**TOWN OF FRANKLIN**

**Water Revenue Bonds, Series 1994**

**Date of Closing: May 27, 1994**

# BOND TRANSCRIPT

## Table of Contents

### BASIC DOCUMENTS


| | |
|---|---|
| 1 | Bond Ordinance |
| 2 | Supplemental Resolution |
| 3 | Loan Agreement |
| 4 | Public Service Commission Orders |
| 5 | Cross-Receipt for Bonds and Bond Proceeds |
| 6 | Direction to Authenticate and Deliver Bonds |
| 7 | Specimen Bond |


### OPINIONS OF COUNSEL


| | |
|---|---|
| 8 | Approving Opinion of Steptoe & Johnson, Bond Counsel |
| 9 | Opinion of Counsel to Issuer |


### CERTIFICATES


| | |
|---|---|
| 10 | General Certificate of Issuer and Attorney |
| 11 | Certificate as to Arbitrage |

## CERTIFICATES (Continued)

| | |
|---|---|
| 12 | Certificate of Engineer, with Schedule A Attached |
| 13 | Certificate of Certified Public Accountant |

## DOCUMENTS OF THE ISSUER

| | |
|---|---|
| 14 | Town Charter |
| 15 | Oaths of Office of Town Officers and Councilmembers |
| 16 | Rate Ordinance |
| 17 | Minutes on Adoption and Enactment of Rate Ordinance |
| 18 | Affidavit of Publication of Rate Ordinance and Notice of Public Hearing |
| 19 | Minutes on Adoption and Enactment of Bond Ordinance and Adoption of Supplemental Resolution |
| 20 | Affidavit of Publication of Abstract of Bond Ordinance and Notice of Public Hearing |
| 21 | IRS Information Return (Form 8038-G) and Letter of Transmittal |
| 22 | Municipal Bond Commission New Issue Report |

## MISCELLANEOUS DOCUMENTS

| | |
|---|---|
| 23 | Evidence of Small Cities Block Grant |
| 24 | Acceptance by Pendleton County Bank of Duties as Depository Bank |
| 25 | Acceptance by One Valley Bank, National Association, of Duties as Registrar |
| 26 | Certificate of Registration of Bonds |

## MISCELLANEOUS DOCUMENTS (Continued)

| | |
|---|---|
| 27 | Registrar's Agreement |

## DOCUMENTS RELATING TO REFUNDING OF PRIOR BONDS

| | |
|---|---|
| 28 | Letter to Escrow Agent on Proposed Refunding of Prior Bonds |
| 29 | Joint Certificate of Issuer and Escrow Agent |
| 30 | Notice of Redemption of Prior Bonds and Copy of Letter of Instructions on Redemption to Escrow Agent |
| 31 | Escrow Agreement |
| 32 | Verification Report of Smith, Cochran & Hicks, Certified Public Accountants, Regarding Bond Yield, Escrow Fund Yield, Sufficiency of Escrow Fund and Savings |
| 33 | Letter of Instructions on Escrow Fund to Escrow Agent |
| 34 | Prior Ordinance |

05/16/94
FRANKC.C2
307110/94001

# TOWN OF FRANKLIN

# WATER REVENUE BONDS, SERIES 1994

# BOND ORDINANCE

## Table of Contents


| Subject | | Page |
|---|---|---|
| **ARTICLE I** | | |
| **STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS** | | |
| Section 1.01 | Authority for this Ordinance | 1 |
| Section 1.02 | Findings | 1 |
| Section 1.03 | Bond Legislation Constitutes Contract | 4 |
| Section 1.04 | Definitions | 4 |
| **ARTICLE II** | | |
| **AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT AND REFUNDING OF PRIOR BONDS** | | |
| Section 2.01 | Authorization of Acquisition and Construction of the Project | 12 |
| Section 2.02 | Authorization of Refunding of Prior Bonds | 12 |
| **ARTICLE III** | | |
| **AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT** | | |
| Section 3.01 | Authorization of Bonds | 13 |
| Section 3.02 | Terms of Bonds | 13 |
| Section 3.03 | Execution of Bonds | 14 |
| Section 3.04 | Authentication and Registration | 14 |
| Section 3.05 | Negotiability, Transfer and Registration | 14 |
| Section 3.06 | Bonds Mutilated, Destroyed, Stolen or Lost | 15 |
| Section 3.07 | Bonds not to be Indebtedness of the Issuer | 15 |
| Section 3.08 | Bonds Secured by Pledge of Gross Revenues | 15 |

| | | |
|---|---|---|
| Section 3.09 | Delivery of Bonds | 16 |
| Section 3.10 | Form of Bonds | 16 |
| | FORM OF BOND | 17 |
| Section 3.11 | Sale of Bonds; Approval and Ratification of Execution of Loan Agreement with Authority | 24 |
| Section 3.12 | "Amended Schedule A" Filing | 24 |

**ARTICLE IV**
**[RESERVED]** 25

**ARTICLE V**
**FUNDS AND ACCOUNTS;**
**SYSTEM REVENUES AND APPLICATION THEREOF**

| | | |
|---|---|---|
| Section 5.01 | Establishment of Funds and Accounts with Depository Bank | 26 |
| Section 5.02 | Establishment of Funds and Accounts with Commission | 26 |
| Section 5.03 | System Revenues; Flow of Funds | 26 |

**ARTICLE VI**
**BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS**

| | | |
|---|---|---|
| Section 6.01 | Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds | 31 |
| Section 6.02 | Disbursements From the Bond Construction Trust Fund | 32 |

**ARTICLE VII**
**ADDITIONAL COVENANTS OF THE ISSUER**

| | | |
|---|---|---|
| Section 7.01 | General Covenants of the Issuer | 33 |
| Section 7.02 | Bonds not to be Indebtedness of the Issuer | 33 |
| Section 7.03 | Bonds Secured by Pledge of Gross Revenues | 33 |
| Section 7.04 | Initial Schedule of Rates and Charges | 33 |
| Section 7.05 | Sale of the System | 33 |
| Section 7.06 | Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances | 34 |
| Section 7.07 | Parity Bonds | 35 |
| Section 7.08 | Books; Records and Facilities | 37 |
| Section 7.09 | Rates | 38 |
| Section 7.10 | Operating Budget and Audit | 39 |

| | | |
|---|---|---|
| Section 7.11 | Engineering Services and Operating Personnel | 40 |
| Section 7.12 | No Competing Franchise | 40 |
| Section 7.13 | Enforcement of Collections | 40 |
| Section 7.14 | No Free Services | 41 |
| Section 7.15 | Insurance and Construction Bonds | 41 |
| Section 7.16 | Connections | 43 |
| Section 7.17 | Completion of Project; Permits and Orders | 43 |
| Section 7.18 | Tax Covenants | 43 |
| Section 7.19 | Statutory Mortgage Lien | 44 |
| Section 7.20 | Compliance with Loan Agreement and Law | 44 |

**ARTICLE VIII**
**INVESTMENT OF FUNDS; NON ARBITRAGE**

| | | |
|---|---|---|
| Section 8.01 | Investments | 45 |
| Section 8.02 | Arbitrage | 45 |
| Section 8.03 | Small Issuer Exemption from Rebate of Excess Investment Earnings to the United States | 46 |

**ARTICLE IX**
**DEFAULT AND REMEDIES**

| | | |
|---|---|---|
| Section 9.01 | Events of Default | 48 |
| Section 9.02 | Remedies | 48 |
| Section 9.03 | Appointment of Receiver | 48 |

**ARTICLE X**
**DEFEASANCE**

| | | |
|---|---|---|
| Section 10.01 | Defeasance of Bonds | 50 |

**ARTICLE XI**
**MISCELLANEOUS**

| | | |
|---|---|---|
| Section 11.01 | Amendment or Modification of Bond Legislation | 51 |
| Section 11.02 | Bond Legislation Constitutes Contract | 51 |
| Section 11.03 | Severability of Invalid Provisions | 51 |
| Section 11.04 | Headings, Etc. | 51 |
| Section 11.05 | Conflicting Provisions Repealed | 51 |
| Section 11.06 | Covenant of Due Procedure, Etc. | 51 |

| | | |
|---|---|---|
| Section 11.07 | Effective Date | 52 |
| Section 11.08 | Statutory Notice and Public Hearing | 52 |
| | SIGNATURES | 52 |
| | CERTIFICATION | 53 |
| | EXHIBIT A | 54 |

TOWN OF FRANKLIN

ORDINANCE AUTHORIZING THE REFUNDING OF THE OUTSTANDING WATERWORKS REVENUE BONDS, SERIES A AND SERIES B, DATED JULY 1, 1968, OF THE TOWN OF FRANKLIN AND THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING WATERWORKS SYSTEM OF THE TOWN AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE TOWN OF NOT MORE THAN $400,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 1994; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

## ARTICLE I

## STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is adopted and enacted pursuant to the provisions of Chapter 8, Article 19 and Chapter 13, Article 2E 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 Franklin (the "Issuer") is a duly created and validly existing municipal corporation and political subdivision of the State of West Virginia in Pendleton County of said State.

B. The Issuer now owns and operates a public water treatment and distribution system. However, such system is inadequate and it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain additions, betterments and improvements to the existing waterworks system of the Issuer, including, but not limited to, repairs and improvements to its pump station, treatment plant and storage tanks in Franklin, Pendleton County, together with all appurtenant facilities (collectively, the "Project") (the Project and any further additions, improvements and betterments thereto or extensions thereof are herein called the "System") at an estimated cost of not more than $700,000, of which $344,000 will be from a grant by the Department of Housing and Urban Development (Small Cities Block Grant through the State of West Virginia) and the balance from the proceeds of the Series 1994 Bonds, in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

C. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all the costs of the operation and maintenance of said System, the principal of and interest on the Series 1994 Bonds and the sinking fund, reserve account and other payments provided for herein.

D. It is deemed necessary for the Issuer to issue its Water Revenue Bonds, Series 1994, in the total aggregate principal amount of not more than $400,000 (the "Series 1994 Bonds"), to be initially represented by a single Bond, to permanently finance the costs of acquisition and construction of the Project and to refund the Prior Bonds (hereinafter defined). Said costs shall be deemed to include the cost of refunding the Prior Bonds, all property rights, easements and franchises deemed necessary or convenient therefor; interest upon that portion of the Series 1994 Bonds to be used to finance the acquisition and construction of the Project (the "New Money Proceeds") prior to and during acquisition or construction and for a period not exceeding 6 months after completion of acquisition or construction of the Project; amounts which may be deposited in the Series 1994 Bonds Reserve Account (hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the Project, administrative expense, commitment fees, fees and expenses of the Authority (as hereinafter defined), discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 1994 Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the acquisition or construction of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof; provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 1994 Bonds or the repayment of indebtedness incurred by the Issuer for such purposes, shall be deemed Costs of the Project, as hereinafter defined.

E. The period of usefulness of the System after completion of the Project is not less than 40 years.

F. It is in the best interests of the Issuer that its Series 1994 Bonds be sold to the West Virginia Water Development Authority (the "Authority") pursuant to the terms and provisions of a loan agreement (the "Loan Agreement") to be entered into between the Issuer and the Authority, in form satisfactory to the Issuer and the Authority, as shall be approved by a resolution supplemental hereto.

G. The Issuer has heretofore financed the acquisition and construction of certain additions, betterments and improvements to its waterworks system by issuance of its Waterworks Revenue Bonds, Series A and Series B, dated July 1, 1968 (the "Prior Bonds"), in the original aggregate principal amount of $128,000, of which $65,000 will be outstanding as of the date of enactment of this Ordinance. The Issuer is advised that by refunding the Prior Bonds, certain liens, restrictions, conditions or limitations imposed by the Prior Ordinance (hereinafter defined) will be released and terminated, and hereby determines that it would be to the benefit of the Issuer and its residents to refund the Prior Bonds to their first redemption date, anticipated to be July 1, 1994, in the manner set forth herein with proceeds of the Series 1994 Bonds and other moneys of the Issuer. Upon conclusion of the refunding and defeasance of the Prior Bonds on the Closing Date, there will be no outstanding obligations of the Issuer which will rank senior and prior to, or on a parity with, or junior and subordinate to, the Series 1994 Bonds as to liens, pledge and source of and security for payment.

H. The Issuer has complied with all requirements of West Virginia law relating to authorization of the acquisition, construction and operation of the Project and the System, refunding of the Prior Bonds, and issuance of the Bonds, or will have so complied prior to issuance thereof, including, among other things, the obtaining of a certificate of convenience and necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will either have expired prior to the date of issuance of the Series 1994 Bonds or such final order will not be subject to appeal.

I. The Issuer is a governmental unit which has general taxing powers to finance operations of or facilities of the nature of the Project and the System; 95% or more of the Net Proceeds of the issues of the Series 1994 Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); 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)(D) of the Code and all other entities benefiting thereby reasonably expect to issue less than $5,000,000 aggregate principal amount of tax-exempt obligations (other than private activity bonds) during the calendar year in which the Series 1994 Bonds are to be issued.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 1994 Bonds by those who shall be the registered owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such 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 and any other Bond by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

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

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser of the Series 1994 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.

"Bond Construction Trust Fund" means the Bond Construction Trust Fund established by Section 5.01 hereof.

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

"Bond Registrar" or "Registrar" means the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns.

"Bond Year" means each one-year period (or shorter period from the date of issuance of the Series 1994 Bonds) that ends at the close of business on October 1, unless otherwise required under the Code.

"Bonds" means the Series 1994 Bonds, and, where appropriate, any bonds on a parity with the Series 1994 Bonds authorized to be issued hereunder.

"Closing Date" means the date upon which there is an exchange of the Series 1994 Bonds for the proceeds representing the purchase of the Series 1994 Bonds by the Authority.

"Code" means the Internal Revenue Code of 1986, as amended, and the Regulations.

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

"Consulting Engineers" means William Pallavicini, P.E., Petersburg, 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, or portion thereof.

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

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

"Escrow Agent" means the Escrow Agent under the Escrow Agreement, which shall be the Commission.

"Escrow Agreement" means the Escrow Agreement to be entered into between the Issuer and the Commission, providing for the defeasance and ultimate payment of the Prior Bonds, the deposit therein of proceeds of the Series 1994 Bonds and other moneys of the Issuer, the disposition of moneys in the various funds and accounts under the Prior Ordinance and other matters in connection therewith, the form of which shall be approved by the Supplemental Resolution.

"Escrow Fund" means the Escrow Fund established pursuant to the Escrow Agreement.

"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, as it may now or hereafter be constituted.

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

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

"Grant Agreement" means a written commitment for the payment of 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.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 8.01 hereof) or any Tap Fees, as hereinafter defined.

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

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

"Investment Property" means any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract, investment-type property or any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan, excluding, however, obligations the interest on which is excluded from gross income, under Section 103 of the Code, for federal income tax purposes other than specified private activity bonds as defined in Section 57(a)(5)(C) of the Code.

"Issuer" means the Town of Franklin, a municipal corporation in Pendleton County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Loan Agreement" means the Loan Agreement to be entered into between the Authority and the Issuer, providing for the purchase of the Series 1994 Bonds from the

Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified by the Supplemental Resolution.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 1994 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 1994 Bonds Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 1994 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.

"New Money Proceeds" means that portion of the proceeds of the Series 1994 Bonds to be used to finance the acquisition and construction of the Project.

"Nonpurpose Investment" means any Investment Property which is acquired with the gross proceeds or any other proceeds of the Series 1994 Bonds and is not acquired in order to carry out the governmental purpose of the Series 1994 Bonds.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, operation and maintenance of the System, as hereinafter defined, and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, fees and expenses of the Authority, fiscal agents, the Depository Bank, 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 Series 1994 Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

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

"Parity Bonds" means additional Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof.

"Paying Agent" means the bank or banks or other entity or authority designated as paying agent for the Bonds in the Supplemental Resolution.

"Prior Bonds" means the Issuer's Waterworks Revenue Bonds, Series A and Series B, dated July 1, 1968, issued in the original aggregate principal amount of $128,000.

"Prior Ordinance" means the ordinance of the Issuer adopted February 2, 1968, authorizing the Prior Bonds.

"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.

"Program" means the Authority's loan program, under which the Authority purchases the water development revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of water development revenue bonds of the Authority.

"Project" means the acquisition and construction of certain additions, betterments and improvements to the existing waterworks system of the Issuer, including, but not limited to, repairs and improvements to its pump station, treatment plant and storage tanks in Franklin, Pendleton County, together with 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 Board of Investments pursuant to Chapter 12, Article 6 of the West Virginia Code of 1931, as amended; and

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

"Recorder" means the Recorder of the Issuer.

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

"Registrar" means the Bond Registrar.

"Regulations" means all applicable regulations promulgated under the Code, or any predecessor thereto.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund established by Section 5.01 hereof.

"Revenue Fund" means the Revenue Fund established by Section 5.01 hereof.

"Series 1994 Bonds" means the not more than $400,000 in aggregate principal amount of Water Revenue Bonds, Series 1994, of the Issuer.

"Series 1994 Bonds Reserve Account" means the Series 1994 Bonds Reserve Account established in the Series 1994 Bonds Sinking Fund pursuant to Section 5.02 hereof.

"Series 1994 Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 1994 Bonds in the then current or any succeeding year.

"Series 1994 Bonds Sinking Fund" means the Series 1994 Sinking Fund established by Section 5.02 hereof.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolutions authorizing the sale of the Series 1994 Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 1994 Bonds and not so included, may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including, without limitation, the Renewal and Replacement Fund and the reserve accounts, the proceeds of which Bonds or other obligations are to be used to pay Costs of the Project.

"System" means the complete public waterworks system of the Issuer, as presently existing in its entirety or any integral part thereof, and shall include the Project and any further improvements or extensions thereto hereafter constructed or acquired from any sources whatsoever.

"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 ACQUISITION AND CONSTRUCTION OF THE PROJECT AND REFUNDING OF PRIOR BONDS

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized the acquisition and construction of the Project, at an estimated cost of not more than $700,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Bonds hereby authorized shall be applied as provided in Article VI hereof. The Issuer has received bids or entered into contracts for the acquisition and construction of the Project, compatible with the financing plan submitted to the Authority.

Section 2.02. Authorization of Refunding of Prior Bonds. For the purpose of releasing and terminating certain liens, restrictions, conditions or limitations imposed by the Prior Ordinance, all Prior Bonds Outstanding as of the date of issuance of the Series 1994 Bonds in the aggregate principal amount of $65,000 are hereby authorized and ordered to be refunded pursuant to the Act and the terms of the Escrow Agreement, and the pledge of revenues in favor of the Holders of such refunded Prior Bonds imposed by the Prior Ordinance, the moneys in the funds and accounts created by the Prior Ordinance and any other funds pledged by the Prior Ordinance thereto are hereby ordered terminated, discharged and released upon the payment into the Escrow Fund from the proceeds of the Series 1994 Bonds, and other moneys available therefor, of the following: (a) if required by the Escrow Agreement, an amount equal to the fiscal and paying agent charges and the Escrow Agent charges to become due and payable in connection with the Prior Bonds and (b) an amount which will be simultaneously invested in Government Obligations bearing interest and having maturities sufficient, together with certain cash which may also be deposited, to provide for the payment of the principal of, interest and redemption premium, if any, on such Prior Bonds on the first date upon which the entire aggregate amount of the Prior Bonds shall be redeemed, anticipated to be July 1, 1994, all as set forth in the Escrow Agreement. Contemporaneously with the deposit of such Series 1994 Bond proceeds into the Escrow Fund, the amounts on deposit in the sinking fund, including the reserve account therein, and all other funds and accounts created and maintained on behalf of the Prior Bonds and currently held at the Commission shall, on the Closing Date, be deposited in the Escrow Fund or such other fund or account as shall be set forth in the Escrow Agreement, and invested as provided in the Escrow Agreement and this Ordinance.

## 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 refunding all of the Outstanding Prior Bonds of the Issuer, capitalizing interest on the New Money Proceeds of the Series 1994 Bonds, funding a reserve account for the Series 1994 Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued negotiable Series 1994 Bonds of the Issuer. The Series 1994 Bonds shall be issued as a single bond, designated "Water Revenue Bond, Series 1994," in the aggregate principal amount of not more than $400,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 1994 Bonds remaining after funding of the Series 1994 Bonds Reserve Account (if funded from Bond proceeds) and capitalizing interest on the New Money Proceeds of the Series 1994 Bonds, if any, shall be deposited in the Bond Construction Trust Fund established by Section 5.01 hereof.

Section 3.02. Terms of Bonds. The Series 1994 Bonds shall bear interest at such rate or rates, not exceeding the then legal maximum, payable semiannually on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution. The Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 1994 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 the Supplemental Resolution, the Series 1994 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 of the Series 1994 Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Bonds shall be exchangeable at the option and expense of the Holder for other fully registered Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. The Series 1994 Bonds shall

be dated as of the date specified in a Supplemental Resolution and shall bear interest from such date.

Section 3.03. Execution of Bonds. The Series 1994 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 Series 1994 Bonds shall cease to be such officer of the Issuer before the Series 1994 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 Series 1994 Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the forms set forth in Section 3.10 shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 1994 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 Issuer, through 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 Bond Legislation. All Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Bonds during the period commencing on the 15th day of the month 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 Series 1994 Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 1994 Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Gross Revenues derived from the operation of the System as herein provided and amounts, if any, in the Series 1994 Bonds Sinking Fund and the Series 1994 Bonds Reserve Account. No holder or holders of any of the Series 1994 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 1994 Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Gross Revenues. The payment of the debt service of all the Series 1994 Bonds shall be secured forthwith equally and ratably with each other by a lien on the Gross Revenues derived from the System. Such Gross Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Series 1994 Bonds and to make the payments into the Renewal and Replacement Fund hereinafter established, and all other payments provided for in the Bond Legislation, are hereby irrevocably pledged to such payments as they become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 1994 Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 1994 Bonds to the original purchasers upon receipt of the documents set forth below:

A. If other than the Authority, a list of the names in which the Series 1994 Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;

B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 1994 Bonds to the original purchasers; and

C. The unqualified approving opinion of bond counsel on the Series 1994 Bonds.

Section 3.10. Form of Bonds. The text of the Series 1994 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 adopted prior to the issuance thereof:

(FORM OF BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
TOWN OF FRANKLIN
WATER REVENUE BOND, SERIES 1994

No. R-____ $_____

KNOW ALL MEN BY THESE PRESENTS: That the TOWN OF FRANKLIN, a municipal corporation and political subdivision of the State of West Virginia in Pendleton County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of _____ DOLLARS ($_____), in installments on October 1 of each year as set forth on the "Schedule of Annual Debt Service" attached as Exhibit A hereto and incorporated herein by reference with interest on each installment at the rate per annum set forth on said Exhibit A.

The interest rate on each installment shall run from the original date of delivery of this Bond to the Authority and payment therefor, and until payment of such installment, and such interest shall be payable on April 1 and October 1 in each year, beginning _____ 1, 199____. 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"). The interest 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 One Valley Bank, National Association, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement between the Issuer and the Authority, dated _____, 199____.

This Bond is issued (i) to refund all of the outstanding Waterworks Revenue Bonds, Series A and Series B, dated July 1, 1968 (the "Prior Bonds"), of the Issuer, heretofore issued to finance the cost of acquisition and construction of certain additions,

betterments and improvements to the waterworks system of the Issuer; (ii) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing waterworks system of the Issuer (the "Project"); (ii) [to pay interest on that portion of the Bonds of this Series (the "Bonds") to be used for acquisition and construction of the Project during the construction of the Project and for not more than 6 months thereafter; (iii) to fund a reserve account for the Bonds; and (iv)] to pay certain costs of issuance hereof and related costs. The Project, and any further additions, betterments and improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 13, Article 2E of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on _____, 199____, and a Supplemental Resolution duly adopted by the Issuer on _____, 199____ (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, and from moneys in the reserve account created under the Bond Legislation for the Bonds (the "Series 1994 Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 1994 Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on the Bonds, and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds; provided however, that so long as there exists in the Series 1994 Bonds 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 respective reserve accounts 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 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the

registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of 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 refunding of the Prior Bonds and the payment of the Costs of the Project described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the registered owner of this Bond.

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

IN WITNESS WHEREOF, the TOWN OF FRANKLIN has caused this Bond to be signed by its Mayor and its corporate seal to be affixed hereon and attested by its Recorder, and has caused this Bond to be dated _____, 199____.

[SEAL]

_____
Mayor

ATTEST:

_____
Recorder

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1994 Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: _____, 199____.

ONE VALLEY BANK,
NATIONAL ASSOCIATION,
as Registrar

By _____
Is Authorized Officer

EXHIBIT A

SCHEDULE OF ANNUAL DEBT SERVICE

(Form of)

ASSIGNMENT

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

Dated: _____, _____.

_____

In the presence of:

_____

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreement with Authority. The Series 1994 Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "Exhibit A" and made a part hereof, and the Recorder is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed.

Section 3.12. "Amended Schedule A" Filing. Upon completion of acquisition and construction of the Project, 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 Project and sources of funds therefor.

## ARTICLE IV

[RESERVED]

## ARTICLE V

## FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created with and shall be held by the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and from each other:

(1) Revenue Fund;

(2) Renewal and Replacement Fund; and

(3) Bond Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created with the Commission:

(1) Series 1994 Bonds Sinking Fund; and

(2) Within the Series 1994 Bonds Sinking Fund, the Series 1994 Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided.

(1) The Issuer shall first (i) on the first day of each month, commencing 7 months prior to the first date of payment of interest on the Series 1994 Bonds for which interest has not been capitalized, apportion and set apart out of the Revenue Fund and remit to the Commission, for deposit in the Series 1994 Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on the Series 1994 Bonds on the next ensuing semiannual interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1994 Bonds Sinking Fund and the next semiannual interest payment date is less than 7 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next semiannual interest payment date, the required amount of interest coming due on such date, and (ii) simultaneously

with the transfer set forth in subsection 5.03A(1)(i), on the first day of each month, commencing 13 months prior to the first date of payment of principal on the Series 1994 Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1994 Bonds Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on the Series 1994 Bonds on the next ensuing principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 1994 Bonds Sinking Fund and the next annual principal payment date is less than 13 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next annual principal payment date, the required amount of principal coming due on such date.

(2) The Issuer shall next, on the first day of each month, commencing 13 months prior to the first date of payment of principal of the Series 1994 Bonds, if not fully funded upon issuance of the Series 1994 Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1994 Bonds Reserve Account, an amount equal to 1/120 of the Series 1994 Bonds Reserve Requirement; provided, that no further payments shall be made into the Series 1994 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 1994 Bonds Reserve Requirement.

(3) Next, the Issuer shall initially transfer all moneys in the depreciation account created and maintained on behalf of the Prior Bonds to the Renewal and Replacement Fund, and thereafter, from the moneys remaining in the Revenue Fund, on the first day of each month, commencing with the first month in which interest shall be payable from the Revenue Fund, transfer to the Renewal and Replacement Fund, a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in the Series 1994 Bonds Reserve Account [except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof] shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

(4) Thereafter, the Issuer shall, each month, pay from the Revenue Fund current Operating Expenses of the System.

Moneys in the the Series 1994 Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 1994 Bonds as the same shall become due. Moneys in the Series 1994 Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 1994 Bonds as the same shall come due, when other moneys in the Series 1994 Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 1994 Bonds Sinking Fund and the Series 1994 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 Bond Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 1994 Bonds, and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 1994 Bonds Reserve Account which result in a reduction in the balance of the Series 1994 Bonds Reserve Account to below the Series 1994 Bonds Reserve Requirement shall be subsequently restored from the first Gross Revenues available after all required payments have been made in full to the Series 1994 Bonds Sinking Fund.

