

\$108,000
TOWN OF ELIZABETH, WEST VIRGINIA
SEWER REVENUE BONDS
SERIES 1999
(STATE REVOLVING FUND)

DISTRIBUTION LIST

Issuer

Town of Elizabeth
Lewis Full, Mayor
Penny McVay, Recorder
P.O. Box 478, 200 Beverly Street
Elizabeth, WV 26143-0478
(304) 275-3200 Telephone
(304) 275-3038 Telecopier

Bond Counsel

Michael I. Spiker, Esq.
William K. Bragg, Jr., Esq.
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P.O. Box 2107, 1500 One Valley Square
Charleston, WV 25328-2107
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wkb@goodwingoodwin.com E-Mail Address

Purchaser

Daniel B. Yonkosky, Director
Barbara B. Meadows, Secretary/Treasurer
West Virginia Water Development Authority
180 Association Drive
Charleston, WV 25311-1571
(304) 558-03612 Telephone
(304) 558-0299 Telecopy
dyonkosky@citynet.net E-Mail Address
barbareameadows@citynet.net E-Mail Address

Lender

Rosalee Broaderson
West Virginia Division of Environmental
Protection
617 Broad Street
Charleston, WV 25301
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(304) 558-3778 Telecopier

Purchaser's and Lender's Counsel

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Jackson & Kelly PLLC
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(304) 340-1080, 1130 Telecopier
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Engineer

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P.O. Box 614, 141 Main Street
Spencer, WV 25276
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bolyeshildreth@citynet.net E-Mail Address

Registrar

Rhonda J. Revels, Senior Trust Officer
WesBanco Trust and Investment Services, a
Division of WesBanco Bank Wheeling
1 Bank Plaza
Wheeling, WV 26003-3565
(304) 234-9411 Telephone
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Issuer's Counsel

Theodore Davitan, Esq.
410 Market Street
Parkersburg, WV 26101
(304) 428-8207 Telephone
(304) 485-3825 Telecopier

Issuer's Accountant

Howard M. Cloke, III, CPA
P.O. Box 513
Barboursville, WV 25504
(304) 736-8162 Telephone and
Telecopier

Project Coordinator

Kathryn Drost, Grants Coordinator
Mid-Ohio Valley Regional Planning and
Development Council
P.O. Box 247, 531 Market Street
Parkersburg, WV 26101
(304) 422-4993 Telephone
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Depository Bank

John Hays, Vice President
WesBanco Bank Parkersburg, Elizabeth Branch
Court Street
P. O. Box 579
Elizabeth, WV 26143-0579
(304) 275-4268 Telephone
(304) 275-3002 Telecopier

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TRANSCRIPT LIST

\$108,000

Town of Elizabeth, West Virginia
Sewer Revenue Bonds,
Series 1999
(State Revolving Fund)

Closing: August 31, 1999

A. BASIC

1. Grant Agreement.
2. Copy of the Authority for the Creation of the Town of Elizabeth, West Virginia (the "Issuer") and Ordinance creating Sanitary Board.
3. Oaths of Office of Members of Town Council and Sanitary Board of the Issuer.
4. Petition of Sanitary Board to Town Council Authorizing Issuance of Bonds.
5. Certified Copy of Bond Ordinance of the Issuer effective on August 30, 1999.
6. Minutes of Meetings of City Council on First and Second Readings and Public Hearing with respect to Ordinance.
7. Notice of Public Hearing on Bond Ordinance and Affidavit of Publication.
8. Loan Agreement among West Virginia Water Development Authority, West Virginia Division of Environmental Protection and the Issuer.
9. Copy of Sewage Treatment Ordinance/Tariff.

B. CERTIFICATES AND RECEIPTS

10. General Certificate signed by the Mayor, Recorder and attorney of the Issuer.
11. Certificate of Consulting Engineer.
12. Certificate of Certified Public Accountant.
13. Certificate of Recorder as to Truth and Accuracy of Documents Delivered.
14. NPDES Permit (cover page).

15. Consent to Issuance of Parity Bonds.
16. Registrar's Agreement between the Issuer and Registrar.
17. Acceptance of Duties of Depository Bank.
18. Acceptance of Duties of Registrar.
19. Request and Authorization as to Authentication and Delivery of the Bonds.
20. Certificate of Registration of Bonds.
21. Bond Registry Form.
22. Cross-Receipt for Bonds and Bond Proceeds.
23. Notice of Delivery of Bonds.
24. Financing Statement.

C. LEGAL OPINIONS

25. Opinion of Goodwin & Goodwin, LLP, Bond Counsel, on Series 1999 Bonds.
26. Opinion of Theodore Davitan, Counsel to the Issuer.
27. Final Title Opinion of Issuer's Counsel.

D. MISCELLANEOUS

28. Existing Bondholder's Agreement to Reduce Debt Service Coverage Requirements.
29. Municipal Bond Commission New Issue Report Form.
30. Public Service Commission Certificate of Convenience and Necessity.
31. West Virginia Infrastructure and Jobs Development Council approval letter.
32. Specimen Bond.
33. Copy of Statutory Authority.

The closing of the sale of \$108,000 in aggregate principal amount of Town of Elizabeth, Sewer Revenue Bonds, Series 1999 (State Revolving Fund) will take place at the office of the West Virginia Water Development Authority, 180 Association Drive, Charleston, West Virginia, at 10:30 a.m., Eastern Time, on August 31, 1999. 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.

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COPY

JAN 26 1998

Water and Waste System Grant Agreement**United States Department of Agriculture****Rural Utilities Service**THIS AGREEMENT dated Jan 22, 1998, betweenTown of Elizabetha public corporation organized and operating underChapter 16, Article 13, 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 \$ 540,000 and has duly authorized the undertaking of such project.

Grantee is able to finance not more than \$ 108,000 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 \$ 108,000 has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed \$ 432,000 or 80 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 80 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.

the Appalachian Regional Development Act of 1965, as amended,

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

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

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

Approximately 9,000 LF of PVC sewerline, 1,000 LF of service laterals and 30 manholes. The grant funds will also include the video inspection of approximately 18,000 LF of existing sewerlines.

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

1. Use of nonexpendable property.

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

(1) Activities sponsored by the Grantor.

(2) Activities sponsored by other Federal agencies.

(b) During the time that nonexpendable personal property is held for use on the project for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the property was originally acquired. First preference for such other use shall be given to 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 property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented.

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

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

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

None

M. Provide Financial Management Systems which will include:

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

N. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm 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 _____ and

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

UNITED STATES OF AMERICA
RURAL UTILITIES SERVICE

By *Gary D. Wilson* August 31, 1999
Gary D. Wilson (Title) Rural Development Specialist

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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
ERNE 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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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 ayes and noes 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 percentum 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 exofficio 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,

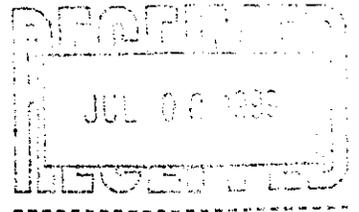
TOWN OF ELIZABETH. TO-WIT:

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

Robert Snider
LARRY WILLIAMS
JERALD VLACH

HAROLD D. VILLERS, MAYOR

FRANK MUNDAY, JR.
LEWIS FULL
ERNIE F. CUMBRIDGE

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, Vaughan & McCormick
Charleston, West Virginia

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STATE OF WEST VIRGINIA

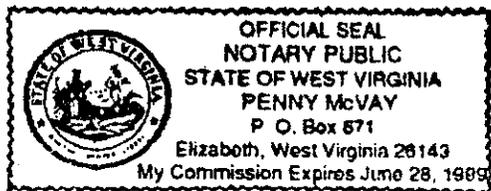
COUNTY OF WIRT, TO-WIT:

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 ^{and Sanitary Board 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.

Lewis H Full

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.

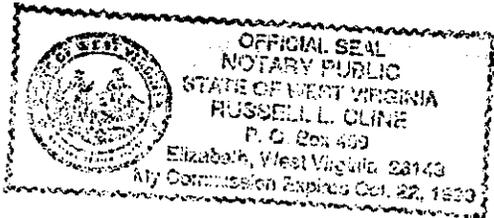
Penny McVay

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

STATE OF WEST VIRGINIA

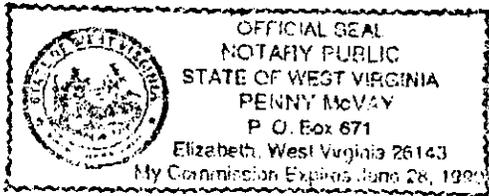
COUNTY OF WIRT, TO-WIT:

I, Carl "Bud" 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 and Sanitary Board member} ~~Mayor~~ 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.

Carl George

Subscribed and sworn to before me Penny McVay
a Notary Public in and for Wirt County, West Virginia, this
9 day of May, 1996.



Penny McVay
Notary Public

STATE OF WEST VIRGINIA

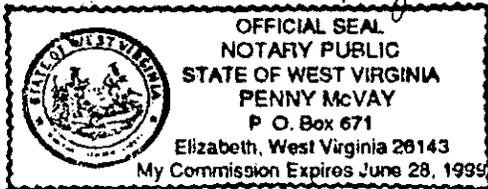
COUNTY OF WIRT, TO-WIT:

I, James 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} ~~Mayor~~ 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.

James Cumberledge

Subscribed and sworn to before me Penny McVay
a Notary Public in and for Wirt County, West Virginia, this
9 day of May, 1996.



Penny McVay
Notary Public

STATE OF WEST VIRGINIA

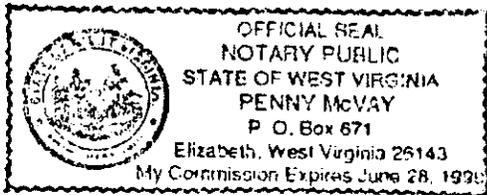
COUNTY OF WIRT, TO-WIT:

I, Kenneth Stempowski, 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} ~~Mayor~~ 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.

Kenneth Stempowski

Subscribed and sworn to before me Penny McVay
a Notary Public in and for Wirt County, West Virginia, this
9 day of May, 1996.



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.

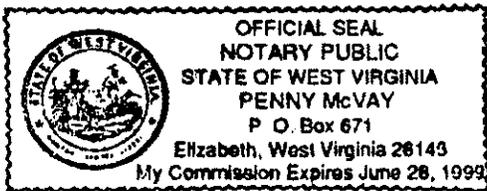
SO HELP ME GOD.

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.

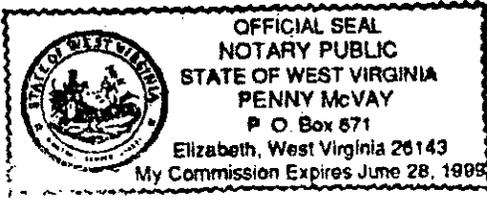
SO HELP ME GOD.

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

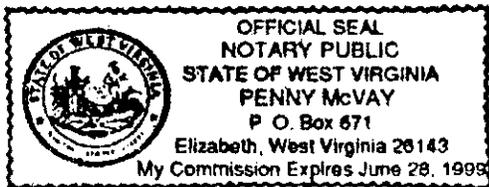
COUNTY OF WIRT, TO-WIT:

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

PETITION OF THE SANITARY BOARD
OF THE TOWN OF ELIZABETH,
WEST VIRGINIA

TO THE COUNCIL OF THE TOWN OF ELIZABETH, WEST VIRGINIA

Pursuant to the provisions of Chapter 16, Article 13 of the Code of West Virginia of 1931, as amended, the Sanitary Board (the "Sanitary Board") of the Town of Elizabeth, West Virginia (the "Town"), hereby petitions the Council to enact an ordinance which shall:

(a) set forth a brief and general description of the plan for construction of additions, improvements and betterments to the sewer system of the Town in accordance with plans and specifications (the "Project") prepared and filed by Boyles & Hildreth, Consulting Engineers (the "Consulting Engineers"), including the report of the Consulting Engineers, a copy of which is filed with the Board and the Town;

(b) set forth the amount needed to pay the costs of the Project which is estimated to be \$108,000 to pay for a portion of the costs of acquiring, constructing and equipping the Project;

(c) order completion of the construction of additions, improvements and betterments to the sewer system of the Town as outlined in the Consulting Engineer's report;

(d) direct that sewer revenue bonds of the Town be issued pursuant to Chapter 16, Article 13 of the Code of West Virginia of 1931, as amended (the "Act"), with such bonds to be in the aggregate amount of \$108,000 to pay a portion of the costs of constructing the Project and direct that sewer revenue bonds of the Town be issued at the earliest possible date pursuant to the Act;

(e) contain such other provisions as may be necessary in the premises to implement the Project.

This Petition was duly authorized at a meeting of the Sanitary Board duly called and held on the 5 day of August 1999.

WITNESS our signatures on this 5 day of Aug 1999.

THE SANITARY BOARD OF THE TOWN OF
ELIZABETH, WEST VIRGINIA

By: Lewis Full

By: Carl George

By: Kevin Merrill



TOWN OF ELIZABETH, WEST VIRGINIA

BOND ORDINANCE

ORDINANCE AUTHORIZING THE CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS FOR THE PUBLIC SEWER 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 \$108,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1999 (STATE REVOLVING FUND), FOR THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PUBLIC SEWER SYSTEM THROUGH FINANCING TO BE OBTAINED BY THE TOWN AT A COST ESTIMATED TO BE APPROXIMATELY \$540,000; 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 OWNERS OF SUCH BONDS; APPROVING AND RATIFYING A LOAN AGREEMENT RELATING TO SUCH BONDS; PLEDGING NET REVENUES, ON A PARITY BASIS, AS SECURITY FOR THE BONDS; PLACING LIMITATION ON SALE OF SYSTEM; AND AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE TOWN OF 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 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

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

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

B. The Issuer desires to have improvements to an existing sewer system constructed. Therefore, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer and surrounding areas that there be constructed additions to the existing wastewater collection

system and treatment facility to serve the Issuer. The proposed improvements will consist of approximately 5,500 linear feet of gravity sewer main, 40 linear feet of highway crossing and related property and equipment (the "Project") which constitute properties for the collection and/or transportation, purification and disposal of liquid or solid wastes, sewage or industrial wastes (the existing and proposed sewer facilities of the Issuer, the Project and any further additions thereto or extensions thereof is herein called the "System") at an estimated cost of \$540,000 to acquire, construct and equip the Project, in accordance with the plans and specifications to be prepared by the Consulting Engineers, which plans and specifications will be filed with the Issuer.

C. The Issuer has entered into a Compliance Order with DEP to make certain improvements to its System.

D. In accordance with Section 18 of Chapter 16, Article 13 of the West Virginia Code of 1931, as amended, the System will be under the supervision and control of the Sanitary Board of the Issuer (the "Board"). The Board has approved and delivered a Petition to the Issuer requesting the enactment of this Ordinance and the issuance of the Bonds, as hereinafter defined.

E. 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.

F. The Issuer is the beneficiary of a United States Department of Agriculture, Rural Utilities Service ("RUS") grant in the amount of \$432,000, the proceeds of which, together with the Bond proceeds, will be used to acquire, construct and equip the Project.

G. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds in the total aggregate principal amount of \$108,000 to finance the cost of the acquisition, construction and equipping of the Project.

H. The estimated maximum cost of the acquisition, construction and equipping of the Project is \$540,000, all of which will be obtained from the sale of the Bonds, from a grant or grants to be made available to the Town. 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 1999 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, fees of DEP or the Authority (as hereinafter defined), discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, 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.

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

J. The Issuer has completed and filed with the Authority and the West Virginia Division of Environmental Protection ("DEP") an Application for a Loan with attachments and exhibits and will file an Amended Application for a Loan also with attachments and exhibits (together, as further revised and supplemented, the "Application"), and upon review thereof, the Authority and DEP have indicated their willingness to lend the Issuer \$108,000 through the purchase of revenue bonds of the Issuer with moneys held in the Fund, hereinafter defined, subject to the Issuer's satisfaction of certain legal and other requirements of the Program, hereinafter defined.

K. It is in the best interests of the Issuer that its Series 1999 Bonds be sold to the Authority pursuant to the terms and provisions of the Loan Agreement entered into among the Issuer, DEP and the Authority.

L. 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 Bonds, and will comply prior to the issuance of any additional indebtedness, including, among other things, the obtaining of a Certificate of Convenience and Necessity from the Public Service Commission of West Virginia by final order, if necessary, the time for rehearing and appeal of which will either have expired prior to the issuance of the 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.

M. 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.

N. The Issuer currently has outstanding Sewer Revenue Bonds, Series 1982 A (the "Series 1982 A Bonds") and Series 1982 B (the "Series 1982 B Bonds") (collectively, the "Prior Bonds") in the principal amounts of \$280,000 and \$49,885.84, respectively. The Prior Bonds are registered to the West Virginia Water Development Authority. The Series 1999 Bonds will be issued on a parity with the Series 1982 A Bonds as to lien on the Net Revenues of the System and senior to the Series 1982 B Bonds. The additional bonds coverage and parity tests set forth in the ordinance authorizing the issuance of the Prior Bonds have been met.

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 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1, as amended and in effect on the date of enactment hereof.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser of the Series 1999 Bonds, or any other agency of the State of West Virginia that succeeds to the functions of the Authority.

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

"Board" means the Sanitary Board of the Issuer, as created and appointed by ordinance enacted by the Governing Body of the Issuer pursuant to the provisions of Section 18 of the Act, and any successor thereto.

"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.

"Bonds" or "Series 1999 Bonds" means the not more than \$108,000 in aggregate principal amounts of Town of Elizabeth, Sewer Revenue Bonds, Series 1999 (State Revolving Fund) issued for the purpose of acquiring, constructing and equipping the Project, and any bonds on a parity therewith authorized to be issued hereunder.

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

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

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

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

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

"Costs" or "Costs of the Project" means those costs described in Section 1.02H 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.

"DEP" means the West Virginia Division of Environmental Protection, or any other agency of the State of West Virginia that succeeds to the functions of DEP.

"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.

"Loan Agreement" shall mean the Loan Agreement to be entered into among the Authority, DEP and the Issuer providing for the purchase of the Bonds from the Issuer by the Authority, the form of which may be approved, and the execution and delivery by the Issuer authorized and directed or ratified herein or by a Supplemental Resolution.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the 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, fees and expenses of DEP or the Authority, fiscal agents, the Depository Bank, Registrar and Paying Agent (all as herein defined), other than those capitalized as part of the Costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption

premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

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

"Outstanding," when used with reference to Bonds and as of any particular date, describes 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.

"Paying Agent" means the West Virginia Municipal Bond Commission, its successors and assigns.

"Prior Bonds" means the Issuer's outstanding Sewer Revenue Bonds, Series 1982 A, issued in the original principal amount of \$280,000, and its Sewer Revenue Bonds, Series 1982 B, issued in the original principal amount of \$49,885.84.

"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 sewer 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 State 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.

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

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

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

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

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

"Series 1999 Bonds Reserve Account" means the Series 1999 Bond Reserve Account established in the Series 1999 Bonds Sinking Fund pursuant to Section 4.02 hereof.

"Series 1999 Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the 1999 Bonds in the then current or any succeeding year.

"Series 1999 Bonds Sinking Fund" means the Series 1999 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 Bonds, the Bonds, or any other obligations of the Issuer, including the Renewal and Replacement Fund, and the Series 1999 Bonds Reserve Account, the proceeds of which Bonds 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 sewer system; and shall also include any and all additions, extensions, improvements, properties, or other facilities at any time acquired or constructed for the sewer 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 \$540,000 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 DEP.

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 \$108,000 for acquisition, construction and equipping of the Project. Said Bonds shall be issued and designated, "Sewer Revenue Bonds, Series 1999 (State Revolving Fund)", in the aggregate principal amount of \$108,000 and shall have such terms as set forth hereinafter or in a Supplemental Resolution. The proceeds of the Bonds remaining after funding of the Series 1999 Bonds 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 Bonds shall be registered and numbered R-1. The Bonds shall not bear interest. The Bonds shall be subject to an annual administrative fee of one percent (1%) payable quarterly to DEP on March 1, June 1, September 1 and December 1, beginning March 1 2001. The Bonds shall mature in not more than twenty (20) years; and shall be redeemable in whole or in part, all as prescribed herein. The Bonds shall be payable as to principal payable quarterly, March 1, June 1, September 1 and December 1, beginning March 1, 2001, 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 on the Bonds shall be paid by check or draft of the Paying Agent mailed to the registered owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

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

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

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

Section 3.04. 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 Certificate of Authentication and Registration on such Bonds, substantially in the form set forth in Section 3.09 shall have been manually executed by the Bond Registrar. 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 any of the Bonds remain outstanding, the Bond Registrar shall keep and maintain books for the registration and transfer of the Bonds.

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

In all cases in which the privilege of exchanging Bonds or transferring the registered Bonds are exercised, 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 a parity with the Series 1982 A Bonds, and senior to the Series 1982 B Bonds, derived from the operation of the System as herein provided and amounts, if any, in the Series 1999 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 a parity with the Series 1982 A 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 A Bonds and to make the payments into the Series 1999 Bond Sinking Fund, the Series 1999 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 Bonds. The text of the Bonds shall be in substantially the following forms, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution or Ordinance adopted prior to the issuance thereof:

(FORM OF SERIES 1999 BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
TOWN OF ELIZABETH
SEWER REVENUE BOND,
SERIES 1999
(STATE REVOLVING FUND)

No. R-1

\$108,000

Date: August 31, 1999

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 West Virginia Water Development Authority (the "Authority") or registered assigns, the sum of One Hundred Eight Thousand and 00/100 Dollars (\$108,000.00), or such lesser amount as set forth on the Record of Advances attached as Exhibit A hereto and incorporated herein by reference. Interest on this Bond is set at zero percent (0%) per annum, plus an annual administrative fee of one percent (1%) payable quarterly. Principal on the Bond is payable in quarterly installments commencing March 1, 2001, and thereafter in quarterly installments on each March 1, June 1, September 1 and December 1, as set forth on the "Debt Service Schedule" attached as Exhibit B hereto and incorporated herein by reference. The final installment of principal shall be paid at the end of twenty (20) years from the date amortization of debt service on the Bond begins and shall be in an amount equal to the amount of outstanding principal due on the Bond at said date. Notwithstanding any provision of this Bond to the contrary, this Bond shall evidence only the indebtedness reflected as outstanding on the Record of Advances attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). Principal on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of WesBanco Trust and Investment Services, a Division of WesBanco Bank Wheeling, at its principal office in Wheeling, West Virginia (the "Registrar"), on the 15th day of the month next preceding such payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole at par, but only upon thirty (30) days prior written notice to the Authority and the West Virginia Division of Environmental Protection ("DEP") and upon the terms and conditions prescribed by and otherwise in compliance with the Loan Agreement by and among the Issuer, the Authority and DEP.

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 sewer facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The sewer 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 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and an Ordinance duly enacted by the Issuer and effective August 30, 1999 (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 1999 Bond Reserve Account") and unexpended proceeds of the Bonds on a parity with the Issuer's Sewer Revenue Bonds, Series 1982 A and senior to the Issuer's Sewer Revenue Bonds, Series 1982 B (collectively, 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 1999 Bond Reserve Account and unexpended proceeds of the Bonds. 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 Bonds and the Prior Bonds, and all other obligations secured by a lien on or payable from such net revenues prior to or on a parity with the Bonds, provided however, that so long as there exists in the Series 1999 Bond Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year and in the reserve account established for any other obligations outstanding prior to or on a parity with the Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to one hundred ten percent (110%). The Prior Bonds originally specified a debt service coverage requirement of one hundred thirty percent (130%) which was reduced to one hundred fifteen percent (115%) by the Authority, as the owner of the Prior Bonds.

The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Ordinance. More particularly, the Issuer has covenanted 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. Remedies provided the registered owners of the Bonds are exclusively as

provided in the Ordinance, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Ordinance, only upon the books of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, 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.

THIS BOND IS ON A PARITY AS TO LIEN AND SOURCE OF PAYMENT WITH THE CERTAIN SEWER REVENUE BONDS, SERIES 1982 A, AND SENIOR TO SEWER REVENUE BONDS, SERIES 1982 B, OF THE ISSUER DESCRIBED IN AN ORDINANCE ENACTED ON FEBRUARY 9, 1981, AND AMENDED BY A RESOLUTION APPROVED ON SEPTEMBER 13, 1982.

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 Recorder and has caused this Bond to be dated August 31, 1999.

