West Virginia Water Development Authority, and a \$156,750 HUD Eminent Threat Grant.

(E) The cost of the Project shall be deemed to include, without being limited to the construction and acquisition of the additions, extensions and improvements constituting a part of the Project, the acquisition of any necessary property, real or personal, or interest therein; interest on the Bond prior to, during and for six months after completion of such construction to the extent that revenues of the System are not sufficient therefor; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; and such other expenses as may be necessary or incidental to the construction of the Project and the financing authorized hereby.

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

(G) There are not outstanding any obligations of the Issuer which will rank prior to or on a parity with the Bond as to lien and source of and security for payment.

(H) The Issuer has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the Bond, or will have so complied prior to issuance of the Bond including, among other things, obtaining a certificate of convenience and necessity for the Project from the Public Service Commission of West

Virginia by final order, the time for rehearing and appeal of which have expired. The rates, charges and rules provided in Article V hereof shall be in full force and effect except as changed by said Public Service Commission, in case of appeal and the time for appeal as to such order shall have expired without appeal being taken therefrom.

Section 1.03. Ordinance to Constitute Contract. In consideration of the acceptance of the Bond by the Purchaser, this Ordinance (the "Bond Legislation") shall be deemed to be and shall constitute a contract between the Issuer and such Bondholder, and the covenants and agreements set forth herein to be performed by the Issuer shall be for the benefit, protection and security of the Purchaser as holder of the Bond.

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

"Act" means Article 19, Chapter 8 of the West Virginia Code.

"Bond" means the Water Revenue Bond, Series 1982, authorized hereby to be issued.

"Bond Legislation" means this Ordinance and all ordinances and resolutions supplemental hereto.

"Consulting Engineer" means Milam/BCM Engineers, Inc., Dunbar, West Virginia, or any qualified engineer or firm of engineers which shall at any time hereafter be retained by the Issuer as Consulting Engineer for the System.

"Facilities" or "waterworks facilities" means all the tangible properties of the System and also any tangible properties which may hereafter be added to the System by additions, betterments, extensions and improvements thereto and properties, furniture, fixtures or equipment therefor, hereafter at any time constructed or acquired.

"Fiscal Year" means each year beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the Common Council of the Issuer.

"Herein" means in this Bond Legislation.

"Holder of the Bond" or "Bondholder" or any similar term means any person who shall be the bearer or owner of the Bond.

"Issuer" means The Town of Elizabeth, in Wirt County, West Virginia, and includes the Governing Body.

"Net Revenues" means the balance of the gross revenues, as defined below, remaining after deduction only of operating expenses, as defined below.

"Operating Expenses" means the current expenses, paid or accrued, of operation and maintenance of the System and its facilities, and includes, without limiting the generality of the foregoing, insurance premiums, salaries, wages and administrative expenses of the Issuer relating and chargeable solely to the System, the accumulation of appropriate reserves for charges not annually recurrent but which are such as may reasonably be expected to be incurred, and such other reasonable operating costs as are normally and regularly included under generally accepted accounting principles and retention of a sum not to exceed one-sixth of the budgeted operating expenses stated above for the current year as working capital, and language herein requiring payment of operating expenses means also retention of not to exceed such sum as working capital.

"Project" shall have the meaning stated in Section 1.02(B) above.

"Purchaser" means United States Department of Agriculture, Farmers Home Administration and any successor thereof.

"Recording Officer" means the Recorder of the Issuer.

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

"System" means the existing waterworks now serving the Issuer as expanded by the Project, and includes the complete waterworks system of the Issuer and all waterworks facilities owned by the Issuer and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with the waterworks system; and shall also include any and all additions, extensions, improvements, properties or other facilities at any time acquired or constructed for the waterworks system after completion of the Project.

Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

ARTICLE II

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND ISSUE OF BOND

Section 2.01. Authorization of Bond. Subject and pursuant to the provisions of this Ordinance, the Bond of the Issuer, to be known as "Water Revenue Bond, Series 1982," is hereby authorized to be issued in the aggregate principal amount of not exceeding Five Hundred Forty-Seven Thousand Dollars (\$547,000) for the purpose of financing a portion of the cost of acquisition and construction of the Project.

Section 2.02. Description of Bond. The Bond shall be issued in single form, No. 1, and shall be dated on the date of delivery. The Bond shall bear interest from date, payable monthly at the rate of five per centum (5%) per annum, and shall be sold for the par value thereof.

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

Section 2.03. Execution of Bond. The Bond shall be executed in the name of the Issuer by the Mayor and its corporate seal shall be affixed thereto and attested by the Recording Officer.

Section 2.04. Bonds Mutilated, Destroyed, Stolen or Lost. In case the Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may in its discretion issue and deliver a new Bond of like tenor as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the holder's furnishing the Issuer proof of his ownership thereof and complying with such other reasonable regulations and conditions as the Issuer may require. The Bond so surrendered shall be canceled and held for the account of the Issuer. If the Bond shall have matured or be about to mature, instead of issuing a substitute Bond the Issuer may pay the same, and, if such Bond be destroyed, stolen or lost, without surrender thereof.

Section 2.05. Bond Secured by Pledge of Revenues. The payment of the debt service of the Bond shall be secured forthwith by a first lien on the net revenues derived from the System in addition to the statutory mortgage lien on the System hereinafter provided for. The net revenues derived from the System in an amount sufficient to pay the principal of and interest on the Bond, and to

make the payments as hereinafter provided, are hereby irrevocably pledged to the payment of the principal of and interest on the Bond as the same become due.

Section 2.06. Form of Bond. Subject to the provisions hereof, the text of the Bond and the other details thereof shall be of substantially the following tenor, with such omissions, insertions and variations as may be authorized or permitted hereby or any resolution adopted after the date of adoption hereof and prior to the issuance thereof:

(Form of Bond)

WATER REVENUE BOND, SERIES 1982

THE TOWN OF ELIZABETH

\$547,000

No. 1

Date: June 9, 1982

FOR VALUE RECEIVED, THE TOWN OF ELIZABETH (herein called "Borrower") promises to pay to the order of the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture (the "Government"), at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of Five Hundred Forty-Seven Thousand Dollars (\$547,000) plus interest on the unpaid principal balance at the rate of five per cent (5%) per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing on the 30th day following delivery of the Bond and continuing on the corresponding day of each month for the first twenty-four months after the date hereof and \$2,686, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of fortieth (40th) year from the date of this Bond, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the reverse hereof.

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

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Farmers Home Administration according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the

obligation of Borrower to pay the remaining installments as scheduled herein.

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

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

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

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

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of construction and acquisition of additions, extensions and improvements to the waterworks system (the "System") of the Borrower, is payable solely from the revenues to be derived from the operation of the System after there have been first paid from such revenues the reasonable current costs of operation and maintenance of the System. This Bond does not in any manner constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provision or limitation.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Article 19 of Chapter 8 of the West Virginia Code (herein called the "Act").

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

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

THE TOWN OF ELIZABETH
(Name of Borrower)

[CORPORATE SEAL]

(Signature of Executive Official)

Mayor

(Title of Executive Official)

Town Hall

(Post Office Box No. or Street Address)

Elizabeth, West Virginia. 26143

(City, State and Zip Code)

ATTEST:

(Signature of Attesting Official)

Recorder

(Title of Attesting Official)

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$		(6) \$	
(2) \$		(7) \$	
(3) \$		(8) \$	
(4) \$		(9) \$	
(5) \$		(10) \$	
		TOTAL	\$ _____

ASSIGNMENT

Pay to the Order of _____

UNITED STATES OF AMERICA
FARMERS HOME ADMINISTRATION

By _____

(Title)

ARTICLE III

BOND PROCEEDS; REVENUES AND APPLICATION THEREOF

Section 3.01. Bond Proceeds; Project Construction Account. The proceeds of temporary financing and from sale of the Bond, shall be deposited on receipt by the Issuer in the Wirt County Bank, Elizabeth, West Virginia, a member of Federal Deposit Insurance Corporation (the "FDIC"), in a special account hereby created and designated as "Town of Elizabeth Project Construction Account" (herein called "Project Construction Account"). The moneys in the Project Construction Account in excess of the amount insured by FDIC shall be secured at all times by such bank by securities or in a manner lawful for the securing of deposits of State and municipal funds under West Virginia law. Moneys in the Project Construction Account shall be expended by the Issuer solely for the purposes provided herein.

Until completion of construction of the Project, the Issuer will transfer from the Project Construction Account and pay to the Government on or before the due date, such sums as shall be from time to time required to make the monthly installment payments on the Bond if there are not sufficient Net Revenues to make such monthly payment.

If the Issuer shall determine at any time that all funds on deposit in the Project Construction Account exceed the estimated disbursements on account of the Project for the ensuing 90 days, the Issuer may invest such excess funds in direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America, which shall mature not later than eighteen months after the date of such investment. All such investments and the income therefrom shall be carried to the credit of the Project Construction Account.

When construction of the Project has been completed and all costs thereof have been paid or provision for such payment has been made, any balance remaining in the Project Construction Account shall be disposed of in accordance with the regulations of the Purchaser.

Section 3.02. Covenants of the Issuer as to Revenues and Funds. So long as the Bond shall be outstanding and unpaid, or until there shall have been set apart in the Reserve Fund hereinafter established, a sum sufficient to pay, when due or at the earliest practical prepayment date, the entire principal of the Bond remaining unpaid, together with interest accrued and to accrue

thereon, the Issuer further covenants with the holder of the Bond as follows:

(A) Revenue Fund. The entire gross revenues derived from the operation of the System, and all parts thereof, shall be deposited as collected by the Issuer in a special fund in a bank or trust company in the State of West Virginia which is a member of FDIC, which Fund, known as the "Revenue Fund" is hereby established initially with the Bank named in Section 3.01. The Revenue Fund shall constitute a trust fund for the purposes provided herein and shall be kept separate and distinct from all other funds of the Issuer and used only for the purposes and in the manner provided herein.

(B) Disposition of Revenues. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order and priority:

(1) The Issuer shall first each month pay from the moneys in the Revenue Fund all current Operating Expenses.

(2) The Issuer shall next, on or before the due date of each installment on the Bond, transfer from the Revenue Fund and pay to the National Finance Office designated in the Bond the amount required to pay the interest on the Bond, and to amortize the principal of the Bond over the life of the Bond issue.

(3) The Issuer shall next, by the fifteenth day of each month, transfer from the Revenue Fund and deposit with the said Bank in the Reserve Fund hereby initially established with said Bank, 1/12 of 1/10 of the amount of principal and interest becoming due on the Bond in any year until the amount in the Reserve Fund equals the sum of \$32,000, such sum being herein called the "Minimum Reserve." After the Minimum Reserve has been accumulated in the Reserve Fund, the Issuer shall monthly deposit into the Reserve Fund such part of the moneys remaining in the Revenue Fund, after such provision for payment of monthly installments on the Bond and for payment of operating expenses of the System, as shall be required to maintain the Minimum Reserve in the Reserve Fund. Moneys in the Reserve Fund shall be used solely to make up any

deficiency for monthly payments of the principal of and interest on the Bond to said National Finance Office as the same shall become due or for prepayment of installments on the Bond, or for mandatory prepayment of the Bond as hereinafter provided, and for no other purpose.