As and when additional Bonds ranking on a parity with the Series 1994 Bonds are issued, provision shall be made for additional payments into the respective sinking funds sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the appropriate reserve account in an amount equal to the maximum provided and required to be paid into the concomitant 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 1994 Bonds Sinking Fund, or the Series 1994 Bonds Reserve Account therein when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 1994 Bonds issued pursuant to this Bond Legislation 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 1994 Bonds Sinking Fund created hereunder, and all amounts required for the Series 1994 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 1994 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 Bond Legislation.

Moneys in the Series 1994 Bonds Sinking Fund and the Series 1994 Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 1994 Bonds Sinking Fund, including the Series 1994 Bonds Reserve Account therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 1994 Bonds and any additional Bonds ranking on a parity therewith that may be issued and Outstanding under the conditions and restrictions hereinafter set forth.

B. 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 1994 Bonds Sinking Fund, including the Series 1994 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. Surplus Revenues may be used for any lawful purpose of the System.

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

D. 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.

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

Section 5.03, and the Gross Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

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

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

## ARTICLE VI

## BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the moneys received from the sale of any or all of the Series 1994 Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 1994 Bonds, there shall first be deposited with the Commission in the Series 1994 Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest on the New Money Proceeds of the Series 1994 Bonds; provided, that such amount may not exceed the amount necessary to pay interest on the Series 1994 Bonds for the period commencing on the date of issuance of the Series 1994 Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. Next, from the proceeds of the Series 1994 Bonds, there shall be deposited with the Commission in the Series 1994 Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 1994 Bonds Reserve Account.

C. Next, from the proceeds of the Series 1994 Bonds, there shall be deposited with the Commission in the Escrow Fund, the amount set forth in the Escrow Agreement which, together with other moneys or securities deposited therein and the earnings thereon, will be sufficient to accomplish the refunding and defeasance of the Prior Bonds.

D. Next, from the proceeds of the Series 1994 Bonds, there shall first be credited to the Bond Construction Trust Fund and then paid, any and all borrowings by the Issuer made for the purpose of temporarily financing a portion of the Costs of the Project, including interest accrued thereon to the date of such payment, not otherwise paid from funds of the Issuer.

E. The remaining moneys derived from the sale of the Series 1994 Bonds shall be deposited with the Depository Bank in the Bond Construction Trust Fund and applied solely to payment of Costs of the Project in the manner set forth in Section 6.02.

F. The Depository Bank shall act as a trustee and fiduciary for the Bondholder with respect to the Bond Construction Trust Fund and shall comply with all requirements with respect to the disposition of the Bond Construction Trust Fund set forth in the Bond Legislation. Moneys in the Bond Construction Trust 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 Series 1994 Bonds.

Section 6.02. Disbursements From the Bond Construction Trust Fund. Payments for Costs of the Project shall be made monthly. Except as provided in Section 6.01 hereof, disbursements from the Bond Construction Trust Fund (except for the costs of issuance of the Series 1994 Bonds which shall be made upon request of the Issuer), shall be made only after submission to the Depository Bank of 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 Bond Construction Trust Fund only the net amount remaining after deduction of any such portion. All payments made from the Bond Construction Trust 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 Bond Construction Trust 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 Bond Construction Trust Fund, including any accounts therein, shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

After completion of the Project, as certified by the Consulting Engineers, and all Costs have been paid, the Depository Bank shall transfer any moneys remaining in the Bond Construction Trust Fund to the Series 1994 Bonds Reserve Account, and when fully funded, shall return such remaining moneys to the Issuer for deposit in the Revenue Fund; provided that, in no event shall more than 10% of the proceeds of the Series 1994 Bonds be deposited in the Series 1994 Bonds Reserve Account and any balance in excess of said amounts shall be returned to the Issuer for deposit in the Revenue Fund. The Issuer shall thereafter, apply such moneys in full, first to the next ensuing interest payments due on the Series 1994 Bonds and thereafter to the next ensuing principal payments due thereon.

## ARTICLE VII

## ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 1994 Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 1994 Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as the Series 1994 Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 1994 Bonds shall not 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 Bond Legislation. No Holder or Holders of the Series 1994 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 1994 Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Gross Revenues. The payment of the debt service of the Series 1994 Bonds issued hereunder shall be secured forthwith equally and ratably by a lien on the Gross Revenues derived from the operation of the System. The Gross Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Series 1994 Bonds and to make the payments into the Series 1994 Bonds Sinking Fund, including the Series 1994 Bonds Reserve Account therein, and all other payments provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided herein, to such payments as they become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Initial Schedule of Rates and Charges. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the water rate ordinance of the Issuer enacted June 2, 1992, which rates are incorporated herein by reference as a part hereof.

Section 7.05. Sale of the System. Except as otherwise required by law or with the written consent of the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Bonds Outstanding, or to effectively defease this Bond Legislation in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 1994 Bonds, immediately be remitted to the Commission for deposit in the

Series 1994 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 Series 1994 Bonds. Any balance remaining after the payment of all the Series 1994 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, be remitted by the Issuer to the Commission for deposit in the Series 1994 Bonds Sinking Fund and shall be applied only to the purchase of Bonds of the last maturities then Outstanding at prices not greater than the par value thereof plus 3% of such par value or otherwise. Such payment of such proceeds into the Series 1994 Bonds Sinking Fund or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Bond Legislation. No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of $50,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of over 50% in amount of the Bonds then Outstanding and the Consulting Engineers. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided in this Section 7.06 and in

Section 7.07B, and, so long as any of the Series 1994 Bonds are Outstanding, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 1994 Bonds. All obligations issued by the Issuer after the issuance of the Series 1994 Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 1994 Bonds; provided, that no such subordinate obligations shall be issued unless payments required to be made into all funds and accounts established by this Bond Legislation have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 1994 Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Bonds and the interest thereon in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants, or any other obligations related to the Project or the System.

Section 7.07. Parity Bonds. No Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of any Bonds pursuant to this Bond Legislation, except under the conditions and in the manner herein provided.

All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 1994 Bonds.

No such Parity Bonds shall be issued except for the purpose of financing the costs of the construction or acquisition of extensions, improvements or betterments to the System or refunding the Series 1994 Bonds issued pursuant hereto, or both such purposes.

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

and become due in any succeeding Fiscal Year for principal of and interest on the following:

(1) The Bonds then Outstanding;

(2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and

(3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from (a) the improvements to be financed by such Parity Bonds and (b) any increase in rates enacted 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 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 Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System and their source of and security for payment from said revenues, without preference of any Bond of one series over any other Bond of the same series. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior liens of the Series 1994 Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Series 1994 Bonds.

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

Notwithstanding the foregoing, or any provision of Section 7.06 to the contrary, additional Parity Bonds may be issued solely for the purpose of completing the Project as described in the application to the Authority submitted as of the date of the Loan Agreement without regard to the restrictions set forth in this Section 7.07, if there is first obtained by the Issuer the written consent of the Authority to the issuance of the Parity Bonds.

Section 7.08. Books; Records and Facilities. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the 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 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, or its agents and representatives, to inspect all records pertaining to the operation of the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

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

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the 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, the Authority, or any other original purchaser of the Series 1994 Bonds, and shall mail in each year to any Holder or Holders of the Series 1994 Bonds, requesting the same, an annual report containing the following:

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

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation and the status of all said funds and accounts.

(C) The amount of any Bonds, notes or other obligations payable from the revenues of the System outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 1994 Bonds and shall submit said report to the Authority, or any other original purchaser of the Series 1994 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 Bond Legislation and that the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service requirements.

The Issuer shall permit the 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 System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority with respect to the System pursuant to the Act.

Section 7.09. Rates. Equitable rates or charges for the use of and service rendered by the System have been established all in the manner and form required by law,

and copies of such rates and charges so established will be continuously on file with the Recorder, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from 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. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Series 1994 Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Series 1994 Bonds; provided that, in the event that amounts equal to or in excess of the reserve requirements are on deposit respectively in the Series 1994 Bonds Reserve Account and reserve accounts for obligations prior to or on a parity with the Series 1994 Bonds, are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest on the Series 1994 Bonds and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Series 1994 Bonds. In any event, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinance described in Section 7.04.

Section 7.10. Operating Budget and Audit. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by 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 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 mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority and to any Holder of any Bonds who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Bonds or anyone acting for and in behalf of such Holder of any Bonds.

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 Bond Legislation and the Loan Agreement and that the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service requirements.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for two years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreement as Exhibit C, and forward a copy of such report to the Authority by the 10th day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers in the form attached to the Loan Agreement, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the Authority, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

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

The Issuer agrees that qualified operating personnel properly certified by the State will be employed to operate the System during the entire term of the Loan Agreement.

Section 7.12. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent

permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System to all users thereof delinquent in payment of charges for the services of the System and will not restore such services of the 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 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as any of the Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for 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 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 $500,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than $500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the construction contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

(4) FLOOD INSURANCE, if the facilities of the System are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

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

(6) FIDELITY BONDS will be provided for every officer, member and employee of the Issuer or the Governing Body having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

B. The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project. 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 7.16. Connections. To the extent permitted by the laws of the State and rules and regulations of the Public Service Commission of West Virginia, the Issuer shall require every owner, tenant or occupant of any house, dwelling or building intended to be served by the System to connect thereto.

Section 7.17. Completion of Project; Permits and Orders. The Issuer will complete the Project as promptly as possible and operate and maintain the System 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 Public Service Commission of West Virginia necessary for the acquisition and construction of the Project and the operation of the System.

Section 7.18. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 1994 Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 1994 Bonds during the term thereof is, under the terms of the Series 1994 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is 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; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 1994 Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 1994 Bonds during the term thereof is, under the terms of the Series 1994 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 1994 Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Series 1994 Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such Private Business Use is related. All of the foregoing shall be determined in accordance with the Code.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of 5% of the Net Proceeds of the Series 1994 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.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 1994 Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

D. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 1994 Bonds and the interest thereon, including, without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it (including, without limitation, those deemed necessary by the Authority) so that the interest on the Series 1994 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, without limitation, those deemed necessary by the Authority), the result of which would adversely affect such exclusion.

Section 7.19. Statutory Mortgage Lien. For the further protection of the Holders of the Series 1994 Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Series 1994 Bonds and shall be for the equal benefit of all Holders of the Series 1994 Bonds.

Section 7.20. Compliance with Loan Agreement and Law. The Issuer agrees to comply with all the terms and conditions of the Loan Agreement and all applicable laws, rules and regulations issued by the Authority, or other State, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

## ARTICLE VIII

## INVESTMENT OF FUNDS; NON ARBITRAGE

Section 8.01. Investments. Any moneys held as a part of the funds and accounts created by this Bond Legislation, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws and this Bond Legislation, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8.01.

Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission, 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 (or more often if reasonably requested by the Issuer), a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 1994 Bonds are Outstanding and as long thereafter as necessary to comply with the Code and assure the exclusion of interest on the Series 1994 Bonds from gross income for federal income tax purposes.

Section 8.02. Arbitrage. The Issuer covenants that (i) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Series 1994 Bonds which would cause the Series 1994 Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, 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 Series 1994 Bonds) so that the interest on the Series 1994 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 8.03. Small Issuer Exemption from Rebate of Excess Investment Earnings to the United States. In accordance with Section 148(f)(4)(D) of the Code, the Issuer covenants that it is a governmental unit with general taxing powers; that no part of the Series 1994 Bonds are private activity bonds; that 95% or more of the Net Proceeds of the Series 1994 Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and that the aggregate face amount of all the tax-exempt obligations (other than private activity bonds) issued by the Issuer during the calendar year in which the Series 1994 Bonds are issued does not and will not exceed $5,000,000, determined in accordance with Section 148(f)(4)(D) of the Code and the Regulations from time to time in effect and applicable to the Series 1994 Bonds. For purposes of this first paragraph of Section 8.03 and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this first paragraph of Section 8.03 and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this first paragraph of Section 8.03 and Section 148(f)(4)(D) of the Code to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefiting thereby shall be treated as one issuer.

Notwithstanding the foregoing, if in fact the Issuer is subject to the rebate requirements of Section 148(f) of the Code, and not exempted from such requirements, the Issuer covenants to make, or cause to be made, all rebate calculations, computations and payments in the time, manner and as required in Section 148(f) of the Code and the Regulations from time to time in effect and applicable to the Series 1994 Bonds and otherwise covenants and agrees to comply with the provisions of such Section 148(f) of the Code and the Regulations from time to time in effect and applicable to the Series 1994 Bonds. In the event of a failure to pay any such amount or amounts, the Issuer will pay, from any lawful sources available therefor, to the United States an amount equal to the sum of 50% of the amount not paid, plus interest at the required rate on the portion of the amount which was not paid on the required date, beginning on such date, unless waived. In order to provide for the administration of this paragraph, the Issuer may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the Issuer may deem appropriate.

The Issuer shall furnish to the Authority, annually, and 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. In addition, the Issuer shall cooperate with the Authority in preparing any required 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.

The Issuer shall submit to the Authority within 15 days following the end of each Bond Year a certified copy of its rebate calculation or, if the Issuer qualifies for the small governmental issue exception to rebate, the Issuer shall submit a certificate stating that it is exempt from the rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Series 1994 Bonds subject to rebate. 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 such term "gross proceeds" is defined in the Code).

## ARTICLE IX

## DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Bonds:

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

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Bonds set forth in this Bond Legislation, any supplemental resolution or in the Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, Registrar or any other Paying Agent or a Holder of a Bond; or

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

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond, may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond, may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the

acquisition and construction of the Project on behalf of the Issuer with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

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

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

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

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

## DEFEASANCE

Section 10.01. Defeasance of Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Series 1994 Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Gross Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 1994 Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Series 1994 Bonds from gross income for federal income tax purposes.

Series 1994 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 Series 1994 Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 1994 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 Series 1994 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 Series 1994 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 XI

## MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. No material modification or amendment of this Bond Legislation, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Bonds shall be made without the consent in writing of the Registered Owners of 66-2/3% or more in principal amount of the Series 1994 Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of the Series 1994 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 pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Series 1994 Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure the exclusion of interest on the Series 1994 Bonds from gross income of the Holders thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 1994 Bonds.

Section 11.04. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 11.05. Conflicting Provisions Repealed. All ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened,

have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, Recorder and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.07. Effective Date. This Ordinance shall take effect immediately following public hearing hereon.

Section 11.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Bond Legislation determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in The Pendleton Times, a newspaper published and of general circulation in the Town of Franklin, together with a notice stating that this Bond Legislation has been adopted and that the Issuer contemplates the issuance of the Bonds described herein and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Bond Legislation 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.

| | | |
|---|---|---|
| Passed on First Reading | - | May 3, 1994. |
| Passed on Second Reading | - | May 10, 1994. |
| Passed on Final Reading Following Public Hearing | - | May 24, 1994. |

Warren R Waggy
Mayor

Barry B Glover
Recorder

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of the TOWN OF FRANKLIN on May 24, 1994.

Dated: May 27, 1994.

[SEAL]

Barry B Glover
Recorder

05/02/94
FRANKJ.A2
30711/94001

"EXHIBIT A"

[Included as Document No. 3 of Bond Transcript]

TOWN OF FRANKLIN

Water Revenue Bonds, Series 1994

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, REDEMPTION PROVISION, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE WATER REVENUE BONDS, SERIES 1994, OF THE TOWN OF FRANKLIN; AUTHORIZING AND APPROVING A LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; AUTHORIZING AND APPROVING AN ESCROW AGREEMENT; DESIGNATING A REGISTRAR, PAYING AGENT, DEPOSITORY BANK AND ESCROW AGENT; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the town council (the "Governing Body") of the Town of Franklin (the "Issuer"), has duly and officially adopted and enacted a bond ordinance, effective May 24, 1994 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE REFUNDING OF THE OUTSTANDING WATERWORKS REVENUE BONDS, SERIES A AND SERIES B, DATED JULY 1, 1968, OF THE TOWN OF FRANKLIN AND THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING WATERWORKS SYSTEM OF THE TOWN AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE TOWN OF NOT MORE THAN $400,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 1994; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND

PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Bond Ordinance;

WHEREAS, the Bond Ordinance provides for the issuance of Water Revenue Bonds, Series 1994, of the Issuer (the "Bonds" or the "Series 1994 Bonds"), in the aggregate principal amount not to exceed $400,000, and has authorized the execution and delivery of a loan agreement relating to the Bonds to be dated the date of delivery of the Bonds (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), all in accordance with Chapter 8, Article 19 and Chapter 13, Article 2E of the West Virginia Code of 1931, as amended (collectively, the "Act"); and in the Bond Ordinance it is provided that the form of the Loan Agreement and the exact principal amount, date, maturity date, redemption provision, interest rate, interest and principal payment dates, sale price and other terms of the Bonds should be established by a supplemental resolution pertaining to the Bonds; and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Loan Agreement has been presented to the Issuer at this meeting;

WHEREAS, the Bonds are proposed to be purchased by the Authority pursuant to the Loan Agreement; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted and that the Loan Agreement be approved and entered into by the Issuer, that the exact principal amount, the date, the maturity date, the redemption provision, the interest rate, the interest and principal payment dates and the sale price of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for;

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

Section 1. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Water

Revenue Bonds, Series 1994, of the Issuer, originally represented by a single Bond, numbered R-1, in the principal amount of $309,000. The Series 1994 Bonds shall be dated the date of delivery thereof, shall finally mature October 1, 2033, shall bear interest at the rate of 6.75% per annum, payable semiannually on April 1 and October 1 of each year, first interest payable October 1, 1994, shall be subject to redemption upon the written consent of the Authority, and upon payment of the interest and redemption premium, if any, and otherwise in compliance with the Loan Agreement, as long as the Authority shall be the registered owner of the Series 1994 Bonds, and shall be payable in installments of principal on October 1 in each of the years 1995 through 2033, inclusive, all as set forth in "Schedule X" attached to the Loan Agreement and incorporated in and made a part of the Bonds.

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

Section 3. The Issuer does hereby authorize, approve and accept the Loan Agreement, a copy of which is incorporated herein by reference, and the execution and delivery of the Loan Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer are hereby authorized, directed and approved. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon.

Section 4. The Issuer does hereby appoint and designate One Valley Bank, National Association, Charleston, West Virginia, as Registrar (the "Registrar") for the Bonds and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and the Registrar, in substantially the form attached hereto, and the execution and delivery of the Registrar's Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer are hereby authorized, approved and directed.

Section 5. The Issuer does hereby appoint and direct the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Bonds, and to serve as Escrow Agent in connection with the refunding of the Prior Bonds.

Section 6. The Issuer does hereby appoint Pendleton County Bank, Franklin, West Virginia, as Depository Bank under the Bond Ordinance.

Section 7. Series 1994 Bonds proceeds in the amount of $-0- shall be deposited in the Series 1994 Bonds Sinking Fund, as capitalized interest.

Section 8. Series 1994 Bonds proceeds in the amount of $-0- shall be deposited in the Series 1994 Bonds Reserve Account.

Section 9. Series 1994 Bonds proceeds in the amount of $40,173.48, together with other moneys of the Issuer, shall be deposited in the Escrow Fund to refund the Prior Bonds to their first redemption date, being July 1, 1994.

Section 10. The balance of the proceeds of the Series 1994 Bonds shall be deposited in or credited to the Bond Construction Trust Fund for payment of Costs of the Project, including costs of issuance of the Series 1994 Bonds.

Section 11. The Issuer hereby determines to pay, on the date of delivery of the Bonds and receipt of proceeds thereof, all borrowings of the Issuer heretofore incurred for the purpose of temporarily financing a portion of the Costs of the Project, if any, including, but not limited to, all borrowings from the Issuer's general fund or from the Authority.

Section 12. The Mayor and Recorder are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered on or about May 27, 1994, to the Authority pursuant to the Loan Agreement.

Section 13. The acquisition and construction of the project and the financing thereof in part with proceeds of the Bonds is in the public interest, serves a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 14. The Issuer hereby determines that it is in the best interest of the Issuer to invest all moneys in the funds and accounts established by the Bond Ordinance held by the Depository Bank until expended, in repurchase agreements or time accounts, secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such moneys to be invested in such repurchase agreements or time accounts, until further directed in writing by the Issuer. Moneys in the Series 1994 Bonds Sinking Fund, including the Series 1994 Bonds Reserve Account therein, shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 15. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder or under any predecessor thereto (the "Code"), by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code and Treasury Regulations to be promulgated thereunder.

Section 16. The Issuer is a governmental unit with general taxing powers to finance operations of or facilities of the nature of the Project and the System; no part of the Bonds are private activity bonds; 95% or more of the net proceeds of the Bonds are to be used for local governmental activities of the Issuer; and the Issuer reasonably expects to issue less than $5,000,000 aggregate principal face amount of tax-exempt obligations (other than private activity bonds) during the calendar year 1994, being the calendar year in which the Bonds are to be issued. For purposes of this Section and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this Section and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this Section and Section 148(f)(4)(D) of the Code to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefiting thereby shall be treated as one issuer.

Section 17. The Escrow Agreement by and between the Issuer and the West Virginia Municipal Bond Commission, as Escrow Agent, to be dated as of the date of delivery of the Bonds, substantially in the form submitted to this meeting shall be and the same is hereby approved. The Mayor shall execute and deliver the Escrow Agreement with such changes, insertions and omissions as may be approved by the Mayor, and the Recorder is hereby authorized and directed to affix the seal of the Issuer thereto and to attest the seal. Execution of the Escrow Agreement by the Mayor shall be conclusive evidence of any approval required by this Section.

Section 18. The Escrow Agent is hereby instructed to purchase the Government Securities listed on Schedule A of the Escrow Agreement in accordance with the provisions of the Escrow Agreement.

Section 19. The West Virginia Municipal Bond Commission is hereby authorized and directed to transfer from the sinking funds and reserve accounts created for the Prior Bonds, and held by the West Virginia Municipal Bond Commission, the amounts set forth in the Escrow Agreement, to the Escrow Fund.

Section 20. The firm of Smith, Cochran & Hicks, Certified Public Accountants, Charleston, West Virginia, is hereby engaged for the purposes of verifying the yield of the Bonds, the yield and sufficiency of the Escrow Fund, and savings, if any, resulting from the refunding of the Prior Bonds.

Section 21.The Issuer hereby determines that one of the purposes of issuing the Bonds is to refund the Prior Bonds to effect the release and termination of liens, restrictions, conditions or limitations imposed upon the Prior Bonds. Accordingly, under

the Act, the Bonds may be issued without the necessity of showing a net saving to the Issuer. The Mayor and Recorder are hereby authorized and directed to take any other actions required in connection with the refunding of the Prior Bonds.

Section 22. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 24th day of May, 1994.

TOWN OF FRANKLIN

Warren R Nazzy
Mayor

Barry B Glover
Recorder

## CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of the TOWN OF FRANKLIN on the 24th of May, 1994.

Dated: May 27, 1994.

[SEAL]

Barry B. Glover
Recorder

05/16/94
FRANKC.B2
307110/94001

WDA-5
(May 1993)

# LOAN AGREEMENT

THIS LOAN AGREEMENT, Made and entered into in several counterparts, by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), and the governmental agency designated below (the "Governmental Agency").

TOWN OF FRANKLIN
(Governmental Agency)

W I T N E S S E T H:

WHEREAS, pursuant to the provisions of Chapter 20, Article 5C, of the Code of West Virginia, 1931, as amended (the "Act"), the Authority is empowered to make loans to governmental agencies for the acquisition or construction of water development projects by such governmental agencies and to issue water development revenue bonds of the State of West Virginia (the "State") to finance, in whole or in part, by loans to governmental agencies, one or more water development projects, all subject to such provisions and limitations as are contained in the Act;

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

WHEREAS, the Governmental Agency is authorized and empowered by the statutes of the State to construct, operate and improve a water development project, as defined by the Act, and to finance the cost of constructing or acquiring the same by borrowing money to be evidenced by revenue bonds issued by the Governmental Agency;

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

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

WHEREAS, having reviewed the Application and made all findings required by Section 5 of the Act and having available sufficient funds therefor, the Authority is willing to lend the Governmental Agency the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Governmental Agency with proceeds of certain water development revenue bonds of the State issued by the Authority pursuant to and in accordance with the provisions of the Act and a certain general revenue bond resolution adopted by the Board of the Authority (the "General Resolution"), as supplemented, subject to the Governmental Agency's satisfaction of certain legal and other requirements of the Authority's water development loan program (the "Program") as hereinafter set forth.

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

## ARTICLE I

## Definitions

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

1.2 "Consulting Engineers" means the professional engineer, licensed by the State, who shall not be a regular, full-time employee of the State or any of its agencies, commissions or political sub-divisions, and designated in the Application and any qualified successor thereto.

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

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

1.5 "Local Bonds" means the revenue bonds to be issued by the Governmental Agency pursuant to the provisions of the Local Statute, as hereinafter defined, to evidence the Loan and to be purchased by the Authority with a portion of the proceeds of its water development revenue bonds, 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 "Origination Fee" means the fee paid by a Governmental Agency with respect to its participation in the State's Revolving Fund program established pursuant to Title VI of the Water Quality Act of 1987, to provide funds for the acquisition and construction of wastewater Projects.

1.8 "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.

1.9 "Project" means the water development project hereinabove referred to, to be constructed or being constructed by the Governmental Agency in whole or in part with the net proceeds of the Local Bonds or being or having been constructed by the Governmental Agency 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 "System" means the water development project owned by the Governmental Agency, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

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

## ARTICLE II

## The Project and the System

2.1 The Project shall generally consist of the construction and acquisition of the facilities described in the Application, to be, being or having been constructed in accordance with plans, specifications and designs prepared for the Governmental Agency by the Consulting Engineers, the Authority having found, to the extent applicable, that the Project is consistent with the applicable comprehensive plan of water management approved by the Director of the West Virginia Division of Natural Resources* (or in the process of preparation by such

---

* Now administered by the West Virginia Division of Environmental Protection.

Director), has been approved by the West Virginia Bureau of Public Health and is consistent with the standards set by the West Virginia Water Resources Board for the waters of the State affected thereby.

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

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

2.4 The Governmental Agency agrees that the Authority and its duly authorized agents shall have the right at all reasonable times to enter upon the Project site and Project facilities and to examine and inspect the same. The Governmental Agency further agrees that the Authority and its duly authorized agents and representatives 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 with respect to the System pursuant to the pertinent provisions of the Act.

2.5 The Governmental Agency shall keep complete and accurate records of the cost of acquiring the Project site and the costs of constructing, acquiring and installing the Project. The Governmental Agency shall permit the Authority, acting by and through its Director or his duly authorized agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at any and all reasonable times for the purpose of audit and examination, and the Governmental Agency shall submit to the Authority 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 Governmental Agency agrees that it will permit the Authority and its agents and representatives to have access to the records of the Governmental Agency pertaining to the operation

and maintenance of the System at any reasonable time following completion of construction of the Project and commencement of operation thereof or if the Project is an improvement to an existing system at any reasonable time following commencement of construction.

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

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

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

2.10 The Governmental Agency 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 Governmental Agency agrees that qualified operating personnel properly certified by the State will be retained to operate the System during the entire term of this Loan Agreement.

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

2.12 The Governmental Agency, commencing on the date contracts are executed for the 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 C and incorporated herein by reference, and forward a copy by the 10th of each month to the Authority.