TOWN OF ELIZABETH

[SEAL]

By: _____
Mayor

ATTEST:

Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is the Series 1999 Bond described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: August 31, 1999

WesBanco Trust and Investment Services,
a Division of WesBanco Bank Wheeling

By: _____
Senior Trust Officer

EXHIBIT A
RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$92,561.00	August 31, 1999	(6) \$ _____	
(2) \$ _____		(7) \$ _____	
(3) \$ _____		(8) \$ _____	
(4) \$ _____		(9) \$ _____	
(5) \$ _____		(10) \$ _____	

TOTAL \$ _____

EXHIBIT B

DEBT SERVICE SCHEDULE

Town of Elizabeth (West Virginia)
Loan of \$108,000
20 Years, 0% Interest Rate, 1% Administrative Fee
Closing Date: August 31, 1999

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
9/01/1999	-	-	-
12/01/1999	-	-	-
3/01/2000	-	-	-
6/01/2000	-	-	-
9/01/2000	-	-	-
12/01/2000	-	-	-
3/01/2001	1,350.00	-	1,350.00
6/01/2001	1,350.00	-	1,350.00
9/01/2001	1,350.00	-	1,350.00
12/01/2001	1,350.00	-	1,350.00
3/01/2002	1,350.00	-	1,350.00
6/01/2002	1,350.00	-	1,350.00
9/01/2002	1,350.00	-	1,350.00
12/01/2002	1,350.00	-	1,350.00
3/01/2003	1,350.00	-	1,350.00
6/01/2003	1,350.00	-	1,350.00
9/01/2003	1,350.00	-	1,350.00
12/01/2003	1,350.00	-	1,350.00
3/01/2004	1,350.00	-	1,350.00
6/01/2004	1,350.00	-	1,350.00
9/01/2004	1,350.00	-	1,350.00
12/01/2004	1,350.00	-	1,350.00
3/01/2005	1,350.00	-	1,350.00
6/01/2005	1,350.00	-	1,350.00
9/01/2005	1,350.00	-	1,350.00
12/01/2005	1,350.00	-	1,350.00
3/01/2006	1,350.00	-	1,350.00
6/01/2006	1,350.00	-	1,350.00
9/01/2006	1,350.00	-	1,350.00
12/01/2006	1,350.00	-	1,350.00
3/01/2007	1,350.00	-	1,350.00
6/01/2007	1,350.00	-	1,350.00
9/01/2007	1,350.00	-	1,350.00
12/01/2007	1,350.00	-	1,350.00
3/01/2008	1,350.00	-	1,350.00
6/01/2008	1,350.00	-	1,350.00
9/01/2008	1,350.00	-	1,350.00
12/01/2008	1,350.00	-	1,350.00
3/01/2009	1,350.00	-	1,350.00
6/01/2009	1,350.00	-	1,350.00
9/01/2009	1,350.00	-	1,350.00
12/01/2009	1,350.00	-	1,350.00
3/01/2010	1,350.00	-	1,350.00
6/01/2010	1,350.00	-	1,350.00
9/01/2010	1,350.00	-	1,350.00
12/01/2010	1,350.00	-	1,350.00
3/01/2011	1,350.00	-	1,350.00

Town of Elizabeth (West Virginia)
Loan of \$108,000
20 Years, 0% Interest Rate, 1% Administrative Fee
Closing Date: August 31, 1999

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
6/01/2011	1,350.00	-	1,350.00
9/01/2011	1,350.00	-	1,350.00
12/01/2011	1,350.00	-	1,350.00
3/01/2012	1,350.00	-	1,350.00
6/01/2012	1,350.00	-	1,350.00
9/01/2012	1,350.00	-	1,350.00
12/01/2012	1,350.00	-	1,350.00
3/01/2013	1,350.00	-	1,350.00
6/01/2013	1,350.00	-	1,350.00
9/01/2013	1,350.00	-	1,350.00
12/01/2013	1,350.00	-	1,350.00
3/01/2014	1,350.00	-	1,350.00
6/01/2014	1,350.00	-	1,350.00
9/01/2014	1,350.00	-	1,350.00
12/01/2014	1,350.00	-	1,350.00
3/01/2015	1,350.00	-	1,350.00
6/01/2015	1,350.00	-	1,350.00
9/01/2015	1,350.00	-	1,350.00
12/01/2015	1,350.00	-	1,350.00
3/01/2016	1,350.00	-	1,350.00
6/01/2016	1,350.00	-	1,350.00
9/01/2016	1,350.00	-	1,350.00
12/01/2016	1,350.00	-	1,350.00
3/01/2017	1,350.00	-	1,350.00
6/01/2017	1,350.00	-	1,350.00
9/01/2017	1,350.00	-	1,350.00
12/01/2017	1,350.00	-	1,350.00
3/01/2018	1,350.00	-	1,350.00
6/01/2018	1,350.00	-	1,350.00
9/01/2018	1,350.00	-	1,350.00
12/01/2018	1,350.00	-	1,350.00
3/01/2019	1,350.00	-	1,350.00
6/01/2019	1,350.00	-	1,350.00
9/01/2019	1,350.00	-	1,350.00
12/01/2019	1,350.00	-	1,350.00
3/01/2020	1,350.00	-	1,350.00
6/01/2020	1,350.00	-	1,350.00
9/01/2020	1,350.00	-	1,350.00
12/01/2020	1,350.00	-	1,350.00
Total	108,000.00	-	108,000.00 *

*Plus \$136.69 quarterly administrative fee. Total fee paid over the life of the loan is \$10,935.20.

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: _____, 19__.

(Assignor)

Witnessed in the presence of:

Section 3.10. Sale of Bonds; Ratification of Execution of Loan Agreement with Authority and DEP; Incorporation of Terms. The Series 1999 Bonds shall be sold to the Authority pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the Loan Agreement in substantially the forms attached hereto as "Exhibit A" and made a part hereof, 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 the Recorder is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to DEP and the Authority, and any such prior execution and delivery is hereby authorized, ratified and approved. The Loan Agreement, as the same may be amended and/or supplemented, and the terms and provisions thereof are herein incorporated by reference thereto.

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

Section 3.12. "Amended Schedule A" Filing. Within sixty (60) days following the Completion Date, the Issuer will file with the Authority a schedule in substantially the form of the "Amended Schedule A" to the Loan Agreement, setting forth the actual costs of the acquisition, construction and equipping of the Project and sources of funds thereof.

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 1999 Bond Sinking Fund;

(a) Within the Series 1999 Bond Sinking Fund, the Series 1999 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 including the annual administrative fee of one percent (1%) described in Section 3.02 hereof.

(2) The Issuer shall, beginning on the date set forth in Exhibit B to the Bonds in order to provide debt service on the Bonds, shall deposit in the Series 1982 Sinking Fund one third (1/3) of the interest payment next coming due on the Series 1982 A Bonds, and then in the Series 1999 Sinking Fund one-third (1/3) of the principal payment next coming due on the Bonds, beginning four (4) months prior to the first date of payment of principal of the Bonds on a parity with the Series 1982 A Bonds. The Issuer shall submit payments monthly to the Commission, on a pro rata basis with the Series 1982 A Bonds, with instructions that the Commission will make quarterly payments to the Authority at such address as are given to the Commission in writing by the Authority. The Issuer shall instruct the Commission to notify the Authority of any monthly payments which are not received by the 20th day of the month in which the payment was due.

(3) The Issuer shall next, on the first day of each month, commencing three (3) months prior to the first date of payment of principal of the Bonds, if not fully funded upon issuance of the Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission, on a pro rata basis with the Series 1982 A Bonds, for deposit into the Series 1999 Bonds Reserve Account, an amount equal to 1/120 of the Series 1999 Bonds Reserve Requirement on a parity with the Series 1982 A Bonds; provided, that no further payments shall be made into the Series 1999 Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 1999 Bonds Reserve Requirement.

(4) From the moneys remaining in the Revenue Fund, the Issuer shall next, transfer to the Renewal and Replacement Fund, a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any reserve account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in

accordance with Article VII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in the Series 1999 Bond Reserve Accounts [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.

With respect to the payments made by the Issuer under Section 4.03 (1) through (4) above which relate to the Series 1999 Bonds, the Issuer shall complete the Monthly Payment Form described in the Loan Agreement and submit a copy of said form and the check or checks representing such payments to the Authority by the 5th day of such calendar month.

Moneys in the Series 1999 Bonds 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 1999 Bond Reserve Account shall be used only for the purpose of paying principal of and interest, if any, on the Bonds, as the same shall come due, when other moneys in the attendant Series 1999 Bonds 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 1999 Bonds Sinking Fund and Series 1999 Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the 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 1999 Bonds Reserve Account which result in a reduction in the balance of the Series 1999 Bonds Reserve Accounts to below the Series 1999 Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full, to the Series 1999 Bonds Sinking Fund for payment of debt service on the Bonds.

B. As and when additional bonds ranking on a parity with the 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 1999 Bonds Sinking Fund or into the Series 1999 Bonds Reserve Account therein when the aggregate amount of funds in said Series 1999 Bonds Sinking Fund and Series 1999 Bonds Reserve Account are at least equal to the aggregate principal amount of the Bonds 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 1999 Bonds Sinking Fund created hereunder, and all amounts required for said Series 1999 Bonds 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 1999 Bonds 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 1999 Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 7.01 hereof.

The Series 1999 Bonds Sinking Fund, including the Series 1999 Bonds Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Bonds and any additional bonds ranking on a 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 1999 Bonds Sinking Fund, including the Series 1999 Bonds 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 Bonds 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 Issuer appoints WesBanco Trust and Investment Services, a Division of WesBanco Bank Wheeling, as Registrar for the Bonds, and the Commission is hereby designated as Paying Agent for the Bonds.

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 1999 Bonds Reserve Account or as otherwise directed by the Authority and DEP.

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 any or all of the Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Bonds, there shall be deposited with the Commission in the Series 1999 Bonds Reserve Account the sum, if any, required hereunder for funding the Series 1999 Bonds Reserve Account.

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

C. The Depository Bank shall act as a trustee and fiduciary for the 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 Bonds.

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 the Authority a report listing the specific purposes for which the proceeds of the Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments for Costs of the Project shall be made monthly.

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

- (1) a completed and signed "Payment Requisition Form," the form of which is attached to the Loan Agreement as Exhibit C, and
- (2) a certificate, signed by an Authorized Officer and the Consulting Engineers, stating:
 - (A) That none of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;
 - (B) That each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;
 - (C) That each of such costs has been otherwise properly incurred; and
 - (D) That payment for each of the items proposed is then due and owing.

In case any contract provides for the retention of a portion of the contract price, the Depository Bank shall disburse from the 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 Bonds. In addition to the other covenants, agreements and provisions of this Ordinance, the Issuer hereby covenants and agrees with the Holders of the Bonds as hereinafter provided in this Article VI. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Bonds or the interest thereon is Outstanding and unpaid.

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

Section 6.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Bonds issued hereunder shall be secured forthwith by a parity lien on the Net Revenues with the Series 1982 A Bonds and senior to the Series 1982 B Bonds derived from the operation of the System including the sewage assessment fees collected by the Issuer and imposed by the Sewage Treatment Ordinance approved by the Governing Body of the Issuer on October 15, 1998. The Revenues derived from the System, in amounts sufficient to pay the principal of and interest on the Bonds and to make the payments into the Series 1999 Bonds Sinking Fund, including the Series 1999 Bonds Reserve Account therein, and all other payments provided for in the Ordinance and the Sewage Treatment Ordinance are hereby irrevocably pledged, in the manner provided herein, to the payment of the principal of and interest on the Bonds as the same become due, and for the other purposes provided in the Ordinance.

Section 6.04. Rates. Prior to issuance of the Bonds, 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 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 Bonds to finance the issuance of the Bonds 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 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 1999 Bonds Reserve Account and the Reserve Accounts for the 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 Bonds.

Section 6.05. Completion, Operation and Maintenance; Schedule of Costs. 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.

Upon completion of the Project, the Issuer shall file with the Authority a schedule in substantially the form of Amended Schedule A to the loan application, setting forth the actual costs of the Project and sources of funds therefor.

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 1999 Bonds Sinking Fund, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal at maturity of and interest on the 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

the Authority and DEP, be remitted by the Issuer to the Commission for deposit in the Series 1999 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 1999 Bonds Sinking Funds or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Ordinance. No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of \$50,000 and insufficient to pay all Bonds then outstanding without the prior approval and consent in writing of DEP and the Holders, or their duly authorized representatives, 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 DEP and the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 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 Bonds. All obligations issued by the Issuer after the issuance of the Bonds and payable from the revenues of the System, except such additional parity bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into the Series 1999 Bonds Reserve Accounts and the Renewal and Replacement Fund at the time of the issuance of such subordinate obligations have been made and are current.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Bonds and the interest thereon in this Ordinance, or upon the System or any part thereof. The Issuer will give the Authority and DEP 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 Bonds issued pursuant to this Ordinance, except under the conditions and in the manner herein provided.

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

No such Parity Bonds shall be issued except for the purpose of financing the costs of the construction or acquisition of the System or extensions, improvements or betterments to the System or

refunding one or more series of Bonds issued pursuant hereto, or both such purposes.

No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Recorder a written statement by the Independent Certified Public Accountants, based upon the necessary investigation and certification by the Consulting Engineers, reciting the conclusion that the 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 1999 Bonds and Prior Bonds then Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and
- (3) The Parity Bonds then proposed to be issued.

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

The 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 Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Bonds.

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

B. Notwithstanding the foregoing, the Issuer may issue Parity Bonds without compliance with any other conditions for the purpose of refunding prior to maturity any issues or series of the 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 DEP and any Holder of a Bond or Bonds issued pursuant to this Ordinance shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the 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 the Authority, or its agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority such documents and information as it may reasonably require in connection with the design, acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of

financing for the Project.

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

The Issuer shall keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any owner of 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. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Governing Body. The Governing Body shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Governing Body shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Consulting Engineers, and DEP, the Authority, or any other original purchaser of the Bonds, 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 any Holder or Holders of Bonds and shall submit said report to and DEP, the Authority, or any other original purchaser of the Bonds. Such audit report submitted to the Authority shall include a statement that the Issuer is in compliance with the terms and provisions of

the Loan Agreement and this Ordinance and the Act and that Gross Revenues are adequate to meet operation/maintenance expenses and debt service requirements.

The Issuer shall also, during construction of the Project and for two (2) years following the completion of the Project, complete a Monthly Financial Report, the form of which is attached to the Loan Agreement as Exhibit B and made a part hereof, and forward a copy by the 10th of each month to the Authority and DEP.

The Issuer shall provide DEP with all appropriate documentation to comply with any special conditions established by federal and/or State regulations as set forth in Exhibit E of the Loan Agreement or as promulgated from time to time.

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

Section 6.10. Compliance With Loan Agreement, Rules and Regulations. The Issuer hereby covenants and agrees to perform and satisfy all terms and conditions of the Loan Agreement and to comply with all applicable laws, rules and regulations issued by the Authority and DEP, 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 DEP, the Authority and to any Holder of any 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 DEP and to any Holder of any Bond, or anyone acting for and on behalf of such Holder of any Bonds.

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

Section 6.12. Engineering Services and Operating Personnel. The Issuer shall provide and maintain competent and adequate resident engineering services satisfactory to the Authority and DEP 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 the Authority, DEP and the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer shall require the Consulting Engineers to submit the As-Built Plans to it within sixty (60) days of the completion of the Project. The Issuer shall notify DEP in writing of such receipt. The Issuer shall submit a "Performance Certificate," the form of which is attached to the Loan Agreement as Exhibit A, to DEP within sixty (60) days of the end of the first year after the Project is completed.

The Issuer shall require the Consulting Engineers to submit the final Operation and Maintenance Manual to DEP when the Project is ninety percent (90%) completed.

The Issuer agrees that qualified operating personnel properly certified by the State will be employed before the Project is twenty-five percent (25%) complete and agrees that it will retain such a certified operator(s) to operate the System during the entire term of the Loan Agreement. The Issuer shall notify DEP in writing of the certified operator employed at the twenty-five percent (25%) completion stage.

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 any of the Bonds remain Outstanding, the Issuer and its contractors and subcontractors will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, ON ALL above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of Elizabeth the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of Elizabeth. 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 Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Loan Agreement, during construction of the Project on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the 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. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 6.17. Mandatory Connections. The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public

Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a thirty (30) day notice of the availability of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction, provided that Issuer gives no assurance of compliance with these requirements for parties outside the limits of the Issuer.

Section 6.18. 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 6.19. 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 Bonds from the treatment afforded by Section 103(a) of the Code by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code in order to assure the tax-exempt status of the Bonds.

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 Bonds and the interest thereon, including without limitation, the information return required under Section 149(e) of the Code.

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

Section 6.20. **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 Bonds are not private activity bonds 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 Bonds 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 1999, 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 6.21. **Compliance with Loan Agreement.** The Issuer agrees to comply with all the terms and conditions of the Loan Agreement. Notwithstanding anything herein to the contrary, the Issuer will provide the DEP with copies of all documents submitted to the Authority.

Section 6.22. **Securities Law Compliance.** The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 6.23. **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 the Authority and DEP shall receive an opinion of counsel to the Issuer to such effect.

Section 6.24. **Contracts.** A. The Issuer shall simultaneously with the delivery of the Bonds or immediately thereafter enter into written contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to DEP for written approval. The Issuer shall obtain the written approval of DEP before expending any proceeds of the Bonds held in "contingency" as set forth in the Schedule B attached to the Loan Agreement. The Issuer shall also obtain the written approval of DEP before expending any proceeds of the Bonds made available due to bid or construction or project underruns.

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 any of the Bonds are outstanding.

Section 7.02. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Bonds 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 Bonds, so that the Bonds 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 Bonds) so that the interest on the Bonds 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 Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this 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 Bonds, 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 Authority, 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 such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefor. In addition, the Issuer shall cooperate with the Authority 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 by the Authority at the expense of the Issuer. To the extent not so performed by the Authority, 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 to the Authority 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 to the Authority 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 to the Authority 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 the Authority may request. The Issuer shall also furnish to the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority, including information with respect to earnings on all funds constituting "gross proceeds" of the Bonds (as defined in the Code).

The Issuer shall furnish to the Authority, 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 by the Authority and shall furnish to the Authority 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 the Authority may request.

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 Bonds or the Prior Bonds:

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

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Bonds set forth in this Ordinance, the Loan Agreement, any Supplemental Resolution or the Bonds 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 a 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 benefitting the holders of the Series 1999 Bonds 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 Bonds and under any covenants of this Ordinance for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Ordinance shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of any Bonds shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

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

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the 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 Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of the Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Ordinance, then with respect to the Bonds 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 Owners of the Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited 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 Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All the Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments of and interest due and to become due on said Bonds on and prior to the next redemption date or the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of and interest on said Bonds provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of and interest to become due on said Bonds on and prior to the next redemption date or the maturity dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Commission or its agent, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

ARTICLE 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 October 15, 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 sewer bill from a customer served with water and sewer 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 XII

MISCELLANEOUS

Section 12.01. 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 offices of the Secretary of State of West Virginia and of the Clerk of the County Commission of Wirt County.

Section 12.02. Delivery of Bonds. The Mayor and Recorder of the Governing Body are hereby authorized and directed to cause the Bonds, 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 12.03. 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 Bonds.

Section 12.04. 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 Owners of the Bonds shall be made without the consent in writing of the Registered Owners of 66 2/3% or more in principal amount of the Bonds so affected and then Outstanding and DEP and the Authority; provided, that no change shall be made in the maturity of any Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein respectively pledged therefor without the consent of the respective Registered Owners thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this 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 Bonds from gross income of the holders thereof.

Section 12.05. Ordinance Constitutes Contract. The provisions of this Ordinance shall constitute a contract between the Issuer and the Registered Owners of the Bonds, and no change, variation or alteration of any kind of the provisions of this Ordinance shall be made in any manner, except as in this Ordinance provided.

Section 12.06. 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 12.07. 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 12.08. 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, 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 12.09. Supplemental Resolutions. The Issuer may pass such supplemental resolutions, if necessary, to effectuate the purposes and intent of this Ordinance.

Section 12.10. Effective Time. This Ordinance shall take effect immediately upon its adoption.

Section 12.11 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 – August 5, 1999

Second Reading – August 12, 1999

Enacted Following Public Hearing – August 30, 1999

TOWN OF ELIZABETH, WEST VIRGINIA

By Lewis Full
Mayor

[SEAL]

ATTEST:

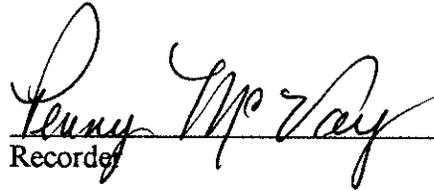
Lenny McRay
Recorder

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 August 30, 1999, and that the foregoing document remains in full force and effect and has not been amended.

Dated: August 31, 1999.

[SEAL]


Recorder

OFFICIAL MINUTES
of
TOWN OF ELIZABETH
Elizabeth, West Virginia

The Elizabeth Town Council met in special session in conjunction with the Elizabeth Sanitary Board on August 5, 1999 at 9 A.M. at the Elizabeth Municipal Building.

Those present were: Lewis Full, Bud George, Kenneth Stempowski, Jim Cumberledge, Kevin Merrill, and Penny McVay.

The purpose of this special meeting was for the first reading by title of the Bond Ordinance. Mayor called the meeting to order. Clerk Penny McVay read by title the Bond Ordinance, authorizing the construction of additions betterments and improvements for the public sewer system.

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

Lewis H. Full Mayor

Penny McVay Clerk

OFFICIAL MINUTES
of
TOWN OF ELIZABETH
Elizabeth, West Virginia

The Elizabeth Town Council met in regular session August 12, 1999 at 7 P.M. at the Elizabeth Municipal Building.

Those present were: Lewis Full, Bud George, Dennis Gage, Kenneth Stempowski, Jim Cumberledge, Edith Cumberledge, Anna Haney, and Penny McVay.

The Mayor 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 carried.

At this time the Mayor opened the public hearing on the Sewer Improvement Project. Clerk Penny McVay read by title the Bond Ordinance. This being the second reading and passage of the ordinance.

The Mayor closed the public hearing, and reopened the regular session of the town council.

The Mayor discussed with council the old blue ford truck, it would cost more to fix the truck then it was worth, council felt should advertise for bids on the truck to sell it. Bud George made a motion to advertise for bids, Edith Cumberledge seconded the motion, all in favor, motion carried.

A discussion was held on having the box van lettered with the Town of Elizabeth name on it, Jim Cumberledge made a motion to have the lettering done, Bud George seconded the motion, all in favor, motion carried.

Bud George advised council that the sidewalks in front of Betty Hyre's property on Route 14 was in dangerous shape, no one could walk on the side walks and have to walk out in the street to get around them, he suggested the town use the money budgeted for the dog warden to fix the sidewalk. Council felt it must look into the legality of this since the sidewalks belong to the property owner.

Anna Haney made a motion to pay the bills, Edith Cumberledge seconded the motion, all in favor, motion carried.

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

Lewis Full Mayor

Penny McVay Clerk

OFFICIAL MINUTES
of
TOWN OF ELIZABETH
Elizabeth, West Virginia

The Elizabeth Town Council met in special session on August 30, 1999 at 10 A.M. at the Elizabeth Municipal Building.

Those present were: Lewis Full, Bud George, Kenneth Stempowski, Jim Cumberledge, Edith Cumberledge, Mike Spiker from Goodwin & Goodwin and Penny McVay.

Mayor Full called the Sewer Improvement Public Hearing to order. Since no public were present there was no public input. Bud George made a motion that the Sewer Improvement Bond Ordinance be effective as of August 30, 1999. Jim Cumberledge seconded the motion, all in favor, motion carried.

The first draw down on the Sewer Improvement project was presented to council, Bud George made a motion to pay requisition #1 in the amount of \$92,560.22, Jim Cumberledge seconded the motion, all in favor, motion carried. A copy of the break down is attached to the minutes.