(4) The Issuer shall next, by the fifteenth day of each month, transfer from the Revenue Fund and deposit in the Depreciation Reserve, hereby initially established with said Bank, the moneys remaining in the Revenue Fund and not permitted to be retained therein, until there has been accumulated in the Depreciation Reserve the aggregate sum of \$46,000 and thereafter such sums as shall be required to maintain such amount therein. Moneys in the Depreciation Reserve shall be used first to make up deficiencies for monthly payments of principal of and interest on the Bond as the same become due, and next to restore to the Reserve Fund any sum or sums transferred therefrom. Thereafter, and provided that payments into the Reserve Fund are current and in accordance with the foregoing provisions, moneys in the Depreciation Reserve may be withdrawn by the Issuer and used for extraordinary repairs and for replacements of equipment and improvements for the System, or any part thereof.

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

Whenever the moneys in the Reserve Fund shall be sufficient to prepay the Bond in full, it shall be the mandatory duty of the Issuer, anything to the contrary herein notwithstanding, to prepay the Bond at the earliest practical date and in accordance with applicable provisions hereof.

The aforesaid Bank (and any successor appointed by the Issuer) is hereby designated as the Fiscal Agent for the administration of the Reserve Fund and the Depreciation Reserve as herein provided, and all amounts

required therefor will be deposited therein by the Issuer upon transfers of funds from the Revenue Fund at the times provided herein, together with written advice stating the amount remitted for deposit into each such Fund.

All the funds provided for in this Section shall constitute trust funds and shall be used only for the purposes and in the order provided herein, and until so used, the Purchaser shall have a lien thereon for further securing payment of the Bond and the interest thereon, but the aforesaid Bank shall not be a trustee as to such funds. The moneys in excess of the sum insured by FDIC in any of such funds shall at all times be secured, to the full extent thereof in excess of such insured sum, in a manner lawful for securing deposits of State and municipal funds under the laws of the State of West Virginia.

If on any payment date the revenues are insufficient to make the payments and transfers as hereinabove provided, the deficiency shall be made up in the subsequent payments and transfers in addition to those which would otherwise be required to be made on the subsequent payment dates.

The Fiscal Agent shall keep the moneys in the Reserve Fund and the Depreciation Reserve invested and reinvested to the fullest extent practicable in direct obligations of, or obligations the payment of the principal of and interest on which are guaranteed by, the United States of America and having maturities not exceeding two years. Earnings upon moneys in the Reserve Fund, so long as the Minimum Reserve is on deposit and maintained therein, shall be paid annually in January into the Revenue Fund by the Fiscal Agent.

(C) Change of Fiscal Agent. The Issuer may designate another bank insured by FDIC as Fiscal Agent if the aforesaid Bank should cease for any reason to serve or if the Governing Body determines by resolution that said Bank or its successor should no longer serve as Fiscal Agent. Upon any such change, the Governing Body will cause notice of the change to be sent by registered or certified mail to the Purchaser.

(D) User Contracts. The Issuer shall, prior to delivery of the Bond, provide evidence that there will be 467 full-time bona fide users initially upon the System, including the large volume users referred to in paragraph numbered 3 of the Letter of Conditions.

ARTICLE IV

GENERAL COVENANTS

Section 4.01. General Statement. So long as the Bond shall be outstanding and unpaid, or until there shall have been set apart in the Reserve Fund a sum sufficient to prepay the entire principal of the Bond remaining unpaid, together with interest accrued and to accrue thereon to the date of prepayment, the covenants and agreements contained herein shall be and constitute valid and legally binding covenants between the Issuer and the Purchaser.

Section 4.02. Rates. The Issuer will, in the manner provided in the Act, fix and collect such rates, fees or other charges for the services and facilities of the System, and revise the same from time to time whenever necessary, as will always provide revenues in each fiscal year sufficient to produce net revenues equal to not less than 110% of the annual debt service on the Bond and to make the payments required herein into the Reserve Fund and the Depreciation Reserve and all the necessary expenses of operating and maintaining the System during such fiscal year and such rates, fees and other charges shall not be reduced so as to be insufficient to provide adequate revenues for such purposes.

Section 4.03. Sale of the System. The System will not be sold without the prior written consent of the Purchaser so long as the Bond is outstanding. Such consent will provide for disposition of the proceeds of any such sale.

Section 4.04. Issuance of Additional Parity Bonds. No additional parity bonds payable out of the revenues of the System shall be issued after the issuance of the Bond pursuant hereto except with the prior written consent of the Purchaser.

Section 4.05. Insurance and Bonds. The Issuer hereby covenants and agrees that it will, as an expense of construction, operation and maintenance of the System, procure, carry and maintain, so long as the Bond remains outstanding, 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 upon acceptance of any part of the Project from the contractor, and immediately upon any portion of the System now in use, on all above-ground structures of the System in an amount equal to the actual cost thereof. In the

event of any damage to or destruction of any portion of the System, the Issuer will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damaged or destroyed portion. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Issuer during construction of the Project in the full insurable value thereof.

(b) Public Liability Insurance, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from the operation of the System, such insurance to be procured not later than the date of delivery of the Bond.

(c) Vehicular Public Liability Insurance, in the event the Issuer owns or operates any vehicle in the operation of the System, or in the event that any vehicle not owned by the Issuer is operated at any time or times for the benefit of the Issuer, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer 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 for the Issuer.

(d) Workmen's Compensation Coverage for all Employees of the District 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 prime contractor, and such payment bonds will be filed with the Clerk of the County Commission of said County prior to commencement of construction of the Project in compliance with West Virginia Code Section 38-2-39.

(e) Fidelity Bonds will be provided as to every member of the Governing Body and as to every officer and employee thereof having custody of the Revenue Fund or of any revenues or other funds of the Issuer in an amount at least equal to the total funds in the custody of any such person at any one time, and initially upon the Recorder in the amount required by the Purchaser, provided, however, that no bond shall be required insofar as custody of the Project Construction Account is concerned so long as checks thereon require the signature of a representative of the Purchaser.

(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 Bond is outstanding, the Issuer will carry insurance and bonds or cause insurance and bonds to be carried for the protection of the Issuer, and during such construction will require each contractor and subcontractor to carry insurance, of such types and in such amounts as the Purchaser may specify, with insurance carriers or bonding companies acceptable to the Purchaser.

Section 4.06. Events of Default. Each of the following events is hereby declared an "Event of Default":

(A) Failure to make payment of any monthly amortization installment at the date specified for payment thereof;

(B) Failure duly and punctually to observe or perform any of the covenants, conditions and agreements on the part of the Issuer contained in the Bond or herein, or violation of or failure to observe any provision of any pertinent law.

Section 4.07. Enforcement. Upon the happening of any Event of Default specified above, then, and in every such case, the Purchaser may proceed to protect and enforce its rights by an appropriate action in any court of competent jurisdiction, either for the specific performance of any covenant or agreement, or execution of any power, or for the enforcement of any proper legal or equitable remedy as shall be deemed most effectual to protect and enforce such rights.

Upon application by the Purchaser, such court may, upon proof of such default appoint a receiver for the affairs of the Issuer and the System. The receiver so appointed shall administer the System on behalf of the Issuer, shall exercise all the rights and powers of the Issuer with respect to the System, shall proceed under the direction of the court to obtain authorization to increase rates and charges of the System, and shall have the power to collect and receive all revenues and apply the same in such manner as the court may direct.

Section 4.08. Fiscal Year; Budget. While the 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 Issuer agrees to adopt the Annual Budget for the ensuing year, and no expenditures for operation and maintenance expenses of the System in excess of the Annual Budget shall be made during such fiscal year unless unanimously authorized and directed by the Governing Body. Copies of each Annual Budget shall be delivered to the Purchaser by the beginning of each fiscal year.

If for any reason the Issuer 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 per centum; and provided further that adoption of a Budget of Current Expenses shall not constitute compliance with the covenant to adopt an Annual Budget unless failure to adopt an Annual Budget be for a reason beyond the control of the Issuer. Each such Budget of Current Expenses shall be mailed immediately to the Purchaser.

Section 4.09. Covenant to Proceed and Complete. The Issuer hereby covenants to proceed as promptly as possible with the construction of the Project to completion thereof in accordance with the plans and specifications prepared by the Consulting Engineer and on file with the Recording Officer on the date of adoption hereof, subject to permitted changes.

Section 4.10. Books and Records. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and the Purchaser shall have the right at

all reasonable times to inspect the System and all records, accounts and data of the Issuer relating thereto.

The Issuer shall, at least once a year, cause said books, records and accounts of the System to be properly audited by an independent competent firm of certified public accountants and shall mail a copy of such audit report to the Purchaser.

Section 4.11. Maintenance of System. The Issuer covenants that it will continuously operate, in an economical and efficient manner, and maintain the System as a revenue-producing utility as herein provided so long as the Bond is outstanding.

Section 4.12. No Competition. The Issuer will not permit competition with the System within its boundaries or within the territory served by it and will not grant or cause, consent to or allow the granting of any franchise, permit or other authorization for any person, firm, corporation, public or private body, agency or instrumentality whatsoever to provide any of the services supplied by the System within the boundaries of the Issuer or within the territory served by the System.

Section 4.13. Concerning Arbitrage. The proceeds of sale of the Bond will not be invested in such a way as to violate the regulations of the Internal Revenue Service or of the Treasury Department of the United States of America in connection with the arbitrage provisions of Section 103(c) of the Internal Revenue Code of 1954, as amended.

ARTICLE V

RATES, ETC.

Section 5.01. Initial Schedule of Rates and Charges; Rules. A. The schedule of rates and charges for the services and facilities of the System shall be as set forth in the Ordinance of the Issuer enacted January 11, 1982.

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

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

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

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

F. No allowance or adjustment in any bill for use of the services and facilities of the System shall be made for any leakage occurring on the customer's side of the water meter.

G. The Issuer shall not be liable to any customer for any damage resulting from bursting or breakage of any pipe, line, main, valve, equipment or part or from discontinuance of the operation of any part of the System or from failure of any part thereof for any cause whatever.

H. In case of emergency, the Issuer shall have the right to restrict the use of any part of the System in any reasonable manner for the protection of the System and the inhabitants of the Issuer.

I. The fees, rates and charges above provided will be increased whenever such increase is necessary in order to comply fully with all provisions hereof, and the Issuer shall always be obligated to and shall fix, establish and collect fees, rates and charges for the services and facilities of the System which shall at all times be sufficient to provide net revenues to meet its obligations hereunder, but not less than 110% of the average annual debt service on all Bonds outstanding.

ARTICLE VI

MISCELLANEOUS

Section 6.01. Defeasance. The Bond shall be considered to have been paid in full and defeased only upon compliance with the requirements of the Purchaser if paid prior to maturity, and only upon payment in full of all interest owed and principal due on the Bond if paid at maturity.

Section 6.02. Modification or Amendment. No material modification or amendment of this Bond Legislation, or of any Bond Legislation amendatory hereof or supplemental hereto, may be made without the consent in writing of the Purchaser.

Section 6.03. Delivery of Bond No. 1. The Mayor is hereby authorized and directed to cause Bond No. 1, hereby awarded to the Purchaser pursuant to prior agreement, to be delivered to the Purchaser as soon as the Purchaser will accept such delivery.

Section 6.04. Severability of Invalid Provision. If any one or more of the covenants, agreements or provisions hereof should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions hereof, and shall in no way affect the validity of all the other provisions hereof or the Bond.