## ARTICLE III

## Conditions to Loan; Issuance of Local Bonds

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

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

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

(c) The Governmental Agency shall either have received bids or entered 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 Governmental Agency must either be constructing or have constructed its Project for a cost and as otherwise compatible with the plan of financing described in the Application; and, in either case, the Authority shall have received a certificate of the Consulting

Engineers to such effect the form of which certificate is attached hereto as Exhibit A;

(d) No Loan shall be made for the purpose of refinancing any outstanding long-term indebtedness of a Governmental Agency unless an opinion of counsel is received by the Authority to the effect that such refinancing is permitted by the Act and the Resolution, and that such refinancing will not cause a violation of any covenant, representation or agreement of the Authority contained in the Resolution or Tax Regulatory Agreement with respect to the exclusion of the interest on the Bonds from gross income of the holder thereof for federal income tax purposes;

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

(f) The Governmental Agency 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 with all requisite appeal periods having expired without successful appeal, and the Authority shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

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

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

(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 shall have received a certificate of the

accountants for the Governmental Agency, or such other person or firm experienced in the finances of governmental agencies and satisfactory to the Authority, 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 shall have received a certificate of the Consulting Engineers, or such other person or firm experienced in the financing of water development projects and satisfactory to the Authority, to such effect, such certificate to be in form and substance satisfactory to the Authority, and evidence satisfactory to the Authority 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 or any other appropriate State agency and any applicable rules, regulations and procedures promulgated from time to time by the federal government, it is hereby agreed that the Authority shall make the Loan to the Governmental Agency and the Governmental Agency shall accept the Loan from the Authority, and in furtherance thereof it is agreed that the Governmental Agency shall sell to the Authority and the Authority shall make the Loan by purchasing the Local Bonds in the principal amount and at the price set forth in Schedule X hereto. The Local Bonds shall have such further terms and provisions as described in Article IV hereof.

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

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

3.5 The Governmental Agency understands and acknowledges that it is one of several governmental agencies which have applied

to the Authority for loans to finance water development projects and that the obligation of the Authority to make any such loan is subject to the Governmental Agency's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing and to the right of the Authority to make such loans to other governmental agencies as in the aggregate will permit the fullest and most timely utilization of such proceeds to enable the Authority to pay debt service on the water development revenue bonds issued by it. The Governmental Agency specifically recognizes that the Authority will not purchase the Local Bonds unless and until it has available funds sufficient to purchase all the Local Bonds and that, prior to such execution, the Authority may commit to and purchase the revenue bonds of other governmental agencies for which it has sufficient funds available. The Governmental Agency further specifically recognizes that during the last 90 days of a period to originate Loans from its water development revenue bond proceeds, the Authority may execute Loan Agreements, commit moneys and close Local Bond sales in such order and manner as it deems in the best interest of the Program.

## ARTICLE IV

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

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

(a) That the revenues generated from the operation of the System will be used monthly, in the order of priority listed, as set forth on Schedule Y attached hereto and incorporated herein by reference. The gross revenues of the System shall always be used for purposes of the System.

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by the gross or net revenues from the System, as more fully set forth in Schedules X and Y attached hereto;

(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 (the "Reserve Account") is funded (whether by Local Bond proceeds, monthly deposits or otherwise) at 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") and any reserve account for any such prior or parity obligations is funded at least at the requirement therefor, equal to at least one hundred ten percent (110%) of the maximum amount required in any year for debt service on the Local Bonds and any such prior or parity obligations;

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

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

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

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

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

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

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

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

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

(xii) That the Governmental Agency shall annually adopt a detailed 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 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, 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 Governmental Agency and on which the owners of the Local Bonds shall have a lien until such proceeds are applied to the construction of the Project (including the repayment of any incidental interim financing for non-construction costs) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim funding of such Governmental Agency, the proceeds of which were used to finance the construction of the Project; provided that, with the prior written consent of the

Authority, the proceeds of the Local Bonds may be used to fund all or a portion of the Reserve Account, on which the owner of the Local Bonds shall have a lien as provided herein;

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

(xvi) 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 Governmental Agency 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;

(xvii) That the Governmental Agency shall take any and all action, or shall refrain from taking any action, as shall be deemed necessary by the Authority to maintain the exclusion from gross income for Federal income tax purposes of interest on the Authority's water development revenue bonds;

(xviii) That the Governmental Agency shall have obtained the certificate of the Consulting Engineer in the form attached to the Loan Application, 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;

(xix) That the Governmental Agency 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 Governmental Agency, then the Governmental Agency shall enter into a termination agreement with the water provider; and

(xx) That the Governmental Agency shall furnish to the Authority such information with respect to earnings on all funds constituting "gross proceeds" of the Local Bonds (as that

term is defined in the Code) from time to time as the Authority may request.

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

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

4.3 An Origination Fee Account shall be established with the Trustee to hold the portion of the proceeds of any Loan established to fund an Origination Fee. Amounts on deposit in an Origination Fee Account shall belong to the Governmental Agency receiving the related Loan, but such amounts may only be disbursed from the Account to pay the Origination Fee as and when required to satisfy the requirements of the State's Revolving Fund program established pursuant to Title VI of the Water Quality Act of 1987 or for such other purposes as the Authority may approve in writing.

4.4 The principal of the Loan shall be repaid by the Governmental Agency annually on the day and in the years provided in Schedule X hereto. Interest payments on the Loan shall be made by the Governmental Agency on a semiannual basis as provided in said Schedule X.

4.5 The Loan shall bear interest from the date of the delivery to the Authority of the Local Bonds until the date of payment thereof, at the rate or rates per annum set forth on Schedule X hereto. In no event shall the interest rate on or the net interest cost of the Local Bonds exceed any statutory limitation with regard thereto.

4.6 The Local Bonds shall be delivered to the Authority in fully registered form, transferable and exchangeable as provided in the Local Act at the expense of the Governmental Agency. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series, as reflected by Schedule X hereto.

4.7 The Governmental Agency agrees to pay from time to time, as required by the Authority, the Governmental Agency's allocable share of the reasonable administrative expenses of the Authority relating to the Program. Such administrative expenses shall be as 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 the water development revenue bonds. The Authority shall provide both the Governmental Agency and the trustee for the water development revenue bonds with a schedule of such fees and charges, and the Governmental Agency shall pay such fees and charges on the dates indicated directly to the trustee. The Governmental Agency hereby specifically authorizes the Authority to exercise the powers granted it by Section 9.06 of the General Resolution.

4.8 The Governmental Agency agrees to expend the net proceeds of the Local Bonds for the Project within 3 years of the issuance of the Authority's bonds.

4.9 As long as the Authority is the owner of any of the Local Bonds outstanding, the Governmental Agency shall not redeem any of such Local Bonds outstanding without the written consent of the Authority, and any such redemption of Local Bonds authorized by the Authority shall provide for the payment of interest to the first allowable redemption date for the applicable water development revenue bonds, the redemption premium payable on the applicable water development revenue bonds redeemable as a consequence of such redemption of Local Bonds and the costs and expenses of the Authority in effecting any such redemption, all as further prescribed by Section 9.11 of the General Resolution. Nothing in this Loan Agreement shall be construed to prohibit the Authority from refunding applicable water development revenue bonds, and such refunding need not be based upon or result in any benefit to the Governmental Agency.

## ARTICLE V

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

5.1 The Governmental Agency hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Governmental Agency hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System, 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 Governmental Agency hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges 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 Governmental Agency defaults in the payment of any fees due to the Authority pursuant to Section 4.6 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 Governmental Agency hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Governmental Agency, the Authority may exercise any or all of the rights and powers granted under Section 6a 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 Governmental Agency

6.1 The Governmental Agency hereby acknowledges to the Authority its understanding of the provisions of the Act, vesting in the Authority certain powers, rights and privileges with respect to water development projects in the event of default by governmental agencies in the terms and covenants of loan agreements, and the Governmental Agency hereby covenants and agrees that, if the Authority should hereafter have recourse to said rights and powers, the Governmental Agency 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 At the option of the Authority, the Governmental Agency shall issue and sell to the Authority additional, subordinate bonds to evidence the Governmental Agency's obligation to repay to the Authority any grant received by the Governmental Agency from the Authority in excess of the amount to which the Governmental Agency is entitled pursuant to applicable policies or rules and regulations of the Authority. Also at the option of the

Authority, the Governmental Agency may issue and sell to the Authority additional, subordinate bonds for such purposes as may be acceptable to the Authority.

6.3 The Governmental Agency hereby warrants and represents that all information provided to the Authority 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 shall have the right to cancel all or any of its obligations under this Loan Agreement if (a) any representation made to the Authority by the Governmental Agency in connection with the Loan shall be incorrect or incomplete in any material respect or (b) the Governmental Agency has violated any commitment made by it in its Application or in any supporting documentation or has violated any of the terms of this Loan Agreement.

6.4 The Governmental Agency hereby agrees to repay on or prior to the Date of Loan Closing any moneys due and owing by it to the Authority for the planning or design of the Project, and such repayment shall be a condition precedent to the Authority's making the Loan.

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

6.6 Notwithstanding Section 6.5, the Authority may at any time, in its sole discretion, cause the rebate calculations prepared by or on behalf of the Governmental Agency to be monitored or cause the rebate calculations for the Governmental Agency to be prepared, in either case at the expense of the Governmental Agency.

6.7 The Governmental Agency hereby agrees to give the Authority 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.

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

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

7.3 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.

7.4 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.

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

7.6 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.

7.7 By execution and delivery of this Loan Agreement, notwithstanding the date hereof, the Governmental Agency specifically recognizes that it is hereby agreeing to sell its Local Bonds to the Authority and that such obligation may be

specifically enforced or subject to a similar equitable remedy by the Authority.

7.8 This Loan Agreement shall terminate upon the earlier of:

(i) the end of ninety (90) days after the date of execution hereof by the Authority if the Governmental Agency has failed to deliver the Local Bonds to the Authority;

(ii) termination by the Authority pursuant to Section 6.3 hereof; or

(iii) payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Governmental Agency to the Authority.

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 Franklin
[Proper Name of Governmental Agency]

(SEAL)

By: Warren R Wagg

Its: Mayor

Date: May 27, 1994

Attest:

Barry B Glover

Its: Recorder

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

(SEAL)

By: Daniel B. Yankoski
Director

Attest:

Barbara B Meadows
Secretary-Treasurer

Date: May 27, 1994

WDA-5X
(May 1993)

SCHEDULE X
DESCRIPTION OF LOCAL BONDS

Principal Amount of Local Bonds $ 309,000

Purchase Price of Local Bonds $ 309,000

Interest on the Local Bonds is payable on April 1 and October 1 in each year, beginning with the first semiannual interest payment date after delivery of the Local Bonds to the Authority, until the Local Bonds are paid in full, at the rate of 6.75 % per annum. Principal of the Local Bonds is payable on October 1 in each year as set forth on Exhibit 1 attached hereto and incorporated herein by reference.

As of the date of the Loan Agreement, the Local Bonds are on a parity as to source of and security for payment with the following obligations:

As of the date of the Loan Agreement, the Local Bonds are subordinate as to source of and security for payment to the following obligations:

**West Virginia Water Development Authority**
**Interest Bearing Local Loan from Bridge Financing Program**
**Debt Service Schedule - Town of Franklin**

Avg Coup = 6.75%
TIC = 6.754234%
NIC = 6.750000%

WAM = 27.84 yrs.

**Closing May 27, 1994**
**Interest Bearing Loan:** $309,000.00

| Date | Coupon | Principal | Interest | Debt Service |
|---|---|---|---|---|
| 10/1/94 | 6.75% | 0.00 | 7,184.25 | 7,184.25 |
| 10/1/95 | 6.75% | 1,771.40 | 20,857.50 | 22,628.90 |
| 10/1/96 | 6.75% | 1,890.97 | 20,737.93 | 22,628.90 |
| 10/1/97 | 6.75% | 2,018.61 | 20,610.29 | 22,628.90 |
| 10/1/98 | 6.75% | 2,154.86 | 20,474.03 | 22,628.89 |
| 10/1/99 | 6.75% | 2,300.32 | 20,328.58 | 22,628.90 |
| 10/1/00 | 6.75% | 2,455.59 | 20,173.31 | 22,628.90 |
| 10/1/01 | 6.75% | 2,621.34 | 20,007.56 | 22,628.90 |
| 10/1/02 | 6.75% | 2,798.28 | 19,830.62 | 22,628.90 |
| 10/1/03 | 6.75% | 2,987.16 | 19,641.73 | 22,628.89 |
| 10/1/04 | 6.75% | 3,188.80 | 19,440.10 | 22,628.90 |
| 10/1/05 | 6.75% | 3,404.04 | 19,224.86 | 22,628.90 |
| 10/1/06 | 6.75% | 3,633.81 | 18,995.08 | 22,628.89 |
| 10/1/07 | 6.75% | 3,879.10 | 18,749.80 | 22,628.90 |
| 10/1/08 | 6.75% | 4,140.93 | 18,487.96 | 22,628.89 |
| 10/1/09 | 6.75% | 4,420.45 | 18,208.45 | 22,628.90 |
| 10/1/10 | 6.75% | 4,718.83 | 17,910.07 | 22,628.90 |
| 10/1/11 | 6.75% | 5,037.35 | 17,591.55 | 22,628.90 |
| 10/1/12 | 6.75% | 5,377.37 | 17,251.53 | 22,628.90 |
| 10/1/13 | 6.75% | 5,740.34 | 16,888.55 | 22,628.89 |
| 10/1/14 | 6.75% | 6,127.82 | 16,501.08 | 22,628.90 |
| 10/1/15 | 6.75% | 6,541.44 | 16,087.45 | 22,628.89 |
| 10/1/16 | 6.75% | 6,982.99 | 15,645.91 | 22,628.90 |
| 10/1/17 | 6.75% | 7,454.34 | 15,174.55 | 22,628.89 |
| 10/1/18 | 6.75% | 7,957.51 | 14,671.39 | 22,628.90 |
| 10/1/19 | 6.75% | 8,494.64 | 14,134.25 | 22,628.89 |
| 10/1/20 | 6.75% | 9,068.03 | 13,560.87 | 22,628.90 |
| 10/1/21 | 6.75% | 9,680.12 | 12,948.77 | 22,628.89 |
| 10/1/22 | 6.75% | 10,333.53 | 12,295.37 | 22,628.90 |
| 10/1/23 | 6.75% | 11,031.05 | 11,597.85 | 22,628.90 |
| 10/1/24 | 6.75% | 11,775.64 | 10,853.26 | 22,628.90 |
| 10/1/25 | 6.75% | 12,570.50 | 10,058.40 | 22,628.90 |
| 10/1/26 | 6.75% | 13,419.01 | 9,209.89 | 22,628.90 |
| 10/1/27 | 6.75% | 14,324.79 | 8,304.11 | 22,628.90 |
| 10/1/28 | 6.75% | 15,291.71 | 7,337.19 | 22,628.90 |
| 10/1/29 | 6.75% | 16,323.90 | 6,305.00 | 22,628.90 |
| 10/1/30 | 6.75% | 17,425.76 | 5,203.13 | 22,628.89 |
| 10/1/31 | 6.75% | 18,602.00 | 4,026.89 | 22,628.89 |
| 10/1/32 | 6.75% | 19,857.64 | 2,771.26 | 22,628.90 |
| 10/1/33 | 6.75% | 21,198.03 | 1,430.87 | 22,628.90 |
| | | 309,000.00 | 580,711.24 | 889,711.24 |

SCHEDULE Y
REVENUES

In accordance with Subsection 4.1(a) of the Loan Agreement, the revenues generated from the operation of the System will be used monthly, in the order of priority listed, as follows:

(i) to the extent not otherwise limited by an outstanding local ordinance, indenture or other act or document, as reflected on Schedule X to the Loan Agreement, and beginning seven (7) months prior to the first date of payment of interest on the Local Bonds from revenues and thirteen (13) months prior to the first date of payment of principal of the Local Bonds, respectively, to provide debt service on the Local Bonds by depositing in a sinking fund one-sixth (1/6) of the interest payment next coming due on the Local Bonds and one-twelfth (1/12) of the principal payment next coming due on the Local Bonds and, beginning thirteen (13) months prior to the first date of payment of principal of the Local Bonds, if the Reserve Account was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof (which, with an approving opinion of bond counsel to the Governmental Agency, may be with a letter of credit) in an amount equal to the Reserve Requirement, by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) (or such other amount as shall be acceptable to the Authority and as shall fund the Reserve Account over not more than ten (10) years) 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;

(iii) to provide debt service on and requisite reserves for any subordinate indebtedness of the Governmental Agency held or owned by the Authority;

(iv) to pay Operating Expenses of the System; and

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

# SCHEDULE Z

## Additional and Supplemental Definitions

1. "Local Statute" means Chapter 8, Article 19, of the Code of West Virginia, 1931, as amended.

2. "System" means the waterworks system owned by the Governmental Agency in its entirety or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system, and any additions, betterments or improvements thereto hereafter constructed or acquired from any sources whatsoever and includes the Project.

## Additional Conditions and Covenants

1. As a condition precedent to the Authority's making the Loan, the Governmental Agency shall have obtained, among other permits required, a permit from the West Virginia Bureau of Public Health.

2. The Local Act shall contain a covenant substantially as follows:

> That the Governmental Agency will, to the full extent permitted by applicable law and the rules and regulations of the PSC, discontinue and shut off the services and facilities of the System to all users of services of the System delinquent in payment of charges for the services of the System and will not restore the services of the System until all delinquent charges for the services of the System have been fully paid.

3. Subject to any prior or parity obligations described in Schedules X and Y attached to the Loan Agreement, the gross revenues derived from the operation of the System are pledged to the payment of the principal of and interest on the Local Bonds.

4. The paying agent for the Local Bonds shall be the West Virginia Municipal Bond Commission or any successor to the functions thereof.

5. As a condition precedent to the Authority's making the Loan, the Governmental Agency shall deliver to the Authority a certificate representing the following:

(a) The Governmental Agency expects to enter into a contract within six months of the date thereof for the construction of the Project, and the amount to be expended pursuant to such contract exceeds the lesser of 2-1/2 percent of the estimated total Project cost financed with proceeds from the sale of the Local Bonds or $100,000;

(b) Work with respect to the construction of the Project will proceed with due diligence to completion. Construction is expected to be completed within three years from the date of issuance of the Authority's water development revenue bonds;

(c) All of the proceeds from the sale of the Local Bonds which will be used for payment of costs of the Project will be expended for such purpose within three years from the date of issuance of the Authority's water development revenue bonds; and

(d) The Governmental Agency does not expect to sell or otherwise dispose of the Project, in whole or in part, prior to the last maturity date of the Local Bonds.

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

FINAL
2-16-94

Entered: January 27, 1994

CASE NO. 93-0935-W-CN

TOWN OF FRANKLIN, a municipal corporation,
Pendleton County.
Application for a certificate of convenience and necessity to construct improvements to its water system including repairs and improvements to the pump station, improvements to the Town's treatment plant and improvements at the Town's storage tanks, at Franklin, Pendleton County, and for approval of financing.

## RECOMMENDED DECISION

On October 18, 1993, the Town of Franklin (Town or Franklin), a municipal corporation providing water service, Pendleton County, filed an application, duly verified, for a certificate of convenience and necessity to construct improvements to its water system, including repairs and improvements to the pump station, the treatment plant and the storage tanks located at Franklin, Pendleton County. The Town estimates that construction will cost approximately $574,000 and will be financed by a West Virginia Small Cities Block Grant in the amount of $344,000 and a loan from the West Virginia Water Development Authority (WDA) in the amount of $222,000. The Town of Franklin does not propose to modify its existing rates and charges which were adopted by municipal ordinance on June 2, 1992, with an effective date of July 18, 1992.

According to the application, the West Virginia Department of Health and Human Resources has ordered the Town to make certain improvements to its existing water system and thus generated the subject application. The cover letter accompanying the application indicated that the high percentage of grant funding and the involvement of the West Virginia Water Development Authority will allow the Town to undertake the project without the need for interim financing. Along with the application, the Town submitted a copy of the municipal rate ordinance adopting the 1992 water rates and charges; a user agreement that sets forth the fees and regulations applicable to the system; Rule 42 financial information; a preliminary engineering report; a copy of the plans and specifications for the system; a permit from the West Virginia Office of Environmental Health Services dated April 27, 1993, authorizing the subject construction; and evidence of funding commitments from the West Virginia Water Development Authority and the West Virginia Development Office for the Small Cities Block Grant.

By Notice of Filing order entered on October 18, 1993, the Public Service Commission directed the Town to give notice of the filing of the application by publishing a copy of the Notice of Filing once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in the Town of Franklin, Pendleton County, making due return to the Commission of proper certification of publication immediately thereafter. Anyone desiring to object to the application was given leave to do so, within thirty days after the publication of the notice. The Notice of Filing further provided that, if no protests were received within the 30-day period, the Commission could waive formal hearing and grant the Town's application, based on the evidence submitted with the application and the Commission's review thereof.

On November 2, 1993, the Public Service Commission issued its Referral Order in this matter, referring this proceeding to the Division of Administrative Law Judges for a decision to be rendered on or before May 16, 1994.

On November 4, 1993, the Town of Franklin filed a certificate of publication from the Pendleton Times, a newspaper published and of general circulation in Pendleton County, verifying that the Notice of Filing was published as required on October 28, 1993. The 30-day protest period expired on November 27, 1993, with no protests having been filed within the 30-day protest period, or as of the date of this order.

On January 26, 1994, Staff Attorney Cassius H. Toon filed the Final Joint Staff Memorandum in this proceeding. Attached to Mr. Toon's Memorandum was the Utilities Division Staff Recommendation prepared by James W. Ellars, Staff Engineer, and Henry Mullins, Utilities Analyst, both with the Water and Sewer Section of the Commission's Utilities Division, dated January 21, 1994. The Utilities Division Staff Recommendation constitutes the Staff position in this proceeding. The Staff analysis of the filing indicates that the rates placed into effect by the Town of Franklin on July 18, 1992, will adequately fund the proposed project as well as the increase in debt service. The rates in the rate ordinance are sufficient to fund the project based on the preliminary cost estimate. According to Commission Staff, the improvements listed in the application are necessary in order for the Town to comply with the latest Sanitary Survey filed by the West Virginia Division of Health on April 24, 1992. Therefore, Staff recommends approval of the Town's application, without hearing, contingent upon the actual construction costs not exceeding the estimated cost. In the event of a cost overrun which would require a rate increase, Staff requested that the Town seek Commission approval prior to the additional construction.

Upon consideration of all of the above, the Administrative Law Judge is of the opinion that the application filed by the Town of Franklin for a certificate of convenience and necessity to construct improvements to its water system is reasonable and should be granted, since it appears that the specified improvements are required by the public convenience and necessity, since they are necessary to comply with the latest West Virginia Division of Health Sanitary Survey for the Town of Franklin and since Commission Staff has reviewed the improvements and has recommended approval thereof. Further, the project appears to be economically

feasible since no rate increase would be required for the Town's customers and since the project is adequately funded by a combination of grant and loan funding which are both firmly committed to the project.

## FINDINGS OF FACT

1. The Town of Franklin has filed an application with the Public Service Commission for a certificate of convenience and necessity to construct certain improvements to its water system, including repairs and improvements to its pump station, the treatment plant and its storage tanks, and for approval of the financing incidental thereto. (Application filed October 18, 1993).

2. The proposed improvements are necessary in order for the Town to comply with the latest Sanitary Survey filed by the West Virginia Division of Health on April 24, 1992. (Application filed October 18, 1993; Final Joint Staff Memorandum and Attachments filed January 26, 1994).

3. The West Virginia Office of Environmental Health Services has granted Permit No. 11,677 to the Town authorizing the proposed improvements, which Permit was issued on April 27, 1993. (See Office of Environmental Health Services Permit attached to application filed October 18, 1993).

4. The Town's existing rates and charges, which were enacted on June 2, 1992, and became effective July 18, 1992, are adequate to fund the proposed project and the additional debt service resulting from the project financing. (Rate ordinance attached to the application filed October 18, 1993; Final Joint Staff Memorandum and attachments filed January 26, 1994).

5. The project has been fully financed through a West Virginia Water Development Authority loan in the amount of $230,000 and a Small Cities Block Grant in the amount of $344,000, and the project will not require interim financing. (Application and attachments filed October 18, 1993; Final Joint Staff Memorandum and attachments filed January 26, 1994).

## CONCLUSIONS OF LAW

1. The Town of Franklin's proposed water improvement project is economically feasible since it is fully funded by a combination of committed grant and loan funds and since the Town's existing rates and charges are sufficient to fund the expenses arising from the proposed project as well as the increase in debt service resulting from the project financing.

2. The public convenience and necessity require the proposed project, since the specified improvements are necessary to allow the Town of Franklin to comply with the latest Sanitary Survey filed by the West Virginia Division of Health on April 24, 1992, and since the West Virginia

Office of Environmental Health Services has reviewed the project and has issued a permit for the specified improvements.

3. As a result, it is reasonable to grant the application filed by the Town of Franklin on October 18, 1993, for a certificate of convenience and necessity to construct improvements to its water system, and for approval of the financing associated therewith.

## ORDER

IT IS, THEREFORE, ORDERED that the application filed by the Town of Franklin on October 18, 1993, for a certificate of convenience and necessity to construct improvements to its water system, including repairs and improvements to its pump station, treatment plant and storage tanks, at Franklin, Pendleton County, be, and it hereby is, granted.

IT IS FURTHER ORDERED that the proposed financing for the project, consisting of a Small Cities Block Grant in the amount $344,000 and a West Virginia Water Development Authority loan in the amount of $230,000 be, and it hereby is, approved.

IT IS FURTHER ORDERED that, if any changes or revisions are required with respect to the scope of the project, the cost of the project or the project financing, the Town of Franklin must first make application to the Public Service Commission for approval of those revisions prior to commencing construction.

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

The Executive Secretary is hereby ordered to serve a copy of this order upon the Commission by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen (15) days of the date this order is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served said exceptions.

If no exceptions are so filed this order shall become the order of the Commission, without further action or order, five (5) days following the expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's Order by filing an appropriate petition in writing with the Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to

make any Administrative Law Judge's Order or Decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.

Melissa K. Marland
Chief Administrative Law Judge

MKM:mal

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 19th day of May, 1994.

CASE NO. 93-0935-W-CN (Reopened)

TOWN OF FRANKLIN, a municipal corporation, Pendleton County.
Petition to reopen water certificate application and for approval of additional financing incidental thereto.

## FINAL ORDER

On January 27, 1994, a recommended decision was entered in Case No. 93-0935-W-CN, which approved an application from the Town of Franklin, a municipal corporation (hereinafter, Franklin), for a certificate of convenience and necessity to construct improvements to its water system including repairs and improvements to the pump station, improvements to its treatment plant and improvements at its storage tanks at Franklin, Pendleton County.

The recommended decision, which became the final order of the Commission, also approved the proposed financing for the project consisting of a Small Cities Block Grant in the amount of $344,000 and a West Virginia Water Development Authority loan in the amount of $230,000. The decision also provided that if any changes or revisions are required with respect to the scope of the project, the cost of the project or the project financing, Franklin was required to make application to the Commission for approval of said revisions.

On April 21, 1994, the Town of Franklin, a municipal corporation, filed a petition with the Commission seeking to reopen its certificate application and for approval of revised funding incidental thereto. As cause, it was stated that when bids were opened for the project covered by the instant application, estimates exceeded the original cost by $16,725.