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

Lewis Full Mayor

Penny McVay Clerk

INVOICE AND
AFFIDAVIT OF PUBLICATION

Cost of publication \$130.09
1,062 words @ \$0.07 = \$74.34 Second week @ 75% = \$55.75
TOTAL = \$130.09

STATE OF WEST VIRGINIA,
COUNTY OF WIRT, to-wit:

I, Joyce Moler, being first duly sworn upon my oath, do depose and say that I am manager of the Wirt County Journal, an Independent Democrat newspaper; that I have been duly authorized by the board of directors of the Little Kanawha Publishing Company, Inc., to execute all affidavits of publication, that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published weekly, for at least fifty weeks during the calendar year, in the Town of Elizabeth, Wirt County, West Virginia; that such newspaper is a newspaper of "general circulation," as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and county and adjoining counties of Wirt; 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 of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices; that the annexed notice of Abstract of Ordinance and Notice of Public Hearing 2 successive weeks, (Class II), commencing with the issue of the 18th day of August, 1999, and ending with the issue of the 25th day of August, 1999.

Joyce Moler
Joyce Moler, Manager
The Wirt County Journal, P. O. Box 309, Elizabeth, WV 26143

Taken, subscribed and sworn to before me in my said county this 25th day of August, 1999.
My commission expires October 11, 2000.

Catherine L. McVay
Notary Public
West Virginia

ABSTRACT OF ORDINANCE AND
NOTICE OF PUBLIC HEARING

Pursuant to the provisions of West Virginia Code Chapter 6, Article 9A, Section 6 and Chapter 16, Article 13, 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 30th day of August, 1999, 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 SEWER 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 \$108,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1999 (STATE REVOLVING FUND), FOR THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PUBLIC SEWER SYSTEM THROUGH FINANCING TO BE OBTAINED BY THE TOWN AT A COST ESTIMATED TO BE APPROXIMATELY \$540,000; 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, TO FUND A RESERVE ACCOUNT FOR SUCH BONDS, TO PROVIDE FOR CAPITALIZED INTEREST DURING CONSTRUCTION, AND TO PAY OTHER COSTS IN CONNECTION THEREWITH; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE OWNERS OF SUCH BONDS; APPROVING AND RATIFYING A LOAN AGREEMENT RELATING TO SUCH BONDS; PLEDGING NET REVENUES, ON A PARITY BASIS, AS SECURITY FOR THE BONDS; PLACING LIMITATION ON SALE OF SYSTEM; AND AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

The Ordinance has been read and approved by the Council on first reading on August 5, 1999, and on second reading on August 12, 1999. The Ordinance would authorize the

issuance of the Town's \$108,000 Sewer Revenue Bonds, Series 1999 (State Revolving Fund) (the "Bonds"). The Bonds would provide a portion of the fund to acquire, construct and equip certain betterments and improvements to the Town's sewer system (the "System").

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

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

2. The Town has the authority under Chapter 16, Article 13 of the Code of West Virginia of 1931, as amended, to finance the operations of the System.

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

4. The Ordinance provides that it is in the best interests of the Town to sell the Bonds at an annual interest rate of 0% and an annual administrative fee of 1% and in the principal amount of \$108,000 to the West Virginia Development Authority, for the benefit of the West Virginia Division of Environmental Protection. The Bonds shall mature not more than 40 years from their date of issuance.

5. The Ordinance provides that the Bonds shall be executed in the name of the Town by the Mayor, and the seal of the Town shall be affixed thereto or imprinted thereon and attested by the Recorder. The West Virginia Municipal Bond Commission shall serve as the Paying Agent of the Series 1999 Bonds. WesBanco Trust and Investment Services, a Division of WesBanco Bank Wheeling, will act as Registrar of the Bonds.

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

Wirt County Journal

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 Registrar to register the Bonds.

8. The Ordinance provides for the repayment of certain existing debt of the System, 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.

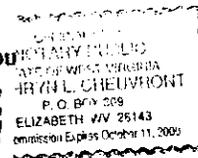
9. The Ordinance provides for the investment of the Bond proceeds and includes covenants designed to maintain the Bonds' tax-exempt status.

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

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

The Town contemplates the issuance of the Bonds described in and under the conditions set forth in the Ordinance abstracted above. The public hearing will be held at Town Hall, 200 Beverly Street, Elizabeth, West Virginia, on the 30th day of August, 1999, at 10:00 a.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 11th day of August, 1999.
TOWN OF ELIZABETH, WIRT COUNTY, WEST VIRGINIA
Lewis Full, Mayor
Penn McVay, Recorder 8-18-99



SRF-LP-1
(August 1998)

LOAN AGREEMENT

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

TOWN OF ELIZABETH
(Local Government)

WITNESSETH:

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

WHEREAS, pursuant to the provisions of Chapter 20, Article 5I, of the Code of West Virginia, 1931, as amended (the "Act"), the State of West Virginia (the "State") has established a state water pollution control revolving fund program (the "Program") to direct the distribution of loans to particular local governments pursuant to the Clean Water Act;

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

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

WHEREAS, pursuant to the Act, the Authority and DEP are empowered to make loans from the Fund to local governments for the acquisition or construction of

wastewater treatment projects by such local governments, all subject to such provisions and limitations as are contained in the Clean Water Act and the Act;

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

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

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

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

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

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

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

ARTICLE I

Definitions

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

The Project and the System

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

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

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

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

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

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

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

2.8 The Local Government shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority and DEP. Until the Project facilities are completed and accepted by the Local Government, the Local Government or (at the option of the Local Government) the contractor shall maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Local Government, the prime contractor and all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Local Government on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds are outstanding. Prior to commencing operation of the Project, the Local Government must also obtain, and maintain so long as any of the Local Bonds are outstanding, business interruption insurance if available at a reasonable cost.

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

2.10 The Local Government shall require the Consulting Engineers to submit the final Operation and Maintenance Manual, as defined in the SRF Regulations, to DEP when the Project is 90% completed. The Local Government agrees that it will at all times provide operation and maintenance of the System to comply with any and all State and federal standards. The Local Government agrees that qualified operating personnel properly certified by the State will be employed before the Project is 25% complete and agrees that it will retain such a certified operator(s) to operate the System during the entire term of this Loan Agreement. The Local Government shall notify DEP in writing of the certified operator employed at the 25% completion stage.

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

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

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

ARTICLE III

Conditions to Loan; Issuance of Local Bonds

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

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

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

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

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

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

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

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

(h) The Local Government shall have obtained any and all approvals of rates and charges required by State law and shall have taken any other action required to establish and impose such rates and charges (imposition of such rates and charges is not, however, required to be effective until completion of construction of the Project) with all requisite appeal periods having expired, and the Authority and DEP shall have received an opinion of counsel to the Local Government, which may be local counsel to the Local Government, bond counsel or special PSC counsel but must be satisfactory to the Authority and DEP, to such effect;

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

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

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

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

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

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

Local Government further specifically recognizes that all loans will be originated in conjunction with the SRF Regulations and with the approval of DEP.

3.6 The Local Government shall provide DEP with the appropriate documentation to comply with the special conditions established by federal and state regulations as set forth in Exhibit E hereto at such times as are set forth in Exhibit E.

ARTICLE IV

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

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

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

(i) to pay Operating Expenses of the System;

(ii) to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document and beginning on the date set forth in Schedule X to provide debt service on the Local Bonds by depositing in a sinking fund one-third (1/3) of the interest payment next coming due on the Local Bonds and one-third (1/3) of the principal payment next coming due on the Local Bonds and, beginning three (3) months prior to the first date of payment of principal of the Local Bonds, if the reserve account for the Local Bonds (the "Reserve Account") was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof in an amount equal to an amount at least equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "Reserve Requirement"), by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;

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

or making emergency repairs or replacements to the System or eliminating any deficiencies in the Reserve Account; and

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

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

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by the net revenues from the System;

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

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

(iv) That, except as otherwise required by State law or the Regulations, the System may be sold, mortgaged, leased or otherwise disposed of as a whole or substantially as a whole provided that the net proceeds to be realized from such sale, mortgage, lease or other disposition shall be sufficient to fully pay all of the local bonds outstanding and further provided that portions of the System when no longer required for the ongoing operation of such System as evidenced by certificates from the Consulting Engineer, may be disposed of with such restrictions as are normally contained in such covenants;

(v) That the Local Government shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if net revenues of the System prior to issuance of such parity bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on all Local Bonds and parity bonds theretofore and then being issued and

on any obligations secured by a lien on or payable from the revenues of the System prior to the Local Bonds and with the written consent of the Authority and DEP; provided, however, that additional parity bonds may be issued to complete the Project, as described in the Application as of the date hereof, without regard to the foregoing;

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

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

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

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

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

(xi) That the Local Government shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority and DEP, which report shall include a statement that the Local Government is in compliance with the terms and provisions of the Local Act and this Loan Agreement and that the Local Government's revenues are adequate to meet its operation and maintenance expenses and debt service requirements;

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

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

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

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

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

(xvii) That the Commission shall serve as paying agent for all Local Bonds;

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

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

(xx) That the Local Government shall, to the full extent permitted by applicable law and the rules and regulations of the West Virginia Public Service Commission, terminate the services of any water facility owned by it to any customer of the System who is delinquent in payment of charges for services provided by the System and will

not restore the services of the water facility until all delinquent charges for the services of the System have been fully paid or, if the water facility is not owned by the Local Government, then the Local Government shall enter into a termination agreement with the water provider.

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

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

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

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

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

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

ARTICLE V

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

5.1 The Local Government hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Local Government hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System, as set forth in the Local Act and in compliance with the provisions of Subsection 4.1(b)(ii) hereof.

5.2 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Local Bonds shall prove to be insufficient to produce the minimum sums set forth in the Local Act, the Local Government hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges so as to provide funds sufficient to produce the minimum sums set forth in the Local Act and as required by this Loan Agreement.

5.3 In the event the Local Government defaults in any payment due to the Authority pursuant to Section 4.2 hereof, the amount of such default shall bear interest at the interest rate of the installment of the Loan next due, from the date of the default until the date of the payment thereof.

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

ARTICLE VI

Other Agreements of the Local Government

6.1 The Local Government hereby acknowledges to the Authority and DEP its understanding of the provisions of the Act, vesting in the Authority and DEP certain powers, rights and privileges with respect to wastewater treatment projects in the event of default by local governments in the terms and covenants of loan agreements, and the Local Government hereby covenants and agrees that, if the Authority should hereafter have

recourse to said rights and powers, the Local Government shall take no action of any nature whatsoever calculated to inhibit, nullify, void, delay or render nugatory such actions of the Authority in the due and prompt implementation of this Loan Agreement.

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

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

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

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

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

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

ARTICLE VII

Miscellaneous

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

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

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

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

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

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

7.7 This Loan Agreement shall terminate upon the earlier of:

- (i) written notice of termination to the Local Government from either the Authority or DEP;
- (ii) termination by the Authority and DEP pursuant to Section 6.2 hereof; or

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

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

Town of Elizabeth

[Proper Name of Local Government]

(SEAL)

By: Lewis H. Field
Its: Mayor

Attest:

Date: 8-16-99

Denny McRay
Its Recorder

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION

By: Barbara B. Meadows
Its: Chief

Date: 8/19/99

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: Daniel B. Gunkel
Its: Director

Attest:

Date: August 13, 1999

Barbara B Meadows
Secretary-Treasurer

EXHIBIT A

[Form of Performance Certificate]

[TO BE PROVIDED BY DEP]

EXHIBIT B

[Form of Monthly Financial Report]
[Name of Local Government]
[Name of Bond Issue]
Fiscal Year - ____
Report Month: _____

<u>ITEM</u>	<u>CURRENT MONTH</u>	<u>YEAR TO DATE</u>	<u>BUDGET YEAR TO DATE</u>	<u>BUDGET DIFFERENCE</u>
1. Gross Revenues Collected				
2. Operation and Maintenance Expense				
3. Other Bond Debt Payments (including Reserve Fund deposits)				
4. SRF Bond Payments (include Reserve Fund deposits)				
5. Renewal and Replacement Fund Deposit				
6. Funds available for capital construction				

Witnesseth my signature this ____ day of _____, ____.

[Name of Local Government]

By: _____
Authorized Officer

EXHIBIT C

PAYMENT REQUISITION FORM

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

EXHIBIT D

FORM OF CERTIFICATE OF CONSULTING ENGINEER

(Issuer)

(Name of Bonds)

I, _____, Registered Professional Engineer, West Virginia License No. _____, of _____, Consulting Engineers, _____, hereby certify that my firm is engineer for the acquisition and construction of _____ to the _____ system (herein called the "Project") of _____ (the "Issuer") to be constructed primarily in _____ County, West Virginia, which construction and acquisition are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the meaning set forth in the _____ passed by the _____ of the Issuer on _____, 19____, effective _____, 19____, and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Division of Environmental Protection ("DEP") dated _____, 19____.

1. The Bonds are being issued for the purpose of

(the "Project").

2. The undersigned hereby certifies that (i) the Project will be constructed in accordance with the approved plans, specifications and designs prepared by my firm and as described in the application submitted to the Authority requesting the Authority to purchase the Bonds (the "Application") and approved by all necessary governmental bodies, (ii) the Project is adequate for the purpose for which it was designed and has an estimated useful life of at least twenty years, (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 described in the Application 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 Issuer has obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, (v) the rates and charges for the System as adopted by the _____ of the Issuer are sufficient to comply with the provisions of Subsection 4.1(b) of the Loan Agreement, (vi) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, are sufficient to pay the costs of construction and

acquisition of the Project as set forth in the Application, and (vii) 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 on this _____ day of _____, 19____.

By _____

West Virginia License No. ____

[SEAL]

EXHIBIT E

SPECIAL CONDITIONS

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

B. **AUDIT REQUIREMENT** (Supplement to Article IV 4.1 (b) (xi)) - The loan recipient that receives \$300,000 or more in a fiscal year must obtain audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular A-133 or any appropriate successor. Financial statement audits are required once all funds have been received by the loan recipient.

EXHIBIT F

[Monthly Payment Form]

West Virginia Water Development
Authority
180 Association Drive
Charleston WV 25311-1571

Re: [Name of bond issue]

Dear Sirs:

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

Sinking Fund:

Interest \$ _____

Principal \$ _____

Total: \$ _____

Reserve Fund: \$ _____

Witness my signature this ____ day of _____.

[Name of Local Government]

By: _____
Authorized Officer

Enclosure: copy of check(s)

EXHIBIT G

[Opinion of Bond Counsel for Local Government]

[To Be Dated as of Date of Loan Closing]

West Virginia Water Development Authority
180 Association Drive
Charleston WV 25311-1571

Gentlemen:

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

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of a loan agreement dated _____, 19__, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Local Government and the West Virginia Water Development Authority (the "Authority") and (ii) the issue of a series of revenue bonds of the Local Government, dated _____, 19__ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are in the principal amount of \$ _____, issued in the form of one bond registered as to principal and interest to the Authority, with interest payable _____ 1, _____ 1, _____ 1, and _____ 1 of each year, beginning _____ 1, 19__, at the respective rate or rates and with principal payable in installments on _____ 1 in each of the years, all as follows:

<u>Year</u>	<u>Installment</u>	<u>Interest Rate</u>
-------------	--------------------	----------------------

The Local Bonds are issued for the purpose of _____ and paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of _____ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond _____ duly enacted by the Local Government on _____ (the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement that has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

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

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

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

3. The Local Government is a duly organized and presently existing _____, with full power and authority to construct and acquire the Project and to operate and maintain the System referred to in the Loan Agreement and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Government has legally and effectively enacted the Local Act and all other necessary _____ in connection with the issuance and sale of the Local Bonds. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds are valid and legally enforceable special obligations of the Local Government, payable from the net revenues of the System referred to in the Local Act and secured by a [first] lien on and pledge of the net revenues of said System, all in accordance with the terms of the Local Bonds and the Local Act, and have been duly issued and delivered to the Authority.

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

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

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

Very truly yours,

SCHEDULE X

DESCRIPTION OF BONDS

Principal Amount of Bonds	\$ 108,000
Purchase Price of Bonds	\$ 108,000

Interest on the Bonds shall be zero percent from the date of delivery ~~to and including~~ ----- . Principal ~~and interest~~ on the Bonds is payable quarterly, commencing March 1, 2001, at a rate of 0 % per annum. Quarterly payments will be made thereafter on each September 1, December 1, March 1 and June 1 as set forth on Schedule Y attached hereto and incorporated herein by reference. As of the date of this Loan Agreement, it is the Authority's and DEP's understanding that the Local Government has [other obligations outstanding which have a lien as to the source of and security for payment equal to or superior to the lien being granted by the Bonds] or [provide list of outstanding debt]. (See attached schedule) *

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

The Bonds will be fully registered in the name of the West Virginia Water Development Authority as to principal ~~and interest~~ and such Bonds shall grant the Authority a first lien on the net revenues of the Local Government's system.

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

*Sewer Revenue Bonds, Series 1982, issued September 13, 1982, in the original principal amount of \$300,000.

SCHEDULE Y

Town of Elizabeth (West Virginia)
Loan of \$108,000
20 Years, 0% Interest Rate, 1% Administrative Fee
Closing Date: August 31, 1999

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
9/01/1999	-	-	-
12/01/1999	-	-	-
3/01/2000	-	-	-
6/01/2000	-	-	-
9/01/2000	-	-	-
12/01/2000	-	-	-
3/01/2001	1,350.00	-	1,350.00
6/01/2001	1,350.00	-	1,350.00
9/01/2001	1,350.00	-	1,350.00
12/01/2001	1,350.00	-	1,350.00
3/01/2002	1,350.00	-	1,350.00
6/01/2002	1,350.00	-	1,350.00
9/01/2002	1,350.00	-	1,350.00
12/01/2002	1,350.00	-	1,350.00
3/01/2003	1,350.00	-	1,350.00
6/01/2003	1,350.00	-	1,350.00
9/01/2003	1,350.00	-	1,350.00
12/01/2003	1,350.00	-	1,350.00
3/01/2004	1,350.00	-	1,350.00
6/01/2004	1,350.00	-	1,350.00
9/01/2004	1,350.00	-	1,350.00
12/01/2004	1,350.00	-	1,350.00
3/01/2005	1,350.00	-	1,350.00
6/01/2005	1,350.00	-	1,350.00
9/01/2005	1,350.00	-	1,350.00
12/01/2005	1,350.00	-	1,350.00
3/01/2006	1,350.00	-	1,350.00
6/01/2006	1,350.00	-	1,350.00
9/01/2006	1,350.00	-	1,350.00
12/01/2006	1,350.00	-	1,350.00
3/01/2007	1,350.00	-	1,350.00
6/01/2007	1,350.00	-	1,350.00
9/01/2007	1,350.00	-	1,350.00
12/01/2007	1,350.00	-	1,350.00
3/01/2008	1,350.00	-	1,350.00
6/01/2008	1,350.00	-	1,350.00
9/01/2008	1,350.00	-	1,350.00
12/01/2008	1,350.00	-	1,350.00
3/01/2009	1,350.00	-	1,350.00
6/01/2009	1,350.00	-	1,350.00
9/01/2009	1,350.00	-	1,350.00
12/01/2009	1,350.00	-	1,350.00
3/01/2010	1,350.00	-	1,350.00
6/01/2010	1,350.00	-	1,350.00
9/01/2010	1,350.00	-	1,350.00
12/01/2010	1,350.00	-	1,350.00
3/01/2011	1,350.00	-	1,350.00

Town of Elizabeth (West Virginia)
Loan of \$108,000
20 Years, 0% Interest Rate, 1% Administrative Fee
Closing Date: August 31, 1999

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+i
6/01/2011	1,350.00	-	1,350.00
9/01/2011	1,350.00	-	1,350.00
12/01/2011	1,350.00	-	1,350.00
3/01/2012	1,350.00	-	1,350.00
6/01/2012	1,350.00	-	1,350.00
9/01/2012	1,350.00	-	1,350.00
12/01/2012	1,350.00	-	1,350.00
3/01/2013	1,350.00	-	1,350.00
6/01/2013	1,350.00	-	1,350.00
9/01/2013	1,350.00	-	1,350.00
12/01/2013	1,350.00	-	1,350.00
3/01/2014	1,350.00	-	1,350.00
6/01/2014	1,350.00	-	1,350.00
9/01/2014	1,350.00	-	1,350.00
12/01/2014	1,350.00	-	1,350.00
3/01/2015	1,350.00	-	1,350.00
6/01/2015	1,350.00	-	1,350.00
9/01/2015	1,350.00	-	1,350.00
12/01/2015	1,350.00	-	1,350.00
3/01/2016	1,350.00	-	1,350.00
6/01/2016	1,350.00	-	1,350.00
9/01/2016	1,350.00	-	1,350.00
12/01/2016	1,350.00	-	1,350.00
3/01/2017	1,350.00	-	1,350.00
6/01/2017	1,350.00	-	1,350.00
9/01/2017	1,350.00	-	1,350.00
12/01/2017	1,350.00	-	1,350.00
3/01/2018	1,350.00	-	1,350.00
6/01/2018	1,350.00	-	1,350.00
9/01/2018	1,350.00	-	1,350.00
12/01/2018	1,350.00	-	1,350.00
3/01/2019	1,350.00	-	1,350.00
6/01/2019	1,350.00	-	1,350.00
9/01/2019	1,350.00	-	1,350.00
12/01/2019	1,350.00	-	1,350.00
3/01/2020	1,350.00	-	1,350.00
6/01/2020	1,350.00	-	1,350.00
9/01/2020	1,350.00	-	1,350.00
12/01/2020	1,350.00	-	1,350.00
Total	108,000.00	-	108,000.00 *

*Plus \$136.69 quarterly administrative fee. Total fee paid over the life of the loan is \$10,935.20.

NOV 16 1998

Special Studies Section

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

Canceling P.S.C. W. Va. No. 5

TOWN OF ELIZABETH, a municipal corporation

OF

ELIZABETH, WEST VIRGINIA

RATES, RULES AND REGULATIONS FOR FURNISHING
SEWERAGE AND SEWAGE DISPOSAL SERVICE

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

Issued by TOWN OF ELIZABETH, a municipal corporation

NOV 16 1998

Public Service Commission of WV
Issued 11/16/98
Special Studies Section

By Lewis Full
Mayor
Title

RULES AND REGULATIONS

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

APPLICABILITY

Applicable in entire territory served

AVAILABILITY

Available for general domestic, commercial, and industrial service

RATES

First	12,000	gallons used per month	\$5.25 per 1,000 gallons
Over	12,000	gallons used per month	\$3.88 per 1,000 gallons

MINIMUM RATES

The minimum monthly charge shall be \$10.50 per month

AVAILABILITY

Available for sanitary sewer service to unmetered water users and users who obtain water from wells

Flat Rate of \$15.78

(A,C) TAP FEE

The charge for installing a sewer tap or connection is \$350.00 or cost, which ever is greater

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 shown. This delayed penalty is not interest and is to be collected only once for each bill where it is appropriate.

- (A) Indicates increase
- (C) Indicates change

SURCHARGE FORMULA TO BE APPLIED IN THE CASE OF USERS PRODUCING UNUSUAL
WASTE

The charge for the treatment of unusual waste will be calculated on the basis of the following formula:

$$C_i = V_o V_i + B_o B_i + S_o S_i$$

C_i = charge to unusual users per year

V_o = average unit cost of transport and treatment chargeable to volume, in dollars per gallon

V_i = volume of waste water from unusual users, in gallons per year

B_o = average unit cost of treatment, chargeable to Biochemical Oxygen Demand (BOD) in dollars per year.

B_i = weight of BOD from unusual users, in pounds per year

S_o = average unit costs of treatment (including sludge treatment) chargeable to total solids, in dollars per pound

S_i = weight of total solids from unusual users, in pounds per year

When an unusual user is to be served, a preliminary study of its wastes, and the cost of transport and treatment thereof, will be made. Waste containing materials which, in judgement of the Issuer, should not be introduced into the sewer system need not be handled by it. The results of this preliminary study will be used to determine the feasibility of the proposed sewer service and the charge therefor, based upon the formula set out above.

AN ORDINANCE TO AMEND AND READOPT THE ORDINANCE ESTABLISHING
SEWER RATES AND CHARGES FOR THE TOWN OF ELIZABETH, WIRT
COUNTY, WEST VIRGINIA

BE IT ORDAINED BY THE TOWN OF ELIZABETH: THE ABOVE NAMED
ORDINANCE IS AMENDED AS FOLLOWS:

APPLICABILITY

APPLICABLE IN ENTIRE TERRITORY SERVED.

AVAILABILITY

AVAILABLE FOR GENERAL DOMESTIC, COMMERCIAL AND
INDUSTRIAL SERVICE.