Section 6.05. Conflicting Provisions Repealed. All ordinances, resolutions and orders, or parts thereof, in conflict with the provisions hereof are, to the extent of such conflicts, hereby repealed; provided that this Section shall not be applicable to the Loan Resolution (Form FmHA 442-47).

Section 6.06. 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 6.07. Effective Time. This Bond Legislation shall take effect following public hearing hereon in accordance with the Act.

Section 6.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Bond Legislation, determined by

the Common Council to contain sufficient information as to give notice of the contents hereof, shall be published once a week for two successive weeks within a period of fourteen consecutive days, with at least six full days intervening between each publication, in the Wirt County Journal, a newspaper published and of general circulation in the Town of Elizabeth, together with a notice stating that this Bond Legislation has been adopted and that the Issuer contemplates the issuance of the Bond, that a certified copy hereof is on file in the office of the Recorder for review by interested persons during the office hours of the Recorder, and that any person interested may appear before the Common Council upon a date certain, not less than ten days subsequent to the date of the first publication of the said Bond Legislation and notice, and present protests. At such hearing, all protests and suggestions shall be heard and the Common Council shall take such action as it shall deem proper in the premises.

Passed on First Reading	May 15, 1982
Passed on Second and Final Reading	June 2, 1982
Following Public Hearing	

Lewis Full
Mayor

Allen Townsend
Recorder

06/07/82
ELIZA-M

standing of any individual so examined, registered or certified, pursuant to the civil service provisions of this article, or aid in so doing, or who shall wilfully or corruptly furnish to any individual any special or secret information, for the purpose of either improving or injuring the prospects or chances of appointment or promotion to any position of any individual so examined, registered or certified, or to be so examined, registered or certified, or who shall impersonate any other individual, or permit or aid in any manner any other individual to impersonate him, in connection with any such examination or registration, or application or request to be examined or registered, shall, for each offense, be deemed guilty of a misdemeanor.

Any person convicted of any such misdemeanor offense shall be punished by a fine of not less than fifty dollars, nor more than one thousand dollars, or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment, in the discretion of the court. (1933, c. 60; 1949, c. 88; 1969, c. 86.)

§ 8-15-27. Repeal of conflicting acts and provisions; civil service provisions of article exclusive; status or tenure not affected.

All acts, whether general, special, local or special legislative charters, or parts thereof, in relation to any civil service measure affecting any paid fire department inconsistent with the civil service provisions of this article shall be, and the same are, hereby repealed insofar as such inconsistencies shall exist. It is intended by the civil service provisions of this article to furnish a complete and exclusive system for the appointment, promotion, reinstatement, removal, discharge, suspension and reduction of all members of all paid fire departments in all municipalities. The status or tenure of all members of any paid fire department, which members were employed on the effective date of this article [July 1, 1969], shall not be affected by the enactment of this article, but all such members shall be subject to all of the civil service provisions of this article with like effect as if they had been appointed members hereunder. (1933, c. 60; 1949, c. 88; 1969, c. 86.)

ARTICLE 16.

MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

Part I. Definitions; Authorization of Municipal Public Works.

- Sec.
8-16-1. Definitions.
8-16-2. Municipalities authorized to construct, etc., public works and to acquire property; payment of costs.
8-16-3. Special provisions as to certain municipal public works.

Part II. Control of Governing Body or Board.

- Sec.
8-16-4. Construction, etc., to be under control of governing body or appointed board, etc.
8-16-4a. Additional special provisions as to motor vehicle parking facilities.
8-16-4b. Additional special provision as to the use of space in motor vehicle parking facilities.

MUNICIPAL CORPORATIONS

Part III. General Powers and Authority.

- Sec.
8-16-5. Powers of board.
8-16-6. Preliminary expenses.
8-16-7. Ordinance for construction, etc., of works.

Part IV. Right of Eminent Domain.

- 8-16-8. Right of eminent domain.

Part V. Revenue Bond Financing.

- 8-16-9. Bonds for improvements, etc., of works.
8-16-10. Items of expense included in cost of works.
8-16-11. No municipality is to incur any obligation not payable from proceeds of bonds; exemption from taxation.
8-16-12. Interest rate and life of bonds; redemption; how payable; form, denominations, etc.; additional bonds authorized; interim certificates.
8-16-13. Obligations not to bind municipal official or officer or member of board personally.
8-16-14. Additional bonds for improvements, etc., of works.
8-16-15. How proceeds of bonds applied.
8-16-16. Bonds secured by trust indenture between municipality or municipalities and corporate trustee.
8-16-17. Sinking fund; sinking fund commission; transfer of funds; purchase of outstanding bonds.

Part VI. Imposition of Rates or Charges.

- 8-16-18. Rates or charges for services rendered by works.
8-16-18a. Pledge of the hotel occupancy tax;

Sec.

contribution of revenues to building commission.

- 8-16-19. Appeal to public service commission from rates fixed.

Part VII. Accounting System and Records.

- 8-16-20. Accounting system; yearly audit; custodian of funds.

Part VIII. Rates or Charges for Municipalities.

- 8-16-21. Municipality or municipalities to pay established rates or charges for services rendered to it or them.

Part IX. Liens and Protection of Bondholders.

- 8-16-22. Statutory mortgage lien upon works created.
8-16-23. Acquisition of property on which lien exists.
8-16-24. Protection and enforcement of rights of bondholders, etc.; receivership; effect of receivership on lease agreement.

Part X. Construction; Extraterritorial Jurisdiction.

- 8-16-25. Article confers additional power and authority; extraterritorial jurisdiction.
8-16-26. Construction of power and authority conferred.
8-16-27. Article liberally construed.
8-16-28. Reference to "municipal authorities" or "municipal authority" elsewhere in law to mean "governing body" for the purposes of this article only.

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

Michie's Jurisprudence. — As to power of municipalities to issue bonds generally, see 13B M.J., Municipal Corporations.

ALR references. — What entities or projects are "public" for purposes of state statutes requiring payment of prevailing wages on public works projects, 5 ALR5th 470.

Construction. — For cases construing article 4A of former chapter 8, dealing with municipal public works and bond issues, see State ex rel. Bibb v. Chambers, 138 W. Va. 701, 77 S.E.2d 297 (1953); State ex rel. Holbert v. Robinson, 134 W. Va. 524, 59 S.E.2d 884 (1950); State ex rel. Klostermeyer v. City of Charleston, 130 W. Va. 490, 45 S.E.2d 7 (1947); City of

Huntington v. Hefley, 127 W. Va. 254, 32 S.E.2d 456 (1944); Smith v. City of Parkersburg, 125 W. Va. 415, 24 S.E.2d 588 (1943); City of Moundsville v. Brown, 125 W. Va. 779, 25 S.E.2d 900 (1943), modified, 127 W. Va. 602, 34 S.E.2d 321 (1945); Duling Bros. Co. v. City of Huntington, 120 W. Va. 85, 196 S.E. 552 (1938).

Easements. — A municipality has no authority to grant a perpetual easement or right-of-way over and across a municipal parking lot to a private banking firm to be used by the bank for ingress and egress to a proposed drive-in facility of the bank. 52 Op. Att'y Gen. 429 (1967).

Exercise of legislative powers. — Court did not enjoin municipal legislative body from exercising legislative powers in enacting a mu-

tribution of revenues to
ng commission.
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t VIII. Rates or Charges for Municipalities.

Municipality or municipalities to pay
established rates or charges for
services rendered to it or them.

IX. Liens and Protection of Bondholders.

Statutory mortgage lien upon works
created.

Acquisition of property on which lien
exists.

Protection and enforcement of rights
of bondholders, etc.; receiver-
ship; effect of receivership on
lease agreement.

Construction; Extraterritorial Jurisdiction.

Article confers additional power and
authority; extraterritorial juris-
diction.

Co-ntinuation of power and authority
conferred.

Article liberally construed.

Reference to "municipal authorities"
or "municipal authority" else-
where in law to mean "govern-
ing body" for the purposes of
this article only.

on v. Hefley, 127 W. Va. 254, 32 S.E.2d
4); Smith v. City of Parkersburg, 125
415, 24 S.E.2d 588 (1943); City of
ville v. Brown, 125 W. Va. 779, 32
30 (1943), modified, 127 W. Va. 602, 34
21 (1945); Duling Bros. Co. v. City of
ton, 120 W. Va. 85, 196 S.E. 552 (1938).

ents. — A municipality has no au-
to grant a perpetual easement or right-
over and across a municipal parking lot
ate banking firm to be used by the bank
ss and egress to a proposed drive-in
of the bank. 52 Op. Att'y Gen. 429

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nicipal ordinance involving administration of a
floodwall system, concerning the public safety
and health, where there was nothing in the
petition for the injunction to indicate that en-
actment or enforcement of the ordinance would
cause irreparable injury to the injunction peti-
tioners or that there was no adequate remedy
at law. *Perdue v. Ferguson*, 177 W. Va. 44, 350
S.E.2d 555 (1986).

Cited in *State ex rel. Bibb v. Chambers*, 138
W. Va. 701, 77 S.E.2d 297 (1953); *State ex rel.*
Holbert v. Robinson, 134 W. Va. 524, 59 S.E.2d

884 (1950); *State ex rel. Klostermeyer v. City of*
Charleston, 130 W. Va. 490, 45 S.E.2d 7 (1947);
City of Huntington v. Hefley, 127 W. Va. 254, 32
S.E.2d 456 (1944); *Smith v. City of*
Parkersburg, 125 W. Va. 415, 24 S.E.2d 588
(1943); *City of Moundsville v. Brown*, 125 W. Va.
779, 25 S.E.2d 900 (1943), modified, 127 W. Va.
602, 34 S.E.2d 321 (1945); *Duling Bros. Co. v.*
City of Huntington, 120 W. Va. 85, 196 S.E. 552
(1938); *State ex rel. Kanawha County Bldg.*
Comm'n v. Paterno, 160 W. Va. 195, 233 S.E.2d
332 (1977).

PART I. DEFINITIONS; AUTHORIZATION OF MUNICIPAL PUBLIC WORKS.

§ 8-16-1. Definitions.

As used in this article, the terms "municipal public works" or "works" or "projects" shall be construed to mean and include the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, maintenance, repair (including replacements) and operation of jails, jail facilities, municipal buildings, police stations, fire stations, libraries, museums, other public buildings, incinerator plants, land-fill or other garbage disposal systems, hospitals, piers, docks, terminals, airports, drainage systems, flood control systems, floodwalls, culverts, bridges (including approaches, causeways, viaducts, underpasses and connecting roadways), public markets, cemeteries, motor vehicle parking facilities (including parking lots, buildings, ramps, curb-line parking, meters and other facilities deemed necessary, appropriate, useful, convenient or incidental to the regulation, control and parking of motor vehicles), farms, dormitories, apartments and other housing facilities for the students and faculties of institutions of higher education; facilities providing housing for the elderly, including, but not limited to, life care facilities, congregate living facilities and adult residential facilities, stadiums, gymnasiums, sports arenas, auditoriums, public recreation centers, public recreation parks, swimming pools, roller skating rinks, ice skating rinks, tennis courts, golf courses, polo grounds, or the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing, widening or otherwise improving of any street, avenue, road, alley or way, or the building or renewing of sidewalks, where such works or projects will be self-supporting, and the cost thereof, together with the interest thereon, will be returned within a reasonable period, not exceeding forty years, by means of tolls, fees, rents, special assessments or charges other than taxation; and the terms shall mean and include any works or project as a whole, and all integral parts thereof, including all necessary, appropriate, useful, convenient or incidental appurtenances and equipment in connection with any one or more of the above. (1935, c. 68, § 1; 1945, c. 90; 1951, c. 136; 1955, c. 121; 1959, c. 116; 1961, c. 100; 1969, c. 86; 1981, c. 164.)