The Town Council of Franklin proposed borrowing sufficient funds from the West Virginia Water Development Authority to not only cover the cost of the improvement project, but also to allow it to retire 1968 Series A and B Bonds. Using the current 1968 reserve account for debt payment, Franklin will need to borrow additionally $53,128 to settle the 1968 debt and $10,000 for bond counsel fees. This approach will allow Franklin to complete needed improvements without burdening its residents with a rate increase.

Therefore, in its April 21, 1994 petition, the Town of Franklin requested permission from this Commission to borrow $322,000 from the West Virginia Water Development authority. However, subsequent filings clarified the figure to be $309,853. The proceeds of

the loan will be used in conjunction with available Small Cities Block Grant funds to construct improvements as proposed in its earlier certificate application and retire the 1968 Series A and B Bonds. Franklin proposes no other alterations in the original project filed with the Commission in October, 1993.

The April 21, 1994 petition was submitted to Commission Staff for review and comment. By Joint Staff Memorandum, received May 18, 1994, Cassius H. Toon, Esq., counsel for Commission Staff, and Henry Mullins, Utilities Analyst, Water and Sewer Section, Utilities Division, presented the recommendation of Commission Staff.

The Town of Franklin's petition filed on April 21, 1994 was in error regarding the increased borrowing amount. The petition requested $322,000 but the correct additional amount is $79,853. The letter accompanying the application was in error stating that various exhibits were attached but were not filed as such. Staff requested and received the exhibits on April 27, 1994. Staff noted the Applicant's Exhibit I contained a surplus (loss) of ($7,758). Staff also noted the Existing Debt of $11,825 was part of the ($7,758) loss. This Existing Debt was part of the $53,128 repayment of 1968 Bonds. The Town of Franklin, bond counsel Steptoe and Johnson, and Region 8 Planning and Development Council also agreed the $11,825 should not be included. This is the principal amount of the "cushion" of $12,147 of the petitioner (letter of April 29, 1994), the interest being discarded since the debt of 1968 is being paid off. Staff requested this be corrected and a Statement H be filed, which was received May 9, 1994. With this information Staff was able to detail the $79,853 which follows.

Mr. Mullins advised the Commission that the detailed proceeds required by Franklin from Water Development loans are as follows:

| | | |
|---|---|---|
| Original Amount | $230,000 | |
| Present Requested Amount | $309,853 | (Reopened) |
| Total Additional Amount | $ 79,853 | |

This additional amount is needed for the following:

(1) $53,128 for repayment of 1968 Bonds
(2) $16,725 for the difference between the estimates and bids
(3) $10,000 for bond counsel fees
$79,853

Based upon the information furnished by Franklin, Commission Staff recommended approval of the April 21, 1994 petition from the Town of Franklin.

Based upon the foregoing, the Commission concludes that Case No. 93-0935-W-CN should be reopened and that the Town of Franklin should be permitted to borrow $309,853 from the West Virginia Water Development Authority.

## FINDINGS OF FACT

1. On April 21, 1994, the Town of Franklin, a municipal corporation, filed a petition with the Commission seeking to reopen Case No. 93-0935-W-CN, and for approval of additional borrowing incidental thereto. (See, petition received April 21, 1994).

2. The Town of Franklin indicates that when bids were opened for the project covered by the original application in this proceeding, estimates exceeded the original cost by $16,725. (See, Letter of April 29, 1994).

3. The Town of Franklin proposed to borrow sufficient funds from the West Virginia Water Development Authority to not only cover the cost of the improvement project, but also to allow it to retire 1968 Series A and B Bonds. (See, letters amending petition).

4. Commission Staff, by Joint Staff Memorandum from Cassius H. Toon, Esq., counsel for Commission Staff, received May 18, 1994, recommended approval of the April 21, 1994 petition from the Town of Franklin as well as the request of the Town of Franklin to borrow additional funds from the West Virginia Water Development Authority. (See, Joint Staff Memorandum received May 18, 1994).

## CONCLUSION OF LAW

It is reasonable to reopen Case No. 93-0935-W-CN and to approve the request of the Town of Franklin to borrow additional funds from the West Virginia Water Development Authority.

## ORDER

IT IS, THEREFORE, ORDERED that Case No. 93-0935-W-CN, be, and it hereby is, reopened.

IT IS FURTHER ORDERED that the Town of Franklin, a municipal corporation, Pendleton County, be, and it hereby is, authorized to borrow $309,853 from the West Virginia Water Development Authority. The proceeds of said loan will be used in conjunction with available Small Cities Block Grant funds to construct improvements as proposed in the Town of Franklin's original certificate application, to retire 1968 Series A and B Bonds, and pay bond counsel fees.

IT IS FURTHER ORDERED that the Commission's Executive Secretary mail a copy of this order to all parties of record by United States First Class Mail.

A True Copy, Teste:

Howard M. Cunningham
Executive Secretary

HMC/ft

TOWN OF FRANKLIN

Water Revenue Bonds, Series 1994

CROSS-RECEIPT FOR BONDS AND BOND PROCEEDS

The undersigned, BARBARA B. MEADOWS, Secretary-Treasurer of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the Authority, and Warren Waggy, Mayor of the Town of Franklin (the "Issuer"), for and on behalf of the Issuer, hereby certify as follows:

1. On the 27th day of May, 1994, the Authority received the entire original issue of $309,000 in aggregate principal amount of Water Revenue Bonds, Series 1994, of the Issuer (the "Bonds"), issued as a single, fully registered Bond, numbered R-1, and dated May 27, 1994.

2. At the time of such receipt of the Bonds upon original issuance, all of the Bonds had been executed by Warren Waggy, as Mayor of the Issuer, and Barry Glover, as Recorder of the Issuer, by their respective manual signatures, and the official seal of the Issuer had been affixed upon the Bonds.

3. The Issuer has received and hereby acknowledges receipt from the Authority, as the original purchaser of the Bonds, of the proceeds of the Bonds in the aggregate amount of $309,000 (100% of par value), there being no interest accrued.

WITNESS our respective signatures on this 27th day of May, 1994.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

By Barbara B Meadows
Secretary-Treasurer

TOWN OF FRANKLIN

By Warren R Waggy
Mayor

05/09/94
FRANKC.M1
307110/94001

5

TOWN OF FRANKLIN

Water Revenue Bonds, Series 1994

DIRECTION TO AUTHENTICATE AND DELIVER BONDS

One Valley Bank, National Association,
as Bond Registrar
Charleston, West Virginia

Ladies and Gentlemen:

There are delivered to you herewith:

(1) Bond No. R-1, constituting the entire original issue of the Town of Franklin Water Revenue Bonds, Series 1994, in the principal amount of $309,000, dated May 27, 1994 (the "Bonds"), executed by the Mayor and Recorder of the Town of Franklin (the "Issuer") and bearing the official seal of the Issuer, authorized to be issued under and pursuant to a Bond Ordinance duly enacted by the Issuer on May 24, 1994, and a Supplemental Resolution duly adopted by the Issuer on May 24, 1994 (collectively, the "Bond Legislation");

(2) A copy of the Bond Legislation authorizing the above-described Bond issue, duly certified by the Recorder of the Issuer;

(3) Executed counterparts of the loan agreement, dated May 27, 1994, by and between the West Virginia Water Development Authority (the "Authority") and the Issuer (the "Loan Agreement"); and

(4) An executed opinion of nationally recognized bond counsel regarding the validity of the Loan Agreement and the Bonds.

You are hereby requested and authorized to deliver the Bonds to the Authority upon payment to the Issuer of the sum of $309,000, representing the agreed aggregate purchase price of the Bonds, there being no accrued interest thereon, in accordance with the transfers set forth in the Supplemental Resolution. Prior to such delivery of the Bonds, you will please cause the Bonds to be authenticated and registered by an authorized officer, as Bond Registrar, in accordance with the form of Certificate of Authentication and Registration thereon.

Dated this 27th day of May, 1994.

TOWN OF FRANKLIN

By _____
Mayor

05/16/94
FRANKC.N2
307110/94001

(SPECIMEN BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
TOWN OF FRANKLIN
WATER REVENUE BOND, SERIES 1994

No. R-1 $309,000

KNOW ALL MEN BY THESE PRESENTS: That the TOWN OF FRANKLIN, a municipal corporation and political subdivision of the State of West Virginia in Pendleton County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of THREE HUNDRED NINE THOUSAND DOLLARS ($309,000), in installments on October 1 of each year as set forth on the "Schedule of Annual Debt Service" attached as Exhibit A hereto and incorporated herein by reference with interest on each installment at the rate per annum set forth on said Exhibit A.

The interest rate on each installment shall run from the original date of delivery of this Bond to the Authority and payment therefor, and until payment of such installment, and such interest shall be payable on April 1 and October 1 in each year, beginning October 1, 1994. 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"). The interest 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 One Valley Bank, National Association, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement between the Issuer and the Authority, dated May 27, 1994.

This Bond is issued (i) to refund all of the outstanding Waterworks Revenue Bonds, Series A and Series B, dated July 1, 1968 (the "Prior Bonds"), of the Issuer, heretofore issued to finance the cost of acquisition and construction of certain additions, betterments and improvements to the waterworks system of the Issuer; (ii) to

pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing waterworks system of the Issuer (the "Project"); and (iii) to pay certain costs of issuance of the Bonds of this Series (the "Bonds") and related costs. The Project, and any further additions, betterments and improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 13, Article 2E of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on May 24, 1994, and a Supplemental Resolution duly adopted by the Issuer on May 24, 1994 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, and from moneys in the reserve account created under the Bond Legislation for the Bonds (the "Series 1994 Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Gross Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Gross Revenues, the moneys in the Series 1994 Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on the Bonds, and all other obligations secured by a lien on or payable from such revenues prior to or on a parity with the Bonds; provided however, that so long as there exists in the Series 1994 Bonds 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 respective reserve accounts 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 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of 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 refunding of the Prior Bonds and the payment of the Costs of the Project described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the registered owner of this Bond.

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

IN WITNESS WHEREOF, the TOWN OF FRANKLIN has caused this Bond to be signed by its Mayor and its corporate seal to be affixed hereon and attested by its Recorder, and has caused this Bond to be dated May 27, 1994.

[SEAL]

_____
Mayor

ATTEST:

_____
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1994 Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: May 27, 1994.

ONE VALLEY BANK,
NATIONAL ASSOCIATION,
as Registrar

By _____
Authorized Officer

EXHIBIT A

SCHEDULE OF ANNUAL DEBT SERVICE

**West Virginia Water Development Authority**
**Interest Bearing Local Loan from Bridge Financing Program**
**Debt Service Schedule - Town of Franklin**

Avg Coup = 6.75%
TIC = 6.754234%
NIC = 6.750000%

WAM = 27.84 yrs.

**Closing May 27, 1994**
**Interest Bearing Loan:** $309,000.00

| Date | Coupon | Principal | Interest | Debt Service |
|---|---|---|---|---|
| 10/1/94 | 6.75% | 0.00 | 7,184.25 | 7,184.25 |
| 10/1/95 | 6.75% | 1,771.40 | 20,857.50 | 22,628.90 |
| 10/1/96 | 6.75% | 1,890.97 | 20,737.93 | 22,628.90 |
| 10/1/97 | 6.75% | 2,018.61 | 20,610.29 | 22,628.90 |
| 10/1/98 | 6.75% | 2,154.86 | 20,474.03 | 22,628.89 |
| 10/1/99 | 6.75% | 2,300.32 | 20,328.58 | 22,628.90 |
| 10/1/00 | 6.75% | 2,455.59 | 20,173.31 | 22,628.90 |
| 10/1/01 | 6.75% | 2,621.34 | 20,007.56 | 22,628.90 |
| 10/1/02 | 6.75% | 2,798.28 | 19,830.62 | 22,628.90 |
| 10/1/03 | 6.75% | 2,987.16 | 19,641.73 | 22,628.89 |
| 10/1/04 | 6.75% | 3,188.80 | 19,440.10 | 22,628.90 |
| 10/1/05 | 6.75% | 3,404.04 | 19,224.86 | 22,628.90 |
| 10/1/06 | 6.75% | 3,633.81 | 18,995.08 | 22,628.89 |
| 10/1/07 | 6.75% | 3,879.10 | 18,749.80 | 22,628.90 |
| 10/1/08 | 6.75% | 4,140.93 | 18,487.96 | 22,628.89 |
| 10/1/09 | 6.75% | 4,420.45 | 18,208.45 | 22,628.90 |
| 10/1/10 | 6.75% | 4,718.83 | 17,910.07 | 22,628.90 |
| 10/1/11 | 6.75% | 5,037.35 | 17,591.55 | 22,628.90 |
| 10/1/12 | 6.75% | 5,377.37 | 17,251.53 | 22,628.90 |
| 10/1/13 | 6.75% | 5,740.34 | 16,888.55 | 22,628.89 |
| 10/1/14 | 6.75% | 6,127.82 | 16,501.08 | 22,628.90 |
| 10/1/15 | 6.75% | 6,541.44 | 16,087.45 | 22,628.89 |
| 10/1/16 | 6.75% | 6,982.99 | 15,645.91 | 22,628.90 |
| 10/1/17 | 6.75% | 7,454.34 | 15,174.55 | 22,628.89 |
| 10/1/18 | 6.75% | 7,957.51 | 14,671.39 | 22,628.90 |
| 10/1/19 | 6.75% | 8,494.64 | 14,134.25 | 22,628.89 |
| 10/1/20 | 6.75% | 9,068.03 | 13,560.87 | 22,628.90 |
| 10/1/21 | 6.75% | 9,680.12 | 12,948.77 | 22,628.89 |
| 10/1/22 | 6.75% | 10,333.53 | 12,295.37 | 22,628.90 |
| 10/1/23 | 6.75% | 11,031.05 | 11,597.85 | 22,628.90 |
| 10/1/24 | 6.75% | 11,775.64 | 10,853.26 | 22,628.90 |
| 10/1/25 | 6.75% | 12,570.50 | 10,058.40 | 22,628.90 |
| 10/1/26 | 6.75% | 13,419.01 | 9,209.89 | 22,628.90 |
| 10/1/27 | 6.75% | 14,324.79 | 8,304.11 | 22,628.90 |
| 10/1/28 | 6.75% | 15,291.71 | 7,337.19 | 22,628.90 |
| 10/1/29 | 6.75% | 16,323.90 | 6,305.00 | 22,628.90 |
| 10/1/30 | 6.75% | 17,425.76 | 5,203.13 | 22,628.89 |
| 10/1/31 | 6.75% | 18,602.00 | 4,026.89 | 22,628.89 |
| 10/1/32 | 6.75% | 19,857.64 | 2,771.26 | 22,628.90 |
| 10/1/33 | 6.75% | 21,198.03 | 1,430.87 | 22,628.90 |
| | | 309,000.00 | 580,711.24 | 889,711.24 |

ASSIGNMENT

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

Dated: _____, _____.

_____

In the presence of:

_____

# STEPTOE & JOHNSON

ATTORNEYS AT LAW

SIXTH FLOOR
BANK ONE CENTER
P. O. BOX 2190
CLARKSBURG, W. VA. 26302-2190
(304) 624-8000
FACSIMILE (304) 624-8183

SEVENTH FLOOR, BANK ONE CENTER
P. O. BOX 1588
CHARLESTON, W. VA. 25326-1588
(304) 353-8000
FACSIMILE (304) 353-8180

1000 HAMPTON CENTER
P. O. BOX 1616
MORGANTOWN, W. VA. 26507-1616
(304) 598-8000
FACSIMILE (304) 598-8116

126 EAST BURKE STREET
P. O. BOX 2629
MARTINSBURG, W. VA. 25401-5429
(304) 263-6991
FACSIMILE (304) 263-4785

104 WEST CONGRESS STREET
P. O. BOX 100
CHARLES TOWN, W. VA. 25414-0100
(304) 725-1414
FACSIMILE (304) 725-1913

THE BRYAN CENTRE
P. O. BOX 570
82 WEST WASHINGTON STREET, SUITE 301
HAGERSTOWN, MARYLAND 21740-0570
(301) 739-8600
FACSIMILE (301) 739-8742

WRITER'S DIRECT DIAL NUMBER


May 27, 1994

Town of Franklin
Water Revenue Bonds, Series 1994

West Virginia Water Development Authority
1201 Dunbar Avenue
Dunbar, West Virginia 25064

Ladies and Gentlemen:

We have served as bond counsel in connection with the issuance by the Town of Franklin (the "Issuer"), a municipal corporation and political subdivision organized and existing under the laws of the State of West Virginia, of its $309,000 Water Revenue Bonds, Series 1994, dated the date hereof (the "Bonds").

We have examined the law and certified copies of proceedings and other papers relating to the authorization of a loan agreement, dated May 27, 1994, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority") and the Bonds, which are to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Bonds are originally issued in the form of one bond, registered as to principal and interest to the Authority, with interest payable April 1 and October 1 of each year, commencing October 1, 1994, at the rate of 6.75% per annum, and with principal installments payable on October 1 in each of the years 1995 through 2033, inclusive, all as set forth in "Schedule X" attached to the Loan Agreement and incorporated in and made a part of the Bonds.

The Bonds are issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly, Chapter 8, Article 19 and Chapter 13, Article 2E of the West Virginia Code of 1931, as amended (collectively, the "Act"), for the purposes of (i) refunding all of the outstanding Waterworks Revenue Bonds, Series A and Series B, dated July 1, 1968 (the "Prior Bonds"), of the Issuer, heretofore issued to finance the cost of acquisition and construction of certain additions, betterments and improvements to the waterworks system of the Issuer; (ii) paying a portion of the costs of acquisition and construction of certain additions, betterments and

improvements to the existing waterworks system of the Issuer (the "Project"); and (iii) paying certain issuance and other related costs in connection therewith.

We have also examined the applicable provisions of the Act, the Bond Ordinance duly enacted by the Issuer on May 24, 1994, as supplemented by a Supplemental Resolution duly adopted by the Issuer on May 24, 1994 (collectively, the "Bond Legislation"), pursuant to and under which Act and Bond Legislation the Bonds are authorized and issued, and the Loan Agreement has been entered into. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Bond Legislation and the Loan Agreement.

In connection with the issuance of the Bonds, the Issuer has executed a Certificate as to Arbitrage, dated as of the date hereof (the "Certificate as to Arbitrage"), which, among other things, sets forth restrictions on the investment and expenditure of the Bond proceeds and earnings thereon, to ensure that the arbitrage requirements of the Internal Revenue Code of 1986, as amended, and regulations thereunder (collectively, the "Code"), necessary to establish and maintain the excludability of interest on the Bonds from gross income for federal income tax purposes, are and will continue to be met.

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

1. The Issuer is a duly organized and validly existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System referred to in the Loan Agreement and to issue and sell the Bonds, all under the Act and other applicable provisions of law.

2. The Loan Agreement has been duly authorized by and executed on behalf of the Issuer, is a valid and binding special obligation of the Issuer enforceable in accordance with the terms thereof, and inures to the benefit of the Authority and cannot be amended so as to affect adversely the rights of the Authority or diminish the obligations of the Issuer without the written consent of the Authority.

3. The Bond Legislation and all other necessary ordinances and resolutions have been duly and effectively enacted and adopted by the Issuer and constitute valid and binding obligations of the Issuer enforceable upon the Issuer. The Bond Legislation contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

4. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Gross Revenues of the System referred to in the Bond Legislation and secured by a first lien on and pledge of the Gross Revenues of said System, all in accordance with the terms of the Bonds and the Bond Legislation.

5. Under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Bonds (a) is excludable from gross income of the owners thereof for federal income tax purposes pursuant to the Code and (b) is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations under the Code. It should be noted, however, that interest on the Bonds is included in the adjusted current earnings of certain corporations for purposes of computing the alternative

minimum tax that may be imposed with respect to corporations. The opinions set forth above are subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Code that must be satisfied subsequent to issuance of the Bonds for interest thereon to be or continue to be excludable from gross income for federal income tax purposes and all certifications, covenants and representations which may affect the excludability from gross income of the interest on the Bonds set forth in the Bond Legislation and the Certificate as to Arbitrage, and other certificates delivered in connection with the issuance of the Bonds. Failure to comply with certain of such Code provisions or such certifications, covenants and representations could cause the interest on the Bonds to be includable in gross income retroactive to the date of issuance of the Bonds. We express no opinion regarding other federal tax consequences arising with respect to the Bonds.

6. The Bonds are, under the Act, exempt from all taxation by the State of West Virginia, or any county, municipality or county commission, political subdivision or agency thereof, and the interest on the Bonds is exempt from personal and corporate net income taxes imposed directly thereon by the State of West Virginia.

7. The Prior Bonds have been paid within the meaning and with the effect expressed in the Prior Ordinance, and the covenants, agreements and other obligations of the Issuer to the holders and owners of such Prior Bonds have been satisfied and discharged. In rendering the opinion set forth in this paragraph 7, we have relied upon the verification report of certain independent certified public accountants relating to the sufficiency of the maturing principal of and interest to be earned on the United States Treasury Obligations deposited in the Escrow Fund established with the Escrow Agent, which together with any other moneys on deposit in said Escrow Fund, will provide for the payment of the principal of and interest on such Prior Bonds as the same become due, to and including the first redemption date thereof.

It is to be understood that the rights of the holders of the Bonds and the enforceability of the Bonds, the Loan Agreement, the Escrow Agreement and the Bond Legislation, and the liens and pledges set forth therein, may be subject to and limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that their enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

We have examined the executed and authenticated 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,

Steptoe & Johnson

STEPTOE & JOHNSON

05/10/94
FRANKC.O1
307110/94001

# JEFFREY S. BOWERS

**Attorney At Law**

**P. O. Box 849**
**Corner of Chestnut & S. Main Streets**
**Franklin, West Virginia 26807-0849**

**ASSOCIATE**
**Kevin C. Sponaugle**
**Attorney At Law**

**Telephone: 304-358-3333**
**Telecopier: 304-358-3334**


May 27, 1994

Town of Franklin
Water Revenue Bonds, Series 1994

West Virginia Water Development Authority
1201 Dunbar Avenue
Dunbar, WV 25064

Steptoe & Johnson
P.O. Box 2190
Clarksburg, WV 26302

Ladies & Gentlemen:

I am counsel to the Town of Franklin, in Pendleton County, West Virginia (the "Issuer). As such counsel, I have examined copies of the approving opinion of Steptoe & Johnson, as bond counsel, a loan agreement dated May 27, 1994, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the West Virginia Water Development Authority ("the Authority") and the Issuer, a Bond Ordinance duly enacted by the Issuer on May 24, 1994, as supplemented by a Supplemental Resolution duly adopted by the Issuer on May 24, 1994, (collectively, the "Bond Legislation") and other documents relating to the above-captioned Bonds of the Issuer ("the Bonds"). Terms used in said opinion, Bond Legislation and Loan Agreement and not otherwise defined herein have the same meanings as therein when used herein.

I am of the opinion that:

1. The Loan Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the Authority constitutes a valid and binding agreement of the Issuer enforceable in accordance with its terms.

2. The Escrow Agreement has been duly authorized, executed and delivered by the Issuer, and assuming due authorization, execution and delivery by the West Virginia Municipal Bond Commission, constitutes a valid and binding agreement of the Issuer enforceable in accordance with its terms.

3. The Issuer has been duly created and is validly existing as a municipal corporation and political subdivision of the State of West Virginia, and the Mayor, Recorder and members of the council of the Issuer have been duly and properly elected or appointed, as applicable, have taken the requisite oaths and are authorized to act on behalf of the Issuer in their respective capacities.

4. The Bond Legislation has been duly adopted and enacted by the Issuer and is in full force and effect.

5. The execution and delivery of the Bonds, the Loan Agreement and the Escrow Agreement, and the consummation of the transactions contemplated by the Escrow Agreement, the Loan Agreement and the Bond Legislation, and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute on the part of the Issuer a breach of or default under any ordinance, resolution, order agreement or other instrument to which the Issuer is a party or any existing law, regulation, court order or consent decree to which the Issuer is subject.

6. The Issuer has received all permits, licenses, approvals and authorizations necessary for the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges for use of the System, including, without limitation, the receipt of all requisite orders and approvals from the Public Service Commission of West Virginia, and has taken any other action required for the imposition of such rates and charges, including, without limitation, the enactment of an ordinance prescribing such rates and charges. The time for appeal of such rate ordinance has expired prior to the date hereof without any appeal. The Issuer has received the Final Orders of the Public Service Commission of West Virginia entered on January 27, 1994, in Case No. 93-0935-W-CN, and on May 19, 1994, in Case No. 93-0935-W-CN (Reopened), among other things, granting to the Issuer a certificate of public convenience and necessity for the Project, and approving the financing for the Project. The time for appeal of the Final Order in Case No. 93-0935-W-CN (Reopened) has not expired prior to the date hereof. However, the staff of the Public Service Commission of West Virginia has stated in a letter dated May 20, 1994, that it does not intend to appeal such Final Order. The Issuer has certified that it will not appeal such Final Order. The Issuer and the Public Service Commission of West Virginia are the only parties to Case No. 93-0935-W-CN (Reopened). The Final Order is not subject to appeal, further hearing, reopening or rehearing by any customer, protestant, intervenor or other person not a party to the original application.

7. To the best of my knowledge, there is no action, suit, proceeding, or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Loan Agreement or the Escrow Agreement, refunding and defeasance of the prior Bonds, the acquisition and construction of the Project, the operation of the System or the validity of the Bonds or the collection or pledge of the Gross Revenues therefor.

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

Very truly yours,

Jeffrey S. Bowers

JSB/amb

TOWN OF FRANKLIN

Water Revenue Bonds, Series 1994

GENERAL CERTIFICATE OF ISSUER AND ATTORNEY ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. CERTIFICATION OF COPIES OF DOCUMENTS
6. INCUMBENCY AND OFFICIAL NAME
7. LAND AND RIGHTS-OF-WAY
8. MEETINGS, ETC.
9. CONTRACTORS' INSURANCE, ETC.
10. GRANTS
11. LOAN AGREEMENT
12. RATES
13. SIGNATURES AND DELIVERY
14. BOND PROCEEDS
15. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE
16. PUBLIC SERVICE COMMISSION ORDERS
17. PRIVATE USE OF FACILITIES
18. NO FEDERAL GUARANTY
19. IRS INFORMATION RETURN
20. SPECIMEN BONDS
21. CONFLICT OF INTEREST
22. INVESTMENT OF ESCROW FUND AND DISCHARGE OF LIEN OF PRIOR BONDS

We, the undersigned MAYOR and RECORDER of the Town of Franklin, in Pendleton County, West Virginia (the "Issuer"), and the undersigned Counsel to the Issuer, hereby certify in connection with the $309,000 aggregate principal amount of the Town of Franklin Water Revenue Bonds, Series 1994 (the "Bonds"), dated the date hereof, as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined shall have the same meaning as in the Bond Ordinance of the Issuer enacted May 24, 1994, and a Supplemental Resolution adopted May 24, 1994 (collectively, the "Bond Legislation").

2. NO LITIGATION: No controversy or litigation of any nature is now pending or threatened, restraining, enjoining or affecting in any manner the issuance, sale or delivery of the Bonds, the refunding and defeasance of the Prior Bonds, the acquisition and construction of the Project, the operation of the System, the receipt of the Grant

Receipts or the Gross Revenues, or in any way contesting or affecting the validity of the Bonds or the Grants or any proceedings of the Issuer taken with respect to the issuance or sale of the Bonds, the refunding and defeasance of the Prior Bonds, the pledge or application of the Gross Revenues or any other moneys or security provided for the payment of the Bonds or the existence or the powers of the Issuer insofar as they relate to the authorization, sale and issuance of the Bonds, the refunding and defeasance of the Prior Bonds, the acquisition and construction of the Project, the operation of the System, the receipt of the Grant Receipts or such pledge or application of moneys and security or the collection of the Gross Revenues or pledge thereof.