RATES

FIRST 2,000 GALLONS USED PER MONTH 5.25 PER 1,000
FOR THE FIRST 12,000
OVER 12,000 GALLONS USED PER MONTH 3.88 PER 1,000

MINIMUM RATE

THE MINIMUM MONTHLY CHARGE SHALL BE 10.50 PER MONTH

AVAILABILITY

Available for sanitary sewer service to unmatered water
users and users who obtain water from wells. Flat Rate
\$15.78

NOW THEREFORE, BE IT ORDAINED BY COUNCIL OF THE TOWN OF
ELIZABETH, WEST VIRGINIA:

Introduced First Reading: January 11, 1991

Adopted Second & Final Reading: January 25, 1991

James A. Bamberger
Mayor

Danny McClary
Clerk/Recorder

\$108,000
TOWN OF ELIZABETH
SEWER REVENUE BOND,
SERIES 1999

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. LOAN AGREEMENT
8. PUBLIC SERVICE COMMISSION ORDER
9. LAND AND RIGHTS-OF-WAY
10. MEETINGS
11. INSURANCE
12. RATES
13. TRUTH AND ACCURACY
14. SPECIMEN BOND
15. BOND PROCEEDS
16. PRIVATE USE OF FACILITIES
17. NO FEDERAL GUARANTY
18. CONFLICT OF INTEREST
19. CLEAN WATER ACT
20. COUNTERPARTS

We, the undersigned MAYOR and 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, Sewer Revenue Bond, Series 1999 (the "Bond"), in the aggregate principal amount of \$108,000, numbered R-1, dated the date hereof and bearing interest at the rate of zero percent (0%), plus an annual administrative fee of one percent (1%) payable quarterly, 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 City Council (the "Council") and effective on August 30, 1999 (the "Ordinance"), and the Loan Agreement (the "Loan Agreement") entered into among the Town, the West Virginia Division of Environmental Protection ("DEP") and the West Virginia Water Development Authority (the "Authority"), dated August 19, 1999.

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 sewer 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, execution and delivery by the Town of the Loan Agreement, among the Authority, DEP and the Town. There has been no adverse change in the financial condition of the Town or the System since the approval by the Authority and DEP of a loan to assist in the acquisition, construction and equipping of the Project. Upon issuance and delivery of the Bonds, the Town will have the Bond and its Sewer Revenue Bonds, Series 1982 A as debt outstanding, both of which constitute a first parity lien on the Net Revenues of the System, and the Sewer Revenue Bonds, Series 1982 B which are junior and subordinate to the Series 1982 A Bonds and the Series 1999 Bonds. 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 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, Recorder and the Town Council of six (6) councilmen or women, whose names, terms and offices are as follows:

<u>Name</u>	<u>Date of Termination of Office</u>	<u>Office</u>
Lewis Full	April 10, 2000	Mayor
Penny McVay	Appointed	Recorder
James Cumberledge	April 10, 2000	Councilman

Edith Cumberledge	April 8, 2002	Councilwoman
Carl George	April 10, 2000	Councilman
Kenneth Stempowski	April 10, 2000	Councilman
Anna Haney	April 8, 2002	Councilwoman
Dennis Gage	April 8, 2002	Councilman

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

7. **LOAN AGREEMENT:** As of the date hereof, (i) representations of the Town contained in the Loan Agreement are true and correct in all material respects as if made on the date hereof; (ii) the Loan Agreement does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) to the best knowledge of the undersigned, no event affecting the Town has occurred since the date of the Loan Agreement which should be disclosed for the purpose for which it is to be used or which is necessary to be disclosed therein in order to make the statements and information contained therein not misleading; and (iv) the Town ratifies and reaffirms all the covenants made in the Loan Agreement as if they were specifically set forth herein.

8. **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 August 27, 1999, in Case No. 99-0281-S-CN, in full force and effect, with the time for rehearing and appeal having expired.

9. **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.

10. **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.

11. **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 Loan Agreement and the Ordinance.

12. **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 January 25, 1991, 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 Loan Agreement.

13. **TRUTH AND ACCURACY:** As of the date hereof, Lewis Full, Mayor, and Penny McVay, 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.

14. **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 Authority and being substantially in the form prescribed in the Ordinance.

15. **BOND PROCEEDS:** On the date hereof, the Town received \$92,561.00 from the Authority and DEP, 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.

16. **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").

17. **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.

18. **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.

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

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

WITNESS our signatures and the official seal of the Town of Elizabeth on the 31st day of August, 1999.

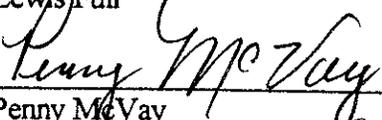
SIGNATURE

OFFICIAL TITLE



Lewis Full

Mayor



Penny McVay

Recorder



Theodore Davitan

Attorney

Exhibit A

(Specimen Bond-See Tab 32)

1

2

\$108,000
TOWN OF ELIZABETH
SEWER REVENUE BOND,
SERIES 1999

CERTIFICATE OF CONSULTING ENGINEER

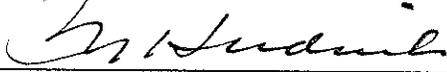
I, James B. Hildreth, Consulting Engineer, Spencer West Virginia, a Registered Professional Engineer, West Virginia License No. 7719, hereby certify that I am the engineer for the acquisition, construction and equipping of certain additions, betterments and improvements to the sewer system (herein called 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 August 30, 1999 (the "Ordinance"), and the Loan Agreement by and among the Issuer, the West Virginia Water Development Authority (the "Authority"), and the West Virginia Division of Environmental Protection ("DEP") dated August 19, 1999.

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 sewer system improvements based upon approved plans, specifications and designs which will be prepared by my firm as described in and in accordance with the application submitted to the Authority requesting the Authority to purchase the Bond (the "Application") and which have been or will be approved by all necessary governmental bodies, (ii) the Project is adequate for the purpose for which it will be constructed and will have an estimated useful life of at least twenty (20) years, (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 described in the Application 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 the West Virginia Division of Environmental Protection; (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) the rates and charges for the System as adopted by the Town Council of the Issuer are or will be sufficient to comply with the provisions of Subsection 4.1(b) of the Loan Agreement, (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 as set forth in the Application, and (xi) attached hereto as Exhibit B is the final amended "Schedule A - Total Cost of Project and Sources of Funds" for the Project.

WITNESS my signature on this 31st day of August, 1999.

JAMES B. HILDRETH, CONSULTING ENGINEER

By: 

Engineer

West Virginia License No. 7719

[SEAL]

SCHEDULE A

Rev. 8/30/99

Name of Governmental Agency: TOWN OF ELIZABETH
 Project Description: WASTEWATER SYSTEM IMPROVEMENTS

FINAL TOTAL COST OF PROJECT, SOURCES OF FUNDS AND COST OF FINANCING

	<u>Total</u>	<u>SRF Loan</u>	<u>ARC Grant</u>
A. Cost of Project			
1. Construction (Based on Actual Bids)	\$ 378,636.90	\$ 15,439.00	\$ 363,197.90
2. Technical Services			
Design Phase	\$ 26,600.00	26,600.00	0
SSES	9,953.00	9,953.00	0
Video Inspection	41,914.00	41,914.00	0
Aerial Mapping	5,000.00	5,000.00	0
Bid Phase	3,800.00	3,800.00	0
Construction Phase	8,733.00	0	8,733.00
Inspection	29,000.00	0	29,000.00
Subtotal	125,000.00	87,267.00	37,733.00
3. Legal and Fiscal	2,500.00	0	2,500.00
4. Administration	1,000.00	544.00	456.00
5. Sites and Other Lands	0	0	0
6. Fac. Plan/Design or Other Loan Repayment -	0	0	0
7. Interim Financing Costs	0	0	0
8. Contingency	27,863.10	0	27,863.10
9. Total	535,000.00	103,250.00	431,750.00
B. Source of Funds			
10. Federal Grant:	432,000.00	0	0
11. State Grants:	0	0	0
12. Other Grants:	0	0	0
13. Any Other Source:	0	0	0
14. Total	432,000.00	0	0
15. Net Proceeds Required from Bond Issue (Line 9 minus Line 14)	103,000.00	103,250.00	431,750.00
C. Cost of Financing			
16. Capitalized Interest	0	0	0
17. Funded Reserve Account	0	0	0
18. Other Costs (Bond Counsel)	5,000.00	4,750.00	250.00
19. Total Cost of Financing	5,000.00	4,750.00	250.00
20. Size of Bond Issue	\$ 108,000.00	\$ 108,000.00	

Town of Elizabeth

Boyles & Hildreth, Consulting Engineers

Lewis Tull
Mayor
8-31-99
Date

[Signature]
B. 31. 99
Date

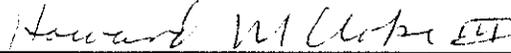
HOWARD M. CLOKE III
Certified Public Accountant
P. O. Box 513
Barboursville, West Virginia 25504
Tel & Fax 1-304-736-8162

\$108,000
TOWN OF ELIZABETH
SEWER REVENUE BONDS
SERIES 1999

CERTIFIED PUBLIC ACCOUNTANT'S CERTIFICATE

I, Howard M. Cloke III, a Certified Public Accountant, License No. 1181, Barboursville, West Virginia, have reviewed the sewer service rates which were enacted by the Town of Elizabeth (the "Town"), by a Rate Ordinance enacted on January 25, 1991, 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 1999 Bonds and the 1982 Bonds, as defined in the Bond Ordinance, and to meet the one hundred fifteen percent (115%) debt service coverage requirement of the 1982 Bonds and the 1999 Bonds and the Bond Ordinance enacted by the Town Council of the Town and effective on August 30, 1999, and are sufficient to comply with the provisions of the Loan Agreement entered into among the Town, the West Virginia Water Development Authority and the West Virginia Division of Environmental Protection dated August 19, 1999. 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 1999 Bonds, 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 1999 Bonds, 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 1999 Bonds and the 1982 Bonds.

WITNESS my signature as of this 30th day of August, 1999.



Certified Public Accountant

\$108,000
TOWN OF ELIZABETH
SEWER REVENUE BOND,
SERIES 1999

CERTIFICATE OF RECORDER AS TO TRUTH
AND ACCURACY OF DOCUMENTS DELIVERED

I, Penny McVay, the duly appointed 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 \$108,000 Town of Elizabeth, Sewer Revenue Bond, Series 1999 (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, supersedence, amendment or modification is also listed below:

1. Charter of the Issuer.
2. Oaths of Office of the Mayor, Recorder and Members of the Town Council (the "Council").
3. Sewage Rate Tariff authorized on January 25, 1991.
4. Minutes of the meeting of the Council wherein the Sewage Rate Tariff was adopted.
5. Bond Ordinance (the "Ordinance") enacted on August 30, 1999.
6. Minutes of the August 5 and August 12, 1999 meetings and the August 30, 1999 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 Journal.
8. Loan Agreement dated August 19, 1999.
9. Recommended Decision of the Public Service Commission of West Virginia entered on August 27, 1999, which became final on August 27, 1999, in Case No. 99-0281-S-CN.
10. Approval Letter from the West Virginia Infrastructure and Jobs Development Council dated October 15, 1996.

WITNESS my signature and the official seal of the Town of Elizabeth as of the 31st day of August, 1999.


Recorder

(SEAL)



WRD 1A-82
Revised 11/97



STATE OF WEST VIRGINIA
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF WATER RESOURCES
1201 GREENBRIER STREET
CHARLESTON, WV 25311

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
WATER POLLUTION CONTROL PERMIT

Permit No.: WV0041505

Issue Date: June 30, 1999

Subject: Sewage Facilities

Effective Date: July 30, 1999

Expiration Date: June 29, 2004

Supersedes: WV/NPDES Permit No. WV0041505
issued July 2, 1992

Location: Elizabeth
(City)

Wirt
(County)

Little Kanawha
(Drainage Basin)

Outlets Site: Latitude: 39° 03' 59" North
Longitude: 81° 23' 58" West

To whom it may concern:

This is to certify that
Town of Elizabeth
P.O. Box 478
Elizabeth, WV 26143

is hereby granted a NPDES Water Pollution Control Permit to: to operate and maintain an existing sewage collection & treatment system consisting of approximately 34,000 linear feet of 6-inch, 8-inch, and 10-inch gravity sewer line, 133 manholes, two(2) duplex pump lift stations with 4 & 6 inch force mains, a duplex grit chamber, followed by a bar screen, flow measuring unit, and a 0.14 MGD-three (3) cell aerated lagoon system with capacities as follows: cells No. 1&2 - 1,190,227 gallons each and cell No. 3 - 1,153,514 gallons plus two(2) 2,356 gallon chlorine contact tanks; also to install de-chlorination and reduce inflow/infiltration in the collection system as required herein under Sections B & C.

This system is designed to serve 460 customers of the Town of Elizabeth and discharge treated wastewater to the Little Kanawha River (27.1 miles from its mouth) of the Ohio River.

This permit is subject to the following terms and conditions:

The information submitted on and with Permit Application No. WV0041505 dated the 28th day of October 1998 plus Engineering Report on collection system improvement project dated August 1998, also additional information received on April 23, 1999 are all hereby made terms and conditions of this Permit with like effect as if all such permit application information were set forth herein and with other conditions set forth in Sections A, B, C, and Appendix A.

The validity of this permit is contingent upon the payment of the applicable annual permit fee, as required by Chapter 22, Article 11, Section 10 of the Code of West Virginia.

1

2

\$108,000
TOWN OF ELIZABETH
SEWER REVENUE BONDS,
SERIES 1999
(STATE REVOLVING FUND)

CONSENT TO ISSUANCE OF PARITY BOND

The West Virginia Water Development Authority (the "Authority"), as the registered owner of the Town of Elizabeth, Sewer Revenue Bond, Series 1982A and 1982B, issued pursuant to an ordinance enacted on February 9, 1981, as supplemented by a resolution adopted on September 9, 1982 (the "Prior Bonds"), hereby consents to the issuance by the Town of Elizabeth, West Virginia (the "Town"), of not more than \$108,000 in aggregate principal amount of parity sewer revenue bonds (the "1999 Bond") to be sold to the West Virginia Water Development Authority, on behalf of the Division of Environmental Protection. The Authority hereby further consents that the 1999 Bond may be payable from the revenues of the sewer system of the Town and otherwise secured on a parity with the Prior Bonds. This consent is given pursuant to Section 6.08 of the ordinance authorizing the Prior Bonds, as amended.

By the execution of this Consent, the undersigned hereby certifies that he is fully empowered and authorized to execute this Consent on behalf of the Authority.

WITNESS my signature this 31st day of August, 1999.

WEST VIRGINIA WATER
DEVELOPMENT AUTHORITY

By: 
Director



REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 31st day of August, 1999, by and between TOWN OF ELIZABETH, a municipality, public corporation and political subdivision duly created under the laws of the State of West Virginia (the "Issuer"), and WESBANCO TRUST AND INVESTMENT SERVICES, a Division of WesBanco Bank Wheeling, a state banking corporation, having its principal office in Wheeling, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$108,000 aggregate principal amount of Sewer Revenue Bond, Series 1999 (State Revolving Fund), in fully registered form (the "Bond"), pursuant to an Ordinance enacted by the Issuer and effective on August 30, 1999 (the "Ordinance");

WHEREAS, capitalized words and terms used in this Registrar's Agreement and not otherwise defined herein shall have the respective meanings given them in the Ordinance, a copy of which is attached as Exhibit A hereto and incorporated herein by reference;

WHEREAS, the Ordinance provides for the appointment by the Issuer of a Registrar for the Bond; and

WHEREAS, the Issuer desires to appoint, and by the Ordinance and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Ordinance and to take certain other actions hereinafter set forth.

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Upon the execution of this Registrar's Agreement by the Issuer and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the powers and duties of the Registrar, all as set forth in the Ordinance, such duties including, among other things, the duties to authenticate, register and deliver the Bond upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exemption of interest on the Bond from federal income taxation, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as the Issuer advises it of and with generally accepted industry standards.

2. The Registrar agrees to furnish the Issuer with appropriate records of all transactions carried out by it as Registrar and to furnish the Issuer with the names and specimen signatures of the Registrar's authorized officers for the purposes of acting as the Registrar and with such other information and reports as the Issuer may from time to time reasonably require.

3. The Registrar shall have no responsibility or liability for any action taken by it at the specific direction of the Issuer.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Issuer hereby agrees to pay to the Registrar, from time to time, reasonable compensation for services rendered and reimbursement for reasonable expenses incurred in connection therewith.

5. It is intended that this Registrar's Agreement shall carry out and implement the provisions of the Ordinance with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Ordinance, the terms of the Ordinance shall govern.

6. The Issuer and the Registrar each warrants and represents that it is duly authorized and empowered to execute and enter into this Registrar's Agreement and that neither such execution nor the performance of its duties hereunder or under the Ordinance will violate any order, decree or agreement to which it is a party or by which it is bound.

7. This Registrar's Agreement may be terminated by either party upon sixty (60) days' written notice sent by registered or certified mail to the other party, at the following respective addresses:

ISSUER: Town of Elizabeth
 Attention: Mayor
 P.O. Box 478
 Elizabeth, WV 26143

REGISTRAR: WesBanco Trust and Investment Services, a Division
 of WesBanco Bank Wheeling
 Attention: Rhonda J. Revels
 1 Bank Plaza
 Wheeling, WV 26003-3565

8. The Registrar is hereby requested and authorized to authenticate and deliver the Bond in accordance with the Ordinance and instructions provided by the Issuer and the Purchaser thereof.

IN WITNESS WHEREOF, TOWN OF ELIZABETH and WESBANCO TRUST AND INVESTMENT SERVICES, a Division of WesBanco Bank Wheeling, have caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the day, month and year first above-written.

TOWN OF ELIZABETH

By: Lewin Full
Mayor

WESBANCO TRUST AND INVESTMENT SERVICES,
a Division of WesBanco Bank Wheeling

By: Rhonda J. Revela
Senior Trust Officer

Exhibit A

See Ordinance (Tab No. 5)

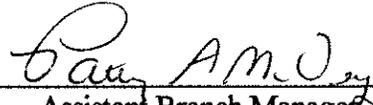
\$108,000
TOWN OF ELIZABETH
SEWER REVENUE BOND,
SERIES 1999

ACCEPTANCE OF DUTIES AS DEPOSITORY BANK

WesBanco Bank Parkersburg, 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 August 30, 1999 (the "Ordinance"), authorizing issuance by the Town of its Sewer Revenue Bond, Series 1999, dated August 31, 1999, in the aggregate principal amount of \$108,000, and agrees to perform all duties of Depository Bank as set forth in the Ordinance.

Witness my signature as of the 31st day of August, 1999.

WesBanco Bank Parkersburg, Elizabeth Branch

By: 
Assistant Branch Manager

\$108,000
TOWN OF ELIZABETH
SEWER REVENUE BOND,
SERIES 1999
(STATE REVOLVING FUND)

ACCEPTANCE OF DUTIES AS REGISTRAR

WesBanco Trust and Investment Services, a Division of WesBanco Bank Wheeling, a state banking corporation, with its principal office located in Wheeling, Ohio County, West Virginia, hereby accepts appointment as Registrar in connection with an Ordinance of the Town of Elizabeth (the "Town") duly enacted by the Town Council of the Town and effective on August 30, 1999, authorizing the issuance by the Town of Elizabeth of its Sewer Revenue Bond, Series 1999, dated August 31, 1999, in the aggregate principal amount of \$108,000, and agrees to perform all duties of Registrar as set forth in the Ordinance.

Witness my signature as of the 31st day of August, 1999.

WESBANCO TRUST AND INVESTMENT SERVICES,
a Division of WesBanco Bank Wheeling

By: Rhonda J. Revels
Senior Trust Officer

REQUEST AND AUTHORIZATION AS TO AUTHENTICATION
AND DELIVERY OF THE BOND

August 31, 1999

WesBanco Trust and Investment Services, a Division
of WesBanco Bank Wheeling
1 Bank Plaza
Wheeling, WV 26003-3565

Ladies and Gentlemen:

We herewith hand to you, duly executed, the \$108,000 Town of Elizabeth, Sewer Revenue Bond, Series 1999 (State Revolving Fund) (the "Bond"), in the form of one bond, numbered R-1, of the Town of Elizabeth (the "Town"), authorized to be issued under and pursuant to the Ordinance, duly enacted by the Town Council of the Town and effective on August 30, 1999.

You are hereby requested and authorized to authenticate and register the Bond and to deliver the Bond on behalf of the Town to the West Virginia Water Development Authority, the original purchaser thereof, upon receipt by the Town of \$92,561.00, being more than a de minimis portion of the \$108,000 proceeds of the Bond.

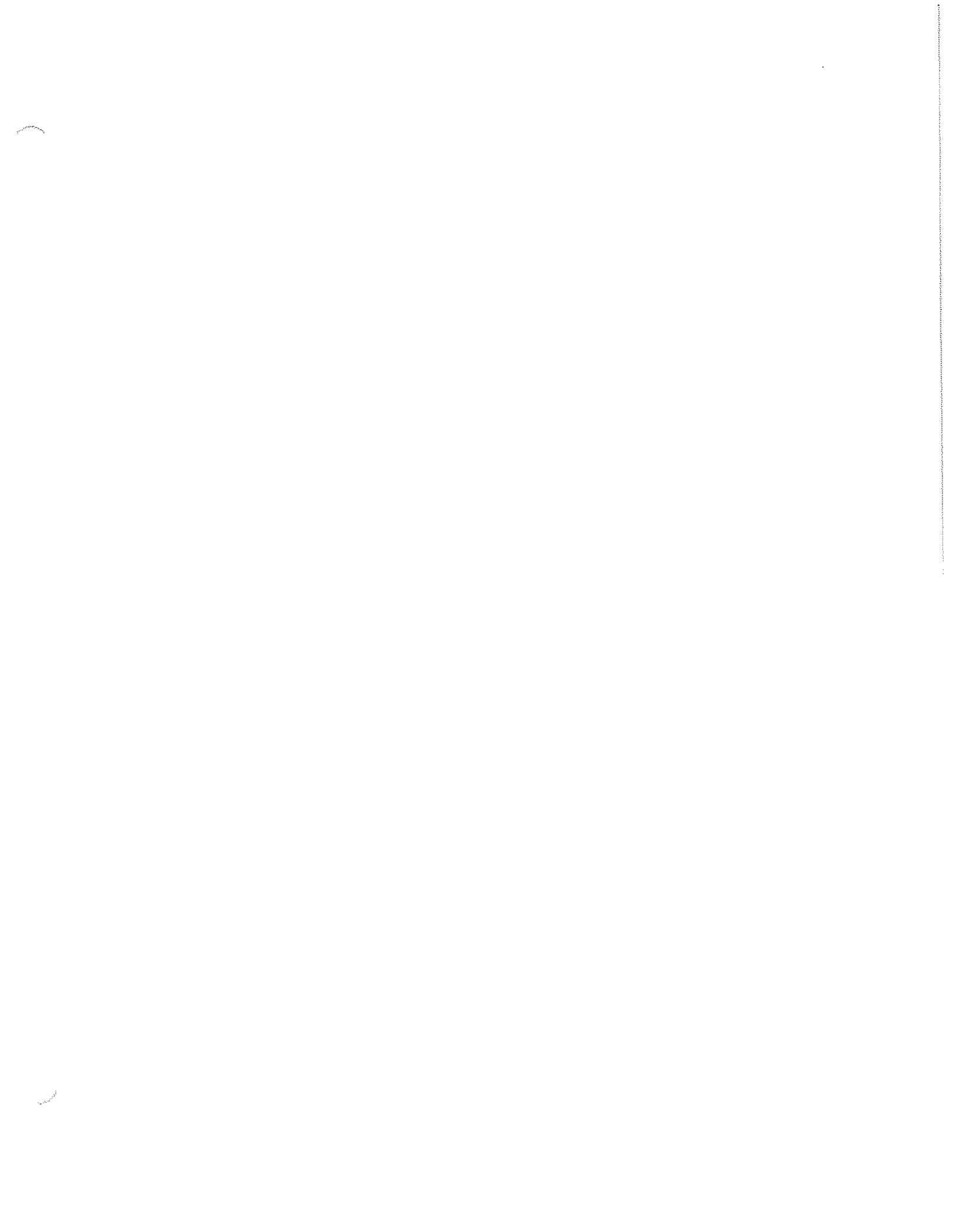
TOWN OF ELIZABETH

By: *Lewin Full*
Mayor

(SEAL)

Attest

Jimmy McVay
Recorder



\$108,000
TOWN OF ELIZABETH
SEWER REVENUE BOND,
SERIES 1999
(STATE REVOLVING FUND)

CERTIFICATE OF REGISTRATION OF BONDS

I, Rhonda J. Revels, Senior Trust Officer of WesBanco Trust and Investment Services, a Division of WesBanco Bank Wheeling, as Registrar (the "Registrar"), under a Registrar's Agreement between the Registrar and the Town of Elizabeth (the "Town") dated as of the date hereof, hereby certify that on the 31st day of August, 1999, the bond of the Town in the principal amount of \$108,000 designated "Town of Elizabeth Sewer Revenue Bond, Series 1999 (State Revolving Fund)", and numbered R-1, dated as of the date hereof, was registered as to principal and interest in the name of "The West Virginia Water Development Authority" on the books of the Registrar kept for that purpose at our office, by a duly authorized officer on behalf of the Registrar.