ALR references. — What entities or projects are "public" for purposes of state statutes requiring payment of prevailing wages on public works projects. 5 ALR5th 470.

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

Building. — For purposes of public financing, the definition of municipal public works extended to a building that was to be purchased and renovated by the Charleston Building Commission, but ultimately leased to the state of West Virginia. State ex rel. Charleston Bldg. Comm'n v. Dial, 198 W. Va. 185, 479 S.E.2d 695 (1996).

Legislative intent. — A reading of this section in pari materia with § 8-16-3 reveals that it was the intent of the legislature to permit municipalities to pledge the resources generated by the imposition of fines and fees for

a period of not more than twenty years for jail facilities used for municipal purposes. Op. Atty Gen., June 7, 1988.

Revenue bonds. — Neither the "self-supporting" provision of this section nor the "obligation" provision of § 8-16-2 prevent a municipality from transferring to a public works authority to service revenue bonds. Op. Atty Gen., Aug. 31, 1979.

Self-supporting requirement. — The requirement that public works be self-sustaining is held to be absolute where the work, like a flood wall, is incapable of producing an operating revenue. State ex rel. Co. v. City of Huntington, 151 W. Va. 126, 136 S.E. 552 (1938).

There is no requirement in this section that municipal public works be self-supporting in the onset. The provision only requires that the works or projects "will be self-supporting." Op. Atty Gen., Aug. 31, 1979.

§ 8-16-2. Municipalities authorized to construct, etc. public works and to acquire property; payment of costs.

Every municipality is and any two or more municipalities acting jointly, whether situate in the same county or different counties, are, hereby empowered and authorized to construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, own, equip, repair (including replacements), maintain and operate any municipal public works, together with all appurtenances necessary, appropriate, useful, convenient or incidental for or to the maintenance and operation of such works, and shall have plenary power and authority to acquire by gift, grant, purchase, condemnation or otherwise, and thereafter hold, all necessary lands, rights, easements, rights-of-way, franchises and other property therefor within or without, or partly within and partly without, the corporate limits of any such municipality or municipalities, and to issue revenue bonds to pay the costs of such public works and properties: Provided, That this section shall not be construed to authorize any municipality to construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, own, equip, repair (including replacements), maintain or operate any works which would render a service already being adequately rendered within such municipality. No obligation shall be incurred by any municipality in such construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement or increase, except such as is payable solely from the funds provided under the authority of this article. (1935, c. 68, § 2; 1969, c. 86.)

W. Va. Law Review. — Wakefield, Problems Associated With the Management of Solid Wastes: Is There a Solution in the Offing?, 83 W. Va. Rev. 131 (1980).

Proceeds. — The proceeds of a series of general obligation bonds of a municipality is-

sued for the purpose of defraying a part of the expense of completing the construction and equipment of a municipal public works, the residue of which expense is to be paid from the sale of revenue bonds issued under this article, may be used for that purpose. Warden v. City of

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Warden v. City of

Grafton, 125 W. Va. 658, 26 S.E.2d 1 (1943).

Refinancing. — Section 13-2A-3, authoriz-
ing municipalities to refinance "any enter-
prise," does not warrant the refinancing of
three separate bond issues as a single issue,
where the original bonds were issued for the
purpose of financing three separate flood wall
units. *City of Huntington v. Hefley*, 127 W. Va.
254, 32 S.E.2d 456 (1944).

Revenue bonds. — "Revenue bonds" issued
by a municipality in conformity with this ar-
ticle are not an indebtedness of the municipal-
ity under either W. Va. Const., art. X, § 8, or
§ 13-1-3. *Warden v. City of Grafton*, 125 W. Va.
658, 26 S.E.2d 1 (1943).

A provision in a municipal ordinance autho-
rizing the issuance of revenue bonds under this
article to aid in the completion of a partly
constructed hospital owned by the municipal-

ity, to the effect that the municipality shall pay
the legally established rates for use of the
hospital, does not create an indebtedness
against the municipality. *Warden v. City of
Grafton*, 125 W. Va. 658, 26 S.E.2d 1 (1943).

Validity. — The validity of bonds, the pro-
ceeds of which are to be used toward the
completion of a hospital owned by the municip-
ality, under this section, is not impaired or
affected by the fact that funds derived from
general taxation, or from other sources, also
have been, and are to be, used in the construc-
tion of the hospital. *Warden v. City of Grafton*,
125 W. Va. 658, 26 S.E.2d 1 (1943).

Quoted in *Perdue v. Ferguson*, 177 W. Va.
44, 350 S.E.2d 555 (1986).

Cited in *State ex rel. Charleston Bldg.
Comm'n v. Dial*, 198 W. Va. 185, 479 S.E.2d 695
(1996).

§ 8-16-3. Special provisions as to certain municipal public works.

When the municipal public works is a motor vehicle parking facility, any municipality involved therein shall have the plenary power and authority, in order to help finance the same, to use any revenue derived from other parking meters or other parking facilities, unless such revenue is otherwise pledged to pay for such other parking meters or other parking facilities.

When the municipal public works is a jail facility used for municipal prisoners, any municipality involved therein shall have the power and authority, in order to help finance the same, to pledge, for a period not to exceed twenty years, the proceeds derived from the imposition of fines and fees.

When the cost of the municipal public works is to be paid by special assessment against the abutting property, represented by assessment certificates which constitute a lien upon such property and said assessment certificates are pledged by any municipality to retire revenue bonds issued and sold to pay the cost thereof, the payor of such assessment certificate shall have the right to pay the same at any time before maturity, together with interest thereon to date of payment, and upon the payment of such assessment certificate the treasurer of such municipality shall deliver to the payor a release for such lien, and the funds received therefrom shall by said treasurer be deposited in a special fund to be expended only in the payment of such revenue bonds. (1951, c. 137; 1953, c. 134; 1955, c. 122; 1963, c. 123; 1969, c. 86.)

ALR references. — Parking places as public improvements which may be established or supported in whole or part by special assessments, 8 ALR2d 392.

Pledging parking meter revenues as unlawful relinquishment of governmental power, 83 ALR2d 649.

Purpose. — Section designed to alleviate congested parking conditions. See *State ex rel.*

Bibb v. Chambers, 138 W. Va. 701, 77 S.E.2d 297 (1953).

Fines. — Fines generated by a municipal court may not be pledged to retire bonds issued to finance the construction of a municipal building for the reason that municipalities do not have an express or an implied power to do so. *Op. Att'y Gen.*, June 7, 1988, No. 28.

Legislative intent. — It was the intent of

the legislature to permit municipalities to pledge the resources generated by the imposition of fines and fees for a period of not more than twenty (20) years only for jail facilities used for municipal prisoners. Op. Att'y Gen., June 7, 1988, No. 28.

Parking meter fees off-street. — This section should be construed to include the right to pledge revenues derived from on-street parking meters, not otherwise pledged, to help finance proposed off-street parking facilities, including the payment of the principal and interest on the revenue bonds. State ex rel. Bibb v. Chambers, 138 W. Va. 701, 77 S.E.2d 297 (1953).

A system of financing proposed off-street automobile parking facilities, whereby revenue obtained from on-street parking meters, in excess of their cost and maintenance, would be used to pay off the principal and interest of the revenue bonds issued to finance such off-street parking facilities, is not invalid on the ground that it is a revenue as distinguished from a

regulatory measure, if the fees charged for parking on both the off-street and on-street facilities are not unreasonable and are not designed to produce revenue in excess of that sufficient to cover cost and maintenance of both facilities. State ex rel. Bibb v. Chambers, 138 W. Va. 701, 77 S.E.2d 297 (1953).

Renting streets. — If a city has rented designated portions of the public streets to individuals, in order to obtain revenue for the city, then such rental is unauthorized and unlawful. However, if the rental is employed by the city as manner of regulating on-street parking and the flow of traffic on its municipal streets, then the city is authorized to make such rentals. 46 Op. Att'y Gen. 446 (1956).

State employees. — Except where speed and right of way are a necessity or emergency circumstances exist, all state employees must obey municipal traffic regulations and pay parking meter fees and fines. 49 Op. Att'y Gen. 202 (1961).

PART II. CONTROL OF GOVERNING BODY OR BOARD.

§ 8-16-4. Construction, etc., to be under control of governing body or appointed board, etc.

The construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, repair (including replacements), custody, maintenance and operation of any such works, and the collection of revenues therefrom, shall be under the supervision and control of the governing body, or of a committee, by whatever name called, composed of all or a portion of the governing body when only one municipality is involved, or of a board or commission appointed by such governing body when only one municipality is involved or appointed by the governing bodies when two or more municipalities take joint action under the provisions of this article, as may be provided by the governing body or bodies.

When such supervision and control are vested in a committee, board or commission, the governing body or bodies, as the case may be, may provide, by ordinance or ordinances, for said committee, board or commission to exercise such of the functions of the governing body or bodies in connection with the matter as it or they deem proper, and may provide for said committee, board or commission to receive such compensation as such body or bodies may deem proper, all of which authority and compensation shall be specifically provided for by ordinance or ordinances. Any such committee, board or commission shall consist of the number of members fixed in the ordinance or ordinances creating the same, and the manner and mode of the selection and appointment of the members of any such board or commission shall be stated in such ordinance or ordinances. The members of any such board or commission appointed by the governing body or bodies shall be chosen without regard to their political affiliations, but with regard to their business and professional experience or standing as citizens in the community. All compensation and expenses,

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including attorney's fees, of such committee, board or commission shall be paid solely from funds provided under the authority of this article. Any such committee, board or commission shall have the power to establish bylaws, rules and regulations for its own government.

When hereinafter used in this article, the term "board" shall be construed to mean the governing body or committee composed of all or a portion of the governing body when only one municipality is involved, or a board or commission appointed by the governing body when only one municipality is involved or appointed by the governing bodies when two or more municipalities take joint action under the provisions of this article, as the case may be. When two or more municipalities take joint action under the provisions of this article each governing body shall appoint to the board the number of members which the governing bodies have agreed shall be appointed by each such governing body.

The governing body or bodies also, in its or their discretion, may provide by ordinance or ordinances for the leasing of a municipal public works and provide for the custody, maintenance and operation thereof by a lessee in accordance with the provisions of such ordinance or ordinances and lease contract executed pursuant thereto: Provided, That the lessee shall pay to the municipality or municipalities for the use and occupancy of such municipal public works so leased an amount sufficient to provide a sinking fund for the payment of the bonds and the interest thereon and all other charges mentioned in section seventeen (§ 8-16-17) of this article. (1935, c. 68, §§ 3, 21; 1937, c. 55; 1961, c. 100; 1969, c. 86.)

"Committee." — A national bank may be regarded as a committee under this section. *Duling Bros. Co. v. City of Huntington*, 120 W. Va. 85, 196 S.E. 552 (1938).

Exercise of legislative powers. — Court did not enjoin municipal legislative body from exercising legislative powers in enacting a municipal ordinance involving administration of a floodwall system, concerning the public safety and health, where there was nothing in the petition for the injunction to indicate that enactment or enforcement of the ordinance would cause irreparable injury to the injunction petitioners or that there was no adequate remedy

at law. *Perdue v. Ferguson*, 177 W. Va. 44, 350 S.E.2d 555 (1986).