3. GOVERNMENTAL APPROVALS AND BIDDING: All applicable approvals, permits, exemptions, consents, authorizations, registrations and certificates required by law for the acquisition and construction of the Project, the operation of the System and the issuance of the Bonds have been obtained and remain in full force and effect, and competitive bids for the acquisition and construction of the Project have been solicited in accordance with Chapter 5, Article 22, Section 1 of the Official West Virginia Code of 1931, as amended, which bids remain in full force and effect.

4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the Issuer since the approval and execution and delivery by the Issuer of the Loan Agreement, and the Issuer has met all conditions prescribed in the Loan Agreement entered into between the Issuer and the Authority.

For the purpose of releasing and terminating liens, restrictions, conditions or limitations imposed upon the Prior Bonds, the Issuer will be using a portion of the proceeds of the Bonds, together with other moneys of the Issuer, to refund the Prior Bonds to their first redemption date, being July 1, 1994, in the manner set forth in the Escrow Agreement. Upon conclusion of the refunding and defeasance of the Prior Bonds on the Closing Date, there will be no outstanding obligations of the Issuer which will rank senior and prior to, or on a parity with, or junior and subordinate to, the Bonds as to liens, pledge, source of and security for payment.

5. CERTIFICATION OF COPIES OF DOCUMENTS: The copies of the below-listed documents hereto attached or delivered herewith or heretofore delivered are true, correct and complete copies of the originals of the documents of which they purport to be copies, and such original documents are in full force and effect and have not been repealed, rescinded, amended or changed in any way unless modification appears from later documents also listed below:

Charter of the Town of Franklin.

Oaths of Office of Town Officers and Councilmembers.

Bond Ordinance.

Supplemental Resolution.

Rate Ordinance.

Affidavit of Publication of Abstract of Bond Ordinance and Notice of Hearing.

Affidavit of Publication of Rate Ordinance and Notice of Public Hearing.

Minutes on Adoption and Enactment of Bond Ordinance and Adoption of Supplemental Resolution.

Minutes on Adoption and Enactment of Rate Ordinance.

Loan Agreement.

Evidence of Small Cities Block Grant.

Public Service Commission Final Orders entered January 27, 1994, and May 19, 1994.

Public Service Commission staff attorney letter dated May 20, 1994.

Escrow Agreement.

Verification Report of Certified Public Accountant Regarding Bond Yield, Escrow Fund Yield, Sufficiency of Escrow Fund and Savings.

Prior Ordinance.

6. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is the "Town of Franklin." The Issuer is a municipal corporation in Pendleton County and is presently existing under the laws of, and a political subdivision of, the State of West Virginia. The governing body of the Issuer is its Council, consisting of a Mayor, a Recorder and 5 councilmembers, all duly elected or appointed, as applicable, qualified and acting, and whose names and dates of commencement and termination of current terms of office are as follows:

| Name | | Date of Commencement of Office | Date of Termination of Office |
|---|---|---|---|
| Warren R. Waggy | - Mayor | July 1, 1992 | June 30, 1994 |
| Barry B. Glover | - Recorder | July 1, 1992 | June 30, 1994 |
| Berlie C. Sponaugle | - Councilmember | July 1, 1992 | June 30, 1994 |
| L. Howard Lambert | - Councilmember | July 1, 1992 | June 30, 1994 |
| Enos H. Horst | - Councilmember | July 1, 1992 | June 30, 1994 |
| Genevieve Glover | - Councilmember | July 1, 1992 | June 30, 1994 |
| Vacant due to resignation | - Councilmember | | |

The duly appointed and acting Counsel to the Issuer is Jeffrey Bowers, Esquire, Franklin, West Virginia.

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

8. MEETINGS, ETC.: All actions, ordinances, resolutions, orders and agreements taken by and entered into by or on behalf of the Issuer in any way connected with the acquisition, construction, operation and financing of the Project or the System were authorized or adopted at regular or special meetings of the Governing Body of the Issuer duly and regularly called and held pursuant to the Rules of Procedure of the Governing Body and all applicable statutes, including, particularly and without limitation, Chapter 6, Article 9A, of the West Virginia Code of 1931, as amended, and a quorum of duly elected or appointed, as applicable, qualified and acting members of the Governing Body was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

9. CONTRACTORS' INSURANCE, ETC.: All contractors have been required to maintain Worker's Compensation, public liability and property damage insurance, and builder's risk insurance where applicable, in accordance with the Bond Legislation. All insurance for the System required by the Bond Legislation is in full force and effect.

10. GRANTS: As of the date hereof, the grant from the Department of Housing and Urban Development (Small Cities Block Grant through the State of West Virginia) in the amount of $344,000 is committed and in full force and effect.

11. LOAN AGREEMENT: As of the date hereof, (i) the representations of the Issuer 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 Issuer 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 it is necessary to disclose therein in order to make the statements and information in the Loan Agreement not misleading; and (iv) the Issuer is in compliance with the Loan Agreement.

12. RATES: The Issuer has duly enacted a rate ordinance on June 2, 1992, setting rates and charges for the services of the System. The time for appeal of such rate ordinance has expired without any appeal thereof, and such rate ordinance is currently in effect.

13. SIGNATURES AND DELIVERY: On the date hereof, the undersigned Mayor did officially sign all of the Bonds of the aforesaid issue, all dated May 27, 1994, by his manual signature, and the undersigned Recorder did officially cause the official seal of the Issuer to be affixed upon each of said Bonds and to be attested by his manual signature, and the Registrar did officially authenticate and deliver the Bonds to a representative of the Authority as the original purchaser of the Bonds under the Loan Agreement. Said official seal is also impressed above the signatures appearing on this certificate.

14. BOND PROCEEDS: On the date hereof, the Issuer received from the Authority the agreed purchase price of the Bonds, being $309,000 (100% of par value), there being no interest accrued thereon.

15. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE: Upon adoption of the Bond Ordinance, an abstract thereof, determined by the Governing Body to contain sufficient information as to give notice of the contents thereof, was published once each week for 2 successive weeks, with not less than 6 full days between each publication, the first such publication occurring not less than 10 days before the date stated below for the public hearing, in The Pendleton Times, a newspaper published and of general circulation in the Town of Franklin, together with a notice to all persons concerned, stating that the Bond Ordinance had been adopted and that the Issuer contemplated the issuance of the Bonds described in such Bond Ordinance, stating that any person interested may appear before the Council at the public hearing held at a public meeting of Council on the 24th day of May, 1994, at 7:30 p.m., in the Council Chambers of the Town Hall of the

Town of Franklin and present protests, and stating that a certified copy of the Bond Ordinance was on file at the office of the Recorder of the Issuer for review by interested parties during the office hours of the Issuer. At such hearing all objections and suggestions were heard by the Governing Body and the Bond Ordinance became finally adopted, enacted and effective as of the date of such public hearing, and remains in full force and effect.

16. PUBLIC SERVICE COMMISSION ORDERS: The Issuer has received the Final Orders of the Public Service Commission of West Virginia entered on January 27, 1994, in Case No. 93-0935-W-CN, and on May 19, 1994, in Case No. 93-0935-W-CN (Reopened), among other things, granting to the Issuer a certificate of public convenience and necessity for the Project, and approving the financing for the Project. The time for appeal of the Final Order in Case No. 93-0935-W-CN (Reopened) has not expired prior to the date hereof. However, the staff of the Public Service Commission of West Virginia has stated in a letter dated May 20, 1994, that it does not intend to appeal such Final Order. The Issuer will not appeal such Final Order. The Issuer and the Public Service Commission of West Virginia are the only parties to Case No. 93-0935-W-CN (Reopened). The Final Order is not subject to appeal, further hearing, reopening or rehearing by any customer, protestant, intervenor or other person not a party to the original application.

17. PRIVATE USE OF FACILITIES: The Issuer 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 Bonds and the interest thereon. Less than 10% of the proceeds of the Bonds will be used, directly or indirectly, for any private business use, and less than 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 Issuer) in respect of property, or borrowed money, used or to be used for a private business use. None of the proceeds of the Bonds will be used, directly or indirectly, for any private business use which is not related to the governmental use of the proceeds of the Bonds, including the disproportionate related business use of the proceeds of the Bonds, and none of the payment of principal on, or the interest on, such issue, under the terms of any underlying arrangement, is, directly or indirectly, secured by any interest in property used, or to be used for a private business use, payments in respect of such property or to be derived from payments (whether or not to the Issuer) in respect of property, or borrowed money, used or to be used for a private business use with respect to such private business use, which is not related to any government use of such proceeds, including the disproportionate business use of the issue of the Bonds. None of the proceeds of the issue of the Bonds will be used, directly or indirectly, to make or finance loans to persons other than governmental units. For purposes of this paragraph, private business use means use, directly or indirectly, in a trade or business carried on by any person, including related persons, other than a governmental unit or other than use as a member of the general public. All of the foregoing shall be determined in accordance with and within the meaning

of the Internal Revenue Code of 1986, as amended, including any successor provisions and rules and regulations thereunder (the "Code").

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

19. IRS INFORMATION RETURN: On the date hereof, the undersigned Mayor did officially sign a properly completed IRS Form 8038-G and will cause such executed Form 8038-G to be filed in a timely manner with the Internal Revenue Service Center, Philadelphia, Pennsylvania.

20. SPECIMEN BONDS: Delivered concurrently herewith is a true and accurate specimen of the Bond.

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

22. INVESTMENT OF ESCROW FUND AND DISCHARGE OF LIENS OF PRIOR BONDS: The funds on deposit in the Escrow Fund established by the Escrow Agreement between the Issuer and the West Virginia Municipal Bond Commission, as Escrow Agent, dated May 27, 1994, have been invested as provided in the Escrow Agreement and the amount of such invested funds (together with certain cash amounts therein, if any) is sufficient to pay fully the principal of and interest accrued on the Prior Bonds on July 1, 1994, being the redemption date thereof.

WITNESS our signatures and the official seal of the TOWN OF FRANKLIN on this 27th day of May, 1994.

[CORPORATE SEAL]

| SIGNATURE | OFFICIAL TITLE |
| --- | --- |
| Warren R Waggy | Mayor |
| Barry B Glover | Recorder |
| Jeffrey L. Barnes | Counsel to Issuer |

05/20/94
FRANKJ.Q3
307110/94001

TOWN OF FRANKLIN

Water Revenue Bonds, Series 1994

CERTIFICATE AS TO ARBITRAGE

I, Warren Waggy, Mayor of the Town of Franklin, in Pendleton County, West Virginia (the "Issuer"), being one of the officials of the Issuer duly charged with the responsibility for the issuance of $309,000 aggregate principal amount of Water Revenue Bonds, Series 1994, of the Issuer, dated May 27, 1994 (the "Bonds" or "Series 1994 Bonds"), hereby certify as follows:

1. This certificate is being executed and delivered pursuant to Section 148 of the Internal Revenue Code of 1986 and applicable regulations (the "Code"). I am one of the officers of the Issuer duly charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances, and estimates herein certified and am duly authorized to execute and deliver this certificate on behalf of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the same meaning as set forth in the bond ordinance authorizing the Bonds duly enacted by the Issuer on May 24, 1994 (as supplemented, the "Bond Ordinance").

2. This certificate may be relied upon as the certificate of the Issuer.

3. The Issuer has not been notified by the Internal Revenue Service of any listing or proposed listing of it as an issuer that may not certify its bonds or the certification of which may not be relied upon by holders of obligations of the Issuer or that there is any disqualification of the Issuer by the Internal Revenue Service because a certification made by the Issuer contains a material misrepresentation.

4. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on May 27, 1994, the date on which the Bonds are to be physically delivered in exchange for the issue price thereof, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

5. The Bonds were sold on May 27, 1994, to the West Virginia Water Development Authority (the "Authority") for a purchase price of $309,000 (100% of par). No accrued interest has been or will be paid on the Bonds.

6. The Issuer has covenanted in the Bond Ordinance to not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Bonds which would cause any of the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code. The Issuer has, therefore, covenanted to not intentionally use any portion of the proceeds of the Bonds to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except

11

as otherwise allowed under Section 148 of the Code. The Issuer, in the Bond Ordinance, has further covenanted that it will take all actions that may be required of it 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.

7. The Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) refunding all of the outstanding Waterworks Revenue Bonds, Series A and Series B, dated July 1, 1968 (the "Prior Bonds"), of the Issuer, heretofore issued to finance the cost of acquisition and construction of certain additions, betterments and improvements to the waterworks system of the Issuer; (ii) paying a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing waterworks system of the Issuer (the "Project"); and (iii) paying costs of issuance and other related costs thereof.

8. The Issuer will, on the date hereof or immediately hereafter, enter into agreements which require the Issuer to expend in excess of $100,000 on the Project constituting a substantial binding commitment, or has already done so. Acquisition, construction and equipping of the Project will commence immediately and will proceed with due diligence to completion, and, with the exception of proceeds constituting capitalized interest (if any), proceeds deposited in the reserve account for the Bonds (if any), all of the proceeds from the sale of the Bonds, together with any investment earnings thereon, will be expended for payment of Costs of the Project on or before February, 1995. Construction of the Project is expected to be completed by February, 1995.

9. The total cost of the Project (including all costs of issuance of the Bonds) is estimated at $653,000. Sources and uses of funds for the Project are as follows:

| SOURCES | |
|---|---|
| Gross Proceeds of Bonds | $ 309,000.00 |
| Small Cities Block Grant | 344,000.00 |
| Total Sources | $653,000.00 |

| USES | |
|---|---|
| Refund Prior Bonds | $40,173.48 |
| Acquisition and Construction of Project | 599,826.52 |
| Capitalized Interest | -0- |
| Fund Reserve Account | -0- |
| Costs of Issuance | 13,000.00 |
| Total Uses | $653,000.00 |

The amount of Project costs not expected to be reimbursed or paid from grant proceeds is estimated to be at least equal to the gross proceeds of the Bonds. Except for the proceeds of the Bonds and the grant proceeds, no other funds of the Issuer will be available to meet costs of the Project, and no balances are available to meet such costs in any account which may, without legislative or judicial action, be invaded to pay such expenditures without a legislative, judicial or contractual requirement that such account be reimbursed.

10. Pursuant to Article V of the Bond Ordinance, the following special funds or accounts have been created:

(1) Revenue Fund;

(2) Renewal and Replacement Fund;

(3) Bond Construction Trust Fund; and

(4) Series 1994 Bonds Sinking Fund, and within the Series 1994 Bonds Sinking Fund the Series 1994 Bonds Reserve Account.

11. Pursuant to Article VI of the Bond Ordinance, the proceeds of the Bonds will be deposited as follows:

(1) Bond proceeds in the amount of $-0- will be deposited in the Series 1994 Bonds Sinking Fund as capitalized interest on the New Money Proceeds of the Bonds and applied to payment of interest on the Bonds during

acquisition and construction of the Project and for not more than six months thereafter.

(2) Bond proceeds in the amount of $-0- will be deposited in the Series 1994 Bonds Reserve Account.

(3) Bond proceeds in the amount of $40,173.48, together with other moneys of the Issuer, will be deposited in the Escrow Fund to accomplish the refunding and defeasance of the Prior Bonds.

(4) The balance of the proceeds of the Bonds will be deposited in the Bond Construction Trust Fund and applied solely to payment of Costs of the Project, including costs of issuance of the Bonds and related costs.

The Issuer has entered into an Escrow Agreement, dated May 27, 1994 (the "Escrow Agreement"), by and between the Issuer and the West Virginia Municipal Bond Commission, as Escrow Agent. Provision will be made for the payment of the Prior Bonds by placing into the Escrow Fund established under the Escrow Agreement, cash and certain securities in the form of United States Treasury Obligations set forth in the Escrow Agreement, which will provide funds sufficient to pay on the first redemption date thereof, being July 1, 1994 (the "Redemption Date"), of the entire principal amount of the Prior Bonds then outstanding and interest accrued thereon to the Redemption Date. On the Closing Date, the Escrow Fund will be funded from (i) $40,173.48 of the Bond proceeds, and (ii) $26,081.95 from the sinking funds (including the reserve account therein) established for the Prior Bonds, and thereupon $64,769.18 will be applied to the purchase of United States Treasury Obligations and the remaining $1,486.25 will be held as cash, uninvested, in the Escrow Fund. The yield on the United States Treasury Obligations will not be higher than the yield on the Bonds.

Amounts in the Bond Construction Trust Fund, if invested, will be invested without yield limitation for a period necessary to complete the Project, not to exceed 3 years, except as otherwise set forth herein. All of such moneys are necessary for such purpose.

None of the proceeds of the Bonds will be used to reimburse the Issuer for costs of the Project previously incurred and paid by the Issuer with its own or other funds.

12. Moneys held in the Series 1994 Bonds Sinking Fund will be used solely to pay principal of and interest on the Bonds and will not be available to meet costs of acquisition and construction of the Project. All investment earnings on moneys in the Series 1994 Bonds Sinking Fund and Series 1994 Bonds Reserve Account, if any, will be withdrawn therefrom and deposited into the Bond Construction Trust Fund during construction of the Project, and following completion of the Project, will be deposited, not

less than once each year, in the Revenue Fund, and such amounts will be applied as set forth in the Bond Ordinance.

13. Except for the Series 1994 Bonds Sinking Fund and the Series 1994 Bonds Reserve Account, there are no other funds or accounts established or held by the Issuer which are reasonably expected to be used to pay debt service on the Series 1994 Bonds or which are pledged as collateral for the Series 1994 Bonds and for which there is a reasonable assurance that amounts therein will be available to pay debt service on the Series 1994 Bonds, if the Issuer encounters financial difficulties. The Issuer does not expect that moneys in the Renewal and Replacement Fund will be used or needed for payments upon the Series 1994 Bonds. Except as provided herein, no funds which have been or will be used to acquire directly or indirectly securities, obligations, annuity contracts, investment-type property or any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved designation plan producing a yield in excess of the yield on the Bonds have been or will be pledged to payment of the Bonds. Less than 10% of the moneys received from the sale of the Series 1994 Bonds, if any, will be deposited in the Series 1994 Bonds Reserve Account or any other reserve or replacement fund. The amounts deposited in the Series 1994 Bonds Reserve Account from time to time by the Issuer will not exceed the maximum annual principal of and interest on the Series 1994 Bonds and will not exceed 125% of average annual principal of and interest on the Series 1994 Bonds. Amounts in the Series 1994 Bonds Reserve Account, not to exceed 10% of the proceeds of the Series 1994 Bonds, if invested, will be invested without yield limitation. The establishment of the Series 1994 Bonds Reserve Account are required by the Authority, is vital to its purchase of the Series 1994 Bonds, and is reasonably required to assure payments of debt service on the Series 1994 Bonds.

Because amounts in the Renewal and Replacement Fund may be expended for other purposes, there is no reasonable assurance that any such amounts would be available to meet debt service if the Issuer encounters financial difficulties; thus, such amounts may be invested without yield limitation.

14. The Issuer has already entered into a contract for the construction of the Project, and the amount to be expended pursuant to such contract exceeds the lesser of 2 1/2% of the estimated total Project cost financed with proceeds from the sale of the Bonds or $100,000.

15. Work with respect to the acquisition and construction of the Project will proceed with due diligence to completion. Construction is expected to be completed within 9 months of the date hereof.

16. Except for a reasonable temporary period until such proceeds are needed for the purpose for which such issue was issued or as otherwise allowed, no portion of the proceeds of the Bonds will be used, directly or indirectly, to acquire higher yielding

investments, or to replace funds which were used, directly or indirectly, to acquire higher yielding investments, all within the meaning of Section 148 of the Code.

17. The Issuer will comply with the provisions of the Code, for which the effective date precedes the date of delivery of its Bonds to the Authority.

18. With the exception of the amount deposited in the Series 1994 Bonds Sinking Fund for payment of interest on the Bonds, if any, and the amounts deposited in the Series 1994 Bonds Reserve Account, if any, all of the proceeds of the Bonds will be expended on the Project within 9 months from the date of issuance thereof.

19. The Issuer does not expect to sell or otherwise dispose of the Project in whole or in part prior to the last maturity date of the Bonds.

20. The Series 1994 Bonds Sinking Fund (other than the Series 1994 Bonds Reserve Account therein) are intended primarily to achieve a proper matching of payments of debt service on the Series 1994 Bonds each year. The Series 1994 Bonds Sinking Fund (other than the Series 1994 Bonds Reserve Account therein) will be depleted at least once a year except for a reasonable carryover amount not in excess of the greater of 1/12th of annual debt service on the Series 1994 Bonds, or 1 year's interest earnings on the Series 1994 Bonds Sinking Fund (other than the Series 1994 Bonds Reserve Account therein). Except as otherwise allowed, any money deposited in the Series 1994 Bonds Sinking Fund for payment of the principal of or interest on the Series 1994 Bonds (other than the Series 1994 Bonds Reserve Account therein), will be spent within a 13-month period beginning on the date of receipt and will be invested without yield limitation, and any moneys received from the investment of amounts held in the Series 1994 Bonds Sinking Fund (other than in the Series 1994 Bonds Reserve Account therein) will be spent within a 1-year period beginning on the date of receipt.

21. All the proceeds of the Bonds which were used for the payment of costs of the Project will be expended for such purposes within three years of May 27, 1994.

22. The amount designated as cost of issuance of the Bonds consists only of costs which are directly related to and necessary for the issuance of the Bonds.

23. All property financed with the proceeds of the Bonds will be held for federal income tax purposes by (or on behalf of) a qualified governmental unit.

24. The Issuer shall file Form 8038-G or 8038-GC in a timely fashion with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19455.

25. No more than 10% of the proceeds of the Bonds will be used (directly or indirectly) in any trade or business carried on by, and less than 5% of the proceeds of

the Bonds have been or will be used to make or finance loans to, any person who is not a governmental unit.

26. The original proceeds of the Bonds will not exceed the amount necessary for the purposes of the issue.

27. The Issuer shall use the Bond proceeds solely for the Project, and the Project will be operated solely for a public purpose as a local governmental activity of the Issuer.

28. 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 treatment afforded by Section 103(a) of the Code by reason of classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions and refrain from taking such actions as shall be necessary to comply with the Code in order to ensure the interest on the Bonds is excludable from gross income for federal income tax purposes.

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

30. The Issuer is a governmental unit and has general taxing powers; no Bonds are private activity bonds; 95% or more of the net proceeds of the Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and the aggregate face amount of all tax-exempt bonds or obligations (other than private activity bonds) issued by the Issuer during the calendar year 1994, the calendar year in which the Bonds are issued, is not reasonably expected to exceed $5,000,000, determined in accordance with Section 148(f)(4)(D) of the Code. For purposes of this paragraph and for purposes of applying such Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this paragraph and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this paragraph and Section 148(f)(4)(D) of the Code, to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefiting thereby shall be treated as one issuer.

The Issuer believes that the Authority exclusively lends bond proceeds in a manner that does not result in its bonds being private activity bonds, as defined in the Code, and the Issuer believes that the use of the proceeds by each borrower from the Authority

would not result in those proceeds being private activity bonds (if viewed as a separate issue).

31. The Issuer has retained the right to amend or supplement its authorizing documents if such amendment or supplement is necessary to preserve the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

32. The Issuer shall comply with the yield restriction on Bond proceeds as set forth in the Code.

33. The Issuer has either (a) funded the Series 1994 Bonds Reserve Account at the maximum amount of principal and interest which will mature and become due on the Bonds in the then current or any succeeding year with the proceeds of the Bonds, or (b) created the Series 1994 Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until such Series 1994 Bonds Reserve Account holds an amount equal to the maximum amount of principal and interest which will mature and become due on the Bonds in the then current or any succeeding year. Moneys in the Series 1994 Bonds Reserve Account and the Series 1994 Bonds Sinking Fund (established for the annual payment of principal and interest) will be used solely to pay principal of and interest on the Bonds and will not be available to pay costs of the Project.

34. The Issuer shall submit to the Authority within 15 days following the end of each bond year a certified copy of its rebate calculation or, if the Issuer qualifies for the small governmental issuer exception to rebate, the Issuer shall submit a certificate stating that it is exempt from the 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 covenants and agrees to comply with the rebate requirements of the Code if not exempted therefrom, and with all other requirements of the Code necessary, proper or desirable to maintain the tax-exempt status of the Bonds and any interest thereon.

35. There are no other obligations of the Issuer which (a) are to be issued at substantially the same time as the Bonds, (b) are to be sold pursuant to a common plan of financing together with any of the Bonds and (c) will be paid out of substantially the same source of funds or will have substantially the same claim to be paid out of substantially the same source of funds as any of the Bonds.

36. The transactions contemplated herein do not represent an exploitation of the difference between taxable and tax-exempt interest rates and the execution and delivery of the Bonds is not occurring sooner than otherwise necessary, nor are the Bonds in principal amounts greater than otherwise necessary or to be outstanding longer than otherwise necessary.

37. The Issuer will rebate to the United States the amount required by the Code and to take all steps necessary to make such rebates. In the event the 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 exclusion from gross income for federal income tax purposes of the interest on the Bonds.

38. The Issuer covenants and agrees to comply with the rebate requirements of the Code if not exempted therefrom, and with all other requirements of the Code necessary, proper or desirable to maintain the tax-exempt status of the Bonds.

39. On the basis of the foregoing, it is not expected that the proceeds of any of the Bonds will be used in a manner that would cause any of the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code.

40. To the best of my knowledge, information and belief, there are no other facts, estimates and circumstances which would materially change the expectations herein expressed.

41. Steptoe & Johnson is entitled to rely upon the representations, expectations, covenants, certifications and statements contained herein in rendering its opinions regarding the tax-exempt status of interest on the Bonds.

42. To the best of my knowledge, information and belief, the foregoing expectations are reasonable.

IN WITNESS WHEREOF, I have set my hand this 27th day of May, 1994.

TOWN OF FRANKLIN

By Warren R Wagg
Mayor

05/16/94
FRANKC.BB2
307110/94001

TOWN OF FRANKLIN

Water Revenue Bonds, Series 1994

ENGINEER'S CERTIFICATE

I, WILLIAM PALLAVICINI, Registered Professional Engineer, West Virginia License No. 8519, of Petersburg, West Virginia, Consulting Engineer, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of certain additions, betterments and improvements to the existing waterworks system (the "Project") for the Town of Franklin (the "Issuer") to be constructed primarily in Pendleton County, West Virginia, which acquisition and construction are being financed in part by the proceeds of the above-captioned bonds (the "Bonds") of the Issuer and certain grant proceeds from the Department of Housing and Urban Development (Small Cities Block Grant). Capitalized words used herein and not otherwise defined herein shall have the meaning set forth in the Bond Ordinance enacted by the Issuer on May 24, 1994, and the Loan Agreement, by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), dated May 27, 1994.

2. The Bonds are being issued for the purposes of (i) refunding all of the outstanding Waterworks Revenue Bonds, Series A and Series B, dated July 1, 1968, of the Issuer, heretofore issued to finance the cost of acquisition and construction of certain additions, betterments and improvements to the waterworks system of the Issuer; (ii) paying a portion of the costs of acquisition and construction of the Project; and (iii) paying costs of issuance and related costs.

3. 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 40 years, (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing 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 of West Virginia and the United States necessary for the acquisition and construction of the Project, (v) the rates and charges for the System as adopted by 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, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction 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 and seal on this 27th day of May, 1994.