WITNESS my signature as of the 31st day of August, 1999.

WESBANCO TRUST AND INVESTMENT SERVICES,
a Division of WesBanco Bank Wheeling

By: Rhonda J. Revels
Senior Trust Officer

BOND REGISTRY

\$108,000
TOWN OF ELIZABETH
SEWER REVENUE BOND,
SERIES 1999

<u>BOND NO.</u>	<u>AMOUNT</u>	<u>HOLDER</u>	<u>DATE ACQUIRED</u>
R-1	\$108,000	West Virginia Water Development Authority 180 Association Drive Charleston, WV 25311-1571	August 31, 1999

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

\$108,000
TOWN OF ELIZABETH
SEWER REVENUE BOND,
SERIES 1999

CROSS-RECEIPT FOR BONDS AND BOND PROCEEDS

The undersigned Daniel B. Yonkosky, Director of the West Virginia Water Development Authority (the "WDA"), and Lewis Full, Mayor of the Town of Elizabeth, Wirt County, West Virginia (the "Issuer"), hereby certify as follows:

1. On the 31st day of August, 1999, the WDA received the entire original issue in aggregate principal amount of \$108,000 of the Sewer Revenue Bond, Series 1999, of the Issuer (the "Bond"). The Bond, as so received on original issuance, is dated August 31, 1999, and is issued as Bond Number R-1, in the denomination of \$108,000.

2. At the time of such receipt of the Bond, the Bond had been executed by Lewis Full, as Mayor of the Issuer, by his manual signature, and by Penny McVay, as 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 the WDA, as the original purchaser of the Bond, of \$92,561.00, 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 as described in the Loan Agreement.

IN WITNESS WHEREOF, this receipt has been signed and delivered on behalf of the West Virginia Water Development Authority, and the Town of Elizabeth, Wirt County, West Virginia, has caused this receipt to be executed by its Mayor, as of the 31st day of August, 1999.

WEST VIRGINIA WATER DEVELOPMENT
AUTHORITY

By: *Daniel B. Yonkosky*
Director

TOWN OF ELIZABETH

By: *Lewis Full*
Mayor

TOWN OF ELIZABETH

P.O. BOX 478 ELIZABETH, WV 26143 TELEPHONE 304-275-3200 FAX NUMBER 304-275-3038

MAYOR
Lewis Full

COUNCIL
MEMBERS

James Cumberledge
Carl "Bud" George
Edith Cumberledge
Ken Stempowski
Anna Nancy
Dennis "Dex" Gage

August 24, 1999

West Virginia Water Development Authority
180 Association Drive
Charleston WV 25311-1571

NOTICE OF DELIVERY OF BONDS

Pursuant to Paragraph 3.4 of the Loan Agreement among the West Virginia Water Development authority, the West Virginia Division of Environmental Protection and the Town of Elizabeth, you are hereby notified that the Town can deliver the Bond on any date on or after August.

TOWN OF ELIZABETH

By *Lewis H Full*
Mayor

copy as a Termination Statement

This FINANCING STATEMENT is presented to a filing officer for filing pursuant to the Uniform Commercial Code:

3. Maturity date (if any): **8/31/2019**

1. Debtor(s) (Last Name First) and address(es)

**Town of Elizabeth
P.O. Box 478
Elizabeth, WV 26143-0478**

2. Secured Party(ies) and address(es)

**West Virginia Water Dev.
Authority
180 Association Drive
Charleston, WV 25311-1571**

For Filing Officer (Date, Time, Number, and Filing Office)

**0524741
99 SEP -1 PM 3:22
FILED**

4. This financing statement covers the following types (or items) of property:

Statutory mortgage lien on accounts, revenues, sewer system and other property as provided by Bond Ordinance authorizing the issuance of \$108,000 Town of Elizabeth, Sewer Revenue Bonds, Series 1999, and by Chapter 16, Article 13 of the Code of West Virginia of 1931, as amended.

This Financing Statement is filed in connection with a public bond issue of the Town of Elizabeth, Wirt County, West Virginia. Pursuant to the provisions of Section 46-9-403(8) of the Code of West Virginia of 1931, as amended, no continuation statements need to be filed to continue this financing statement in effect throughout the term of the underlying bond issue.

5. Assignee(s) of Secured Party and Address(es)

This statement is filed without the debtor's signature to perfect a security interest in collateral. (check if so)

- already subject to a security interest in another jurisdiction when it was brought into this state.
- which is proceeds of the original collateral described above in which a security interest was perfected:

Check if covered: Proceeds of Collateral are also covered. Products of Collateral are also covered. No. of additional Sheets presented:

Filed with:

Secretary of State of WV

Town of Elizabeth

By: *Lewis Hill* **Mayor**
Signature(s) of Debtor(s)

West Virginia Water Development Authority

By: *David Blanton* **Director**
Signature(s) of Secured Party(ies)

STANDARD FORM - FORM UCC-1.

(2) FILING OFFICER COPY - NUMERICAL

LAW OFFICES
GOODWIN & GOODWIN, LLP
P. O. BOX 2107
1500 ONE VALLEY SQUARE
CHARLESTON, WEST VIRGINIA 25328-2107
304/346-7000
TELECOPIER 304/344-9692

201 THIRD STREET
PARKERSBURG, WEST VIRGINIA 26101
304/485-2345

P. O. BOX 349
500 CHURCH STREET
RIPLEY, WEST VIRGINIA 25271
304/372-2651

REPLY TO
Charleston

August 31, 1999

West Virginia Water Development
Authority
180 Association Drive
Charleston, West Virginia 25311-1571

Re: \$108,000
Town of Elizabeth
Sewer Revenue Bond
Series 1999 (State Revolving Fund)

Gentlemen:

We are bond counsel to the Town of Elizabeth (the "Town"), a municipality, public corporation and political subdivision duly created under the laws of the State of West Virginia located in Wirt County, West Virginia.

We have examined a certified copy of proceedings and other papers relating to (i) the authorization of the Loan Agreement, dated August 19, 1999, including all schedules and exhibits attached thereto (the "Loan Agreement"), among the Town, the West Virginia Water Development Authority (the "Authority") and the West Virginia Division of Environmental Protection ("DEP") and (ii) the issuance of a sewer system revenue bond of the Town, dated August 31, 1999 (the "Bond"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Bond is in the principal amount of \$108,000, and is issued in the form of one bond registered as to principal and interest to the Authority.

Interest on the Bond shall be paid on the unpaid principal balance of the Bond at zero percent (0%), plus an annual administrative fee of one percent (1%) payable quarterly. Principal on the Bond is payable in quarterly installments commencing March 1, 2001, and thereafter in quarterly installments on each March 1, June 1, September 1 and December 1, as set forth on the "Debt Service Schedule" attached as Schedule Y to the Loan Agreement. The final installment of principal on the Bond shall be paid at the end of twenty (20) years from the date amortization of debt service on the Bond begins.

GOODWIN & GOODWIN, LLP

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

We have also examined the applicable provisions of Chapter 16, Article 13 and Chapter 22C, Article 2 of the Code of West Virginia of 1931, as amended (the "Act"), and the Bond has been authorized by a Bond Ordinance duly enacted by the Town Council of the Town ("Council") effective on August 30, 1999 (the "Ordinance"), pursuant to and under which Act and Ordinance the Bond is authorized and issued, and the Loan Agreement has been undertaken. The 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 and the Loan Agreement.

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 Sewage Rate Ordinance, sewer 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 Loan Agreement has been duly authorized by and executed on behalf of the Town and is a valid and binding special obligation of the Town enforceable in accordance with the terms thereof.
2. The Loan Agreement inures to the benefit of the Authority and DEP and cannot be amended so as to affect adversely the rights of the Authority or DEP or diminish the obligations of the Town without the consent of the Authority and DEP.
3. The Town is a duly organized and presently existing municipality, public corporation and political subdivision duly created under the laws of the State of West Virginia, with full power and authority to acquire, construct and equip the Project and to operate and maintain the System referred to in the Loan Agreement and to issue and sell the Bond, all under the Act and other applicable provisions of law. The Town has taken all legal action necessary to operate a sewer system.
4. 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 Bond. The Ordinance contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.
5. The 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 lien on and pledge of the net revenues of said System on a parity with the Town's Sewer Revenue Bonds, Series 1982 A (the "1982 A Bonds"), and senior to the Town's Sewer Revenue Bonds, Series 1982 B (the "Series 1982 B Bonds") all in accordance with the terms of the Bond, the Ordinance and the Sewage Rate Ordinance adopted on January 25, 1991, and has been duly issued and delivered to the Authority. The Town has reserved the right to issue additional bonds ranking on a parity with the Bond and the 1982 A Bonds, as provided in the Ordinance. The Town has certified, and an independent certified public accountant has verified, that the rates and charges generated by the Sewage Rate Ordinance are sufficient to pay the principal of and interest on the Bond and on the 1982 A and B Bonds, when due. The Ordinance

GOODWIN & GOODWIN, LLP

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.

6. Under the Act, as presently written and applied, the Bond and the income thereon are exempt from taxation by the State of West Virginia pursuant to the provisions of Section 16-13-22f of the Code of West Virginia of 1931, as amended.

No opinion is given herein as to the effect upon enforceability of the 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 Bond and its execution and authentication are regular and proper.

Respectfully submitted,

Goodwin & Goodwin, LLP

GOODWIN & GOODWIN, LLP

THEODORE DAVITIAN
Attorney-At-Law
P. O. Box 120, Elizabeth, WV 26143
(304) 275-8901
FAX (304) 275-3418

August 31, 1999

West Virginia Water Development
Authority
180 Association Drive
Charleston, West Virginia 25311-1571

Jackson & Kelly PLLC
P. O. Box 553
Charleston, West Virginia 25322

Re: \$108,000 Town of Elizabeth
Sewer Revenue bond, Series 1999 (State Revolving Fund)

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 "Bonds"), the Loan Agreement by and among the West Virginia Water Development Authority (the "Authority"), the West Virginia Division of Environmental Protection (the "Division"), and the Town, dated August 19, 1999, and an Ordinance duly enacted by the Town Council of the Town (the "Council") and effective on August 30, 1999 (the "Ordinance"), and other documents relating to the Bonds. Terms used in this opinion and not otherwise defined herein shall have the same meanings as contained in the Loan Agreement and 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 Loan Agreement and to issue and sell the Bonds, all under the Ordinance and other applicable provisions of Law.
2. The Loan Agreement has been duly authorized, executed and delivered by the Town, and assuming due authorization, execution and delivery by the Authority and the Division, constitutes a valid and binding agreement of the Town in accordance with its terms.
3. The members of the Town Council were duly and properly elected or appointed and are thereby authorized to act on behalf of the Town.
4. The Ordinance has been duly enacted by the Council and is in full force and effect.

5. The execution and delivery of the Bonds and the Loan Agreement and the consummation of the transactions contemplated by the Ordinance and the Loan Agreement 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.

6. 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.

7. The Town has obtained from the West Virginia Public Service Commission a valid, final and non-appealable Commission Order in Case No. 99-0281-S-CN which lawfully authorizes the Town to proceed with the acquisition and construction of the Town's sewer system extension and approval of issuance of the above-captioned bond.

8. To the best of my knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public council or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by or the validity of the Bonds 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 Bonds 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/clh

Very truly yours,

THEODORE DAVITIAN

Attorney-At-Law

P. O. Box 120, Elizabeth, WV 26143

(304) 275-8901

FAX (304) 275-3418

August 31, 1999

West Virginia Division of Environmental Protection
617 Broad Street
Charleston, WV 25301

Re: Town of Elizabeth, West Virginia
1999 Sewer Bond

Ladies & Gentlemen:

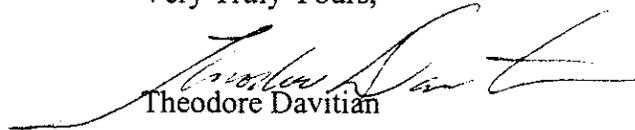
This firm represents the Town of Elizabeth, West Virginia with regard to a proposed project to construct a sewer treatment and collection system for the Town of Elizabeth (the "Project"), and provide this final title opinion on behalf of the Town of Elizabeth, West Virginia to satisfy the requirements of the West Virginia Division of Environmental Protection ("DEP") with regard to the "DEP" financing proposed for the Project. Please be advised of the following:

1. That I am of the opinion that the Town of Elizabeth, West Virginia is a duly created and existing municipality possessed with all the powers and authority granted to municipalities under the laws of the State of West Virginia and has the full power and authority to construct, operate and maintain the Project as approved by the Division of Environmental Protection and Health Department.
2. That the Town of Elizabeth, West Virginia has obtained approval for all necessary permits and approvals for the construction of the Project.
3. That I have investigated and ascertained the location of and am familiar with the legal description of the necessary sites, including easements and/or rights James Hildreth, P. E., the consulting engineer for the Project.
4. That I have examined the records on file in the Office of the Clerk of the County Commission of Wirt County, West Virginia, the county in which the Project is to be located, and, in my opinion, the Town of Elizabeth, West Virginia has required legal title or such estate or interest in the necessary site components for the project sufficient to assure undisturbed use and possession for the purpose of construction, operation and maintenance for the estimated life of the facilities to be constructed.

No properties are being acquired by eminent domain and the necessary filings have been made (or will be made prior to closing) in the Office of the Clerk of the County Commission of Wirt, West Virginia to permit the Town of Elizabeth, West Virginia a right-of-entry for the purpose of construction, operation and maintenance of the subject facilities on the subject properties. The Town of Elizabeth, West Virginia's title thereto is defeasible in the event the Town of Elizabeth, West Virginia does not satisfy any resulting judgment and/or award in the proceedings for acquisition of said properties, and our certification is subject to the pending litigation.

That all deeds or other documents which have been acquired to date by the Town of Elizabeth, West Virginia have been duly recorded in the aforesaid Clerk's Office in order to protect the legal title to and interest of the Town of Elizabeth, West Virginia.

Very Truly Yours,



Theodore Davitian

TD/clh





RECEIVED

DEC 26 1989

WATER DEVELOPMENT AUTHORITY

STATE OF WEST VIRGINIA
WATER DEVELOPMENT AUTHORITY
1201 DUNBAR AVENUE
DUNBAR, WV 25064
(304) 348-2612

August 21, 1985

The Honorable Lewis H. Full
Mayor, Town of Elizabeth
Post Office Box 1107
Elizabeth, West Virginia 26143

Re: Governmental Agency Bonds and Loan Agreement

Gentlemen:

As you know, the West Virginia Water Development Authority (the "Authority") owns two series of sewerage system revenue bonds (the "Governmental Agency Bonds") of the Town of Elizabeth (the "Governmental Agency"). The Governmental Agency Bonds were purchased by the Authority pursuant to the terms of a loan agreement, dated June 9, 1982, as to the Authority (the "Loan Agreement").

On June 19, 1985, the Authority issued \$46,320,000 in aggregate principal amount of West Virginia Water Development Authority Water Development Revenue Bonds (Loan Program), 1985 Series A (the "1985 Series A Bonds"). The proceeds of the 1985 Series A Bonds were used, among other things, to refund prior to maturity the Authority's 1982 Series A Bonds, a portion of the proceeds of which was used to purchase one of the series of the Governmental Agency Bonds. One of the reasons for the advance refunding was to effect modifications in certain of the local covenants required by the resolution pursuant to which the 1982 Series A Bonds were issued. Such modifications generally increased the number of years over which the reserve account may be built up to the reserve account requirement, reduced the debt service coverage requirement in general and reduced the debt service coverage required for the issuance of parity obligations. Accordingly, the Loan Agreement may be amended as follows:

1. Subsection 4.1(a) of the Loan Agreement may be amended to read as follows:

(a) That the revenues generated from the operation of the system will be used monthly

The Honorable Lewis H. Full
August 21, 1985
Page 2

first to pay operation and maintenance expenses of the System; second, to the extent not otherwise limited by an outstanding local resolution or ordinance, to provide debt service on the Local Bonds, which shall include the establishment of a reserve account for the payment of debt service on the Local Bonds (the "Reserve Account") into which shall be deposited an amount equal to one-twelfth (1/12) of one-tenth (1/10) of the amount necessary to fund the Reserve Account at an amount equal to the maximum amount of principal and interest which will come due on the Local Bonds in any year (the "Reserve Requirement") or, if the Reserve Account has been so funded (whether by monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement; third, to create a renewal and replacement, or similar, fund in an amount equal to two and one-half percent (2-1/2%) of the gross revenues of the System, exclusive of the payments into the Reserve Account, for the purpose of improving or making emergency repairs or replacements to the System, or eliminating any deficiencies in the Reserve Account; and fourth, to pay debt service on the Supplemental Bonds or to purchase Local Bonds on the open market, or to redeem Local Bonds, or to pay debt service on obligations junior and subordinate to the Local Bonds (other than the Supplemental Bonds). The gross revenues of the System shall always be used for purposes of the System.

The Honorable Lewis H. Full
August 21, 1985
Page 3

2. Subsection 4.1(b)(iii) of the Loan Agreement may be amended as follows:

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

3. Subsection 4.1(b)(vi) of the Loan Agreement may be amended as follows:

(vi) That the Governmental Agency shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if net revenues of the System prior to issuance of

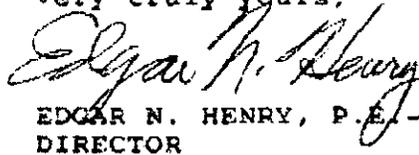
The Honorable Lewis H. Full
August 21, 1985
Page 4

such parity bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on all Local Bonds and parity bonds theretofore and then being issued and on any obligations secured by or payable from the revenues of the System prior to the Local Bonds; provided, however, that additional parity bonds may be issued to complete the Project, as described in the Application as of the date of the Loan Agreement, without regard to the foregoing.

The local act pursuant to which the Local Bonds were issued may also be amended to reflect the above modifications.

Please indicate the Governmental Agency's acceptance of these modifications by executing the copy of this letter attached and returning it, together with a certified copy of the official action of the Governmental Agency accepting such modifications, to the Authority.

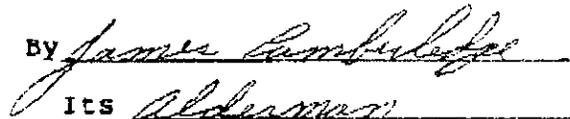
Very truly yours,


EDGAR N. HENRY, P.E.
DIRECTOR

cc: West Virginia Municipal Bond Commission

Accepted this 21st day of December, 1985.

TOWN OF ELIZABETH

By 
Its Alderman



WV MUNICIPAL BOND COMMISSION
812 Quarrier Street, Suite 300
Charleston, WV 25301
(304) 558-3971

NEW ISSUE REPORT FORM
Date of Report: August 25, 1999
(See Reverse for Instructions)

ISSUE: Town of Elizabeth, Sewer Revenue Bonds, Series 1999 (State Revolving Fund)
ADDRESS: P.O. Box 478, 200 Beverly Street
Elizabeth, WV 26143-0478 COUNTY: Wirt
PURPOSE: New Money X
OF ISSUE: Refunding ___ Refunds issue dated: N/A
ISSUE DATE: August 31, 1999 CLOSING DATE: August 31, 1999
ISSUE AMOUNT: \$108,000 RATE: 0%
1ST DEBT SERVICE DUE: March 1, 2001 1ST PRINCIPAL DUE: March 1, 2001
1ST DEBT SERVICE AMOUNT: \$1,350.00 PAYING AGENT: Municipal
Bond Commission

BOND COUNSEL: Goodwin & Goodwin, LLP
Contact Person: W.K. Bragg, Jr.
Phone 346-7000
REGISTRAR: WesBanco Bank Wheeling
WesBanco Trust and Investment
Services, a Division of
Contact Person: Janet L. Shelburne
Phone: (304) 234-9436

LENDER: WV Division of Environmental Protection
Contact Person: Rosalee Broaderson
Phone: 558-0641

LENDER'S COUNSEL: Jackson & Kelly PLLC
Contact Person: Samme L. Gee
Phone: 340-1318

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

-----DEPOSITS TO MBC AT CLOSE:

	___	Accrued Interest:	\$	<u>0</u>
	___	Capitalized Interest:	\$	<u>0</u>
By ___	Wire	___	Reserve Account:	\$ <u>0</u>
___	Check	___	Other: _____	\$ _____

-----REFUNDS & TRANSFERS BY MBC AT CLOSE:

	___	To Escrow Trustee:	\$	<u>N/A</u>
By ___	Wire	___	To Issuer:	\$ <u>N/A</u>
___	Check	___	To Cons. Invest. Fund:	\$ <u>N/A</u>
___	IGT	___	Other: _____	\$ _____

Notes: _____

FOR MUNICIPAL BOND COMMISSION USE ONLY:

DOCUMENTS

REQUIRED: _____

TRANSFERS

REQUIRED: _____

80000 SERIES
10% P.C.W.



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 27th day of August, 1999.

CASE NO. 99-0281-S-CN

TOWN OF ELIZABETH, a municipal corporation.

Application for a certificate of convenience and necessity to replace existing sanitary sewer lines in various locations within the Town of Elizabeth, Wirt County.

COMMISSION ORDER

On February 24, 1999, the Town of Elizabeth (Town), a municipal corporation located in Wirt County, West Virginia, filed an application for a certificate of convenience and necessity to replace existing sanitary sewer lines in various locations within the Town. According to the application, the construction will cost approximately \$540,000.00 and is to be financed as follows: an Appalachian Regional Commission (ARC) grant in the amount of \$432,000.00; a State Revolving Fund Loan (SRF) in the amount of \$88,000.00; and local funds in the amount of \$20,000.00. The Town proposes no increase in its current rates.

In an order entered March 2, 1999, and a Corrective Order entered March 3, 1999, the Town was directed to give notice of the filing 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, making due return to the Commission of proper certification of publication immediately after publication.

On March 16, 1999, Commission Staff filed its Initial Joint Staff Memorandum, recommending that the matter be referred to the Division of Administrative Law Judges (ALJ). Staff also requested additional Rule 42 information or a letter requesting a waiver of the requirements; the proposed terms and conditions of financing; and letters indicating commitment of funds.

This matter was referred to the ALJ by order entered March 22, 1999.

On March 26, 1999, the Town requested a waiver of the Rule 42 Exhibit requirements.

On March 29, 1999, the Town filed its cash flow analysis, bill analysis and a copy of its Rule 42 waiver request.

On April 16, 1999, Staff filed its Final Joint Staff Memorandum recommending that the Town's request for the waiver of the Rule 42 Exhibit requirements be granted.

On May 12, 1999, the Town filed its affidavit of publication, indicating that the Notice of Filing was published on March 17 and 24, 1999 in The Wirt County Journal, a newspaper of general circulation in Wirt County. Also on that date, Staff filed its Third Joint Staff Memorandum, requesting that the Town submit an updated NPDES Permit to the Commission when it becomes available.

By Procedural Order entered July 7, 1999, this matter was scheduled for hearing to be held on July 28, 1999. Staff was directed to file its substantive recommendation no later than July 19, 1999 and any settlement in this case was to be filed no later than July 22, 1999.

On July 9, 1999, Staff filed its Further Joint Staff Memorandum, in which it, among other things, recommended that the Town's application be granted upon submission of an updated NPDES Permit. Staff also filed a motion to cancel the hearing scheduled for July 28, 1999. Staff's motion was granted by order entered July 26, 1999.

In a letter dated July 26, 1999, the Town, among other things, indicated that it concurred with Staff's recommendation that the application be granted. Also on that date, the Town filed its updated NPDES Permit.