Racial restrictions prohibited. — A municipality may not, by leasing a swimming pool constructed with public funds to a private association of persons, relieve itself of the constitutional obligation to afford colored citizens equal rights with those of white citizens in the use of the public recreational facilities thereby provided. *Lawrence v. Hancock*, 76 F. Supp. 1004 (S.D.W. Va. 1948).

Cited in *State ex rel. Charleston Bldg. Comm'n v. Dial*, 190 W. Va. 125, 570 S.E.2d 695 (1995).

§ 8-16-4a. Additional special provisions as to motor vehicle parking facilities.

(a) The legislature hereby finds that the greatly increased use by the public of motor vehicles of all kinds has caused serious traffic congestion on the streets of many municipalities in this State; that the lack of adequate planning and supervision of the location of parking facilities, the parking of motor vehicles of all kinds and the lack of adequate parking facilities for motor vehicles of all kinds substantially impede the free circulation of traffic in, through and from many municipalities in this State, impede the rapid and effective fighting of fires and disposition of police officers therein, contribute to

the location and relocation of commercial and business enterprises outside of urban areas and retard the development of commerce and business within many municipalities in this State, thereby giving rise to urban blight and adversely affecting or threatening to adversely affect the tax base of such municipalities; that such parking crisis can be reduced by such municipalities providing adequate motor vehicle parking facilities strategically located there; that providing properly located terminal space for motor vehicles is a public responsibility; that fostering the development of commerce and business within municipalities, with the increased tax revenues resulting therefrom, is a public purpose; that fostering the availability of property for charitable use is a public purpose; that the closer the proximity between municipally owned motor vehicle parking facilities and commercial and business establishments the greater the development of commerce and business and the greater the level of revenue produced by such motor vehicle parking facilities; that the erection or construction of pedestrian viaducts, ramps, bridges, tunnels or other pedestrian facilities leading to and from motor vehicle parking facilities so as to facilitate the movement of pedestrians to and from such motor vehicle parking facilities fosters the development of commerce and business and increases the level of revenue produced by such motor vehicle parking facilities; that the leasing, particularly on a long-term basis, and the selling of space for commercial or business use in connection with a municipally owned motor vehicle parking facility will aid the development of commerce and business, increase the level of revenue produced by such motor vehicle parking facility and maintain and increase the tax base of such municipalities; that in many instances the authority for the leasing of space as provided for in this section would assist in financing the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) of any such motor vehicle parking facility; that the enactment of this section is for the general welfare of the public and is a public necessity; and that the means and measures authorized in this section are, as a matter of public policy, for the public purposes of such municipalities. This section is enacted in view of these findings and shall be liberally construed in the light thereof.

(b) The governing body or bodies, in its or their discretion, may provide by ordinance or ordinances:

(1) For the leasing by the board as lessor of space in or on a municipal public works which is a motor vehicle parking facility for any business, commercial or charitable use to such person, for such fair and adequate consideration, for such period or periods of time and upon such other terms and conditions as such body or bodies or the board may agree to. In connection with the leasing of any such space, the board may agree to provide in or on such motor vehicle parking facility such structures, accommodations or improvements as may be necessary for such business, commercial or charitable use or such space may be leased upon condition that the lessee shall provide the same in or on the space so leased.

(2) For the leasing by the board as lessor or the selling of air space over a municipal public works which is a motor vehicle parking facility for any

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business, commercial or charitable use to such person, for such fair and adequate consideration, for such period or periods of time in the case of a lease and upon such other terms and conditions as such body or bodies or the board may agree to. Any lease or deed of sale of such air space may contain provisions (i) authorizing the use of such areas of the underlying motor vehicle parking facility as are essential for ingress and egress to and from such air space, (ii) relating to the support of any building or other structure to be erected in such air space, and (iii) relating to the connection of essential public or private utilities to any building or other structure in such air space.

(3) For the erection or construction by the board of any pedestrian viaduct, ramp, bridge, tunnel or other pedestrian facility leading to and from a municipal public works which is a motor vehicle parking facility; and any such pedestrian viaduct, ramp, bridge, tunnel or other pedestrian facility shall, for all purposes of this article, be considered to be a part of a municipal public works which is a motor vehicle parking facility with like effect as if the term "municipal public works" were expressly defined in section one (§ 8-16-1) of this article to include pedestrian viaducts, ramps, bridges, tunnels or other pedestrian facilities: Provided, That any cost incurred by any municipality or municipalities in erecting or constructing any such pedestrian viaduct, ramp, bridge, tunnel or other pedestrian facility which connects a municipal public works which is a motor vehicle parking facility with a privately owned building or buildings or other privately owned structure or structures shall be paid for by the owner or owners of such building or buildings or such other structure or structures.

Any such lease may be privately negotiated without any public notice or advertising, and any such sale may be a public sale pursuant to the provisions of section eighteen (§ 8-12-18), article twelve of this chapter or such sale may be privately negotiated, notwithstanding the provisions of said section eighteen.

(c) The proceeds received from any lease, sale or payment as provided in this section shall be deemed revenue of the works and used as provided in section seventeen (§ 8-16-17) of this article.

(d) Notwithstanding the fact that any motor vehicle parking facility subject to the provisions of this article is municipally owned and the fact that a lease or sale under the provisions of subdivision (1) or subdivision (2), subsection (b) of this section is for a public purpose as declared in subsection (a) of this section, any leasehold interest under said subdivision (1), and any building, structure, accommodation or improvement erected, made or operated in any air space leased or sold under said subdivision (2) shall be subject to all property taxes, which shall be assessed and imposed against the lessee or grantee, as the case may be, unless the use of such leasehold interest, building, structure, accommodation or improvement is otherwise exempt from property taxation under the provisions of section nine (§ 11-3-9), article three, chapter eleven of this code. (1971, c. 99.)

Constitutionality. — This section is not in contravention of W. Va. Const., art. X, §§ 1 and 2 or art. III, §§ 9 and 10 or of the Fourteenth

Amendment to the Constitution of the United States. State ex rel. City of Charleston v. Coghill, 156 W. Va. 377, 207 S.E.2d 113 (1973).

Inasmuch as this section has been construed by West Virginia's highest court to restrict private leasing to incidental space, and in view of the availability of adequate means by which the property owner can insist that this test be

met prior to condemnation, the section is constitutional. *Washington-Summers, Inc. v. City of Charleston*, 430 F. Supp. 1013 (S.D.W. Va. 1977).

§ 8-16-4b. Additional special provision as to the use of space in motor vehicle parking facilities.

For all purposes of this article, the power and authority of any municipality to lease, as lessor, space in a motor vehicle parking facility to any person for business, commercial or charitable use shall be deemed to include the power and authority to lease such space to the United States of America, the State of West Virginia, the county court [county commission] of any county of the State of West Virginia, and any agency, board or commission of any thereof, and the revenues derived from such leases may be pledged as security for and expended in payment of revenue bonds of such municipality in like manner and to the same extent as other revenues from such motor vehicle parking facility. (1974, c. 47.)

Editor's notes. — The bracketed words were inserted by the editor. See W. Va. Const., art. IX, § 9.

PART III. GENERAL POWERS AND AUTHORITY.

§ 8-16-5. Powers of board.

The board shall have plenary power and authority to take all steps and proceedings, and to make and enter into all contracts or agreements necessary, appropriate, useful, convenient or incidental to the performance of its duties and the execution of its powers and authority under this article: Provided, That any contract or agreement relating to the financing, or the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase or equipment of any such works, and any trust indenture with respect thereto as hereafter provided for, shall be approved by the governing body or bodies.

The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys and such other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the board may direct. All such compensation and expenses incurred in carrying out the provisions of this article shall be paid solely from funds provided under the authority of this article, and the board shall not exercise or carry out any power or authority herein given it so as to bind said board or any municipality beyond the extent to which money shall have been, or may be provided under the authority of this article. No contract or agreement with any contractor or contractors for labor or materials, or both, exceeding in amount the sum of one thousand dollars shall be made without advertising for bids, which bids shall be publicly opened and an award made to the lowest responsible bidder, with power and authority

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in the board to reject any and all bids. After the construction, reconstruction, establishment, acquisition, renovation or equipment of any such works, the board shall maintain, operate, manage and control the same, and may order and complete any improvements, extensions, enlargements, increase or repair (including replacements) of and to the works that the board may deem expedient, if funds therefor be available, or are made available, as provided in this article, and shall establish rules and regulations for the use, maintenance and operation of the works, and do all things necessary or expedient for the successful operation thereof. All public ways or public works damaged or destroyed by the board in carrying out its authority under this article shall be restored or repaired by the board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds provided under the authority of this article. (1935, c. 68, § 4; 1969, c. 86.)

§ 8-16-6. Preliminary expenses.

All necessary preliminary expenses actually incurred by the board of any municipality or municipalities in the making of surveys or estimates of cost and of revenues, employment of engineers or other employees, the giving of notices, the taking of options, and all other expenses of whatsoever nature necessary to be paid prior to the issue, sale and delivery of the revenue bonds herein provided for, may be paid by the municipality or municipalities, to be reimbursed and repaid out of the proceeds of the sale of such revenue bonds to be used for the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) of such works as hereinafter provided. (1935, c. 68, § 5; 1969, c. 86.)

§ 8-16-7. Ordinance for construction, etc., of works.

Before any municipality or municipalities shall, under the provisions of this article, construct, reconstruct, establish, acquire, improve, renovate, extend, enlarge, increase, equip or repair (including replacements) any municipal public works, the governing body, or the governing body of each participating municipality, shall enact an ordinance or ordinances, which shall (a) set forth a brief and general description of the works, including a reference to the preliminary report or plans and specifications which shall theretofore have been prepared; (b) set forth the estimated cost thereof; (c) order the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) of such works; (d) direct that municipal revenue bonds be issued pursuant to this article, in such amount as may be found necessary to pay the cost of the works; (e) contain such provisions as the governing body determines are necessary or desirable with regard to the establishment and setting aside of reserves from the proceeds of such revenue bonds or from the revenues of said works, or from both, and the administration and disposition thereof; and (f) contain such other provisions as may be necessary or proper in the premises. When two or more municipalities take joint action under the provisions of this

article, a certified copy of each such ordinance shall be filed in the office of the clerk of the county commission of the county or counties in which the municipalities are located and in the office of the state tax commissioner, and when any such municipality is located in more than one county, the filing for that municipality shall be in the office of the clerk of the county commission in which the major portion of the territory of such municipality is located. Before any such ordinance shall become effective, an abstract of the ordinance, determined by the governing body or each governing body, as the case may be, 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 or each such municipality, as the case may be. The notice to be published with said abstract of the ordinance shall specify a date, time and place for a public hearing, the date being not less than ten days after the first publication of said abstract and notice and not prior to the last publication of said abstract and notice, at which time and place all parties and interest may appear before the governing body of the municipality or each such municipality and may be heard as to whether or not said ordinance shall be put into effect, and said notice shall also identify the office in which a certified copy of such ordinance shall be on file for review by interested persons during the office hours of such office. At such hearing all objections and suggestions shall be heard and the governing body or each such governing body shall take such action as it or they shall deem proper in the premises: Provided, That if at any such hearing written protest is filed by thirty percent or more of the freeholders of the municipality for which the hearing is held, then the governing body of said municipality shall not take further action unless four fifths of the members of said governing body assent thereto: Provided, however, That in case written protest is filed by thirty percent or more of the freeholders as herein provided, any such governing body shall have authority to appoint a committee to consist of one proponent, one opponent, and the third to be selected by these two, to determine whether or not thirty percent of the freeholders have in fact protested and said committee shall report its findings to any such governing body. (1935, c. 68, § 6; 1967, c. 105; 1969, c. 86; 1971, c. 193; 1973, c. 89; 1981, 1st Ex. Sess., c. 2.)