(SEAL)

WILLIAM PALLAVICINI REGISTERED 8519 STATE OF WEST VIRGINIA PROFESSIONAL ENGINEER

WILLIAM PALLAVICINI, P.E.

West Virginia License No. 8519

05/10/94
FRANKC.R1
307110/94001

DATE: May 27, 1994

## AMENDED SCHEDULE A

NAME OF GOVERNMENTAL AGENCY: Town of Franklin

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

### A. Cost of Project

| | | | |
|---|---|---|---|
| 1. | Construction | $ 464,050 | |
| 2. | Technical Services | $ 76,475 | |
| 3. | Legal and Fiscal | $ 2,000 | |
| 4. | Administrative | $ 25,000 | |
| 5. | Site and Other Lands | $ | |
| 6. | Step I and/or Step II (Design) or Other Loan Repayment (Specify Type: Repayment 1968 Bonds ) | $ 40,174 | |
| 7. | Interim Financing Costs | $ | |
| 8. | Contingency | $ 32,301 | |
| 9. | Total of Lines 1 through 8 | | $ 640,000 |

### B. Sources of Funds

| | | | | |
|---|---|---|---|---|
| 10. | Federal Grants:[1] (Specify Source) | WVSCBG | $ 344,000 | |
| | | | $ | |
| 11. | State Grants: (Specify Source) | | $ | |
| | | | $ | |
| | | | $ | |
| | | | $ | |
| 12. | Other Grants: (Specify Source) | | $ | |
| | | | $ | |
| 13. | Any Other Source[2] (Specify) | | $ | |
| | | | $ | |
| 14. | Total of Lines 10 through 13 | | | $ 344,000 |
| 15. | Net Proceeds Required from Bond Issue (Line 9 less Line 14) | | | $ 296,000 |

---

1 Attach supporting documentation not previously submitted. If not yet available, state such and expectations as to availability.

2 For example, interest earnings during construction, if applicable. Include the proceeds of any parity or subordinate bond issue to be used for such purpose and attach supporting documentation if available (if not yet available, state such and expectations as to availability).

## C. Cost of Financing

| | | | |
|---|---|---|---|
| 16. | Capitalized Interest (Construction period plus six months) | $ 0 | |
| 17. | Funded Reserve Account[3] | $ 0 | |
| 18. | Other Costs[4] | $ 13,000 | |
| 19. | Total Cost of Financing (Lines 16 through 18) | | $ 13,000 |
| 20. | Size of Bond Issue (Line 15 plus Line 19) | | $ 309,000 |

Additional or explanatory material may be provided on additional sheets attached to Amended Schedule A.

SIGNATURE OF AUTHORIZED OFFICER OF APPLICANT

SIGNATURE OF ENGINEER

---

[3] Consult with bond counsel and the Authority before assuming a funded reserve.

[4] For example, fees of bond counsel for the Governmental Agency.

GOHDES & THOMAS
Certified Public Accountants
401 Maple Avenue - P.O. Box 655
MOOREFIELD, W. VA. 26836
(304) 538-2035
(304) 538-7367 (Fax)

icille S. Gohdes, CPA
Rosalie E. Thomas, CPA

May 27, 1994

Town of Franklin
Water Revenue Bonds, Series 1994

West Virginia Water Development Authority
1201 Dunbar Avenue
Dunbar, West Virginia 25065

Ladies and Gentlemen:

Based upon the rates and charges as set forth in the ordinance of the Town of Franklin finally enacted June 2, 1992, and projected operation and maintenance expenses and anticipated customer usage as furnished to us by William Pallavicini, consulting engineer, it is our opinion that such rates and charges will be sufficient to provide revenues which, together with other revenues of the waterworks system of the Town of Franklin, will pay all repair, operation and maintenance expenses and leave a balance each year equal to at least 115% of the maximum amount required in any year for debt service on the Water Revenue Bonds, Series 1994, to be issued to the West Virginia Water Development Authority.

Very truly yours,

GOHDES & THOMAS

FRANKLIN, WEST VIRGINIA

AN ACT TO INCORPORATE THE

TOWN OF FRANKLIN IN THE

COUNTY OF PENDLETON.

Passed February 28, 1872

FRANKLIN, WEST VIRGINIA
AN ACT TO INCORPORATE THE
TOWN OF FRANKLIN, IN THE
COUNTY OF PENDLETON.
Passed February 28, 1872

Be it enacted by the Legislature of West Virginia:

1. The corporate limits and boundaries of the town of Franklin, shall be as follows: Beginning at the northeast corner of Samuel P. Priest's lot, east of the road leading to Moorefield, and thence north seventy-five, west forty-four poles, to a stake in E. J. Coatney's pasture; thence south twenty, west eighty poles, to a rock in William M. Coy's pasture, south thirty-one, east forty-two poles to the west bank of the South Branch above the town; thence down the west bank of said branch, north eighty and a half, east twenty-two poles to a crib at the log across said branch, and thence north twelve, east ninety-four poles, to the beginning.

corporate limits

2. The municipal authorities shall be a mayor, recorder, and five councilmen, who together shall form a common council.

common council

3. The mayor, recorder, and councilmen, so soon as they have been elected and qualified, as hereinafter provided, shall be a body corporate, by the name of "The Town of Franklin," and shall have perpetual succession and a common seal, and by that name may sue and be sued, implead and be impleaded, 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.

incorporation

style of corporation

powers of corporation

4. All the corporate powers of said corporation shall be exercised by the said council, or under their authority, except when otherwise provided.

corporate powers; how exercised

5. There shall be a town sergeant, a treasurer and com-

missioner of the revenue, appointed by the council, to continue in office at its pleasure, and perform the duties respectively as hereinafter prescribed, or may be required by the council.

officers to be appointed

6. The duties of the office of recorder, treasurer and commissioner of the revenue, may be discharged by the same person, or otherwise, as the council may from time to time determine.

recorder, treasurer and commissioner

7. The mayor, recorder and councilmen, shall be elected for the term of one year; they shall hold their offices until their successors are elected and qualified, and no one shall be eligible to either of said offices, who is not a resident of said town, and qualified to vote for its common council.

terms of office

qualification for office

8. The first election shall be held on the fourth Saturday in March, 1872, at the court-house in said town, under the superintendence of the justice of Franklin township; and annually thereafter there shall be an election on the same day in each year, at such place and under such supervision, rules and regulations as the council of said town may prescribe. The persons conducting the first election shall grant certificates to the persons elected, which shall be entered upon the records with the ordinances of said council, and their term of office shall commence on the first day of April next, after the election.

first election

annual election

certificates of election

9. All persons resident in said town, and entitled to vote for county and township officers shall be entitled to vote for mayor, recorder and councilmen.

who may vote

10. When a vacancy shall occur, from any cause, in the office of mayor, recorder or council, the vacancy shall be filled by appointment by the council.

vacancie how fill ed.

11. At all elections the vote shall be by ballot, and when two or more persons for the same office at any elec-

vote by ballot

tion shall receive an equal number of votes, the person or persons conducting such an election shall decide by lot which of said persons shall be returned elected. And all contested elections shall be heard and determined by the council for the time being.

tie votes

contested elections

12. The mayor, recorder, and councilmen, sergeant, treasurer and commissioner of the revenue 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 an oath that they will truly, faithfully and impartially discharge the duties of their said offices, respectively, to the best of their abilities so long as they continue therein. The recorder shall take such oath or affirmation before a justice or other officer authorized to administer oaths, and thereupon he shall administer the oath aforesaid to the other officers and councilmen. Certificates of the said oaths or affirmation shall be recorded on the journal of the proceedings of the council.

oath of office

before whom taken

certificates of oath

13. When any four of the newly elected councilmen shall have been qualified, they shall enter upon their said offices and supersede the former councilmen.

when new council enter upon office

14. If any one elected mayor, recorder or councilman shall not have been eligible, or shall fail or refuse to take the oath or affirmation required under this act, within the ten days aforesaid, such office shall be declared vacant, and the vacancy filled as hereinbefore prescribed, but in all cases from among the citizens of the town eligible to such office or position under this act.

failure to qualify

15. The council shall be presided over at its meetings by the mayor, or, in his absence, by one of the councilmen selected by a majority of the council present, and a majority of the council shall be necessary to constitute a quorum to do business.

presiding officer

quorum

16. The council shall cause a journal to be kept in which 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, shall be entered. journal and proceedings

17. 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, though voting as a member of the council, in cases of a tie, shall have the casting vote. reading of journal; yeas and nays; casting vote

18. The council so constituted shall have all the powers within said town, that are granted to the council of towns and villages, generally, by section twenty-eight, of chapter forty-seven, of the code of West Virginia. powers of council

19. To carry into effect all powers conferred upon the said town, or its council, expressly, or by implication, in this or any other acts of the legislature, the council shall have power to adopt and enforce all needful orders, by-laws and ordinances, not contrary to the constitution 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 the said town, or the person lawfully exercising his functions. The council, with the consent of the supervisors of Pendleton county entered on record, may have the right to use the jail of said county, for any purpose necessary in the administration of its affairs. further powers

20. The annual levy ordered by the council may be upon all 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 annual levy

taxation, and all such other subjects in said town, as may, at the time, be assessed with state taxes: Provided, the tax do not exceed twenty-five cents on every hundred dollars value of real and personal property: and, Provided further, that no tax shall be levied upon land used for agricultural purposes, when the said tract, or parcel, or land shall exceed two acres in one body or piece of land belonging to one person, or one dollar per head on each taxable male person.

limit to levy

21. When anything for which a state license is required is to be done within the 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 case, require from the person so licensed a bond with sueties, with such penalty, and with conditions as it may determine.

licenses

22. The sergeant shall collect the town taxes, fines, levies, and licenses, and after thirty days from the time he may receive the books of the commissioner of the revenue of said town, may distrain and sell therefor in like manner as a sheriff may for state taxes, and shall in all respects have the same powers 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, executing and levying process, and shall be entitled to the same compensation therefor, and he and his sureties shall be liable to all the fines, penalties and forfeitures that a constable is legally held liable to for any failure or dereliction in said office, to be recovered in the same manner and before the same tribunals, that the same are now recovered against constables.

sergeant; his duties, powers, compensation and liabilities

23. There shall be a lien on real estate for the town taxes assessed thereon 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 interst thereon, with such per centum as the council may prescribe for charges and expenses thereof, and may regulate the terms upon, and time within which the same may be redeemed. No such sale or renting shall be ordered until such realty shall be returned delinquent, and the sale shall be after twenty days' notice, posted at the court-house door, and the post-office in said town.

lien for taxes

sale of real estate delinquent

notice of sale

24. 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.

prohibition of shows

25. The mayor shall be the chief executive officer of the town, shall take care that the by-laws, ordinances and orders of the council are faithfully executed, shall be ex-officio, a conservator and justice of the peace in the town, and shall, within the same, exercise all the powers and duties vested in justices, except that he shall have no juriddiction in civil causes; 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 cases shall not exceed thirty days. He shall, from time to time recommend to the council such measures as he may

mayor; his duties, powers and compensation

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.

recorder; his duties and compensation

26. The recorder shall keep a journal of the proceedings of the council, and have charge of and preserve the records 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.

treasurer; his duties

27. 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 recorder, 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 day's notice, obtain judgment before the circuit court of said county, on account thereof against them and their sureties respectively, or either of them, or their heirs or legal representatives.

how treasurer and sergeant proceeded against

exemption from road tax

28. The said town, and taxable property therein, shall be exempt from all expenses or liability for construction or repair of roads or bridges outside the corporate limits of said town.

former rights, &c., to vest in town

29. All rights, privileges and properties of the said town, heretofore acquired and possessed, owned and enjoyed, by any act now in force, shall continue and remain vested in said town in this act, and all laws, ordinances, acts, resolutions, rights and liabilities existing, and now in force, not inconsistent with this act, shall continue in full force and effect until regularly repealed or canceled by a council elected as provided under this act.

existing laws and liabilities to remain in force

MUNICIPALITY OF FRANKLIN

Box 483

WEST VIRGINIA 26807

State of West Virginia

County of Pendleton, To-Wit:

I, WARREN R WAGGY, do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of this State, and will faithfully discharge the duties of my office as MAYOR of the Town of Franklin, Pendleton County, West Virginia, to the best of my skill and judgment, so help me God.

Warren R Waggy

Subscribed and sworn to before me, in said County and State this 1st day of July, 1992. My commission expires on _____, 19____.

Thomas Pickett

~~Notary Public~~

Magistrate

MUNICIPALITY OF FRANKLIN

Box 483

WEST VIRGINIA 26807

State of West Virginia

County of Pendleton, To-Wit:

I, Barry B Glover, do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of this State, and will faithfully discharge the duties of my office as Recorder of the Town of Franklin, Pendleton County, West Virginia, to the best of my skill and judgment, so help me God.

Barry B Glover

Subscribed and sworn to before me, in said County and State this 1st day of July, 1992. My commission expires on _____, 19____.

Thomas Pingot

~~Notary Public~~

Magistrate

MUNICIPALITY OF FRANKLIN

Box 483

WEST VIRGINIA 26807

State of West Virginia

County of Pendleton, To-Wit:

I, Leslie C. Sponaugle, do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of this State, and will faithfully discharge the duties of my office as Councilman of the Town of Franklin, Pendleton County, West Virginia, to the best of my skill and judgment, so help me God.

Leslie C. Sponaugle

Subscribed and sworn to before me, in said County and State this 7th day of July, 1992. My commission expires on May 19, ~~19~~2000.

Linda L. May
Notary Public

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
LINDA L. MAY
P.O. BOX 94
FRANKLIN, WV 26807
My Commission Expires May 19, 2000

MUNICIPALITY OF FRANKLIN

Box 483

WEST VIRGINIA 26807

State of West Virginia

County of Pendleton, To-Wit:

I, LESLIE HOWARD LAMBERT, do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of this State, and will faithfully discharge the duties of my office as COUNCILMAN of the Town of Franklin, Pendleton County, West Virginia, to the best of my skill and judgment, so help me God.

Leslie H. Lambert

Subscribed and sworn to before me, in said County and State this 7th day of July, 1992. My commission expires on May 19, ~~19~~2000.

Linda L. May

Notary Public

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
LINDA L. MAY
P. O. BOX 294
FRANKLIN, WV 26807
My Commission Expires May 19, 2000

MUNICIPALITY OF FRANKLIN

Box 483

WEST VIRGINIA 26807

State of West Virginia

County of Pendleton, To-Wit:

I, Enos H. Horst, do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of this State, and will faithfully discharge the duties of my office as Councilperson of the Town of Franklin, Pendleton County, West Virginia, to the best of my skill and judgment, so help me God.

Enos H. Horst

Subscribed and sworn to before me, in said County and State this 2th day of July, 1992. My commission expires on May 19, 2000.

Linda L. May
Notary Public

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA

MUNICIPALITY OF FRANKLIN

Box 483

WEST VIRGINIA 26807

State of West Virginia

County of Pendleton, To-Wit:

I, Genevieve Glover, do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of this State, and will faithfully discharge the duties of my office as Council Person of the Town of Franklin, Pendleton County, West Virginia, to the best of my skill and judgment, so help me God.

Genevieve Glover

Subscribed and sworn to before me, in said County and State this 7th day of July, 1992. My commission expires on May 19, ~~19~~2000.

Linda L. May
Notary Public

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
LINDA L. MAY
P. O. BOX 483
FRANKLIN, WEST VIRGINIA 26807
My Commission Expires May 19, 2000

ORDINANCE #63

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

THE TOWN COUNCIL OF THE TOWN OF FRANKLIN HEREBY ORDAINS: The following schedule of rates, fees, charges and delayed payment penalty charges are hereby fixed and determined as the rates, fees, charges and delayed payment penalty to be charged to customers of the water system of the Town of Franklin:

## SECTION 1. SCHEDULE OF RATES AND BILLING

### RATES -- IN-TOWN CUSTOMERS

The minimum water bill for all domestic, commercial and industrial users shall be Five Dollars ($5.00) per month. Where multiple units are served by one meter, the minimum fee shall be applied to each unit.

FIRST: 1,000 gallons used per month or any fraction thereof - $5.00

NEXT: 3,000 gallons used per month - $1.75 per thousand gallons

NEXT: 16,000 gallons used per month - $1.25 per thousand gallons

All over 20,0000 gallons used per month - $1.00 per thousand gallons

### RATES - OUT-OF-TOWN CUSTOMERS

The minimum water bill for all domestic, commercial and industrial users shall be Five Dollars and Twenty-Five Cents ($5.25) per month. Where multiple units are served by one meter, the minimum fee shall be applied to each unit.

FIRST: 1,000 gallons used per month or any fraction thereof - $5.25

NEXT: 3,000 gallons used per month - $2.00 per thousand gallons

NEXT: 16,000 gallons used per month - $1.50 per thousand gallons

All over 20,000 gallons used per month - $1.25 per thousand gallons

BILLING

Bills will be calculated on each ten gallons of water used after the first 1,000 gallons minimum flat rate charge. Meters will be read monthly and bills rendered bimonthly, subject to the discretion of the Council.

SECTION 2. DELAYED PAYMENT PENALTY, DELINQUENT BILLS, AND WATER TAP FEES

DELAYED PAYMENT PENALTY

10% if not paid thirty (30) days from date of bill

DELINQUENT BILLS

The Town will pursue collection of delinquent accounts to the full extent of and subject to the applicable provisions of law. If any bill for water service is not paid in full within thirty-five (35) days of billing date, the customer's water service shall be subject to disconnection by the Town, subject to and in accordance with Public Service Commission rules and regulations. Service shall not be restored until all delinquent bills and penalties plus a reconnection charge of twenty-five ($25.00) have been paid.

WATER TAP FEES

5/8" meter - $250.00
3/4" meter - $300.00
1" meter - $400.00
1½" meter - $600.00
2" meter - $800.00
All over 2" meter - $800.00 + difference in cost of meter

SECTION 3. EFFECTIVE DATE

The rates, fees, and charges provided herein shall be effective 45 days after the enactment.

SECTION 4. SEPARABILITY; REPEAL OF CONFLICTING ORDINANCES

The provisions of this Ordinance are separable, and if any clause, provision of section hereof be held void or unenforceable by any court of competent jurisdiction, such holding shall not affect the remainder of this Ordinance. Upon the effective date of the fees,

rates, charges and delayed penalty charges as herein set forth, all resolutions, orders or parts thereof in conflict with the provisons of this Ordinance are, to the extent of such conflicts, hereby repealed; and to the extent that the provisions of this Ordinance do not touch upon the provisions of prior resolutions, orders or parts thereof, the same shall remain in full force and effect.

Passed on First Reading: May 5, 1992
Enacted on Second Reading Following Public Hearing: June 2, 1992
Effective Date: July 18, 1992

Barry B. Glover
Recorder

Warren R. Waggy
Mayor

May 5,1992:

The regular meeting of the Franklin Town Council was held May 5, 1992 at 7:30 pm at the Franklin town office on main street. Present at the meeting were Warren R. Waggy, Mayor; Barry B. Glover, Recorder; Alice Hartman, Berlie Sponaugle, Homer Glover Jr., and Steve Roberson, Council Members; Linda May, Clerk-Treasurer; Bruce Smith, Town Police.

Minutes from Previous Meeting:

*** Alice Hartman made the motion to accept the minutes from the April meeting. Berlie Sponaugle seconded the motion. Motion carried.

Old Business:

- The water connections for Dasher and Corbet have not been made yet.
- Bruce Smith got a price for a reconditioned police cruiser $6,600.
*** Alice Hartman made the motion to table the purchasing of a new cruiser until the June meeting. Barry B. Glover seconded the motion. Motion carried.
- Mayor Waggy asked the permmission of the council to go over some changes in the contract that was presented by Mr Pallavicini, engineer for the town.
- The report from Brad Reid, State Health Dept. was reviewed.
-Mayor Waggy reported that the sidewalks at the town parking lot have been measured but he left the figures at home.

Treasurers Financial Report:

Mayor Waggy suggested that the 1985 flood money for lighting at he park be used at the park for security purposes to help prevent destruction of property.

*** Barry Glover made the motion to accept the financial report. Berlie Sponaugle seconded the motion. Motion carried.

William Crutchfield -- Regional Manager for Triax Cable:

Mr. Crutchfield told the council that he would see that the TV cable service would improve for the area. When asked by the council about the franchise between the town and Triax, his comment was the old franchise contract was still in effect. Mayor Waggy stated that he had talked to the town's attorney, Mr. Jerry Moore, and he said that the contract was void. Mr. Crutchfield said he would set down with the town of Franklin to draw up a new contract.

Proration of Business Lic. Tax:

No proration of business lic. tax was the descision by the council.

Water rate increase:

The town Council had the reading of the water rate increase for the new water rate increase proposal.

*** Homer Glover made the motion to leave the rate increase the same as proposed. Steve Roberson seconded the motion. Motion carried.

The cost of the water meter installation as follows:

| | | |
|---|---|---|
| 5/8" | meter | $250.00 |
| 3/4" | " | 300.00 |
| 1" | " | 400.00 |
| 1 1/2" | " | 600.00 |
| 2" | " | 800.00 |

Above 2" $800.00 plus the difference in the cost of equipment.

*** Berlie Sponaugle made the motion to raise the water meter installation rates as presented above. Steve Roberson seconded the motion. Motion carried.

Water Hook-up request:

- Bill McCoy South of Franklin above Hanover Shoe Co.

*** Berlie Sponaugle made the motion to grant Bill McCoy a 5/8" meter hook-up soley for his consumption and the line cannot be extended or allow other parties to hook-up to his line. Homer Glover Jr. seconded the motion. Motion carried.

- Oliver Mowery III water hook-up request on Painter's Point.

*** Homer Glover made the motion to grant Mr. Mowery water hook-up. Berlie Sponaugle seconded the motion. Motion carried.

Renew Office Lease:

Council decided to rent the office on a month to month basis.

Clean-Up Day for Town:

*** Alice Hartman made the motion to advertise in the Pend. Times for Wed. May 20,1992 to be Clean-up day for the town. Berlie Sponaugle seconded the motion. Motion carried.

Mayor Waggy -- Misc.

Mayor Waggy asked permission from the council to install culverts at his lot located on Dogwood Lane.

*** Homer Glover Jr. made the motion to allow Mayor Waggy to install culverts. Steve Roberson seconded the motion. Motion carried.

~~- The RCD Project is being submitted for bids once again.~~

- Mayor Waggy asked permission from the council to look into the possibility of hiring Johnny Murphy to mow the grass at the town park and help on Thursday on the trash truck. Mr Murphy is now taking care of the cermentery under the supervision of Mr. Dale Niemun.

*** Alice Hartman made the motion to have Mayor Waggy proceed with Johnny Murphy. Steve Roberson seconded the motion. Motion carried.

*** Barry B. Glover made the motion to adjourn. Berlie Sponaugle seconded the motion. Meeting adjourned at 11:05 pm.

Barry B. Glover — Recorder

Warren R Waggy — Mayor

The regular meeting of the Franklin Town Council was held June 2, 1992 at 7:30 pm at the Franklin town office on main street. Present at the meeting were Warren R. Waggy, Mayor; Barry B. Glover, Recorder; Alice Hartman, Genevieve Glover, Homer Glover Jr. Steve Roberson and Berlie Sponaugle, Council Members; Linda May Clerk-Treasurer; Bruce Smith, Town Police; Larry Hoover, Town maintainence.

Minutes from Previous Meeting:

Homer Glover Jr. made the motion to accept the minutes from the May meeting. Alice Hartman seconded the motion. Motion carried.

Old Business:

- Mr. Corbet's water connection on Dry Run has been made.
- Issue of purchasing a new Police Cruiser was discussed and the following motions were made.

*** Homer Glover Jr. made the motion to table the issue for another meeting. Motion died for lack of second.

*** Steve Roberson made the motion to purchase a new cruiser. Motion died for lack of second.

*** Alice Hartman make the motion to revise Steve Roberson's motion to buy a new cruiser if money used for the purchase was not taken out of street funds. Steve Roberson seconded the motion. Motion was not passed with a vote of 2 for and 4 against.

*** Alice Hartman made the motion to delay purchasing a new cruiser until after the end of the fiscal year. Homer Glover Jr. seconded the motion. Motion carried.

- *** Alice Hartman made the motion to add more lights at the Town Park with the money remaining from the flood money. Genevieve Glover seconded the motion. Motion carried.

Treasurer's Report:

*** Alice Hartman made the motion to accept the Treasurer's Report as presented. Genevieve Glover seconded the motion. Motion carried.

Fire Dept.-- Water Hauling:

Mike Waggy was the spokesperson for the fire dept. concerning a policy that could be followed by the fire dept. and the town of Franklin concerning water hauling to area residents.

*** Homer Glover Jr. made the motion to have Mayor Waggy appoint a six member committee ( 3 from town council and 3 from the fire dept.) to come up with a policy that would be approved by both the Franklin town council and the Franklin fire dept. Berlie Sponaugle seconded the motion. Motion carried.

Mayor Waggy appointed the following persons to the committee: Barry B. Glover, Chairman, Homer Glover Jr. and Berlie Sponaugle from the

Franklin town council and Mike Waggy, Steve Roberson, and Ronald Huffman from the Franklin fire dept.

Wa[illegible] Rate Ordinance:

The second reading of the new Water Rate Ordinance was conducted and there were no residents present to object to the water rate ordiance as it was read.

*** Alice Hartman made the motion to adopt the Water Rate Ordinance as read. Berlie Sponaugle seconded the motion. Motion carried.

Liaison for RC&D Project:

*** Genevieve Glover made the motion to accept Mayor Waggy's appointment of Homer Glover Jr. as the RC&D liaison. Alice Hartman seconded the motion. Motion carried.

Sidewalks:

*** Alice Hartman made the motion to have Genevieve Glover to get prices on replacing the sidewalks at the town parking lot. Homer Glover Jr. seconded the motion. Motion carried.

Canaan Valley Seminar - - July 9th:

*** Genevieve Glover made the motion to send Linda May to the seminar which is being conducted by the PSC and the town to pay 22 cents per mile and lunch. Alice Hartman seconded the motion. Motion carried.

WV Municipal League Seminar - - August 5 - 9, 1992:

Alice Hartman made the motion to table the seminar until next meeting. Homer Glover Jr seconded the motion. Motion carried.

Adjustment for Dave Basagic's water bills for past 9 months:

*** Alice Hartman made the motion to adjust the water bill for one month only. Homer Glover Jr. seconded the motion. Motion carried.

Sewage System:

Mayor Waggy read a certified letter that was received from the DNR concerning problems that needed to be corrected with the sewage system. The problems needed worked on and should be brought into compliance by the town. Mayor Waggy reported that the DNR stated that the Sewage Plant Operator was to spend more time at the plant.

County Health Dept.:

*** Alice Hartman made the motion to give the Pendleton Co. Health Dept. $400.00. Homer Glover Jr. seconded the motion. Motion carried.

Mo[illegible]y June 5, 1992 the special meeting was scheduled to Canvass the vot[illegible] for the 1992 Town Election.

# Certificate of Pul

I, William McCoy, Jr., Editor of

THE PENDLETON TIMES

do hereby certify that the attached

Legal Advertisement

was published in the aforesaid Pendleton Times, a weekly newspaper published at Franklin, Pendleton County, West Virginia for two successive weeks, beginning with the issue of May 21, 1992.

William McCoy, Jr. (PM)

William McCoy, Jr., Editor

Cost of Publication ..... $ 112.09

Other _____ ..... _____

Total Amount Due ..... $ 112.09

NOTARY'S CERTIF

Sworn to and subscribed before me this 10th day of _____, 1994.