In a letter filed August 5, 1999, the Town sought to increase the SRF loan amount from \$88,000.00 to \$108,000.00, and to decrease the Town's contribution from \$20,000.00 to zero. The proposed modification would change neither the total project costs or rates nor the amount of the ARC grant.

In a Procedural Order entered August 16, 1999, the ALJ ordered, among other things, that Staff file a recommendation regarding the proposed change in the project's financing no later than August 27, 1999. Any response by the Town to Staff's recommendation must be filed no later than September 3, 1999.

In a Fifth Joint Staff Memorandum filed August 24, 1999, Staff recommended that the Commission approve the proposed change in the project's financing and grant the Town's application for a certificate of convenience and necessity. In the event there are any changes in the scope and/or financing of the project, Staff recommended that the Town be required to seek further Commission approval. Additionally, Staff recommended that the March 22, 1999 order referring this case to the ALJ be rescinded and that the matter be handled expeditiously.

In a letter received by the Commission via facsimile on August 26, 1999, the Town indicated that it concurs with Staff's recommendation and requested that an order in this case be issued as soon as possible, as the loan closing date for this project is August 31, 1999.

DISCUSSION

Based upon Staff's recommendation and the Town's response thereto, the Commission believes it to be fair and reasonable to approve the above-described change in the project's financing and to grant the Town's application for a certificate of convenience and necessity. The Town is required to seek Commission approval should there be any further changes in the scope and/or financing of the project. The Commission will rescind the Referral Order entered March 22, 1999 and will grant the requests for expedited treatment of this matter.

FINDINGS OF FACT

1. On February 24, 1999, the Town of Elizabeth (Town), a municipal corporation located in Wirt County, West Virginia, filed an application for a certificate of convenience and necessity to replace existing sanitary sewer lines in various locations within the Town.

2. According to the application, the construction will cost approximately \$540,000.00 and is to be financed as follows: an Appalachian Regional Commission (ARC) grant in the amount of \$432,000.00; a State Revolving Fund Loan (SRF) in the amount of \$88,000.00; and local funds in the amount of \$20,000.00. The Town proposes no increase in its current rates.

3. In an order entered March 2, 1999, and a Corrective Order entered March 3, 1999, the Town was directed to give notice of the filing 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, making due return to the Commission of proper certification of publication immediately after publication.

4. On March 16, 1999, Commission Staff filed its Initial Joint Staff Memorandum, recommending that the matter be referred to the Division of Administrative Law Judges (ALJ).

5. This matter was referred to the ALJ by order entered March 22, 1999.

6. On May 12, 1999, the Town filed its affidavit of publication, indicating that the Notice of Filing was published on March 17 and 24, 1999 in The Wirt County Journal, a newspaper of general circulation in Wirt County. Also on that date, Staff filed its Third Joint Staff Memorandum, requesting that the Town submit an updated NPDES Permit to the Commission when it becomes available.

7. On July 9, 1999, Staff filed its Further Joint Staff Memorandum, in which it, among other things, recommended that the Town's application be granted upon submission of an updated NPDES Permit.

8. In a letter dated July 26, 1999, the Town, among other things, indicated that it concurred with Staff's recommendation that the application be granted. Also on that date, the Town filed its updated NPDES Permit.

9. In a letter filed August 5, 1999, the Town sought to increase the SRF loan amount from \$88,000.00 to \$108,000.00, and to decrease the Town's contribution from \$20,000.00 to zero.

10. The proposed modification would change neither the total project costs or rates nor the amount of the ARC grant.

11. In a Procedural Order entered August 16, 1999, the ALJ ordered, among other things, that Staff file a recommendation regarding the proposed change in the project's financing no later than August 27, 1999. Any response by the Town to Staff's recommendation must be filed no later than September 3, 1999.

12. In a Fifth Joint Staff Memorandum filed August 24, 1999, Staff recommended that the Commission approve the proposed change in the project's financing and grant the Town's application for a certificate of convenience and necessity. In the event there are any changes in the scope and/or financing of the project, Staff recommended that the Town be required to seek further Commission approval.

13. Additionally, Staff recommended that the March 22, 1999 order referring this case to the ALJ be rescinded and that the matter be handled expeditiously.

14. In a letter received by the Commission via facsimile on August 26, 1999, the Town indicated that it concurs with Staff's recommendation and requested that an order in this case be issued as soon as possible, as the loan closing date for this project is August 31, 1999.

CONCLUSIONS OF LAW

1. The Commission will approve the change in financing for the project as proposed by the Town.

2. The Commission will grant the application for a certificate of convenience and necessity to replace existing sanitary sewer lines in various locations within the Town, filed February 24, 1999.

3. Any further changes in the scope and/or financing of the project must be approved by the Commission.

4. The Commission will rescind the Referral Order entered March 22, 1999.

5. The Commission will grant the requests for expedited treatment of this case made by both Staff and the Town.

ORDER

IT IS THEREFORE ORDERED that the application filed by the Town of Elizabeth, Wirt County, on February 24, 1999, for a certificate of convenience and necessity to replace existing sanitary sewer lines in various locations within the Town is hereby granted.

IT IS FURTHER ORDERED that the change in financing of the project, as described herein, is hereby approved.

IT IS FURTHER ORDERED that in the event the scope and/or financing of the project changes, the Town must seek further Commission approval.

IT IS FURTHER ORDERED that the Referral Order entered March 22, 1999 is hereby rescinded.

IT IS FURTHER ORDERED that this case is hereby resolved and 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.

A True Copy, Teste:



Sandra Squire
Executive Secretary

ARC
MSB/lfg
990281ca.wpd



STATE OF WEST VIRGINIA
WATER DEVELOPMENT AUTHORITY

1201 DUNBAR AVENUE
DUNBAR, WV 25064

Telephone (304) 558-3612
Telecopier (304) 558-0299

October 15, 1996

Kathryn Drost
Mid-Ohio Valley Regional Council
P.O. Box 247
Parkersburg, West Virginia 26102

Re: Town of Elizabeth
Sewer System Project

Dear Ms. Drost:

The West Virginia Infrastructure and Jobs Development Council (Council) has reviewed the Town of Elizabeth's (Town) preliminary application regarding its proposed project to correct the sewer system's inflow and infiltration, and 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 Sewer Technical Review Committee. The Town may need to address certain issues raised in said comments as it proceeds with the project.

Pursuant to its review of the preliminary application, the Council recommends the Town pursue funding of approximately \$432,000 in the form of a grant from the Appalachian Regional Commission and \$88,000 from the State Revolving Fund administered by the West Virginia Division of Environmental Protection. The Council understands that the Town will contribute \$20,000 of its own funds to assist in the financing of this project. Please contact the West Virginia Development Office at 558-4010 and the West Virginia Division of Environmental Protection at 558-0641 for specific information on the steps the Town needs to follow to apply for these funds. **Please note that this letter does not constitute funding approval from these funding agencies.**

If you have any questions regarding this matter, please contact Susan J. Riggs, Executive Secretary of the Council, at (304) 558-4607.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell L. Isaacs".

Russell L. Isaacs, Chairman
West Virginia Infrastructure and
Jobs Development Council

RLI/bjh
Enclosure

cc: Fred Cutlip
J. Michael Johnson, P.E.



UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
TOWN OF ELIZABETH
SEWER REVENUE BOND,
SERIES 1999
(STATE REVOLVING FUND)

No. R-1

\$108,000

Date: August 31, 1999

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 West Virginia Water Development Authority (the "Authority") or registered assigns, the sum of One Hundred Eight Thousand and 00/100 Dollars (\$108,000.00), 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 hereof at the rate set out below. Interest on this Bond is set at zero percent (0%) per annum, plus an annual administrative fee of one percent (1%) payable quarterly. Principal on the Bond is payable in quarterly installments commencing March 1, 2001, and thereafter in quarterly installments on each March 1, June 1, September 1 and December 1, as set forth on the "Debt Service Schedule" attached as Exhibit B hereto and incorporated herein by reference. The final installment of principal shall be paid at the end of twenty (20) years from the date amortization of debt service on the Bond begins and shall be in an amount equal to the amount of outstanding principal due on the Bond at said date. Notwithstanding any provision of this Bond to the contrary, this Bond shall evidence only the indebtedness reflected as outstanding on the Record of Advances attached hereto.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). Principal on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of WesBanco Trust and Investment Services, a Division of WesBanco Bank Wheeling, at its principal office in Wheeling, West Virginia (the "Registrar"), on the 15th day of the month next preceding such payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole at par, but only upon thirty (30) days prior written notice to the Authority and the West Virginia Division of Environmental Protection ("DEP") and upon the terms and conditions prescribed by and otherwise in compliance with the Loan Agreement by and among the Issuer, the Authority and DEP.

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 sewer facilities of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The sewer 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 16, Article 13 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and an Ordinance duly enacted by the Issuer and effective August 30, 1999 (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 1999 Bond Reserve Account") and unexpended proceeds of the Bonds on a parity with the Issuer's Sewer Revenue Bonds, Series 1982 A and senior to the Sewer Revenue Bonds, Series 1982 B (collectively, 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 1999 Bond Reserve Account and unexpended proceeds of the Bonds. 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 Bonds and the Prior Bonds, and all other obligations secured by a lien on or payable from such net revenues prior to or on a parity with the Bonds, provided however, that so long as there exists in the Series 1999 Bond Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or any succeeding year and in the reserve account established for any other obligations outstanding prior to or on a parity with the Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to one hundred ten percent (110%). The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Ordinance. More particularly, the Issuer has covenanted 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. Remedies provided the registered owners of the Bonds are exclusively as provided in the Ordinance, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Ordinance, only upon the books of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, 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.

THIS BOND IS ON A PARITY AS TO LIEN AND SOURCE OF PAYMENT WITH THE CERTAIN SEWER REVENUE BONDS, SERIES 1982, OF THE ISSUER DESCRIBED IN AN ORDINANCE ENACTED ON FEBRUARY 9, 1981, AND AMENDED BY A RESOLUTION APPROVED ON SEPTEMBER 13, 1982.

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 Recorder and has caused this Bond to be dated August 31, 1999.

SPECIMEN TOWN OF ELIZABETH

[SEAL]

By: Lewis Full
Mayor

ATTEST:

Lenny McVay
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is the Series 1999 Bond described in the within-mentioned Ordinance and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: August 31, 1999

SPECIMEN

WesBanco Trust and Investment Services,
a Division of WesBanco Bank Wheeling

By: Rhonda J. Revels
Senior Trust Officer

EXHIBIT A
RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$92,561.00	August 31, 1999	(6) \$ _____	
(2) \$ _____		(7) \$ _____	
(3) \$ _____		(8) \$ _____	
(4) \$ _____		(9) \$ _____	
(5) \$ _____		(10) \$ _____	
		TOTAL \$ _____	

EXHIBIT B

Town of Elizabeth (West Virginia)
Loan of \$108,000
20 Years, 0% Interest Rate, 1% Administrative Fee
Closing Date: August 31, 1999

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
9/01/1999	-	-	-
12/01/1999	-	-	-
3/01/2000	-	-	-
6/01/2000	-	-	-
9/01/2000	-	-	-
12/01/2000	-	-	-
3/01/2001	1,350.00	-	1,350.00
6/01/2001	1,350.00	-	1,350.00
9/01/2001	1,350.00	-	1,350.00
12/01/2001	1,350.00	-	1,350.00
3/01/2002	1,350.00	-	1,350.00
6/01/2002	1,350.00	-	1,350.00
9/01/2002	1,350.00	-	1,350.00
12/01/2002	1,350.00	-	1,350.00
3/01/2003	1,350.00	-	1,350.00
6/01/2003	1,350.00	-	1,350.00
9/01/2003	1,350.00	-	1,350.00
12/01/2003	1,350.00	-	1,350.00
3/01/2004	1,350.00	-	1,350.00
6/01/2004	1,350.00	-	1,350.00
9/01/2004	1,350.00	-	1,350.00
12/01/2004	1,350.00	-	1,350.00
3/01/2005	1,350.00	-	1,350.00
6/01/2005	1,350.00	-	1,350.00
9/01/2005	1,350.00	-	1,350.00
12/01/2005	1,350.00	-	1,350.00
3/01/2006	1,350.00	-	1,350.00
6/01/2006	1,350.00	-	1,350.00
9/01/2006	1,350.00	-	1,350.00
12/01/2006	1,350.00	-	1,350.00
3/01/2007	1,350.00	-	1,350.00
6/01/2007	1,350.00	-	1,350.00
9/01/2007	1,350.00	-	1,350.00
12/01/2007	1,350.00	-	1,350.00
3/01/2008	1,350.00	-	1,350.00
6/01/2008	1,350.00	-	1,350.00
9/01/2008	1,350.00	-	1,350.00
12/01/2008	1,350.00	-	1,350.00
3/01/2009	1,350.00	-	1,350.00
6/01/2009	1,350.00	-	1,350.00
9/01/2009	1,350.00	-	1,350.00
12/01/2009	1,350.00	-	1,350.00
3/01/2010	1,350.00	-	1,350.00
6/01/2010	1,350.00	-	1,350.00
9/01/2010	1,350.00	-	1,350.00
12/01/2010	1,350.00	-	1,350.00
3/01/2011	1,350.00	-	1,350.00

Town of Elizabeth (West Virginia)
Loan of \$108,000
20 Years, 0% Interest Rate, 1% Administrative Fee
Closing Date: August 31, 1999

DEBT SERVICE SCHEDULE

Date	Principal	Coupon	Total P+I
6/01/2011	1,350.00	-	1,350.00
9/01/2011	1,350.00	-	1,350.00
12/01/2011	1,350.00	-	1,350.00
3/01/2012	1,350.00	-	1,350.00
6/01/2012	1,350.00	-	1,350.00
9/01/2012	1,350.00	-	1,350.00
12/01/2012	1,350.00	-	1,350.00
3/01/2013	1,350.00	-	1,350.00
6/01/2013	1,350.00	-	1,350.00
9/01/2013	1,350.00	-	1,350.00
12/01/2013	1,350.00	-	1,350.00
3/01/2014	1,350.00	-	1,350.00
6/01/2014	1,350.00	-	1,350.00
9/01/2014	1,350.00	-	1,350.00
12/01/2014	1,350.00	-	1,350.00
3/01/2015	1,350.00	-	1,350.00
6/01/2015	1,350.00	-	1,350.00
9/01/2015	1,350.00	-	1,350.00
12/01/2015	1,350.00	-	1,350.00
3/01/2016	1,350.00	-	1,350.00
6/01/2016	1,350.00	-	1,350.00
9/01/2016	1,350.00	-	1,350.00
12/01/2016	1,350.00	-	1,350.00
3/01/2017	1,350.00	-	1,350.00
6/01/2017	1,350.00	-	1,350.00
9/01/2017	1,350.00	-	1,350.00
12/01/2017	1,350.00	-	1,350.00
3/01/2018	1,350.00	-	1,350.00
6/01/2018	1,350.00	-	1,350.00
9/01/2018	1,350.00	-	1,350.00
12/01/2018	1,350.00	-	1,350.00
3/01/2019	1,350.00	-	1,350.00
6/01/2019	1,350.00	-	1,350.00
9/01/2019	1,350.00	-	1,350.00
12/01/2019	1,350.00	-	1,350.00
3/01/2020	1,350.00	-	1,350.00
6/01/2020	1,350.00	-	1,350.00
9/01/2020	1,350.00	-	1,350.00
12/01/2020	1,350.00	-	1,350.00
Total	108,000.00	-	108,000.00 *

*Plus \$136.69 quarterly administrative fee. Total fee paid over the life of the loan is \$10,935.20.

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: _____, 19__

(Assignor)

Witnessed in the presence of:

one [§ 16-12-1] of this article. The conduct of the hearing and the manner of conducting the subsequent election on the question whether such territory shall become disconnected and the issuance, reception, return and canvassing of the ballots shall be, as nearly as possible, in accordance with the provisions of section one of this article. The ballots for the election provided for in this section shall be substantially as follows, to wit:

- For disconnection from sanitary district.
- Against disconnection from sanitary district.

If a majority of the votes cast at such election shall be in favor of disconnection, and if the trustees of such sanitary district shall, by ordinance, disconnect such territory, thereupon the county court of the county in which the original petition for the formation of such sanitary district was filed, shall enter an appropriate order in the records of the said county court and thereafter such territory shall henceforth be deemed disconnected from such sanitary district. (1933, Ex. Sess., c. 24, § 14.)

Editor's notes. — As to the designation of county courts as county commissions, see W. Va. Const., art. IX, § 9.

ARTICLE 13.

SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.

Sec.	Sec.
16-13-1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds.	proceeds; additional and temporary bonds.
16-13-2. Sanitary board to supervise and control construction, etc., of works; appointment of board; definitions.	16-13-11. Additional bonds to extend or improve works.
16-13-3. Powers of sanitary board; contracts; employees; compensation thereof; extensions and improvements; replacement of damaged public works.	16-13-12. Additional bonds for extension, etc., of works to have equal priority with original bonds.
16-13-4. Payment of preliminary expenses of surveys, etc.	16-13-13. Application of revenue from bonds; lien.
16-13-5. Ordinance necessary before acquisition or construction of works.	16-13-14. Securing bonds by trust indenture.
16-13-6. Publication and hearing upon ordinance.	16-13-15. Sinking fund; transfer of balance of net revenues.
16-13-7. Acquisition by condemnation or purchase.	16-13-16. Rates for service; change or readjustment; hearing; lien and recovery; discontinuance of services.
16-13-8. Cost of works.	16-13-17. Municipality subject to established rates.
16-13-9. Contracts and obligations incurred to be paid for solely by revenue bonds.	16-13-18. Supervision of works by sanitary board; organization of board; qualifications, terms and compensation of members.
16-13-10. Interest on and redemption of bonds; form; statement on face of bond; negotiability; exemption from taxation; registration; execution; sale; disposition of surplus	16-13-18a. Publication of financial statement.
	16-13-19. Contract with other municipalities for service of works; powers of lessee as to rates; intercepting sewers.
	16-13-20. Discharge of lien on property acquired.
	16-13-21. Action on certificates or attached coupons; receivers.

Sec.

- 16-13-22. Powers conferred in addition to existing powers; jurisdiction outside corporate limits.
- 16-13-22a. Grants, loans and advances.
- 16-13-22b. Contracts for abatement of pollution.
- 16-13-22c. Refunding bonds.
- 16-13-22d. Subordination of bonds.
- 16-13-22e. Operating contract.
- 16-13-22f. Exemption of bonds from taxation.

Sec.

- 16-13-22g. Covenants with bondholders
- 16-13-23. Article deemed full authority for construction, etc., of works and issue of bonds; alternative method; powers of state department of health unaffected
- 16-13-23a. Additional powers of municipality upon receipt of order to cease pollution.
- 16-13-24. Article to be construed liberally

Editor's notes. — For redesignation of department of health as division of health, within the department of health and human resources, see § 5F-2-1.

Constitutionality. — See *Brewer v. City of Point Pleasant*, 114 W. Va. 572, 172 S.E. 717 (1934); *Stevenson v. City of Bluefield*, 39 F. Supp. 462 (S.D.W. Va. 1941); *West Virginia Water Serv. Co. v. Cunningham*, 143 W. Va. 1, 98 S.E.2d 891 (1957).

Obligations incurred by a city under the authority of this article permitting the issuance of revenue bonds for the construction of sewers are not to be deemed "debts" within the constitutional inhibition. *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1957), commented on in 60 W. Va. L. Rev. 105 (1957).

Legislative intent to protect municipalities from general obligations. — It appears clear that the legislature recognized the need for municipal utility systems; however, it did not wish the municipality to become generally obligated for the building or acquisition of the system. Financing is provided for primarily by revenue bonds, and bondholders are assured of a safe investment through the collection of sufficient user charges to service the bonds and maintain the assets of the system. Op. Att'y Gen., April 3, 1979.

No conflict with statutory limitations on expenditure of tax funds. — There is no conflict between this article, authorizing a city to incur expenses which are to be payable solely from the proceeds of revenue bonds, and the

general statutory limitations on the expenditure of money and incurring of obligations with respect to funds produced by tax levies. *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1957), commented on in 60 W. Va. L. Rev. 105 (1957).

Limitation imposed by article read into agreement with federal works administrator. — Where a city made an agreement with the federal works administrator under the War Mobilization and Reconversion Act of 1944 with regard to advances of money to the city for the purpose of plan preparation for construction of a proposed sewage treatment and disposal system, the limitation imposed by this article would be read into the agreement, since the parties are presumed to know the extent of the city's authority to make a binding contract. *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1957), commented on in 60 W. Va. L. Rev. 105 (1957).

Municipality may not compel nonresidents to connect with a municipal sewer extended without its corporate limits. 48 Op. Att'y Gen. 19 (1958).

Ordinance held valid. — An ordinance of a municipal corporation, creating a sanitary board and authorizing such sanitary board to enter into contracts for the construction of a sewage system, was within the police power of the State delegated to municipalities by this chapter. *West Virginia Water Serv. Co. v. Cunningham*, 143 W. Va. 1, 98 S.E.2d 891 (1957).

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

Any municipal corporation and/or sanitary district in the state of West Virginia is hereby authorized and empowered to own, acquire, construct, equip, operate and maintain within and/or without the corporate limits of such municipal corporation, a sewage collection system and/or a sewage treatment plant or plants, intercepting sewers, outfall sewers, force mains, pumping stations, ejector stations, and all other appurtenances necessary or useful and

convenient for the collection and/or treatment, purification and disposal, in a sanitary manner, of the liquid and solid waste, sewage, night soil and industrial waste of such municipal corporation and/or sanitary district, including acquisition of the municipal sewerage system resulting from the severance of a combined waterworks and sewerage system pursuant to section one-b [§ 8-20-1b], article twenty, chapter eight of this code, and shall have authority to acquire by gift, grant, purchase, condemnation, or otherwise, all necessary lands, rights-of-way and property therefor, within and/or without the corporate limits of such municipal corporation and/or sanitary district, and to issue revenue bonds to pay the cost of such works and property; and any such municipality may serve and supply the facilities of such sewerage system within the corporate limits of such municipality and within the area extending twenty miles beyond the corporate limits of such municipality; Provided, That such municipality shall not serve or supply the facilities of such sewerage system within the corporate limits of any other municipality without the consent of the governing body thereof. No obligations shall be incurred by any such municipality and/or sanitary district in such construction or acquisition except such as is payable solely from the funds provided under the authority of this article. (1933, Ex. Sess., c. 25, § 1; 1955, c. 132; 1986, c. 118.)

Sections read together. — This section should be read and construed with former § 8-4-20 and §§ 16-13-2, 16-13-16, 24-1-1, 24-2-1, and 24-2-3. *Delardas v. Morgantown Water Comm'n*, 148 W. Va. 776, 137 S.E.2d 426 (1964).

Use of territory in adjoining state authorized. — By this section and § 16-13-22 the legislature intended, insofar as it could, to confer upon such municipalities as might find its exercise convenient, the right to make nec-

essary and appropriate arrangements for the disposal of their sewage, even where that course involved the use of territory in an adjoining state. *Bernard v. City of Bluefield*, 117 W. Va. 556, 186 S.E. 298 (1936).

Quoted in State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

Cited in City of Beckley v. Craighead, 125 W. Va. 484, 24 S.E.2d 908 (1943).

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

The construction, acquisition, improvement, equipment, custody, operation and maintenance of any such works for the collection, treatment or disposal of sewage and the collection of revenues therefrom for the service rendered thereby, shall be under the supervision and control of a sanitary board appointed by the governing body as set forth in section eighteen [§ 16-13-18] of this article. The term "works" as used in this article shall be construed to mean and include a works for the collection and/or treatment, purification and disposal of sewage, in its entirety or any integral part thereof. The term "municipality" as used in this article shall be construed to mean any municipal corporation, incorporated city, town, village or sanitary district in the State of West Virginia. The term "governing body" as used in this article shall be construed to mean the mayor and council or other legally constituted governing body of any municipality. The term "board" when hereinafter used in this article shall be construed to mean the sanitary board as set up in section eighteen of this article. (1933, Ex. Sess., c. 25, § 2.)

Sections read together. — This section should be read and construed with former § 8-4-20 and §§ 16-13-1, 16-13-16, 24-1-1, 24-2-1 and 24-2-3. *Delardas v. Morgantown Water Comm'n*, 148 W. Va. 776, 137 S.E.2d 426 (1964).

Quoted in *State ex rel. City of Wheeling v. Renick*, 145 W. Va. 640, 116 S.E.2d 763 (1960).