“Estimated cost.” — The provision requiring an ordinance to set forth the estimated cost of the construction of a public work refers to the cost of the proposed work to the municipality, and not to other contributions. *Smith v. City of Parkersburg*, 125 W. Va. 415, 24 S.E.2d 588 (1943).

Purpose of ordinance. — The purpose of the ordinances required by this section is plainly to inform the residents and taxpayers of the municipalities concerned as to the outlay by them, and the expected returns from the special assessment to be laid. *Smith v. City of Parkersburg*, 125 W. Va. 415, 24 S.E.2d 588 (1943).

Repeal of ordinance. — An ordinance providing for the collection of just and reasonable rates or charges for the use or services rendered by a municipal public works in order to pay cost of operating and maintaining such works and, from its net earnings, to meet the interest charges upon, and provide for the retirement of, the outstanding bonds which have been made a direct charge upon the net earnings and capital investment of such works under the provisions of this article, the ordinance providing the only means by which such works can earn money, cannot, while the bonds are outstanding, be repealed. *State ex rel. Klostermeyer v. City of Charleston*, 130 W. Va. 490, 45 S.E.2d 7 (1947).

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§ 8-16-8. Rig

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Cited in *Washington-Summers, Inc. v. City of Charleston*, 430 F. Supp. 1013 S.D.W. Va. (1977).

PART IV. RIGHT OF EMINENT DOMAIN.

§ 8-16-8. Right of eminent domain.

Every such municipality shall have plenary power and authority to condemn any such municipal public works to be acquired, and any land, rights, easements, rights-of-way, franchises and other property, real or personal, deemed necessary, appropriate, useful or convenient for, and incidental to, the construction, reconstruction or establishment of any such works and space for business, commercial or charitable use in connection therewith, or for the improvement, renovation, extension, enlargement, increase or equipment thereof or thereto, and in connection therewith shall have and may exercise all the rights, power, authority and privileges of eminent domain granted to municipalities under the laws relating thereto. Title to property shall be taken in the name of the municipality or jointly in the names of the participating municipalities. Proceedings for such appropriation of property shall be under and pursuant to chapter fifty-four (§ 54-1-1 et seq.) of this code: Provided, That any such municipality shall be under no obligation to accept and pay for any property condemned, and shall in no event pay for any property condemned or purchased, except from funds provided under the authority of this article; and in any proceedings to condemn, such orders may be made as may be just to any such municipality and to the owners of the property to be condemned; and an understanding or other security may be required securing such owners against any loss or damage which may be sustained by reason of the failure of any such municipality to accept and pay for the property, but such undertaking or security shall impose no liability upon any such municipality, except such as may be paid from the funds provided under the authority of this article.

In the event of acquisition by purchase, the board may obtain and exercise an option from the owners of said property for the purchase thereof, and may enter into a contract for the purchase thereof, and such purchase may be made upon such terms and conditions, and in such manner as the board may deem proper: Provided, however, That the exercise of such option, or the contract for such purchase, or such purchase shall in no event create any obligation of any such municipality, or create any debt, liability or claim, except such as may be discharged or paid from the funds provided under the authority of this article.

In the event of the acquisition of any works already constructed by purchase or condemnation, the board at or before the time of the adoption of any ordinance described in section seven (§ 8-16-7) hereof, shall cause to be determined what reconstruction, improvement, renovation, extension, enlargement, increase, equipment or repair (including replacements) will be necessary, in order that such works and space for business, commercial or charitable use in connection therewith, if any, may be effective for their

Stated in State ex rel. Charleston Bldg.
Comm'n v. Dial, 198 W. Va. 135, 479 S.E.2d 695
(1996).

§ 8-16-11. No municipality is to incur any obligation not payable from proceeds of bonds; exemption from taxation.

Nothing in this article contained shall be so construed as to authorize or permit any municipality or municipalities to make any contract or incur any obligation of any kind or nature, except such as shall be discharged or payable solely from the funds provided under the authority of this article. Funds for the payment of the entire cost of the works shall be provided by the issuance of revenue bonds of the municipality or municipalities, the principal and interest of which bonds shall be payable solely from the special fund for such payment herein provided for, and said bonds shall not in any respect be a corporate indebtedness of such municipality or municipalities. All such bonds and the interest thereon, and all properties and revenues and income derived from such municipal public works, shall be exempt from all taxation by this State, or any county, municipality, political subdivision or agency thereof. All of the details of such bonds and the issuance thereof shall be determined by ordinance of the governing body or bodies. (1935, c. 68, § 10; 1969, c. 86.)

W. Va. Law Review. — For note, "Municipal Bonds — The Need for Disclosure," see 75 W. Va. L. Rev. 291 (1976).

Transfer of funds. — This section does not preclude a municipality from transferring funds for the purpose of servicing debt, where the transfer does not obligate the municipality in any way, the principal and interest of the revenue bonds remaining payable only from a fund made up of parking fees. Op. Att'y Gen., Aug. 31, 1979, No. 27.

This section prevents a bondholder from expecting payment from any source save the fund set up for the purpose, but does not prevent a

city from gratuitously transferring funds for the purpose of servicing revenue bonds provided that the city is not obligated to do so. Op. Att'y Gen., Aug. 31, 1979, No. 27.

Neither the "self supporting" provision of § 8-16-1 nor the "no obligation" provision of this section prevents a municipality from transferring funds to a public works authority to service revenue bonds. Op. Att'y Gen., Aug. 31, 1979, No. 27.

Quoted in State ex rel. Charleston Bldg. Comm'n v. Dial, 198 W. Va. 135, 479 S.E.2d 695 (1996).

§ 8-16-12. Interest rate and life of bonds; redemption; how payable; form, denominations, etc.; additional bonds authorized; interim certificates.

Such revenue bonds shall bear interest at not more than twelve percent per annum, payable semiannually, or at shorter intervals, and shall mature at such time or times, not exceeding forty years, as may be determined by the ordinance or ordinances authorizing the issuance of such bonds. Such bonds may be made redeemable before maturity, at the option of the municipality or municipalities issuing the same, to be exercised by said board, at not more than the par value thereof, and at a premium of not more than five percent, under such terms and conditions as may be fixed by the ordinance or ordinances authorizing the issuance of the bonds. The principal and interest of

the bonds may be made payable in any lawful medium. Such ordinance or ordinances shall determine the form of the bonds, either coupon or registered, shall set forth any registration or conversion privileges, and shall fix the denomination or denominations of such bonds, and the place or places of the payment of the principal and interest thereof, which may be at any banking institution or trust company within or without the State. When two or more municipalities take joint action under the provisions of this article, the bonds shall be issued by the participating municipalities either as separate or joint bonds, as the governing bodies thereof may agree, and when separate bonds are issued, the amount of the bonds to be issued by each participating municipality shall be fixed by agreement of the governing bodies of the participating municipalities set forth in the ordinance of each participating municipality authorizing the issuance of such bonds. The bonds shall contain a statement on their face that the municipality or municipalities issuing the same shall not be obligated to pay the same, or the interest thereon, except from the special fund derived from the net revenue of the works, or the pro rata part thereof, as provided for in section eleven (§ 8-16-11) hereof. All such bonds shall be, and shall have and are hereby declared to have all the qualities and incidents of negotiable instruments, under the Uniform Commercial Code of this State. The bonds shall be executed in such manner as the governing body or bodies may direct. The bonds shall be sold by the governing body or bodies in such manner as may be determined to be for the best interest of the municipality or municipalities: Provided, That 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. Any surplus of the bond proceeds over and above the cost of the project shall be paid into the sinking fund hereinafter provided for. If the proceeds of the bonds, by error of calculation or otherwise, shall be less than the cost of the project, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the ordinance or ordinances authorizing the issuance of the bonds first issued, or in the trust indenture hereinafter authorized, shall be deemed to be of same issue, and shall be entitled to payment without preference or priority of the bonds first issued; and if any preference or priority of the bonds first issued is provided for in the ordinance or ordinances authorizing the issuance of the bonds first issued or in said trust indenture, such preference or priority shall not extend to an amount exceeding ten percent of the original issue. Prior to the preparation of the definitive bonds, interim certificates may, under like restrictions, be issued, exchangeable for definitive bonds upon the issuance of the latter. (1935, c. 68, § 11; 1969, c. 86; 1970, c. 7; 1980, c. 33; 1981, 1st Ex. Sess., c. 2.)

Editor's notes. — The Uniform Commercial Code is codified as § 46-1-101 et seq.

Early redemption. — A city has no authority to establish a scheme requiring early re-

demption, thereby eliminating its option either to call bonds early or not to do so. *City of Fairmont v. Investors Syndicate of Am., Inc.*, 172 W. Va. 431, 307 S.E.2d 467 (1983).

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§ 8-16-13. Obligations not to bind municipal official or officer or member of board personally.

No municipal official or officer or member of the board shall in any event be personally liable upon any contract or obligation of any kind or character executed under the authority herein contained, even if said undertaking should thereafter be held ultra vires. (1935, c. 68, § 12; 1969, c. 86.)

§ 8-16-14. Additional bonds for improvements, etc., of works.

The governing body or bodies may provide by the said ordinance or ordinances authorizing the issuance of the bonds or in the trust indenture hereinafter referred to, that additional bonds may thereafter be authorized and issued at one time, or from time to time, under such limitations and restrictions as may be set forth in said ordinance or ordinances, or trust indenture, or all of these, for the purpose of improving, renovating, extending, enlarging, increasing, equipping or repairing (including replacements) the works when deemed necessary in the public interest, such additional bonds to be secured, and be payable from the revenues of the works, as provided for in section nine [§ 8-16-9] of this article. (1935, c. 68, § 13; 1969, c. 86.)

§ 8-16-15. How proceeds of bonds applied.

All moneys received from the sale of any bonds issued under the authority of this article, after reimbursements and repayments to said municipality or municipalities of all amounts advanced for preliminary expenses, as provided in section six [§ 8-16-6] of this article, shall be applied solely to the payment of the cost of the project, or to the appurtenant sinking fund, and there shall be, and there is hereby, created and granted a lien upon such moneys, until so applied, in favor of the holders of the bonds or the trustees hereinafter provided for. (1935, c. 68, § 14; 1969, c. 86.)

§ 8-16-16. Bonds secured by trust indenture between municipality or municipalities and corporate trustee.