Irvin S. Propst

Notary Public.

My commission expires October 18, 1999.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
IRVIN S. PROPST
Box 24
Brandywine, WV 26802
My Commission Expires October 18, 1999

NOTE: Do not misplace this certificate; it will be needed in settling the estate.

**A ORDINANCE ESTABLISHING AND FIXING RATES, FEES, CHARGES AND DELAYED PAYMENT PENALTY CHARGES FOR SERVICE TO CUSTOMERS OF THE WATER SYSTEM OF THE TOWN OF FRANKLIN**

THE TOWN COUNCIL OF THE TOWN OF FRANKLIN HEREBY ORDAINS: The following schedule of rates, fees, charges and delayed payment penalty charges are hereby fixed and determined as the rates, fees, charges and delayed payment penalty to be charged to customers of the water system of the Town of Franklin:

SECTION 1. SCHEDULE OF RATES AND BILLING

RATES — IN-TOWN CUSTOMERS

The minimum water bill for all domestic, commercial and industrial users shall be Five Dollars ($5.00) per month. Where multiple units are served by one meter, the minimum fee shall be applied to each unit.

FIRST: 1,000 gallons used per month or any fraction thereof - $5.00

NEXT: 3,000 gallons used per month - $1.75 per thousand gallons

NEXT: 16,000 gallons used per month - $1.25 per thousand gallons

All over 20,000 gallons used per month - $1.00 per thousand gallons

RATES — OUT-OF-TOWN CUSTOMERS

The minimum water bill for all domestic, commercial and industrial users shall be Five Dollars and Twenty-Five Cents ($5.25) per month. Where multiple units are served by one meter, the minimum fee shall be applied to each unit.

FIRST: 1,000 gallons used per month or any fraction thereof - $5.25

NEXT: 3,000 gallons used per month - $2.00 per thousand gallons.

NEXT: 16,000 gallons used per month - $1.50 per thousand gallons

All over 20,000 gallons used per month - $1.25 per thousand gallons

BILLING

Bills will be calculated on each ten gallons of water used after the first 1,000 gallons minimum flat rate charge. Meters will be read monthly and bills rendered bimonthly, subject to the discretion of the Council.

SECTION 2. DELAYED PAYMENT PENALTY, DELINQUENT BILLS, AND WATER TAP FEES

DELAYED PAYMENT PENALTY

10% if not paid thirty (30) days from date of bill

DELINQUENT BILLS

The Town will pursue collection of delinquent accounts to the full extent of and subject to the applicable provisions of law. If any bill for water service is not paid in full within thirty-five (35) days of billing date, the customer's water service shall be subject to disconnection by the Town, subject to and in accordance with Public Service Commission rules and regulations. Service shall not be restored until all delinquent bills and penalties plus a reconnection charge of twenty-five ($25.00) have been paid.

WATER TAP FEES

5/8" meter - $250.00
3/4" meter - $300.00
1" meter - $400.00
1 1/2" meter - $600.00
2" meter - $800.00
All over 2" meter - $800.00 + difference in cost of meter

SECTION 3. EFFECTIVE DATE

The rates, fees, and charges provided herein shall be effective 45 days after the enactment.

SECTION 4. SEPARABILITY; REPEAL OF CONFLICTING ORDINANCES

The provisions of this Ordinance are separable, and if any clause, provision or section hereof be held void or unenforceable by any court of competent jurisdiction, such holding shall not affect the remainder of this Ordinance. Upon the effective date of the fees, rates, charges and delayed penalty charges as herein set forth, all resolutions, orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflicts, hereby repealed; and to the extent that the provisions of this Ordinance do not touch upon the provisions of prior resolutions, orders or parts thereof, the same shall remain in full force and effect.

A vote for final adoption of the above proposed ordinance will be held on June 2, 1992, at 7:30 p.m. in the Town Office; Main Street; Franklin, WV. Interested parties may appear and be heard at that time.

Barry B. Glover
Recorder

5-21-2c

TOWN OF FRANKLIN

Water Revenue Bonds, Series 1994

MINUTES ON ADOPTION OF BOND ORDINANCE - FIRST READING

I, BARRY GLOVER, Recorder of the Town of Franklin, hereby certify that the following is a true and correct excerpt of the minutes of a regular meeting of the Council of said Town:

* * * * * * * * *

The Council of the Town of Franklin met in regular session, pursuant to notice duly given, on the 3rd day of May, 1994, at Franklin, West Virginia, at the hour of 7:30 p.m.

| | | | |
|---|---|---|---|
| PRESENT: | Warren R. Waggy | - | Mayor |
| | Barry B. Glover | - | Recorder |
| | Enos Horst | - | Councilmember |
| | Berlie Sponaugle | - | Councilmember |
| | L. Howard Lambert | - | Councilmember |
| ABSENT: | Genevieve Glover | - | Councilmember |

The Mayor announced that a quorum of members was present and that the meeting was open for any business properly before it.

Thereupon, the Mayor presented a proposed Bond Ordinance in writing entitled:

ORDINANCE AUTHORIZING THE REFUNDING OF THE OUTSTANDING WATERWORKS REVENUE BONDS, SERIES A AND SERIES B, DATED JULY 1, 1968, OF THE TOWN OF FRANKLIN AND THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING WATERWORKS SYSTEM OF THE TOWN AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE TOWN OF NOT MORE THAN $400,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 1994; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH

BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

and caused the same to be read and there was discussion. Thereupon, on motion of Councilmember L. Howard Lambert, seconded by Councilmember Enos Horst, it was unanimously ordered that the above-entitled Ordinance be adopted upon first reading.

* * * * * * * * *

There being no further business to come before the meeting, on motion duly made and seconded, it was ordered that the meeting adjourn.

Warren R. Waggoner
Mayor

* * * * * * * * *

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

WITNESS my signature on this 27th day of May, 1994.

Barry B. Glover
Recorder

05/25/94
FRANKC.AA2
307110/94001

TOWN OF FRANKLIN

Water Revenue Bonds, Series 1994

MINUTES ON ADOPTION OF BOND ORDINANCE - SECOND READING

I, BARRY GLOVER, Recorder of the Town of Franklin, hereby certify that the following is a true and correct excerpt of the minutes of a special meeting of the Council of said Town:

* * * * * * * * *

The Council of the Town of Franklin met in special session, pursuant to notice duly given, on the 10th day of May, 1994, at Franklin, West Virginia, at the hour of 7:30 p.m.

| | | | |
|---|---|---|---|
| PRESENT: | Warren R. Waggy | - | Mayor |
| | Enos Horst | - | Councilmember |
| | L. Howard Lambert | - | Councilmember |
| | Berlie Sponaugle | - | Councilmember |
| ABSENT: | Barry B. Glover | - | Recorder |
| | Genevieve Glover | - | Councilmember |

The Mayor announced that a quorum of members was present and that the meeting was open for any business properly before it. He stated that the proposed Bond Ordinance heretofore passed on first reading would be considered upon second reading.

Thereupon, the Mayor stated that it would be in order to consider the said Bond Ordinance for adoption upon second reading and he presented the said Bond Ordinance in writing entitled:

ORDINANCE AUTHORIZING THE REFUNDING OF THE OUTSTANDING WATERWORKS REVENUE BONDS, SERIES A AND SERIES B, DATED JULY 1, 1968, OF THE TOWN OF FRANKLIN AND THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING WATERWORKS SYSTEM OF THE TOWN AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE TOWN OF NOT MORE THAN $400,000 IN AGGREGATE PRINCIPAL

19B

AMOUNT OF WATER REVENUE BONDS, SERIES 1994; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

and caused the same to be read and there was discussion. Thereupon, on motion of Councilmember Enos Horst, seconded by Councilmember Berlie Sponaugle, it was unanimously ordered that the said Bond Ordinance be adopted on second reading.

* * * * * * * * *

There being no further business to come before the meeting, on motion duly made and seconded, it was ordered that the meeting adjourn.

Warren R Nozzy
Mayor

* * * * * * * * *

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

WITNESS my signature on this 27th day of May, 1994.

Barry B Glover
Recorder

05/25/94
FRANKC.DD2
307110/94001

TOWN OF FRANKLIN

Water Revenue Bonds, Series 1994

MINUTES ON ENACTMENT OF BOND ORDINANCE
FOLLOWING PUBLIC HEARING
AND ADOPTION OF SUPPLEMENTAL RESOLUTION

I, BARRY GLOVER, Recorder of the Town of Franklin, hereby certify that the following is a true and correct excerpt of the minutes of a special meeting of the Council of said Town:

* * * * * * * * *

The Council of the Town of Franklin met in special session, pursuant to notice duly given, on the 24th day of May, 1994, at Franklin, West Virginia, at the hour of 7:30 p.m.

| | | | |
|---|---|---|---|
| PRESENT: | Warren R. Waggy | - | Mayor |
| | Genevieve Glover | - | Councilmember |
| | Berlie Sponaugle | - | Councilmember |
| | Enos Horst | - | Councilmember |
| | L. Howard Lambert | - | Councilmember |
| ABSENT: | Barry B. Glover | - | Recorder |

The Mayor announced that a quorum of members was present and that the meeting was open for any business properly before it. He stated that the proposed Bond Ordinance heretofore passed on first and second readings would be subject to protests and suggestions from any interested person at this time in accordance with the publication of an abstract of said Bond Ordinance and a Notice of Hearing, which publication has been duly made, and the Mayor called for protests and suggestions as to said Bond Ordinance and all persons desiring to protest the said Bond Ordinance or to make any suggestions with reference thereto were heard.

There being no protests or suggestions made as to said Bond Ordinance, the Mayor thereupon stated that it would be in order to consider the said Bond Ordinance for final enactment and the Mayor presented the said Bond Ordinance in writing entitled:

19C

ORDINANCE AUTHORIZING THE REFUNDING OF THE OUTSTANDING WATERWORKS REVENUE BONDS, SERIES A AND SERIES B, DATED JULY 1, 1968, OF THE TOWN OF FRANKLIN AND THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING WATERWORKS SYSTEM OF THE TOWN AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE TOWN OF NOT MORE THAN $400,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 1994; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

and caused the same to be read and there was discussion. Thereupon, on motion of Councilmember Berlie Sponaugle seconded by Councilmember Enos Horst, it was unanimously ordered that the said Bond Ordinance be finally enacted and be in full force and effect on and from the date hereof.

Next, the Mayor presented a proposed Supplemental Resolution in writing entitled:

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, REDEMPTION PROVISION, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE WATER REVENUE BONDS, SERIES 1994, OF THE TOWN OF FRANKLIN; AUTHORIZING AND APPROVING A LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; AUTHORIZING AND APPROVING AN ESCROW AGREEMENT; DESIGNATING A REGISTRAR, PAYING AGENT,

DEPOSITORY BANK AND ESCROW AGENT; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

and caused the same to be read and there was discussion. Thereupon, on motion of Councilmember Enos Horst, seconded by Councilmember L. Howard Lambert, it was unanimously ordered that the said Supplemental Resolution be adopted and be in full force and effect on and from the date hereof.

* * * * * * * * *

There being no further business to come before the meeting, on motion duly made and seconded, it was unanimously ordered that the meeting adjourn.

Mayor

* * * * * * * * *

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

WITNESS my signature on this 27th day of May, 1994.

Recorder

05/25/94
FRANKC.EE2
307110/94001

# Certificate of Publication

I, William McCoy, Jr., Editor of

THE PENDLETON TIMES

do hereby certify that the attached

Legal Advertisement

was published in the aforesaid Pendleton Times, a weekly newspaper published at Franklin, Pendleton County, West Virginia for two successive weeks, beginning with the issue of May 12, 1994.

William McCoy, Jr. (pr)

William McCoy, Jr., Editor

Cost of Publication ..... $ 84.53

Other _____ ..... _____

Total Amount Due ..... $ 84.53

**TOWN OF FRANKLIN NOTICE OF PUBLIC HEARING ON WATER REVENUE BOND ORDINANCE**

A public hearing will be held on the following-entitled Ordinance at a special meeting of the Council of the Town of Franklin to be held on May 24, 1994, at 7:30 p.m. in the Council chambers at the Franklin Town Hall, and at such hearing any person interested may appear before the Council and present protests, and all protests and suggestions shall be heard by the Council and it shall then take such actions as it shall deem proper in the premises upon an Ordinance entitled:

ORDINANCE AUTHORIZING THE REFUNDING OF THE OUTSTANDING WATERWORKS REVENUE BONDS, SERIES A AND SERIES B, DATED JULY 1, 1968, OF THE TOWN OF FRANKLIN AND THE ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING WATERWORKS SYSTEM OF THE TOWN AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE TOWN OF NOT MORE THAN $400,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 1994; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

The above-entitled Ordinance was adopted by the Council of the Town of Franklin on May 10, 1994.

The above-quoted title of the Ordinance describes generally the contents thereof and the purposes of the Bonds contemplated thereby. The Town of Franklin contemplates refunding its outstanding Waterworks Revenue Bonds, Series A and Series B, dated July 1, 1968 (the "Prior Bonds"), and issuing the Bonds described in said Ordinance. The proceeds of the Bonds will be used to refund the Prior Bonds and to provide permanent financing of a portion of the costs of acquisition and construction of additions, betterments and improvements to the existing public waterworks system of the Town of Franklin. The Bonds are payable solely from revenues to be derived from the ownership and operation of the waterworks system of the Town. No taxes may at any time be levied for the payment of the Bonds or the interest thereon.

A certified copy of the above-entitled Ordinance is on file with the Council at the office of the Recorder of the Town of Franklin for review by interested parties during regular office hours.

Following said public hearing, the Council intends to enact said Ordinance upon final reading.

Dated: May 12, 1994.

s/s WARREN R. WAGGY
Mayor

5-12-2c

NOTARY'S CERTIFICATE

Sworn to and subscribed before me this 19th day of May, 1994.

Irvin S. Propst
Notary Public.

My commission expires October 18, 1999.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
IRVIN S. PROPST
Box 24
Brandywine, WV 26802
My Commission Expires October 18, 1999

NOTE: Do not misplace this certificate; it will be needed in settling the estate.

# STEPTOE & JOHNSON

ATTORNEYS AT LAW

SIXTH FLOOR

BANK ONE CENTER

P. O. BOX 2190

CLARKSBURG, W. VA. 26302-2190

(304) 624-8000

FACSIMILE (304) 624-8183

SEVENTH FLOOR, BANK ONE CENTER
P. O. BOX 1588
CHARLESTON, W. VA. 25326-1588
(304) 353-8000
FACSIMILE (304) 353-8180

1000 HAMPTON CENTER
P. O. BOX 1616
MORGANTOWN, W. VA. 26507-1616
(304) 598-8000
FACSIMILE (304) 598-8116

126 EAST BURKE STREET
P. O. BOX 2629
MARTINSBURG, W. VA. 25401-5429
(304) 263-6991
FACSIMILE (304) 263-4785

104 WEST CONGRESS STREET
P. O. BOX 100
CHARLES TOWN, W. VA. 25414-0100
(304) 725-1414
FACSIMILE (304) 725-1913

THE BRYAN CENTRE
P. O. BOX 570
82 WEST WASHINGTON STREET, FOURTH FLOOR
HAGERSTOWN, MARYLAND 21740-0570
(301) 739-8600
FACSIMILE (301) 739-8742

FOURTH FLOOR - RILEY BUILDING
14TH AND CHAPLINE STREETS
P. O. BOX 150
WHEELING, W. VA. 26003-0020
(304) 233-0000
FACSIMILE (304) 233-0014

WRITER'S DIRECT DIAL NUMBER

(304)624-8104


November 14, 1994

Town of Franklin
Water Revenue Bonds, Series 1994

TO ALL ON ATTACHED DISTRIBUTION LIST

Ladies and Gentlemen:

Enclosed please find an acknowledged copy of the amended Form 8038-G for the above-captioned bond issue. Please insert this in your transcript under Document No. 21. Please let me know if you have any questions. Thank you for your attention to this matter.

Very truly yours,

Francesca Tan

Francesca Tan

FT/jlt
Enclosure
111494.L01
307110/94001

DISTRIBUTION LIST FOR TOWN OF FRANKLIN
WATER REVENUE BONDS, SERIES 1994

Mr. Daniel B. Yonkosky
Director
Water Development Authority
1201 Dunbar Avenue
Dunbar, West Virginia 25064

Honorable Warren R. Waggy
Mayor, Town of Franklin
P. O. Box 483
Franklin, West Virginia 26807

Samme L. Gee, Esquire
Jackson & Kelly
P. O. Box 553 -- 25322
1600 Laidley Tower
Charleston, West Virginia 25301

Jeffrey S. Bowers, Esquire
P. O. Box 849
Franklin, West Virginia 26807

Mr. R. Witter Hallan
Executive Director
West Virginia Municipal Bond
Commission
1800 Washington Street, East
Building 3, Suite 337
Charleston, West Virginia 25305

Ms. Charlotte Morgan
Corporate Trust Administrative Officer
One Valley Bank, National Association
P. O. Box 1793
One Valley Square
Charleston, West Virginia 25326

Ms. Phyllis Sponaugle
Pendleton County Bank
P. O. Box 487
Franklin, West Virginia 26807

06/01/94
DISTL.T
307110/94001

Form **8038-G**
(Rev. May 1993)
Department of the Treasury
Internal Revenue Service

# Information Return for Tax-Exempt Governmental Obligations

▶ Under Internal Revenue Code section 149(e)
▶ See separate Instructions.
(Use Form 8038-GC if the issue price is under $100,000.)

ORIGINAL INPUT
ACKMT COPY ONLY
MAU

OMB No. 1545-0720

**Part I** Reporting Authority — If Amended Return, check here ▶ ☒

1 Issuer's name: Town of Franklin
2 Issuer's employer identification number: 55 6006092
3 Number and street (or P.O. box if mail is not delivered to street address): P.O. Box 483 — Room/suite:
4 Report number: G1994 - 1
5 City, town, state, and ZIP code: Franklin, West Virginia 26807
6 Date of issue: 5/27/94
7 Name of issue: Town of Franklin Water Revenue Bonds, Series 1994
8 CUSIP Number: N/A

**Part II** Type of Issue (check applicable box(es) and enter the issue price)

| | | Issue price |
|---|---|---|
| 9 | ☐ Education (attach schedule—see instructions) | $ |
| 10 | ☐ Health and hospital (attach schedule—see instructions) | |
| 11 | ☐ Transportation | |
| 12 | ☐ Public safety | |
| 13 | ☒ Environment (including sewage bonds) | 309,000 |
| 14 | ☐ Housing | |
| 15 | ☐ Utilities | |
| 16 | ☐ Other. Describe (see Instructions) ▶ | |
| 17 | If obligations are tax or other revenue anticipation bonds, check box ▶ ☐ | |
| 18 | If obligations are in the form of a lease or installment sale, check box ▶ ☐ | |

FILE COPY

**Part III** Description of Obligations

| | (a) Maturity date | (b) Interest rate | (c) Issue price | (d) Stated redemption price at maturity | (e) Weighted average maturity | (f) Yield | (g) Net interest cost |
|---|---|---|---|---|---|---|---|
| 19 Final maturity | 10/1/2033 | 6.75 % | 21,198.03 | 21,198.03 | | | |
| 20 Entire issue | | | 309,000 | 309,000 | 27.84 years | 6.75 % | 6.75 % |

**Part IV** Uses of Original Proceeds of Bond Issue (including underwriters' discount)

| | | | | |
|---|---|---|---|---|
| 21 | Proceeds used for accrued interest | | 21 | -0- |
| 22 | Issue price of entire issue (enter amount from line 20, column (c)) | | 22 | 309,000 |
| 23 | Proceeds used for bond issuance costs (including underwriters' discount) | 23 13,000 | | |
| 24 | Proceeds used for credit enhancement | 24 -0- | | |
| 25 | Proceeds allocated to reasonably required reserve or replacement fund | 25 -0- | | |
| 26 | Proceeds used to refund prior issues | 26 40,173.48 | | |
| 27 | Total (add lines 23 through 26) | | 27 | 53,173.48 |
| 28 | Nonrefunding proceeds of the issue (subtract line 27 from line 22 and enter amount here) | | 28 | 255,826.52 |

IRS RECEIVED 10 1994 PHILA., PA MAU-10

**Part V** Description of Refunded Bonds (complete this part only for refunding bonds)

29 Enter the remaining weighted average maturity of the bonds to be refunded ▶ 2.40 years
30 Enter the last date on which the refunded bonds will be called ▶ July 1, 1994
31 Enter the date(s) the refunded bonds were issued ▶ July 1, 1968

**Part VI** Miscellaneous

32 Enter the amount of the state volume cap allocated to the issue ▶ -0-
33 Enter the amount of the bonds designated by the issuer under section 265(b)(3)(B)(i)(III) (small issuer exception) ▶ -0-
34 Pooled financings:
a Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units ▶ -0-
b If this issue is a loan made from the proceeds of another tax-exempt issue, check box ▶ ☒ and enter the name of the issuer ▶ West Virginia Water Development Authority and the date of the issue ▶ September 27, 1994
35 If the issuer has elected to pay a penalty in lieu of rebate, check box ▶ ☐

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

**Please Sign Here**

▶ Alice B. Hartman — Signature of officer — Date 10/13/94
▶ Alice B. Hartman [redacted], Mayor — Type or print name and title

**For Paperwork Reduction Act Notice, see page 1 of the Instructions.** Cat. No. 63773S Form **8038-G** (Rev. 5-93)

*U.S. Government Printing Office: 1993 — 343-034/80150

# STEPTOE & JOHNSON

ATTORNEYS AT LAW

SIXTH FLOOR

BANK ONE CENTER

P. O. BOX 2190

CLARKSBURG, W. VA. 26302-2190

(304) 624-8000

FACSIMILE (304) 624-8183

SEVENTH FLOOR, BANK ONE CENTER
P. O. BOX 1588
CHARLESTON, W. VA. 25326-1588
(304) 353-8000
FACSIMILE (304) 353-8180

1000 HAMPTON CENTER
P. O. BOX 1616
MORGANTOWN, W. VA. 26507-1616
(304) 598-8000
FACSIMILE (304) 598-8116

126 EAST BURKE STREET
P. O. BOX 2629
MARTINSBURG, W. VA. 25401-5429
(304) 263-6991
FACSIMILE (304) 263-4785

104 WEST CONGRESS STREET
P. O. BOX 100
CHARLES TOWN, W. VA. 25414-0100
(304) 725-1414
FACSIMILE (304) 725-1913

THE BRYAN CENTRE
P. O. BOX 570
82 WEST WASHINGTON STREET, SUITE 301
HAGERSTOWN, MARYLAND 21740-0570
(301) 739-8600
FACSIMILE (301) 739-8742

WRITER'S DIRECT DIAL NUMBER


May 27, 1994

Town of Franklin
Water Revenue Bonds, Series 1994

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Internal Revenue Service
Internal Revenue Service Center
Philadelphia, Pennsylvania 19255

Gentlemen:

Enclosed herewith is a completed and executed Internal Revenue Service Form 8038-G and a file copy thereof with regard to the above-captioned bonds. Please file the original form in the appropriate Internal Revenue Service records and return the copy marked in red as the "File Copy" to me (after acknowledging receipt of the same) in the enclosed self-addressed, stamped envelope. Thank you for your attention to this matter.

Very truly yours,

Steptoe & Johnson

Steptoe & Johnson

Enclosures
Copy of letter with enclosures to:
Samme L. Gee, Esquire
Honorable Warren Waggy
05/10/94
8038.LTR
307110/94001

21

Form **8038-G** (Rev. May 1993) Department of the Treasury Internal Revenue Service

# Information Return for Tax-Exempt Governmental Obligations

▶ Under Internal Revenue Code section 149(e)

▶ See separate Instructions.

(Use Form 8038-GC if the issue price is under $100,000.)

OMB No. 1545-0720

**Part I** Reporting Authority — If Amended Return, check here ▶ ☐

1 Issuer's name: Town of Franklin

2 Issuer's employer identification number: 55 6006092

3 Number and street (or P.O. box if mail is not delivered to street address): P. O. Box 483 — Room/suite:

4 Report number: G1994 1

5 City, town, state, and ZIP code: Franklin, West Virginia 26807

6 Date of issue: 5/27/94

7 Name of Issue: Town of Franklin Water Revenue Bonds, Series 1994

8 CUSIP Number: N/A

**Part II** Type of Issue (check applicable box(es) and enter the issue price)

| | | Issue price |
|---|---|---|
| 9 | ☐ Education (attach schedule–see instructions) | $ |
| 10 | ☐ Health and hospital (attach schedule–see instructions) | |
| 11 | ☐ Transportation | |
| 12 | ☐ Public safety | |
| 13 | ☒ Environment (including sewage bonds) | $309,000 |
| 14 | ☐ Housing | |
| 15 | ☐ Utilities | |
| 16 | ☐ Other. Describe (see Instructions) ▶ | |
| 17 | If obligations are tax or other revenue anticipation bonds, check box ▶ ☐ | |
| 18 | If obligations are in the form of a lease or installment sale, check box ▶ ☐ | |

**Part III** Description of Obligations

| | (a) Maturity date | (b) Interest rate | (c) Issue price | (d) Stated redemption price at maturity | (e) Weighted average maturity | (f) Yield | (g) Net interest cost |
|---|---|---|---|---|---|---|---|
| 19 Final maturity | 10/1/2033 | 6.75 % | $21,198.03 | $21,198.03 | | | |
| 20 Entire issue | | | $309,000 | $309,000 | 27.84 years | 6.75 % | 6.75 % |

**Part IV** Uses of Original Proceeds of Bond Issue (including underwriters' discount)

| | | | |
|---|---|---|---|
| 21 | Proceeds used for accrued interest | | 21 –0– |
| 22 | Issue price of entire issue (enter amount from line 20, column (c)) | | 22 $309,000 |
| 23 | Proceeds used for bond issuance costs (including underwriters' discount) | 23 $13,000 | |
| 24 | Proceeds used for credit enhancement | 24 –0– | |
| 25 | Proceeds allocated to reasonably required reserve or replacement fund | 25 –0– | |
| 26 | Proceeds used to refund prior issues | 26 40,173.48 | |
| 27 | Total (add lines 23 through 26) | | 27 $53,173.48 |
| 28 | Nonrefunding proceeds of the issue (subtract line 27 from line 22 and enter amount here) | | 28 $255,826.52 |

**Part V** Description of Refunded Bonds (complete this part only for refunding bonds)

29 Enter the remaining weighted average maturity of the bonds to be refunded ▶ 2.40 years

30 Enter the last date on which the refunded bonds will be called ▶ July 1, 1994

31 Enter the date(s) the refunded bonds were issued ▶ July 1, 1968

**Part VI** Miscellaneous

32 Enter the amount of the state volume cap allocated to the issue ▶ –0–

33 Enter the amount of the bonds designated by the issuer under section 265(b)(3)(B)(i)(III) (small issuer exception) ▶ –0–

34 Pooled financings:

a Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units ▶ –0–

b If this issue is a loan made from the proceeds of another tax-exempt issue, check box ▶ ☐ and enter the name of the issuer ▶ _____ and the date of the issue ▶ _____

35 If the issuer has elected to pay a penalty in lieu of rebate, check box ▶ ☐

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Please Sign Here ▶ Warren R. Waggy (Signature of officer) May 27, 1994 (Date) ▶ Warren Waggy, Mayor (Type or print name and title)

WV MUNICIPAL BOND COMMISSION
Suite 337 Building 3
1800 Washington St. E
State Capitol Complex
Charleston, WV 25305
(304) 348-3971

# NEW ISSUE REPORT FORM

Date of Report: May 27, 1994

(See Reverse for Instructions)

ISSUE: Town of Franklin Water Revenue Bonds, Series 1994

ADDRESS: P. O. Box 483, Franklin, West Virginia 26807 COUNTY: Pendleton

PURPOSE OF ISSUE: New Money X Refunding X Refunds issue(s) dated: July 1, 1968

ISSUE DATE: May 27, 1994 CLOSING DATE: May 27, 1994

ISSUE AMOUNT: $ 309,000 RATE: 6.75%

1st DEBT SERVICE DUE: October 1, 1994 1st PRINCIPAL DUE: October 1, 1995, $1,771.40

1st DEBT SERVICE AMOUNT: $7,184.25 PAYING AGENT: Municipal Bond Commission

ISSUERS
BOND COUNSEL: Steptoe & Johnson
Contact Person: Vincent A. Collins, Esq.
Phone: 624-8161

CLOSING BANK: Pendleton County Bank
Contact Person: Phyllis Sponaugle
Phone: 358-2311

KNOWLEDGEABLE ISSUER CONTACT
Contact Person: Warren Waggy
Position: Mayor
Phone: 358-7525

UNDERWRITERS
BOND COUNSEL: Jackson & Kelly
Contact Person: Samme L. Gee, Esq.
Phone: 340-1318

ESCROW TRUSTEE:
Contact Person:
Phone:

OTHER:
Contact Person:
Function:
Phone:

DEPOSITS TO MBC AT CLOSE:
By ___ Wire
X Check

___ Accrued Interest: $
___ Capitalized Interest: $
___ Reserve Account: $
X Other: Escrow Fund for Prior Bond redemption $ 40,173.48

REFUNDS & TRANSFERS BY MBC AT CLOSE:
By ___ Wire
___ Check
___ IGT

___ To Escrow Trustee: $
___ To Issuer: $
___ To Cons. Invest. Fund: $
___ To Other: $

NOTES:

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

22

The purpose of the **NEW ISSUE REPORT FORM** is to provide the WV Municipal Bond Commission with an early warning of three basis facts **no later than the day of closing** on any issue for which the Commission is to act as fiscal agent. These are:

1. Formal notification that a new issue is outstanding.
2. Date of first action or debt service.
3. Contact people should we lack documents, information, or funds needed to administer the issue by the date of the first action or debt service.