Cited in *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1957).

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

The board shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this article: Provided, That any contract relating to the financing of the acquisition or construction of any such works, or any trust indenture as hereinafter provided for, shall be approved by the governing body of such municipality before the same shall be effective. The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys, and such other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the board shall direct. All such compensation and all expenses incurred in carrying out the provisions of this article shall be paid solely from funds provided under the authority of this article, and the board shall not exercise or carry out any authority or power herein given it so as to bind said board of said municipality beyond the extent to which money shall have been or may be provided under the authority of this article. No contract or agreement with any contractor or contractors for labor and/or material, exceeding in amount the sum of five thousand dollars, shall be made without advertising for bids, which bids shall be publicly opened and award made to the best bidder, with power in the board to reject any or all bids. After the construction, installation, and completion of the works, or the acquisition thereof, the board shall operate, manage and control the same and may order and complete any extensions, betterments and improvements of and to the works that the board may deem expedient, if funds therefor be available or are made available as provided in this article, and shall establish rules and regulations for the use and operation of the works, and of other sewers and drains connected therewith so far as they may affect the operation of such works, and do all things necessary or expedient for the successful operation thereof. The sanitary board may declare an emergency situation in the event of collector line breaks or vital treatment plant equipment failure and shall be exempted from competitive bidding requirements and enter into direct purchase agreements or contracts for such expenses. All public ways or public works damaged or destroyed by the board in carrying out its authority under this article shall be restored or repaired by the board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds provided by this article. (1933, Ex. Sess., c. 25, § 3; 1989, c. 133.)

Contractor is not entitled to governmental immunities of municipality. — A contractor under contract with the sanitary board of a municipality for construction of a sewage treatment and disposal system is not entitled to the governmental immunities of the municipality incident to the construction project. *West Virginia Water Serv. Co. v. Cunningham*, 143 W. Va. 1, 98 S.E.2d 891 (1957).

And is liable on contract with third party. — Where a contract between a municipal sanitary board and a contractor, providing for the construction of a sanitary sewage system, provides inter alia that "existing surface, overhead or subsurface structures damaged or

destroyed by reason of the contractor's operations shall be promptly repaired or replaced in a satisfactory manner at the cost and expense of the contractor," and the contractor by job order requests enters into a contract with an existing water company to remove certain of the latter's water pipes which interfere with the construction of the sewage system, the contractor, in a notice of motion for judgment proceeding instituted by the water company, is liable for the expense so incurred. *West Virginia Water Serv. Co. v. Cunningham*, 143 W. Va. 1, 98 S.E.2d 891 (1957).

Stated in State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

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

All necessary preliminary expenses actually incurred by the board of any municipality in the making of surveys, estimates of costs and of revenue, employment of engineers or other employees, the giving of notices, taking of options and all other expenses of whatsoever nature, necessary to be paid prior to the issue and delivery of the revenue bonds pursuant to the provisions of this article, may be met and paid in the following manner. Said board may from time to time certify such items of expense to the clerk or recorder of said municipality, directing him to pay the several amounts thereof, and thereupon said clerk or recorder shall at once draw a warrant or warrants upon the treasurer of said municipality, which warrant or warrants shall be paid out of the general funds of said municipality not otherwise appropriated, without a special appropriation being made therefor by the governing body; or, in case there are no general funds of such municipality not otherwise appropriated, the clerk or recorder shall recommend to the governing body the temporary transfer from other funds of such municipality of a sufficient amount to meet such items of expense, or the making of a temporary loan for such purpose, and such governing body shall thereupon at once make such transfer of funds, or authorize such temporary loan in the same manner that other temporary loans are made by such municipality: Provided, however, That the fund or funds of such municipality from which such payments are made shall be fully reimbursed and repaid by said board out of the first proceeds of the sale of revenue bonds hereinafter provided for, and before any other disbursements are made therefrom, and the amount so advanced to pay such preliminary expenses, shall be a first charge against the proceeds resulting from the sale of such revenue bonds until the same has been repaid as herein provided. (1933, Ex. Sess., c. 25, § 4.)

A municipality is authorized to incur obligations for the purpose of defraying preliminary expenses of sewer projects, provided repayment of such obligations is to be made solely from the proceeds of revenue bonds, and not in any way from tax levies. *United States v. City of Charleston*, 149 F.

Supp. 866 (S.D.W. Va. 1957), commented on in 60 W. Va. L. Rev. 105 (1957).

And may obtain advances by any procedure it may see fit to adopt. — Money used in preliminary engineering work prior to actually beginning construction of a sewage disposal system need not be handled by the sani-

tary board in accordance with the provisions of §§ 16-13-1, 16-13-18 and this section. The sanitary board is an agency of the city. This article merely requires that the construction and maintenance of the project be under the supervision and control of the sanitary board. A method is provided whereby the sanitary board may meet its own necessary preliminary expenses; but the city, in the early stages of the project, during that period in which the city has not even decided to go ahead with the work, and when there is no sanitary board in existence, is not prevented by any provision in the article from obtaining advances for plan preparation by any procedure which it may see fit to adopt. *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1957), commented on in

60 W. Va. L. Rev. 105 (1957).

United States entitled to recover advances made by federal works agency. — The United States was held entitled to recover from a city the amount of three advances of money made to the city by the federal works agency for the purpose of plan preparation for construction of a proposed sewage treatment and disposal system, and the city sanitary board was ordered to issue a requisition to the trustees, into whose hands proceeds of future bond issues came, to repay such advances out of any funds in its hands comprising proceeds of revenue bond issues. *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1957), commented on in 60 W. Va. L. Rev. 105 (1957).

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

Before any municipality shall construct or acquire any works under this article, the governing body shall upon petition of the board, enact an ordinance or ordinances which shall: (a) Set forth a brief and general description of the works and, if the same are to be constructed, a reference to the preliminary report which shall heretofore have been prepared and filed by an engineer chosen by the board as aforesaid; (b) set forth the cost thereof estimated by the engineer chosen as aforesaid; (c) order the construction or acquisition of such works; (d) direct that revenue bonds of the municipality shall be issued pursuant to this article in such an amount as may be found necessary to pay the cost of the works; and (e) contain such other provisions as may be necessary in the premises. (1933, Ex. Sess., c. 25, § 5.)

Quoted in *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1957).

Stated in *State ex rel. City of Wheeling v. Renick*, 145 W. Va. 640, 116 S.E.2d 763 (1960).

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

After such ordinance shall have been adopted, an abstract of the ordinance, determined by the governing body to contain sufficient information as to give notice of the contents of such ordinance, together with the following described notice, shall be published as a Class II legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this Code, and the publication area for such publication shall be the municipality. The notice shall state that said ordinance has been adopted, and that the municipality contemplates the issuance of the bonds described in the ordinance, and that any person interested may appear before the governing body upon a certain date, which shall not be less than ten days subsequent to the first date of publication of such abstract and notice which shall not be prior to the last date of publication of such abstract and notice, and present protests. At such hearing all objections and suggestions shall be heard and the governing body shall take such action as it shall deem proper in the premises: Provided,

however, That if at such a hearing written protest is filed by thirty percent or more of the owners of real estate situate in said municipality, then the governing body of said municipality shall not take further action unless four fifths of the qualified members of the said governing body assent thereto. (1933, Ex. Sess., c. 25, § 6; 1967, c. 105; 1981, 1st Ex. Sess., c. 2.)

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

Every such municipality shall have power to condemn any such works to be acquired and any land, rights, easements, franchises and other property, real or personal, deemed necessary or convenient for the construction of any such works, or for extensions, improvements, or additions thereto, and in connection therewith may have and exercise all the rights, powers and privileges of eminent domain granted to municipal corporations under the laws relating thereto. Title to property condemned shall be taken in the name of the municipality. Proceedings for such appropriation of property shall be under and pursuant to the provisions of chapter fifty-four [§ 54-1-1 et seq.], of the Code of West Virginia, one thousand nine hundred thirty-one, and acts amendatory and supplemental thereto: Provided, That the municipality shall be under no obligation to accept and pay for any property condemned, and shall in no event pay for any property condemned or purchased, except from the funds provided pursuant to this article; and in any proceedings to condemn, such orders may be made as may be just to the municipality and to the owners of the property to be condemned, and an undertaking or other security may be required securing such owners against any loss or damage to be sustained by reason of the failure of the municipality to accept and pay for the property, but such undertaking or security shall impose no liability upon the municipality except such as may be paid from the funds provided under the authority of this article. In event of the acquisition by purchase the board may obtain and exercise an option from the owner or owners of said property for the purchase thereof, or may enter into a contract for the purchase thereof, and such purchase may be made upon such terms and conditions, and in such manner as the board may deem proper. In event of the acquisition of any works already constructed by purchase or condemnation, the board at or before the time of the adoption of the ordinance described in section five [§ 16-13-5] hereof, shall cause to be determined what repairs, replacements, additions, and betterments will be necessary in order that such works may be effective for their purpose, and an estimate of the cost of such improvements shall be included in the estimate of the cost required by section five hereof, and such improvement shall be made upon the acquisition of the works and as a part of the cost thereof. (1933, Ex. Sess., c. 25, § 7.)

§ 16-13-8. Cost of works.

The cost of the works shall be deemed to include the cost of acquisition or construction thereof, the cost of all property, rights, easements, and franchises deemed necessary or convenient therefor and for the improvements determined upon as provided in this article; interest upon bonds prior to and during

construction or acquisition and for six months after completion of construction or of acquisition of the improvement last mentioned; engineering and legal expenses; expense for estimates of cost and of revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized and the construction or acquisition of the works and the placing of the works in operation and the performance of the things herein required or permitted in connection with any thereof. (1933, Ex. Sess., c. 25, § 8.)

Expenses incurred in "determining the feasibility or practicability of the enterprise." — It is foreseen, as shown in this section, that a city may probably incur expenses in "determining the feasibility or practicability of the enterprise." Such determination would of course be made prior to the issuance of any revenue bonds, and probably before the creation of a sanitary board. It might often result in a rejection of the project altogether, in which event no revenue bonds would be issued, and any obligation incurred by the city might prove to be uncollectible. On the other hand, if the project be undertaken by the city, whatever loans may have been made on the faith of the revenue bonds would or should be included in the cost of the works and repaid out of the proceeds of the bonds. *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1957), commented on in 60 W. Va. L. Rev. 105 (1957).

Advances from the United States to a city for the purpose of plan preparation for construction of a proposed sewage treatment and disposal system represent a part of the cost of the works which should have been repaid out of the first proceeds received from the sale of the first issue of revenue bonds. Such repayment would not in any way increase the cost of the works: it was the very first item of expense incurred in connection with the works. Under the agreement between the city and the United States, it was a liability from the moment construction of the sewage treatment and disposal plant was begun. No disadvantage would result to bondholders as a result of the payment of this just debt out of the proceeds of a future revenue bond issue. *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1957), commented on in 60 W. Va. L. Rev. 105 (1957).

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

Nothing in this article contained shall be so construed as to authorize or permit any municipality to make any contract or to incur any obligation of any kind or nature except such as shall be payable solely from the funds provided under this article. Funds for the payment of the entire cost of the works, exclusive of any portions of the cost that may be defrayed out of any grant or contribution, shall be provided by the issuance of revenue bonds of the municipality, the principal and interest of which shall be payable solely from the fund herein provided for such payment, and said bonds shall not, in any respect, be a corporate indebtedness of such municipality, within the meaning of any statutory or constitutional limitations thereon. All the details of such bonds shall be determined by ordinance or ordinances of the municipality. (1933, Ex. Sess., c. 25, § 9; 1949, c. 93.)

Cross references. — See notes to § 16-13-8. **The provisions of this article become a part of the contract between the municipality and the bondholders as effectually as if written verbatim in the bonds.** The bondhold-

ers are bound by their contract in this instance just as firmly as in any other legal contract. Consequently, the bonds do not create a corporate indebtedness of the municipality. *Brewer v. City of Point Pleasant*, 114 W. Va. 572, 172 S.E.

717 (1934); *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1957), commented on in 60 W. Va. L. Rev. 105 (1957).

Contractual obligation between municipalities not relieved by inability of town to sell revenue bonds. — Under the provisions of §§ 16-13-19 and 16-13-23a, a city and a town may enter into a contract whereby the city agreed to construct a sewage disposal facility and the town agreed to contribute to the cost of the construction of the facility in return for the right to use the facility, and the fact that the town was unable to sell revenue bonds because

it was not allowed to have part ownership in the treatment plant or interceptor sewers did not relieve the town of its contractual obligation when the city offered to buy the revenue bonds issued by the town. Since the contracts were authorized by statute and were thus not ultra vires, even if the contracts were not formally approved by ordinance, the municipalities were estopped from asserting any invalidity of the contracts on such ground. *City of Morgantown v. Town of Star City*, 156 W. Va. 529, 195 S.E.2d 166 (1973).

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

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

sinking fund hereinafter provided. If the proceeds of the bonds, by error of calculation or otherwise, shall be less than the cost of the works, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in said ordinance authorizing the issuance of the bonds first issued or in the trust indenture hereinafter authorized, shall be deemed to be of the same issue and shall be entitled to payment without preference or priority of the bonds first issued. Prior to the preparation of the definitive bonds, temporary bonds may under like restrictions be issued with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. (1933, Ex. Sess., c. 25, § 10; 1970, c. 11; 1980, c. 33; 1981, 1st Ex. Sess., c. 2.)

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

The governing body may provide by said ordinance authorizing the issuance of the bonds or in the trust indenture hereinafter referred to, that additional bonds may thereafter be authorized and issued, at one time or from time to time under such limitations and restrictions as may be set forth in said ordinance and/or trust indenture, for the purpose of extending, improving or bettering the works when deemed necessary in the public interest, such additional bonds to be secured and be payable from the revenues of the works equally with all other bonds issued pursuant to said ordinance without preference or distinction between any one bond and any other definite bonds upon the issuance of the latter. (1933, Ex. Sess., c. 25, § 11.)

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

The governing body may provide by said ordinance authorizing the issuance of the bonds or in the trust indenture hereinafter referred to, that additional bonds may thereafter be authorized and issued, at one time or from time to time, under such limitations and restrictions as may be set forth in said ordinance and/or trust indenture, for the purpose of extending, improving or bettering the works when deemed necessary in the public interest, such additional bonds to be secured and be payable from the revenues of the works equally with all other bonds issued pursuant to said ordinance without preference or distinction between any one bond and any other bond by reason of priority of issuance or otherwise. (1933, Ex. Sess., c. 25, § 12.)

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

All moneys received from any bonds issued pursuant to this article, after reimbursements and repayment to said municipality of all amounts advanced for preliminary expenses as provided in section four [§ 16-13-4] of this article, shall be applied solely to the payment of the cost of the work, extensions, improvements or betterments, or to the appurtenant sinking fund and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the holders of the bonds or the trustees hereinafter provided for. (1933, Ex. Sess., c. 25, § 13.)

Quoted in *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1957).

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

In the discretion of the governing body such bonds may be secured by a trust indenture by and between the municipality and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the State of West Virginia but no such trust indenture shall convey or mortgage the works or any part thereof. The ordinance authorizing the revenue bonds and fixing the details thereof may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the municipality and the board in relation to the construction or acquisition of the works and the improvement, operation, repair, maintenance and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that the works shall be contracted for, constructed and paid for under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, successors, assigns or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or revenues of the works or other moneys pertaining thereto be satisfactory to such purchasers, successors, assigns or nominees. Such indenture may set forth the rights and remedies of the bondholders and/or such trustee, restricting the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. Except as in this article otherwise provided, the governing body may provide by ordinance or in such trust indenture for the payment of the proceeds of the sale of the bonds and the revenues of the works to such officer, board or depository as it may determine for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. (1933, Ex. Sess., c. 25, § 14.)

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

At or before the issuance of any such bonds the governing body shall by said ordinance create a sinking fund, to be remitted to and administered by the West Virginia municipal bond commission, for the payment of the bonds and the interest thereon and the payment of the charges of banks or trust companies for making payment of such bonds or interest, and shall set aside and pledge a sufficient amount of the net revenues of the works, hereby defined to mean the revenues of the works remaining after the payment of the reasonable expense of operation, repair and maintenance, such amount to be paid by the board into said sinking fund at intervals to be determined by ordinance prior to issuance of the bonds, for: (a) The interest upon such bonds as such interest shall fall due; (b) the necessary fiscal agency charges for paying bonds and interest; (c) the payment of the bonds as they fall due, or, if

all bonds mature at one time, the proper maintenance of a sinking fund in such amounts as are necessary and sufficient for the payment thereof at such time; (d) a margin for safety and for the payment of premiums upon bonds retired by call or purchase as herein provided, which margin, together with any unused surplus of such margin carried forward from the preceding year, shall equal ten percent of all other amounts so required to be paid into the sinking fund. Such required payments shall constitute a first charge upon all the net revenue of the works. Prior to the issuance of the bonds the board may by ordinance be given the right to use or direct the West Virginia municipal bond commission to use such sinking fund or any part thereof in the purchase of any of the outstanding bonds payable therefrom at the market price thereof, but not exceeding the price, if any, at which the same shall in the same year be payable or redeemable, and all bonds redeemed or purchased shall forthwith be cancelled and shall not again be issued. After the payments into such fund as herein required, the board may at any time in its discretion transfer all or any part of the balance of the net revenues, after reserving an amount deemed by the board sufficient for operation, repair and maintenance for an ensuing period of not less than twelve months and for depreciation, into the sinking fund or into a fund for extensions, betterments and additions to the works. The amounts of the balance of the net revenue as and when so set apart shall be remitted to the West Virginia municipal bond commission to be retained and paid out by said commission consistent with the provisions of this article and with the ordinance pursuant to which such bonds have been issued. The West Virginia municipal bond commission is hereby authorized to act as fiscal agent for the administration of such sinking fund, under any ordinance passed pursuant to the provisions of this article, and shall invest all such sinking funds as provided by general law. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States of America or any agency or department thereof may be made by the governing body directly thereto. (1933, Ex. Sess., c. 25, § 15; 1933, 2nd Ex. Sess., c. 48; 1986, c. 118.)

§ 16-13-16. Rates for service; change or readjustment; hearing; lien and recovery; discontinuance of services.

The governing body shall have power, and it shall be its duty, by ordinance, to establish and maintain just and equitable rates or charges for the use of and the service rendered by such works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses such works by or through any part of the sewerage system of the municipality, or that in any way uses or is served by such works, and may change and readjust such rates or charges from time to time. Such rates or charges shall be sufficient in each year for the payment of the proper and reasonable expense of operation, repair, replacements and maintenance of the works and for the payment of the sums herein required to be paid into the sinking fund. Revenues collected pursuant to this section shall be 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 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 ordinance fixing such rates or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of such rates or charges, shall be given by publication as a Class II-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 the municipality. The first publication shall be made at least ten days before the date fixed in such notice for the hearing. After such hearing, which may be adjourned from time to time, the ordinance establishing rates or charges, either as originally introduced or as modified and amended, shall be passed 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 the operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates or charges so established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice. Any change or readjustment of such rates or charges may be made in the same manner as such rates or charges were originally established as hereinbefore provided: Provided, however, That if such change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice shall be required. The aggregate of the rates or charges shall always be sufficient for such expense of operation, repair and maintenance and for such sinking fund payments. All such rates or charges, if not paid when due, shall constitute a lien upon the premises served by such works. If any service rate or charge so established shall not be paid within thirty days after the same is due, the amount thereof, together with a penalty of ten percent, and a reasonable attorney's fee, may be recovered by the board in a civil action in the name of the municipality, and in connection with such action said lien may be foreclosed against such lot, parcel of land or building, in accordance with the laws relating thereto: Provided, however, That where both water and sewer services are furnished by any municipality to any premises the schedule of charges may be billed as a single amount or individually itemized and billed for the aggregate thereof. Whenever any rates, rentals or charges for services or facilities furnished shall remain unpaid for a period of thirty days after 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. The board collecting such charges shall be obligated under reasonable rules and regulations, to shut off and discontinue both water and sewer services to all delinquent users of either water facilities, or sewer facilities, or both, and shall not restore either water facilities or sewer facilities to any delinquent user of either until all delinquent charges for both water facilities and sewer facilities, including reasonable interest and penalty charges, have been paid in full. (1933, Ex. Sess., c. 25, § 16; 1933, 2nd Ex. Sess., c. 48; 1959, c. 125; 1967, c. 105.)

Rules of Civil Procedure. — As to abolition of procedural distinctions between law and equity, see R.C.P. 2.

Textbooks. — Administrative Law in West Virginia (Neely), § 3.07.

Sections read together. — This section should be read and construed with former § 8-4-20 and §§ 16-13-1, 16-13-2, 24-1-1, 24-2-1, and 24-2-3. *Delardas v. Morgantown Water Comm'n*, 148 W. Va. 776, 137 S.E.2d 426 (1964).

Municipal sewer system is subject to jurisdiction of public service commission. 45 Op. Att'y Gen. 642 (1954).

Hence, municipality is required to file its rates with the commission for approval in accordance with § 24-2-1 et seq. 45 Op. Att'y Gen. 642 (1954).

Jurisdiction to enforce lien. — The fact that this section speaks of the enforcement of the lien in a "civil action" should not be construed as placing that jurisdiction in our courts of law simply because the word "action," strictly applied, does not usually refer to chancery

practice. *City of Beckley v. Craighead*, 125 W. Va. 484, 24 S.E.2d 908 (1943).

Discrimination not shown. — Charges made against the users of a city sewage system were based upon the amount of water used upon the premises as indicating the extent to which the sewers were used. The charges were subject to a deduction of the amount of water retained on the premises, such amount to be determined by a meter installed by the consumer and used to record gallonage of water that had come on the property but had not been disposed of through the sewers. It was held that the method under which the charges were assessed was neither capricious nor unfair although certain users had been unable to install meters used to measure their deductions. *Houchins v. City of Beckley*, 127 W. Va. 306, 32 S.E.2d 286 (1944).

Applied in *Brewer v. City of Point Pleasant*, 114 W. Va. 572, 172 S.E. 717 (1934).

Quoted in State ex rel. *City of Wheeling v. Renick*, 145 W. Va. 640, 116 S.E.2d 763 (1960).

§ 16-13-17. Municipality subject to established rates.

The municipality shall be subject to the same charges and rates established as hereinbefore provided, or to charges and rates established in harmony therewith, for service rendered the municipality, 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 be applied as herein provided for the application of such revenues. (1933, Ex. Sess., c. 25, § 17.)

Quoted in *West Virginia Water Serv. Co. v. Cunningham*, 143 W. Va. 1, 98 S.E.2d 891 (1957).

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

The governing body shall provide by ordinance the organization of the board, and that the custody, administration, operation and maintenance of such works shall be under the supervision and control of a sanitary board, created as herein provided. Such sanitary board shall be composed of either the mayor of the municipality, or the city manager thereof, if said municipality shall have a city manager form of government, and two persons appointed by the governing body: Provided, That, in the event of an acquisition or merger of an existing sewage works, the governing body may increase the membership to a maximum of four members in addition to the mayor or city manager of the municipality served by the board. During the construction period one of the members must be a registered professional engineer. The engineer member of the board need not be a resident of said municipality. After the construction of the plant has been completed, the engineer member may be succeeded by a

person not an engineer. No officer or employee of the municipality, whether holding a paid or unpaid office, shall be eligible to appointment on said sanitary board until at least one year after the expiration of the term of his public office. Said appointees shall originally be appointed for terms of two and three years respectively, and upon the expiration of each such term and each succeeding term, an appointment of a successor shall be made in like manner for a term of three years. Vacancies shall be filled for an unexpired term in the same manner as the original appointment. Each member shall give such bond, if any, as may be required by ordinance. Such mayor or city manager shall act as chairman of the sanitary board, which shall elect a vice chairman from its members and shall designate a secretary and treasurer (but the secretary and the treasurer may be one and the same), who need not be a member or members of the sanitary board. The vice chairman, secretary and treasurer shall hold office as such at the will of the sanitary board. The members of the sanitary board shall receive such compensation for their services, either as a salary or as payments for meetings attended, as the governing body may determine, and shall be entitled to payment for their reasonable expenses incurred in the performance of their duties. The governing body shall fix the reasonable compensation of the secretary and treasurer in its discretion, and shall fix the amounts of bond to be given by the treasurer. All compensation, together with the expenses in this section referred to, shall be paid solely from funds provided under the authority of this article. The sanitary board shall have power to establish bylaws, rules and regulations for its own government. (1933, Ex. Sess., c. 25, § 18; 1939, c. 96; 1953, c. 146; 1957, c. 137; 1992, c. 95.)