In the discretion and at the option of the governing body or bodies such bonds may be secured by a trust indenture by and between such municipality or municipalities and a corporate trustee, which may be a trust company or banking institution having powers of a trust company within or without the State. The ordinance or ordinances authorizing the issuance of the revenue bonds, and fixing the details thereof, may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the municipality or municipalities and the board in relation to the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement,

increase and equipment of the project and the repair (including replacements), maintenance, operation and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that the project shall be contracted for, carried out and paid for, under the supervision and approval of the consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, their successors, assignees or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or revenues of the works or other moneys pertaining thereto be satisfactory to such purchasers, their successors, assignees or nominees. Such indenture may set forth the rights and remedies of the bondholders or such trustee, or both. Except as in this article otherwise provided, the governing body or bodies may provide by ordinance or ordinances or in such trust indenture for the payment of the proceeds of the sale of the bonds and the revenues of the works to such officer, board or depository, as such body or bodies may determine for the custody thereof, and for the method of distribution thereof, with such safeguards and restrictions as such body or bodies may determine. (1935, c. 68, § 15; 1969, c. 86.)

§ 8-16-17. Sinking fund; sinking fund commission; transfer of funds; purchase of outstanding bonds.

Before the issuance of any such bonds, the governing body or bodies shall, by ordinance or ordinances, provide for a sinking fund for the payment of the bonds and the interest thereon, and the payment of the charges of banking institutions or trust companies for making payment of such bonds and interest, out of the net revenues of said works, and shall set aside and pledge a sufficient amount of the net revenues of the works hereby defined to mean the revenues of the works remaining after the payment of the reasonable expenses of repair (including replacements), maintenance and operation, such amount to be paid by the board into the sinking fund at intervals, to be determined by ordinance or ordinances adopted prior to the issuance of the bonds, for (a) the interest upon such bonds as such interest shall fall due; (b) the necessary fiscal agency charges for paying bonds and interest; (c) the payment of the bonds as they fall due, or if all bonds mature at one time, the proper maintenance of a sinking fund sufficient for the payment thereof at such time; and (d) a margin for safety and for the payment of premium upon bonds retired by call or purchase as herein provided, which margin, together with unused surplus of such margin carried forward from the preceding year and the amounts set aside as reserved out of the proceeds from the sale of the bonds, or from the revenues of said works, or from both, shall equal ten percent of all other amounts so required to be paid into the sinking fund. Such required payments shall constitute a first charge upon all the net revenues of the works. Prior to the issuance of the bonds, the board may, by ordinance or ordinances, be given the right to use or direct the trustee or the state sinking fund commission to use such sinking fund, or any part thereof, in the purchase of any of the outstanding bonds payable therefrom, at the market prices thereof, but not exceeding the price, if any, at which the same shall in the same year be payable

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§ 8-16-18. Ra

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or redeemable, and all bonds redeemed or purchased shall forthwith be cancelled, and shall not again be issued. After the payments into the sinking fund as herein required and after reserving an amount deemed by the board sufficient for repair (including replacements), maintenance and operation for an ensuing period of not less than twelve months and for depreciation, the board may at any time in its discretion transfer all or any part of the balance of the net revenues into the sinking fund or into a fund for improvement, renovation, extension, enlargement, increase or equipment for or to the works, or the governing body or bodies may, notwithstanding the provisions of section twenty (§ 8-13-20), article thirteen of this chapter, transfer all or any part of the balance of the net revenues to the general or any special fund of the municipality or municipalities and use such revenues for any purpose for which such general or special fund may be expended.

All amounts for the sinking fund and interest, as and when set apart for the payment of same, shall be remitted to the state sinking fund commission at such periods as shall be designated in the ordinance or ordinances, but in any event at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by said commission consistent with the provisions of this article and the ordinance or ordinances pursuant to which such bonds have been issued. The state sinking fund commission is hereby authorized to act as fiscal agent for the administration of such sinking fund under any ordinance or ordinances passed or adopted pursuant to the provisions of this article and shall invest all sinking funds as provided by general law. (1935, c. 68, § 16; 1969, c. 86; 1971, c. 99; 1973, c. 89.)

Applied in State ex rel. City of Charleston v. Hutchinson, 154 W. Va. 585, 176 S.E.2d 691 (1970).

PART VI. IMPOSITION OF RATES OR CHARGES.

§ 8-16-18. Rates or charges for services rendered by works.

The governing body shall have primary power and authority and it shall be its duty, by ordinance, to establish and maintain just and equitable rates or charges for the use and services rendered, or the improvement or protection of property provided or afforded, by such works, to be paid by the person using the same, receiving the services thereof, or owning the property improved or protected thereby, and may readjust such rates or charges from time to time. When two or more municipalities take joint action under the provisions of this article, such rates or charges shall be established by each participating municipality, with the concurrence of the other participating municipality or municipalities as to the amount of such rates or charges, and such rates or charges may be the same with respect to each municipality, or they may be different.

Rates or charges heretofore or hereafter established and maintained for the improvement or protection of property, provided or afforded by a municipal

flood control system or flood walls, to be paid by the person owning the property improved or protected thereby, shall be collectible and enforceable from the time provided in any such ordinance, any provision of this or any other law to the contrary notwithstanding, if, at such time, such works, though not yet fully completed, are nearing completion and such governing body is reasonably assured that such works will be completed and placed in operation without unreasonable delay.

All rates or charges shall be sufficient in each year for the payment of the proper and reasonable expenses of repair (including replacements), maintenance and operation of the works, and for the payment of the sums herein required to be paid into the sinking fund.

Revenues collected pursuant to the provisions of this section shall be deemed the revenues of the works. No such rates or charges shall be established until after a public hearing at which all the users of the works and owners of the property served, or to be served thereby, and others interested, shall have an opportunity to be heard concerning the proposed rates or charges. After introduction of the proposed ordinance fixing such rates or charges and before the same is finally adopted, notice of such hearing, setting forth the proposed schedule of such rates or charges, shall be given by publishing the same as a Class I-0 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 or each such municipality, as the case may be. Said notice shall be published at least five days before the date fixed in such notice for the hearing, which hearing may be adjourned from time to time. No other or further notice to parties in interest shall be required. After such hearing the ordinance establishing rates or charges, either as originally proposed or introduced, or as modified and amended, shall be adopted and put into effect. A copy of the schedule of such rates and charges so established shall be kept on file in the office of the board having charge of such works, and also in the office of the governing body or bodies, and shall be open to inspection by all parties in interest. The rates or charges so established for any class of users or property served shall be extended to cover any additional class of users or property thereafter served which fall within the same class, without the necessity of any hearing or notice. Any change or adjustment of rates or charges may be made in the same manner as such rates or charges were originally established as hereinabove provided. The aggregate of the rates or charges shall always be sufficient for the expenses of repair (including replacements), maintenance and operation, and for the sinking fund payments. If any rate or charge so established shall not be paid within thirty days after the same is due, the amount thereof may be recovered by the board in a civil action in the name of the municipality or municipalities, and in the case of charges due for services rendered, such charges, if not paid when due, may, if the governing body so provide in the ordinance provided for under section seven [§ 8-16-7] of this article, constitute a lien upon the premises served by such works, which lien may be foreclosed against such lot, parcel of land or building so served, in accordance with the laws relating to the foreclosure of liens on real property. Upon failure of any person receiving any such service to

pay for the same when notice. (1935, c. 68, § 1

"Charges." — The word "charges" in this section includes a special tax levied against real estate. City of Brown, 125 W. Va. 779, 25 S.E.2d 321, modified, 127 W. Va. 602, 34 S.E.2d 321.

Collection of assessment. — An assessment made by a municipality against land abutting on a street paved for municipal public works project may be levied by an action or suit in the name of the municipality. And this is true even though the project is held by trustees. City of Mourning, 127 W. Va. 602, 34 S.E.2d 321.

Repeal of ordinance. — An ordinance providing for the collection of just

§ 8-16-18a. Pledge of security and payment of bonds for the security and payment of revenues which are derived from the property of the municipality.

In addition to the rates and charges provided for in this code for such law, the governing body may impose pursuant to chapter and which are set forth in this code for such law, the power and authority of the governing body pursuant to chapter, including payment of the same. (1976, c. 82.)

§ 8-16-19. Appeal of rates or charges so fixed.

If any party in interest in the provisions of the immediate section shall have the right to appeal the rates so fixed by the governing body until set aside, altered or otherwise modified. (1968, § 18; 1969, c. 86.)

pay for the same when due, the board may discontinue such service without notice. (1935, c. 68, § 17; 1949, c. 85; 1967, c. 105; 1969, c. 86.)

Charges. — The word "charges" as used in this section includes a special assessment against real estate. *City of Moundsville v. Brown*, 125 W. Va. 779, 25 S.E.2d 900 (1943), modified, 127 W. Va. 602, 34 S.E.2d 321 (1945).

Collection of assessments. — Assessments made by a municipality against the owner of land abutting on a street paved or repaved as a municipal public works project may be collected by an action or suit in the name of the municipality. And this is true even though such land is held by trustees. *City of Moundsville v. Brown*, 127 W. Va. 602, 34 S.E.2d 321 (1945).

Repeal of ordinance. — An ordinance providing for the collection of just and reasonable

rates or charges for the use or services rendered by a municipal public works in order to pay cost of operating and maintaining such works and, from its net earnings, to meet the interest charges upon, and provide for the retirement of, the outstanding bonds which have been made a direct charge upon the net earnings and capital investment of such works under the provisions of this article, the ordinance providing the only means by which such works can earn money, cannot, while the bonds are outstanding, be repealed. *State ex rel. Klostermeyer v. City of Charleston*, 130 W. Va. 490, 45 S.E.2d 7 (1947).

Cited in *Perdue v. Ferguson*, 177 W. Va. 44, 350 S.E.2d 555 (1986).

§ 8-16-18a. Pledge of the hotel occupancy tax; contribution of revenues to building commission.

In addition to the rates or charges authorized to be pledged and expended for the security and payment of bonds as provided in this article, the governing body issuing such bonds shall have plenary power and authority to pledge and expend for the security and payment of such bonds all, or any part, of the revenues which are derived from the hotel occupancy tax which a municipality may impose pursuant to section three [§ 8-13-3], article thirteen of this chapter and which are specifically dedicated by such governing body for any purpose or purposes set forth in section three, article thirteen of this chapter. All such sums which are so pledged shall be deemed "revenues of the works" for all purposes of the provisions of this article. The governing body shall also have the power and authority to contribute all, or any part of, the revenues derived from said hotel occupancy tax to a building commission created by such governing body pursuant to article thirty-three [§ 8-33-1 et seq.], chapter eight of this code for such lawful purposes which such building commission shall determine and which are set forth in section three, article thirteen of this chapter, including payment of revenue bonds issued by such building commission. (1976, c. 82.)

§ 8-16-19. Appeal to public service commission from rates fixed.

If any party in interest is dissatisfied with the rates fixed under the provisions of the immediately preceding section [§ 8-16-18] of this article, such party shall have the right to appeal to the public service commission at any time within thirty days after the fixing of such rates by the governing body, but the rates so fixed by the governing body shall remain in full force and effect, until set aside, altered or amended by the public service commission. (1935, c. 68, § 18; 1969, c. 86.)

Editor's notes. — The language referring to "the immediately preceding section" was rendered obsolete by the addition of § 8-16-18a. The reference is presumably intended to be to § 8-16-18.

Special assessments. — Even if this section

applies to special assessments (which the court did not concede) it cannot be extended, because such extension is expressly excluded by § 8-16-26. *Duling Bros. Co. v. City of Huntington*, 120 W. Va. 85, 196 S.E. 552 (1938).

PART VII. ACCOUNTING SYSTEM AND RECORDS.

§ 8-16-20. Accounting system; yearly audit; custodian of funds.