Effect of article generally. — The effect of the provisions of this article is to authorize and empower a municipal corporation in this State to own, construct, equip, operate and maintain sewer systems, to place the construction, operation and management of such systems under the supervision and control of a sanitary board appointed by the governing body, to authorize such board to operate, manage and control them and to order and complete any extensions or betterments that the board may deem expedient. State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

There is no repugnancy between the provisions of this article and §§ 24-1-1, 24-2-1 or 24-3-1, and for these reasons, the provisions of this article do not operate to repeal any of those sections. State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

The provisions of this article do not revise the subject matter of §§ 24-1-1, 24-2-1 or 24-3-1, and they were not intended as a substitute for any of the provisions of those sections. State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

In conferring such power and authority upon a municipality by this article, the legislature did not create, or intend to create, any repugnancy or inconsistency between the provisions

of this article and the pertinent provisions of chapter 24, or to repeal any of those provisions of that chapter. State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

Public service commission may order extension of service. — A public utility is under a duty to make reasonable extensions of its services in accordance with its franchise and charter obligations and the needs of the inhabitants within the territory covered by its franchise; and a public service commission may, where its action is not unlawful, arbitrary, or capricious, order an extension of service for the inhabitants of such territory. State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

Sanitary board may be incorporated and domesticated in adjoining state. — Since the incorporation of its sanitary board and its domestication in the state of Virginia was the only plan by which the power intended to be granted by the legislature to a city to construct a sewage disposal plant outside the State of West Virginia could be legally effectuated, the power to so incorporate its sanitary board was a necessary and incidental right to the main power granted. Bernard v. City of Bluefield, 117 W. Va. 556, 186 S.E. 298 (1936).

Member of city council may not serve as consulting engineer to the sanitary board on

city sewer project. 49 Op. Att'y Gen. 60 (1961).

Mayor and city manager may not both be appointed to municipal sanitary board.

— When a municipal corporation has a city manager form of government, the municipality's governing board has the option of appointing either its mayor or its city manager (but not both) to the municipal sanitary board. 52 Op. Att'y Gen. 217 (1967).

As to scope of duties and responsibilities of city treasurer as they relate to possession of funds of a sanitary board, see 52 Op. Att'y Gen. 497 (1967).

Applied in *Houchins v. City of Beckley*, 127 W. Va. 306, 32 S.E.2d 286 (1944).

Cited in *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1957).

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

Every sanitary board shall prepare a financial statement and cause the same to be published as a Class I legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this Code, and the publication area for such publication shall be the sanitary district. Such statement shall contain an itemized account of the receipts and expenditures of the board during the previous fiscal year, showing the source from which all money was derived, and the name of the person to whom an order was issued, together with the amount of such order, and why such order was issued, arranging the same under distinct heads, and including all money received and expended from the sale of bonds, and also a specific statement of the debts of such board, showing the purpose for which any debt was contracted, the amount of money in all funds at the end of the preceding year, and the amount of uncollected service charges. Such statement shall be prepared and published by the board as soon as practicable after the close of the fiscal year: Provided, That such statement for the fiscal year ending June thirtieth, one thousand nine hundred fifty-six, may be published any time during the year one thousand nine hundred fifty-seven. The statement shall be sworn to by the chairman and secretary and treasurer of the board. If a board fails or refuses to perform the duties hereinbefore named, every member of the board concurring in such failure or refusal shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than five hundred dollars and the circuit court or criminal court and justices of the peace, of the county where the offense was committed, shall have concurrent jurisdiction to try such offense. (1957, c. 138; 1967, c. 105.)

Editor's notes. — The phrase "justice of the peace" and the word "justice," when used in a context meaning "justice of the peace," are

construed to mean "magistrate." See § 50-1-17 and W. Va. Const., art. VIII, § 15.

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

Any municipality operating a sewage collecting system and/or a sewage disposal plant or plants as defined in this article, or which as herein provided has ordered the construction or acquisition of such works (in this section called the owner), is hereby authorized to contract with one or more other municipal corporations or political subdivisions within the State (in this section called the

lessee), and such lessees are hereby authorized to enter into such contracts with such owners, for the service of such works to such lessees and their inhabitants, but only to the extent of the capacity of the works without impairing the usefulness thereof to the owners, upon such terms and conditions as may be fixed by the boards and approved by ordinances of the respective contracting parties: Provided, however, That no such contract shall be made for a period of more than forty years or in violation of the provisions of said ordinance authorizing bonds hereunder or in violation of the provisions of said trust indenture. The lessee shall by ordinance have power to establish, change and adjust rates and charges for the service rendered therein by the works against the owners of the premises served, in the manner hereinbefore provided for establishing, changing and adjusting rates and charges for the service rendered in the municipality where the works are owned and operated, and such rates or charges shall be collectible and shall be a lien as herein provided for rates and charges made by the owner. The necessary intercepting sewers and appurtenant works for connecting the works of the owner with the sewerage system of the lessee shall be constructed by the owner and/or the lessee upon such terms and conditions as may be set forth in said contract, and the cost or that part of the cost thereof which is to be borne by the owner may be paid as a part of the cost of the works from the proceeds of bonds issued under this article unless otherwise provided by said ordinance or trust indenture prior to the issuance of the bonds. The income received by the owner under any such contract shall, if so provided in said ordinance or trust indenture, be deemed to be a part of the revenues of the works as in this article defined and be applied as herein provided for the application of such revenues. (1933, Ex. Sess., c. 25, § 19; 1981, 1st Ex. Sess., c. 2.)

Applied in *City of Morgantown v. Town of Star City*, 156 W. Va. 529, 195 S.E.2d 166 (1973).

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

No property shall be acquired under this article upon which any lien or other encumbrance exists, unless at the time such property is acquired a sufficient sum of money be deposited in trust to pay and redeem such lien or encumbrance in full. (1933, Ex. Sess., c. 25, § 20.)

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

Any holder of any such certificates or any of the coupons attached thereto, and the trustee, if any, except to the extent the rights herein given may be restricted by said ordinance authorizing issuance of the bonds or by the trust indenture, may either at law or in equity, by suit, action, mandamus or other proceeding protect and enforce any and all rights granted hereunder or under such ordinance or trust indenture, and may enforce and compel performance of all duties required by this article or by such ordinance or trust indenture to be performed by the municipality issuing the bonds or by the board or any officer,

including the making and collecting of reasonable and sufficient charges and rates for service rendered by the works. If there be any failure to pay the principal or interest of any of the bonds on the date therein named for such payment, any court having jurisdiction of the action may appoint a receiver to administer the works on behalf of the municipality and the bondholders and/or trustee, except as so restricted, with power to charge and collect rates sufficient to provide for the payment of the expenses of operation, repair and maintenance and also to pay any bonds and interest outstanding and to apply the revenues in conformity with this article and the said ordinance and/or trust indenture. (1933, Ex. Sess., c. 25, § 21.)

Rules of Civil Procedure. — As to abolition of procedural distinctions between law and equity, see Rule 2.

As to receivers, see Rule 66.
As to application of rules to extraordinary remedies, see Rule 81(a)(5).

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

The authority herein given shall be in addition to and not in derogation of any power existing in any municipality under any statutory or charter provisions which it may now have or hereafter adopt. For all purposes of this article, all municipal corporations shall have jurisdiction for ten miles outside the corporate limits thereof. (1933, Ex. Sess., c. 25, § 22.)

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

Any municipality is authorized and empowered to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of acquisition or construction of said sewage works and the construction of betterments and improvements thereto, and for the other purposes herein authorized, from any authorized agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article, the revenues of the said sewage works or grants to the municipality from any agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any agency of the state, the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article to the contrary notwithstanding, interest on any such loans or temporary advances may be paid from the proceeds thereof until the maturity of such notes or other negotiable instrument.

In no event shall any such loan or temporary advance be a general obligation of the municipality and such loans or temporary advances, including the interest thereon, shall be paid solely from the sources specified in this section. (1949, c. 93; 1961, c. 107; 1980, c. 59; 1981, 1st Ex. Sess., c. 2; 1986, c. 118.)

Stated in *United States v. City of Charleston*, 149 F. Supp. 866 (S.D.W. Va. 1957).

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

When determined by its legislative body to be in the public interest and necessary for the protection of the public health, any municipality is authorized to enter into and perform contracts, whether long-term or short-term, with any industrial establishment for the provision and operation by the municipality of sewerage facilities to abate or reduce the pollution of waters caused by discharges of industrial wastes by the industrial establishment and the payment periodically by the industrial establishment to the municipality of amounts at least sufficient, in the determination of such legislative body, to compensate the municipality for the cost of providing (including payment of principal and interest charges, if any), and of operating and maintaining the sewerage facilities serving such industrial establishment. (1949, c. 93.)

§ 16-13-22c. Refunding bonds.

Any municipality is authorized to issue refunding revenue bonds to refund, pay or discharge all or any part of its outstanding revenue bonds, including interest thereon, if any, in arrears or about to become due. The relevant provisions in this article pertaining to revenue bonds shall be equally applicable in the authorization and issuance of refunding revenue bonds, including their terms and security, the ordinance, the trust indenture, rates, or other aspects of the bonds. (1949, c. 93.)

§ 16-13-22d. Subordination of bonds.

Notwithstanding any other provisions to the contrary in this article, any municipality authorizing the issuance of bonds under this article in an effort to aid in the abatement or reduction of the pollution of any waters or streams may provide in the ordinance authorizing the issuance of the bonds and in any trust indenture pertaining thereto that such bonds, or any additional bonds that may thereafter be issued to extend or improve the works, shall, to the extent and in the manner prescribed, be subordinated and be junior in standing, with respect to the payment of principal and interest and the security thereof, to such other bonds as are designated in the ordinance. (1949, c. 93.)

§ 16-13-22e. Operating contract.

Any such municipality may enter into contracts or agreements with any persons, firms or corporations for the operation and management of the facilities and properties of said sewerage system, or any part thereof, for such

period of time and under such terms and conditions as shall be agreed upon between such municipality and such persons, firms or corporations. Such municipality shall have power to provide in the resolution authorizing the issuance of bonds hereunder, or in any trust indenture, securing such bonds, that such contracts or agreements shall be valid and binding upon the municipality as long as any of said bonds, or interest thereon, are outstanding and unpaid. (1955, c. 132.)

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

Said bonds and the interest thereon, together with all properties and facilities of said municipality owned or used in connection with sewerage system, and all the moneys, revenues and other income of such municipality derived from such sewerage system shall be exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof. (1955, c. 132.)

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

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

(a) The purpose or purposes to which the proceeds of sale of such bonds, or the revenues derived from said sewerage system, may be applied and the securing, use and disposition thereof, including, if deemed desirable, the appointment of a trustee or depository for any of such funds;

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

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

(d) The transfer from the general funds of the municipality to the account or accounts of such sewerage system of an amount equal to the cost of furnishing the municipality or any of its departments, boards or agencies with the services and facilities of such sewerage system;

(e) Limitations or restrictions upon the issuance of additional bonds or other obligations payable from the revenue of such sewerage system, and the rank or

priority, as to lien and source and security for payment from the revenues of such sewerage system, between bonds payable from such revenues:

(f) The manner and terms upon which all bonds and other obligations issued hereunder may be declared immediately due and payable upon the happening of a default in the payment of the principal of or interest thereon, or in the performance of any covenant or agreement with bondholders, and the manner and terms upon which such defaults may be declared cured and the acceleration of the maturity of such bonds rescinded and repealed:

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

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

(i) The keeping of books of account, relating to such undertakings and the audit and inspection thereof, and the furnishing to the holders of bonds issued hereunder or their representatives, reports prepared, certified, or approved by accountants designated or approved by the holders of bonds issued hereunder;

(j) Such other additional covenants as shall be deemed necessary or desirable for the security of the holders of bonds issued hereunder, notwithstanding that such other covenants are not expressly enumerated hereunder, it being the intention hereof to grant to such municipalities the power to make any and all covenants or agreements necessary in order to secure greater marketability for bonds issued hereunder as fully and to the same extent as such covenants or agreements could be made by a private corporation rendering similar services and facilities and to grant such municipalities full and complete power to enter into any contracts, covenants or agreements with holder of bonds issued hereunder not inconsistent with the Constitution of the State of West Virginia. (1955, c. 132.)

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

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

by this article. any provisions of other statutes of the State to the contrary notwithstanding: Provided, however, That all functions, powers and duties of the state department of health shall remain unaffected by this article. (1933. Ex. Sess., c. 25, § 23.)

Quoted in State ex rel. City of Wheeling v. Renick, 145 W. Va. 640, 116 S.E.2d 763 (1960).

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

Notwithstanding any other provision contained in this article, and in addition thereto, the governing body of any municipal corporation which has received or which hereafter receives an order issued by the director of the division of environmental protection or the environmental quality board requiring such municipal corporation to cease the pollution of any stream or waters, is hereby authorized and empowered to fix, establish and maintain, by ordinance, just and equitable rates or charges for the use of the services and facilities of the existing sewer system of such municipal corporation, and/or for the use of the services and facilities to be rendered upon completion of any works and system necessary by virtue of said order, to be paid by the owner, tenant or occupant of each and every lot or parcel of real estate or building that is connected with and uses any part of such sewer system, or that in any way uses or is served thereby, and may change and readjust such rates or charges from time to time. Such rates or charges shall be sufficient for the payment of all the proper and reasonable costs and expenses of the acquisition and construction of plants, machinery and works for the collection and/or treatment, purification and disposal of sewage, and the repair, alteration and extension of existing sewer facilities, as may be necessary to comply with such order of the director of the division of environmental protection or the environmental quality board, and for the operation, maintenance and repair of the entire works and system; and the governing body shall create, by ordinance, a sinking fund to accumulate and hold any part or all of the proceeds derived from rates or charges until completion of said construction, to be remitted to and administered by the municipal bond commission by expending and paying said costs and expenses of construction and operation in the manner as provided by said ordinance; and after the completion of the construction such rates or charges shall be sufficient in each year for the payment of the proper and reasonable costs and expenses of operation, maintenance, repair, replacement and extension from time to time, of the entire sewer and works. No such rates or charges shall be established until after a public hearing, at which all the potential users of the works and owners of property served or to be served thereby and others shall have had an opportunity to be heard concerning the proposed rates or charges. After introduction of the ordinance fixing such rates or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of such rates or charges, shall be given by publication of such notice as a Class II-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 is the municipality. The first publication shall be made at least ten days before the date fixed therein for the hearing. After such hearing, which may be adjourned from time to time, the ordinance establishing the rates or charges, either as originally introduced or as modified and amended, may be passed 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 sanitary board having charge of the construction and operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates or charges so established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice. Any change or readjustment of such rates or charges may be made in the same manner as such rates or charges were originally established as hereinbefore provided: Provided, That if such change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice is required. If any rate or charge so established is not paid within thirty days after the same is due, the amount thereof, together with a penalty of ten percent, and a reasonable attorney's fee, may be recovered by the sanitary board of such municipal corporation in a civil action in the name of the municipality. Any municipal corporation exercising the powers given herein has authority to construct, acquire, improve, equip, operate, repair and maintain any plants, machinery, or works necessary to comply with such order of the director of the division of environmental protection or the environmental quality board, and the authority provided herein to establish, maintain and collect rates or charges is an additional and alternative method of financing such works and matters, and is independent of any other provision of this article insofar as such article provides for or requires the issuance of revenue bonds or the imposition of rates and charges in connection with such bonds: Provided, however, That except for the method of financing such works and matters, the construction, acquisition, improvement, equipment, custody, operation, repair and maintenance of any plants, machinery or works in compliance with an order of the director of the division of environmental protection or the environmental quality board, and the rights, powers, and duties of such municipal corporation and the respective officers and departments thereof, including the sanitary board, are governed by the provisions of this article. (1955, c. 135; 1967, c. 105; 1994, c. 61.)

Effect of amendment of 1994. — The amendment substituted "director of the division of environmental protection or the environmental quality board" for "chief of the division of water resources or the state water resources board" twice preceding the two provisos and for "state water resources board" once in each proviso; substituted "municipal bond

commission" for "state sinking fund commission"; deleted "however" in the first proviso; and made other minor changes.

Textbooks. — Administrative Law in West Virginia (Neely), § 3.07.

Applied in *City of Morgantown v. Town of Star City*, 156 W. Va. 529, 195 S.E.2d 166 (1973).

ARTICLE 9.

OFFENSES GENERALLY.

Sec.
16-9-1. [Repealed.]

§ 16-9-1.

Repealed by Acts 1996. c. 89.

Editor's notes. — Former § 16-9-1 (enacted by Acts 1913, c. 23, §§ 1, 2 and amended by Code 1923, c. 150, § 20h), concerning prohibition of common drinking cups, was repealed by Acts 1996. c. 89.

ARTICLE 9A.

TOBACCO USAGE RESTRICTIONS.

§ 16-9A-1. Legislative intent.

W. Va. Law Review. — Hall, "Secondhand Smoke as an Issue in Child Custody/Visitation Disputes," 97 *W. Va. L. Rev.* 115 (1994).

§ 16-9A-4. Use of tobacco or tobacco products in certain areas of certain public schools prohibited; penalty.

W. Va. Law Review. — Hall, "Secondhand Smoke as an Issue in Child Custody/Visitation Disputes," 97 *W. Va. L. Rev.* 115 (1994).

ARTICLE 13.

SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND
SANITARY DISTRICTS.

§ 16-13-16. Rates for service; change or readjustment; hearing; lien and recovery; discontinuance of services.

Applicability. — Although the public service commission concluded that cities providing only sewer service are not covered by this section, which applies to municipalities that provide both water and sewer service, the dis-

trict court implicitly rejected the commission's interpretation. *City of Charleston v. Public Serv. Comm'n.* 57 F.3d 385 (4th Cir.), cert. denied. — U.S. —, 116 S. Ct. 474, 133 L. Ed. 2d 404 (1995).

ARTICLE 2.
**WATER POLLUTION CONTROL REVOLVING FUND
 ACT.**

<p>Sec. 22C-2-1. Definitions. 22C-2-2. Designation of division of environmental protection as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency. 22C-2-3. West Virginia water pollution control revolving fund; disburse-</p>	<p>Sec. ment of fund moneys: administration of the fund. 22C-2-4. Annual audit. 22C-2-5. Collection of money due to the fund. 22C-2-6. State construction grants program established; special fund. 22C-2-7. Environmental review of funded projects. 22C-2-8. Conflicting provisions.</p>
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Editor's notes. — The Water Pollution Control Revolving Fund Act was formerly compiled in c. 20, art. 5I.

§ 22C-2-1. Definitions.

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

(a) "Authority" means the water development authority provided for in section four [§ 22C-1-4], article one of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Sewage and wastewater collection, treatment and disposal facilities;
- (2) Public water transportation, treatment and distribution facilities;
- (3) Drainage facilities and projects;
- (4) Administrative, maintenance, storage and laboratory facilities related to the facilities delineated in subdivisions (1), (2) and (3) of this subsection;
- (5) Interests in land related to the facilities delineated in subdivisions (1), (2), (3) and (4) of this subsection; and
- (6) Other projects allowable under federal law. (1994, c. 61; 1996, c. 257.)

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

The division of environmental protection shall act as the instrumentality that is empowered to enter into capitalization agreements with the United States environmental protection agency, to accept capitalization grant awards made under the federal clean water act, as amended, the safe drinking water act, as amended, and other federal laws and to otherwise manage the fund provided for in this article in accordance with the requirements of said federal laws. (1994, c. 61.)

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

(a) Under the direction of the division of environmental protection, the water development authority shall establish, administer and manage a permanent and perpetual fund, to be known as the "West Virginia Water Pollution Control Revolving Fund." The fund shall be comprised of moneys appropriated to the fund by the Legislature, moneys allocated to the state by the federal government expressly for the purposes of establishing and maintaining a state water pollution control revolving fund, all receipts from loans made from the fund to local entities, all income from the investment of moneys held in the

fund, and all other sums designated for deposits to the fund from any source, public or private. Moneys in the fund shall be used solely to make loans to local entities to finance or refinance the costs of a project: Provided, That moneys in the fund shall be utilized to defray the costs incurred by the authority and the division of environmental protection in administering the provisions of this article: Provided, however, That moneys in the fund shall be used to make grants for projects to the extent allowed or authorized by federal law.

(b) The director of the division of environmental protection, in consultation with the authority, shall promulgate legislative rules in accordance with the provisions of article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of this code, to:

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

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

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

(d) The authority shall promulgate legislative rules in accordance with the provisions of article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of this code to govern the pledge of loans to secure bonds of the authority.

(e) All moneys belonging to the fund shall be kept in appropriate depositories and secured in conformance with this code. Disbursements from the fund shall be authorized for payment by the director of the authority or the director's designee. Any depository or officer of the depository to which moneys of the fund are paid shall act as trustee of the moneys and shall hold and apply them solely for the purposes for which the moneys are provided under this article. Moneys in the fund shall not be commingled with other money of the authority. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by the authority in obligations or securities which are considered lawful investments for public funds under this code. (1994, c. 61; 1996, c. 257.)

§ 22C-2-4. Annual audit.

The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants, and the cost thereof may be defrayed as a part of the cost of construction of a project or as an administrative expense under the provisions of subsection (a), section three [§ 22C-2-3(a)] of this article. (1994, c. 61.)

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

In order to ensure the timely payment of all sums due and owing to the fund under a revolving fund loan agreement between the state and a local entity,

and notwithstanding any provisions of this code to the contrary, the authority has and may, at its option, exercise the following rights and remedies in the event of any default by a local entity under a loan agreement:

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

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

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

- (1) The adjustment of service charges as required to repay the loan or otherwise satisfy the terms of the loan agreement;
- (2) The enforcement and collection of service charges; and
- (3) The enforcement by the local entity of all rights and remedies conferred by statute, rule, regulation or judicial decision.

The rights and remedies enumerated in this section are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement. (1994, c. 61; 1996, c. 257.)

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

(a) The director of the division of environmental protection shall promulgate rules in accordance with the provisions of chapter twenty-nine-a [§ 29A-1-1 et seq.] of this code to establish a state construction grants program that is designed to complement and supplement the state water pollution control revolving fund program established pursuant to subsection (b), section three [§ 22C-2-3(b)] of this article.

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

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defray the costs incurred by the division of environmental protection in administering the provisions of this section. (1994, c. 61.)

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

(a) The division of environmental protection shall conduct an environmental review on each project funded under this article. The director of the division of environmental protection shall promulgate legislative rules in accordance with the provisions of article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of this code to implement the environmental review of funded projects: Provided, That the rules shall be consistent with the regulations promulgated by the United States environmental protection agency pursuant to the federal clean water act, as amended.

(b) The director of the division of environmental protection is authorized to direct a local entity, or its agent, to implement all measures that, in the judgment of the director, are necessary in order to mitigate or prevent adverse impacts to the public health, safety or welfare or to the environment that may result from a project funded under this article. The director is further authorized to require all projects to comply with all other appropriate federal laws and regulations that are required of the projects under the federal clean water act, as amended. (1994, c. 61; 1996, c. 257.)

§ 22C-2-8. Conflicting provisions.

The provisions of this article shall be liberally construed to the end that its beneficial purposes may be effectuated. Insofar as the provisions of this article are inconsistent with the provisions of any other general, special or local law, the provisions of this article are controlling. (1994, c. 61.)

ARTICLE 3.

SOLID WASTE MANAGEMENT BOARD.

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| Sec. | Sec. |
| 22C-3-1. Short title. | 22C-3-7. Development of state solid waste management plan. |
| 22C-3-2. Legislative findings; declaration of policy and responsibility; purpose and intent of article. | 22C-3-8. Power of board to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights. |
| 22C-3-3. Definitions. | 22C-3-9. Development and designation of solid waste disposal sheds by board. |
| 22C-3-4. Solid waste management board; organization of board; appointment and qualification of board members; their term of office, compensation and expenses; director of board. | 22C-3-10. Board empowered to issue solid waste disposal revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance. |
| 22C-3-5. Board to designate and establish disposal sheds; construction, maintenance, etc., of disposal projects; loan agreements; compliance with federal and state law. | 22C-3-11. Establishment of reserve funds, replacement and improvement funds and sinking funds; fiscal |
| 22C-3-6. Powers, duties and responsibilities of board generally. | |