Any municipality or municipalities issuing revenue bonds under the provisions of this article shall install and maintain a proper system of accounting, showing the amount of revenues received and the application of the same, and the governing body or bodies shall, at least once a year, cause such accounts to be properly audited by a competent auditor, and the report of such auditor shall be open for inspection at all proper times to any taxpayer or resident of said municipality or municipalities, or person receiving service from said works, or any holder of bonds issued under the provisions of this article, or anyone acting for in behalf of such taxpayer, resident, person or bondholder. The treasurer of such municipality or each such municipality, or other official or institution specifically charged with the duty, shall be the custodian or custodians of the funds derived from income received from said works, and shall give proper bond or bonds for the faithful discharge of his or its or their duties as such custodian or custodians, which bond or bonds shall be fixed and approved by the governing body or bodies. All of the funds received as income from said works under the provisions of this article and all funds received from the sale of revenue bonds issued therefor shall be kept separate and apart from other funds of the municipality or municipalities, and separate accounts shall be maintained for the several items required to be set up by the provisions of section seventeen [§ 18-16-17] of this article. (1935, c. 68, § 19; 1969, c. 86.)

Applied in *State ex rel. City of Charleston v. Hutchinson*, 154 W. Va. 585, 176 S.E.2d 691 (1970).

Stated in *City of Fairmont v. Investors Syndicate of Am., Inc.*, 172 W. Va. 431, 307 S.E.2d 467 (1963).

PART VIII. RATES OR CHARGES FOR MUNICIPALITIES.

§ 8-16-21. Municipality or municipalities to pay established rates or charges for services rendered to it or them.

The municipality or municipalities issuing such bonds shall be subject to the same rates or charges established as hereinbefore provided, or to rates or charges established in harmony therewith, for service rendered to the municipality or municipalities and shall pay such rates or charges, when due, from corporate funds, and the same shall be deemed to be a part of the revenues of the works as herein defined, and may be applied as herein provided for the application of such revenue. (1935, c. 68, § 20; 1969, c. 86.)

§ 8-16-22. Statute

There shall be and there shall not be a lien upon such municipality or municipalities acquired, improved, repaired (including repairs) shall exist in favor of the holder of the public works shall require payment in full of the § 22; 1969, c. 86.)

Ordinance held valid. — Ordinance, authorizing the issue of revenue bonds under the completion of a hospital building, which bonds are made a "special lien" on the hospital works.

§ 8-16-23. Acquisition

No property shall be subject to any lien or other encumbrance acquired a sufficient security for such lien or encumbrance.

§ 8-16-24. Protection of holder's right of ownership

Any holder of any such bonds, the trustee, if any, except as restricted by the ordinance of the trust indenture, may enforce the statutory provisions [§ 8-16-22] of this article hereunder or under any other ordinance and compel performance or by any such ordinance of the municipality or municipalities and collecting of revenues and interest upon any of the works having jurisdiction shall be sufficient to provide for the replacement, maintenance

PART IX. LIENS AND PROTECTION OF BONDHOLDERS.

§ 8-16-22. Statutory mortgage lien upon works created.

There shall be and there is hereby created and granted a statutory mortgage lien upon such municipal public works constructed, reconstructed, established, acquired, improved, renovated, extended, enlarged, increased, equipped or repaired (including replacements) under the provisions of this article, 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 municipal public works shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest upon said bonds. (1935, c. 68, § 22; 1969, c. 86.)

Ordinance held valid. — A provision in an ordinance, authorizing the issuance of a series of revenue bonds under this article for the completion of a hospital building owned by the city, which bonds are made a "statutory mortgage lien" on the hospital when completed and

on the equipment and future additions thereto, and which provision pledges all of the net profits therefrom for the payment of the bonds and interest thereon, is valid under the provisions of this section. *Warden v. City of Grafton*, 125 W. Va. 658, 26 S.E.2d 1 (1943).

§ 8-16-23. Acquisition of property on which lien exists.

No property shall be acquired under the provisions of this article upon which any lien or other encumbrance exists, unless at the time such property is acquired a sufficient sum of money be deposited in trust to pay and redeem such lien or encumbrance in full. (1935, c. 68, § 23; 1969, c. 86.)

§ 8-16-24. Protection and enforcement of rights of bondholders, etc.; receivership; effect of receivership on lease agreement.

Any holder of any such bonds, or any of the coupons attached thereto, and the trustee, if any, except to the extent that the rights herein given may be restricted by the ordinance authorizing the issuance of the bonds or by the trust indenture, may by civil action, mandamus or other proper proceeding enforce the statutory mortgage lien created and granted in section twenty-two [§ 8-16-22] 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 municipalities, or by the board or any officer, including the making and collecting of reasonable and sufficient rates or charges for services rendered by the works. If there be default in the payment of the principal of or interest upon any of the bonds, or of both principal and interest, any court having jurisdiction shall appoint a receiver to administer the works on behalf of the municipality or municipalities, and the bondholders or trustee, or both, except as so restricted, with power to charge and collect rates or charges sufficient to provide for the payment of the expenses of repair (including replacements), maintenance and operation, and also to pay any bonds and

§ 8-16-26. Construction of power and authority conferred.

This article shall, without reference to any other statute or charter provision, be deemed full authority for the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, repair (including replacements), maintenance and operation of the works herein provided for, and for the issuance and sale of the bonds by this article authorized, and shall be construed as an additional alternative method therefor, and for the financing thereof, and no petition or other or further proceeding in respect to any such project, or to the issuance or sale of bonds under this article, and no publication of any ordinance, notice or proceeding relating to any such project, or to the issuance or sale of such bonds shall be required, except such as are prescribed in this article, any provisions of other statutes of the State to the contrary notwithstanding. (1935, c. 68, § 26; 1969, c. 86.)

§ 8-16-27. Article liberally construed.

This article being necessary for the public health, safety and welfare shall be liberally construed to effectuate the purposes thereof. (1935, c. 68, § 27; 1969, c. 86.)

Legislative intent. — It is evident that the legislature, in enacting this chapter as a measure to promote public health, safety and welfare, intended it to have broad scope and wide application to public improvements beneficial to the public health, safety and welfare of

municipalities in all sections of the State. State ex rel. Holbert v. Robinson, 134 W. Va. 524, 59 S.E.2d 884 (1950). See also State ex rel. Bibb v. Chambers, 138 W. Va. 701, 77 S.E.2d 297 (1953).

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

In elaboration of the provisions of section eight [§ 8-1-8], article one of this chapter, wherever in this code, in any act, in general law, elsewhere in law, in any charter, in any ordinance, resolution or order, or in any ordinance, resolution or order of a county court [county commission], reference is made to the term "municipal authorities" or "municipal authority" within the meaning of the provisions of former article four-a of this chapter, such reference shall henceforth be read, construed and understood to mean "governing body" as that term is used in this article sixteen [§ 8-16-1 et seq.] only. (1969, c. 86.)

Editor's notes. — The bracketed words were inserted by the editor. See W. Va. Const., art. IX, § 9.

W. Va. Law Review. — Dobbs and Joslin,

Bankruptcy Preference Concerns in Industrial Development Bond Financing, 84 W. Va. L. Rev. 573 (1982).

§ 8-15-19. Refusal to examine or certify; review thereof.

Writ of mandamus. — Determination of eligibility for appointment as a fireman is not subject to judicial review; thus, where applicant passed the physical examination, but the psychological examination was unsatisfactory, request for writ of mandamus was properly denied. *Horton v. South Charleston Fire Civil Serv. Comm'n*, 497 S.E.2d 354 (W. Va. 1997).

§ 8-15-22. Vacancies filled by promotions; eligibility for promotion.

Vacancies in positions in a paid fire department shall be filled, so far as practicable, by promotions from among individuals holding positions in the next lower grade in the department. Promotions shall be based upon experience and by competitive examinations to be provided by the firemen's civil service commission: Provided, That no individual shall be eligible for promotion from the lower grade to the next higher grade until such individual shall have completed at least two years of continuous service in the next lower grade in the department immediately prior to said examination and has completed the registered apprenticeship and certification program under article twenty-nine-a [§ 30-29A-1 et seq.], chapter thirty of this code: Provided, however, That completion of the registered apprenticeship and certification program as a requirement for promotion shall apply only to those firefighters employed since the twelfth day of June, one thousand nine hundred eighty-seven. The commission shall have the power to determine in each instance whether an increase in salary constitutes a promotion. (1933, c. 60; 1949, c. 88; 1969, c. 86; 1986, c. 117; 1991, c. 111; 1998, c. 153.)

Effect of amendment of 1998. — The amendment, effective June 11, 1998, added "and has completed the registered apprenticeship and certification program under article twenty-nine-a, chapter thirty of this code: Provided, That completion of the registered ap-

prenticeship and certification program as a requirement for promotion shall apply only to those firefighters employed since the twelfth day of June, one thousand nine hundred eighty-seven."

ARTICLE 16.**MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.****Part III. General Powers and Authority.**

Sec.
8-16-5. Powers of board.

PART III. GENERAL POWERS AND AUTHORITY.**§ 8-16-5. Powers of board.**

The board shall have plenary power and authority to take all steps and proceedings, and to make and enter into all contracts or agreements necessary, appropriate, useful, convenient or incidental to the performance of its duties and the execution of its powers and authority under this article: Provided, That

§ 8-16-5

MUNICIPAL CORPORATIONS

any contract or agreement relating to the financing, or the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase or equipment of any such works, and any indenture with respect thereto as hereafter provided for, shall be approved by the governing body or bodies.

The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys and such other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix the compensation, all of whom shall do such work as the board may direct. All such compensation and expenses incurred in carrying out the provisions of this article shall be paid solely from funds provided under the authority of this article, and the board shall not exercise or carry out any power or authority herein given it so as to bind said board or any municipality beyond the extent to which money shall have been, or may be provided under the authority of this article. No contract or agreement with any contractor or contractors for labor or materials, or both, exceeding in amount the sum of ten thousand dollars shall be made without advertising for bids, which bids shall be publicly opened and an award made to the lowest responsible bidder, with power and authority in the board to reject any and all bids. After the construction, reconstruction, establishment, acquisition, renovation or equipment of any such works, the board shall maintain, operate, manage and control the same, and may order and complete any improvements, extensions, enlargements, increase or repairs (including replacements) of and to the works that the board may deem expedient, if funds therefor be available, or are made available, as provided in this article, and shall establish rules for the use, maintenance and operation of the works, and do all things necessary or expedient for the successful operation thereof. All public ways or public works damaged or destroyed by the board in carrying out its authority under this article shall be restored or repaired by the board and placed in their original condition, as nearly as practicable, as requested so to do by proper authority, out of the funds provided under the authority of this article. (1935, c. 68, § 4; 1969, c. 86; 1998, c. 214.)

Effect of amendment of 1998. — The amendment, effective June 12, 1998, in the second paragraph, substituted "ten thousand dollars" for "one thousand dollars" and deleted "and regulations" following "shall establish rules."

ARTICLE 18.

ASSESSMENTS TO IMPROVE STREETS, SIDEWALKS AND SEWERS; SEWER CONNECTIONS AND BOARD OF HEALTH; ENFORCEMENT OF DUTY TO PAY FOR SERVICE.

Part XII. Connection to Sewers; Board of Health; Enforcement of Duty to Pay for Service.

Sec. 8-18-22. Connection to sewers; board of health; penalty.