The Commission recognizes that as bond transcripts become increasingly long and complex, it has become more difficult to assemble and submit them to the Commission within the 30 days specified by the WV Code 13-3-8. This notice is not intended to provide all the information needed to administer an issue, but to alert the Commission and ensure that no debt service payments are missed due to delays in assembling bond transcripts. If, at the time of closing, documents such as the ordinance and all suppliments, debt service schedules, and a specimen bond or photostat are available and submitted with this form, it will greatly aid the Commission in the performance of its duties. These documents are needed to set up the proper accounts and to advise the issuer of monthly deposit requirements as far in advance of the first debt service as possible.

It is not necessary to complete all items if they are not pertinent to your issue. Indicate the County of the issuer. With PSDs that overlap more than one county, indicate the county of their business office. Complete "Rate" only if the issue has only one rate. Please complete a separate form for each series of an issue. Other important information can be recorded under "Notes".

Again, please submit this form on each new issue on the day of closing. If fund transfers into or out of the Commission at close are required, please submit this form before closing. If no significant facts change by closing, no resubmission at close is required. If, however, there are changes, please submit an updated form, with changes noted, at close.

If you should have any questions concerning this form, please call the Commission.

Chrono

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

GASTON CAPERTON
GOVERNOR

September 4, 1992

The Honorable Warren R. Waggy
Mayor
Town of Franklin
Post Office Box 483
Franklin, West Virginia 26807

Dear Mayor Waggy:

Thank you for your application to the Small Cities Block Grant Program for fiscal year 1992.

I am pleased to approve a grant in the amount of $344,000 to the town of Franklin. These funds will enable you to make improvements to the Franklin water system.

In order to most effectively use the limited dollars available, I hereby commit $186,000 from our fiscal year 1992 allocation which will be immediately available to you. The remaining $158,000 necessary to complete this project will be evaluated and committed in the coming fiscal year. I encourage you to expedite this project and reach its completion as quickly as possible with this funding strategy in mind. My Community Development staff will contact you to complete the necessary contracts in order to proceed with your project.

It is with pleasure that I am able to work with you to make this improvement a reality for the citizens of Franklin.

Sincerely,

Gaston Caperton

Gaston Caperton
Governor

GC:bts

23A

FHIL

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

GASTON CAPERTON
GOVERNOR

July 26, 1993

The Honorable Warren R. Waggy
Mayor
Town of Franklin
Post Office Box 483
Franklin, West Virginia 26807

Dear Mayor Waggy:

On September 4, 1992, the Town of Franklin received a commitment of $344,000 in Small Cities Block Grant (SCBG) funds for water system improvements in the Town of Franklin.

The SCBG award was based upon your immediate need for funds; and, therefore, only $186,000 was made available from the FY1992 allocation, with a commitment to evaluate your progress and provide the remaining funding from future allocations.

Based upon the town's ability to proceed with this worthwhile community development project, I am committing the remaining $158,000 from the FY1993 Small Cities allocation. Your existing SCBG contract will be amended to include the additional funds.

It is with great pleasure that I am able to work with you to make this improvement a reality.

Sincerely,

Gaston Caperton
Governor

GC:bts

cc: Region VIII

23B

TOWN OF FRANKLIN

Water Revenue Bonds, Series 1994

ACCEPTANCE OF DUTIES AS DEPOSITORY BANK

PENDLETON COUNTY BANK, a state banking corporation, with its principal office in Franklin, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Ordinance of the Town of Franklin (the "Issuer"), duly enacted by the Issuer on May 24, 1994, and a Supplemental Resolution duly adopted by the Issuer on May 24, 1994 (collectively, the "Bond Legislation"), authorizing issuance of the Issuer's Water Revenue Bonds, Series 1994, dated May 27, 1994, in the principal amount of $309,000 (the "Bonds") and agrees to perform all duties of Depository Bank in connection with such Bonds, all as set forth in said Bond Legislation.

Dated this 27th day of May, 1994.

PENDLETON COUNTY BANK

By Phyllis Sponaugle
Cashier

05/16/94
FRANKC.S2
307110/94001

TOWN OF FRANKLIN

Water Revenue Bonds, Series 1994

ACCEPTANCE OF DUTIES AS REGISTRAR

ONE VALLEY BANK, NATIONAL ASSOCIATION, a national banking association with its principal office in the City of Charleston, West Virginia, hereby accepts appointment as Registrar in connection with the Town of Franklin Water Revenue Bonds, Series 1994, dated May 27, 1994, in the principal amount of $309,000 (the "Bonds") and agrees to perform all duties of Registrar in connection with such Bonds, all as set forth in the Bond Legislation authorizing issuance of the Bonds.

Dated this 27th day of May, 1994.

ONE VALLEY BANK,
NATIONAL ASSOCIATION

By Charlotte S. Morgan
Corporate Trust Administrative
Officer

05/10/94
FRANKC.T1
307110/94001

TOWN OF FRANKLIN

Water Revenue Bonds, Series 1994

CERTIFICATE OF REGISTRATION OF BONDS

I, CHARLOTTE S. MORGAN, Corporate Trust Administrative Officer of One Valley Bank, National Association, as Registrar under the Bond Legislation and Registrar's Agreement providing for the $309,000 principal amount of Water Revenue Bonds, Series 1994, of the Town of Franklin (the "Issuer"), hereby certify that on the 27th day of May, 1994, the single fully registered Series 1994 Bond of the Issuer in the principal amount of $309,000 designated "Water Revenue Bond, Series 1994," numbered R-1, was registered as to principal and interest in the name of "West Virginia Water Development Authority" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of One Valley Bank, National Association, as Registrar.

WITNESS my signature as of this 27th day of May, 1994.

ONE VALLEY BANK,
NATIONAL ASSOCIATION

By Charlotte S. Morgan
Corporate Trust Administrative
Officer

05/10/94
FRANKC.U1
307110/94001

26

# REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 27th day of May, 1994, by and between the TOWN OF FRANKLIN, a municipal corporation and political subdivision of the State of West Virginia (the "Issuer"), and ONE VALLEY BANK, NATIONAL ASSOCIATION, a national banking association (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its $309,000 aggregate principal amount of Water Revenue Bonds, Series 1994 in fully registered form (the "Bonds"), pursuant to a Bond Ordinance of the Issuer duly enacted May 24, 1994, and a Supplemental Resolution of the Issuer duly adopted May 24, 1994 (collectively, the "Bond Legislation");

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 Bond Legislation, a copy of which is attached as Exhibit A hereto and incorporated herein by reference;

WHEREAS, the Bond Legislation provides for an appointment by the Issuer of a Registrar for the Bonds; and

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

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

1. Upon the execution of this Registrar's Agreement by the Issuer and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the powers and duties of Registrar for the Bonds, all as set forth in the Bond Legislation, such duties including, among other things, the duties to authenticate, register and deliver Bonds upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exemption of interest on the Bonds 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, the compensation for services rendered as provided in the annexed schedule and reimbursement for reasonable expenses incurred in connection therewith.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Bond Legislation with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Bond Legislation, the terms of the Bond Legislation 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 Bond Legislation will violate any order, decree or agreement to which it is a party or by which it is bound.

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

ISSUER: Town of Franklin
P. O. Box 483
Franklin, West Virginia 26807
Attention: Mayor

REGISTRAR: One Valley Bank, National Association
Post Office Box 1793
One Valley Square
Charleston, West Virginia 25326
Attention: Corporate Trust Department

8. The Registrar is hereby requested and authorized to authenticate and deliver the Bonds in accordance with the Bond Legislation.

IN WITNESS WHEREOF, the TOWN OF FRANKLIN and ONE VALLEY BANK, NATIONAL ASSOCIATION have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the day and year first above-written.

TOWN OF FRANKLIN

By _____
Mayor

ONE VALLEY BANK, NATIONAL ASSOCIATION

By _____
Corporate Trust Administrative Officer

05/10/94
FRANKC.V1
307110/94001

EXHIBIT A

[Included in transcript as Documents No. 1 and 2]

# *Invoice*

ONE VALLEY BANK

HONORABLE WARREN R. WAGGY
MAYOR, TOWN OF FRNKLIN
P O BOX 483
FRANKLIN WV 26807

DATE MAY 27, 1994

| UNITS | ITEM DESCRIPTION | TOTAL |
|---|---|---|
| | $309,000 PAR TOWN OF FRANKLIN, WV WATER REVENUE BONDS, SERIES 1994 (BRIDGE FINANCING PROGRAM-WDA) | |
| | ONE TIME FEE FOR SERVICES AS REGISTRAR AND AUTHENICATING AGENT..... | $500.00 |

869

SEND REMITTANCE TO: One Valley Bank
One Valley Square
P.O. Box 1793
Charleston, WV 25326

Attn: CHARLOTTE S. MORGAN

# STEPTOE & JOHNSON

ATTORNEYS AT LAW

SIXTH FLOOR
BANK ONE CENTER
P. O. BOX 2190
CLARKSBURG, W. VA. 26302-2190
(304) 624-8000
FACSIMILE (304) 624-8183

SEVENTH FLOOR, BANK ONE CENTER
P. O. BOX 1588
CHARLESTON, W. VA. 25326-1588
(304) 353-8000
FACSIMILE (304) 353-8180

1000 HAMPTON CENTER
P. O. BOX 1616
MORGANTOWN, W. VA. 26507-1616
(304) 598-8000
FACSIMILE (304) 598-8116

126 EAST BURKE STREET
P. O. BOX 2629
MARTINSBURG, W. VA. 25401-5429
(304) 263-6991
FACSIMILE (304) 263-4785

104 WEST CONGRESS STREET
P. O. BOX 100
CHARLES TOWN, W. VA. 25414-0100
(304) 725-1414
FACSIMILE (304) 725-1913

THE BRYAN CENTRE
P. O. BOX 570
82 WEST WASHINGTON STREET, SUITE 301
HAGERSTOWN, MARYLAND 21740-0570
(301) 739-8600
FACSIMILE (301) 739-8742

WRITER'S DIRECT DIAL NUMBER

(304) 624-8161


May 10, 1994

Town of Franklin
Water Revenue Bonds, Series 1994

Mr. R. Witter Hallan
Executive Director
West Virginia Municipal Bond Commission
1800 Washington Street, East
Building 3, Suite 337
Charleston, West Virginia 25305

Dear Witter:

Please be informed that the Town of Franklin intends to current refund all of its outstanding Waterworks Revenue Bonds, Series A and Series B (collectively, the "Prior Bonds"), dated July 1, 1968, to their first redemption date, being July 1, 1994, at which time the Prior Bonds will be redeemed in full.

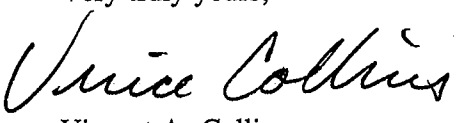
I have enclosed a copy of the Ordinance which is in the process of being enacted by the Town Council, and will be sending to you shortly the Supplemental Resolution and Escrow Agreement relating to the refunding. The Town of Franklin requests that the West Virginia Municipal Bond Commission act as Escrow Agent under the Escrow Agreement.

Settlement is anticipated on or about May 27, 1994. Please give me a call if you have any questions at this time.


RECEIVED
MAY 12 1994
MBC

My best regards.

Very truly yours,



Vincent A. Collins

VAC/cab
Enclosure
Copy of letter only to:
Mayor Warren Waggy
Mr. Daniel B. Yonkosky
Samme L. Gee, Esquire
Jeffrey Bowers, Esquire
Mr. Philip Liggett
FRANKC.L1
307110/94001

# STEPTOE & JOHNSON

ATTORNEYS AT LAW

SIXTH FLOOR
BANK ONE CENTER
P. O. BOX 2190
CLARKSBURG, W. VA. 26302-2190
(304) 624-8000
FACSIMILE (304) 624-8183

SEVENTH FLOOR, BANK ONE CENTER
P. O. BOX 1588
CHARLESTON, W. VA. 25326-1588
(304) 353-8000
FACSIMILE (304) 353-8180

1000 HAMPTON CENTER
P. O. BOX 1616
MORGANTOWN, W. VA. 26507-1616
(304) 598-8000
FACSIMILE (304) 598-8116

126 EAST BURKE STREET
P. O. BOX 2629
MARTINSBURG, W. VA. 25401-5429
(304) 263-6991
FACSIMILE (304) 263-4785

104 WEST CONGRESS STREET
P. O. BOX 100
CHARLES TOWN, W. VA. 25414-0100
(304) 725-1414
FACSIMILE (304) 725-1913

THE BRYAN CENTRE
P. O. BOX 570
82 WEST WASHINGTON STREET, SUITE 301
HAGERSTOWN, MARYLAND 21740-0570
(301) 739-8600
FACSIMILE (301) 739-8742

WRITER'S DIRECT DIAL NUMBER

(304) 624-8161


May 10, 1994

Town of Franklin
Water Revenue Bonds, Series 1994

Mr. R. Witter Hallan
Executive Director
West Virginia Municipal Bond Commission
1800 Washington Street, East
Building 3, Suite 337
Charleston, West Virginia 25305

Dear Witter:

Please be informed that the Town of Franklin intends to current refund all of its outstanding Waterworks Revenue Bonds, Series A and Series B (collectively, the "Prior Bonds"), dated July 1, 1968, to their first redemption date, being July 1, 1994, at which time the Prior Bonds will be redeemed in full.

I have enclosed a copy of the Ordinance which is in the process of being enacted by the Town Council, and will be sending to you shortly the Supplemental Resolution and Escrow Agreement relating to the refunding. The Town of Franklin requests that the West Virginia Municipal Bond Commission act as Escrow Agent under the Escrow Agreement.

Settlement is anticipated on or about May 27, 1994. Please give me a call if you have any questions at this time.

My best regards.

Very truly yours,

Vincent A. Collins

VAC/cab
Enclosure
Copy of letter only to:
Mayor Warren Waggy
Mr. Daniel B. Yonkosky
Samme L. Gee, Esquire
Jeffrey Bowers, Esquire
Mr. Philip Liggett
FRANKC.L1
307110/94001

TOWN OF FRANKLIN

Water Revenue Bonds, Series 1994

JOINT CERTIFICATE OF ISSUER AND ESCROW AGENT

The undersigned WARREN WAGGY, Mayor of the Town of Franklin, a municipal corporation of the State of West Virginia (the "Issuer"), and the undersigned R. WITTER HALLAN, Executive Director of the West Virginia Municipal Bond Commission (the "Escrow Agent"), hereby jointly certify as follows in connection with the above-captioned Bond issue:

1. We have executed on behalf of the Issuer and the Escrow Agent, respectively, the Escrow Agreement between the Issuer and the Escrow Agent, dated May 27, 1994 (the "Escrow Agreement").

2. A portion of the funds on deposit in the Escrow Fund established by the Escrow Agreement have been invested as provided in the Escrow Agreement.

3. The invested funds, together with the uninvested funds in the Escrow Fund, are shown by the Exhibits to the Escrow Agreement to be in amounts sufficient to fully pay the Prior Bonds described in the Escrow Agreement, including payment of the interest accrued and principal due on the first redemption date thereof, being July 1, 1994, and the liens of the Prior Bonds and the ordinance pursuant to which the Prior Bonds were issued have been discharged.

WITNESS our signatures this 27th day of May, 1994.

TOWN OF FRANKLIN

By _____
Mayor

WEST VIRGINIA MUNICIPAL BOND COMMISSION

By _____
Executive Director

05/16/94
FRANKC.W2
307110/94001

TOWN OF FRANKLIN
P. O. Box 483
Franklin, West Virginia 26807

May 27, 1994

Redemption of Town of Franklin
Waterworks Revenue Bonds, Series A and Series B, dated July 1, 1968

**HAND DELIVERY**

Mr. R. Witter Hallan
Executive Director
West Virginia Municipal Bond Commission
Escrow Agent in Connection with
the Town of Franklin Water Revenue
Bonds, Series 1994

Dear Mr. Hallan:

Attached hereto is a copy of a "Notice of Redemption" pertaining to the above-captioned Bonds (the "Prior Bonds"), to be published and mailed by registered mail to the registered owners (if any) of the Prior Bonds and The Bond Buyer not less than 30 days nor more than 60 days prior to July 1, 1994 (the "Redemption Date"), in accordance with the redemption notice provisions of the ordinance pursuant to which the Prior Bonds were issued. Please deliver all publications through Fiduciary Communications Company, New York.

The directions contained in this letter are irrevocable and are made in accordance with the provisions of the Ordinance enacted by the Council of the Town of Franklin on May 24, 1994, as supplemented, authorizing the issuance of $309,000 Water Revenue Bonds, Series 1994, dated May 27, 1994 (the "Bonds"), and the defeasance of the Prior Bonds.

United States Treasury Obligations have been purchased with a portion of the proceeds of the Bonds and certain cash amounts deposited in the Escrow Fund established under the Escrow Agreement, and the interest and principal on such security, together with certain cash amounts deposited in the Escrow Fund, will be used solely to pay the redemption price of the Prior Bonds on the Redemption Date, being July 1, 1994.

30A

If at any time you have any questions about the instructions contained in this letter, please communicate with me or with Vincent A. Collins, of Steptoe & Johnson, Bond Counsel, Clarksburg, West Virginia.

Very truly yours,

TOWN OF FRANKLIN

By _____
Mayor

Copy to:
Vincent A. Collins, Esquire
Samme L. Gee, Esquire
05/24/94
FRANKC.X3
307110/94001

[TO BE PUBLISHED ONCE IN THE BOND BUYER
AND MAILED BY REGISTERED MAIL TO ALL
REGISTERED OWNERS OF THE 1968 BONDS,
AND THE BOND BUYER NOT LESS THAN
30 NOR MORE THAN 60 DAYS PRIOR TO JULY 1, 1994]

# NOTICE OF REDEMPTION

TOWN OF FRANKLIN

WATERWORKS REVENUE BONDS
SERIES A AND SERIES B
Dated : July 1, 1968
CUSIPS: _____
_____
_____

TO THE OWNERS OF ALL THE ABOVE-CAPTIONED BONDS:

NOTICE IS HEREBY GIVEN that all the Town of Franklin Waterworks Revenue Bonds, Series A and Series B, dated July 1, 1968 (the "1968 Bonds"), have been ordered by the Town to be redeemed on July 1, 1994, in accordance with the provisions of the ordinance authorizing issuance of the 1968 Bonds.

All 1968 Bonds outstanding as of July 1, 1994, are to be surrendered for payment of the redemption price thereof and interest accrued thereon to July 1, 1994 (the "Redemption Date") to:

State Street Bank & Trust
[Address] _____
_____
_____
_____

There has been deposited with the West Virginia Municipal Bond Commission, Charleston, West Virginia, as Escrow Agent for the 1968 Bonds, an amount sufficient to pay, on the Redemption Date, the principal amount of each of the 1968 Bonds outstanding, and interest accrued thereon. On the Redemption Date, interest will cease to accrue on all 1968 Bonds.

30B

No representation is made as to the correctness of the CUSIP numbers, either as printed on the 1968 Bonds or as contained in this notice. Reliance may be placed only on the identification numbers printed on the 1968 Bonds prefixed "CH."

**IMPORTANT**: Under Federal law, individual holders of the 1968 Bonds who present such bonds for payment are required to submit their social security number, certified as correct under penalty of perjury. The required certification may be made on an Internal Revenue Service Form W-9. Holders of the 1968 Bonds may obtain copies of Form W-9 from their local bank or broker. If the social security number is not submitted and certified as correct, 31% of the principal due under the bonds must be withheld and paid over to the IRS.

TOWN OF FRANKLIN

By /s/ WARREN WAGGY
Mayor

Dated: May 31, 1994

05/10/94
FRANKC.Y1
307110/94001

# ESCROW AGREEMENT

This AGREEMENT, made and entered into as of May 27, 1994, by and between the TOWN OF FRANKLIN (the "Issuer") and the WEST VIRGINIA MUNICIPAL BOND COMMISSION (the "Commission" or the "Escrow Agent").

## WITNESSETH THAT:

WHEREAS, the Issuer presently owns and operates a municipal waterworks system (the "System") and has heretofore financed the acquisition and construction of the System and certain additions, betterments and improvements thereto by issuance of its bonds, of which there are presently outstanding the Waterworks Revenue Bonds, Series A and Series B, dated July 1, 1968, originally issued in the aggregate principal amount of $128,000, of which $65,000 is presently outstanding (the "Prior Bonds");

WHEREAS, the Prior Bonds were issued pursuant to an ordinance of the Issuer enacted by the council of the Issuer on February 2, 1968 (the "Prior Ordinance");

WHEREAS, the Issuer has determined to issue its Water Revenue Bonds, Series 1994 (the "Series 1994 Bonds"), pursuant to an Ordinance enacted May 24, 1994, as supplemented by a Supplemental Resolution adopted May 24, 1994 (collectively, the "1994 Ordinance"), and contemporaneously therewith, legally defease the Prior Bonds by applying a portion of the proceeds of the Series 1994 Bonds and certain moneys of the Issuer ("Issuer's Funds") to the purchase of obligations of the United States government to be deposited, together with certain cash amounts, in the Escrow Fund herein described;

WHEREAS, the Escrow Agent will cause to be purchased on behalf of the Issuer, with such Series 1994 Bonds proceeds and Issuer's Funds, certain United States Treasury Obligations (the "Government Securities") described in the Verification Report, dated May 27, 1994, of Smith, Cochran & Hicks, a firm of independent certified public accountants, attached hereto as EXHIBIT A - VERIFICATION REPORT (the "Verification Report");

WHEREAS, the Government Securities, plus certain cash amounts, which will be delivered to the Escrow Agent simultaneously with the delivery of the Series 1994 Bonds, are in such principal amount and mature and bear interest at such rates and are payable at such times and in such amounts as to insure the payment on the first redemption date thereof, being July 1, 1994 (the "Redemption Date"), of the entire principal amount of the Prior Bonds then outstanding, without premium, and interest accrued thereon to the

Redemption Date, being $66,486.25 (collectively, the "Redemption Price"), there being no principal of or interest due upon the Prior Bonds until the Redemption Date; and

WHEREAS, the Issuer has found it desirable to appoint the Escrow Agent and the Escrow Agent has agreed to such appointment for the purposes of holding title, as trustee, to the Government Securities, receiving payments of the principal thereof and interest thereon when due, disbursing to the paying agent for the Prior Bonds such amounts as may be necessary to provide for payment of the Redemption Price on the Redemption Date, and holding and investing and reinvesting any cash balances which may at any time not be needed for immediate disbursement;

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and in order further to secure payment of the Prior Bonds, as heretofore provided, the parties hereto mutually undertake, promise and agree for themselves, their respective representatives, successors and assigns, as follows:

1. There is hereby created and established with the Escrow Agent an irrevocable trust fund to be known as the Escrow Fund, to be held in the custody of the Escrow Agent, separate and apart from all other funds of the Issuer and the Escrow Agent. The deposit of securities and/or moneys in the Escrow Fund shall constitute an irrevocable deposit of such securities and/or moneys in trust for the Prior Bonds, and such securities and/or moneys, together with any income or interest earned thereon, shall be applied, except as otherwise provided herein, to the payment on the Redemption Date of the Redemption Price, all in accordance with paragraph 5 hereof.

2. Concurrently with the delivery of the Series 1994 Bonds, the sum of $26,081.95 on deposit in the sinking funds for the Prior Bonds, including the reserve account therein, shall be transferred by the Commission to the Escrow Agent and deposited by the Escrow Agent into the Escrow Fund. ← 26,081.95

3. Concurrently with the delivery of the Series 1994 Bonds, the Issuer and the Escrow Agent shall cause Series 1994 Bonds proceeds in the amount of $40,173.48, and the $26,081.95 described in paragraph 2 above (total amount of $66,255.43) to be deposited in the Escrow Fund, and thereupon $64,769.18 to be applied to the purchase of the Government Securities and the remaining $1,486.25 to be held as cash, uninvested, in the Escrow Fund. Maturing principal and interest of the Government Securities and the uninvested cash in the Escrow Fund shall be applied solely to the payment of the Prior Bonds. Smith, Cochran & Hicks has certified, in its Verification Report, attached hereto as EXHIBIT A, that the Government Securities, together with the income to be derived therefrom, and the uninvested cash in the Escrow Fund, will be sufficient to pay the Redemption Price on the Redemption Date. The Issuer hereby authorizes and directs the

← 40,173.48
+ 12 T-Bill 230.82
66,486.25

Redemption Date, being $66,486.25 (collectively, the "Redemption Price"), there being no principal of or interest due upon the Prior Bonds until the Redemption Date; and

WHEREAS, the Issuer has found it desirable to appoint the Escrow Agent and the Escrow Agent has agreed to such appointment for the purposes of holding title, as trustee, to the Government Securities, receiving payments of the principal thereof and interest thereon when due, disbursing to the paying agent for the Prior Bonds such amounts as may be necessary to provide for payment of the Redemption Price on the Redemption Date, and holding and investing and reinvesting any cash balances which may at any time not be needed for immediate disbursement;

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and in order further to secure payment of the Prior Bonds, as heretofore provided, the parties hereto mutually undertake, promise and agree for themselves, their respective representatives, successors and assigns, as follows:

1. There is hereby created and established with the Escrow Agent an irrevocable trust fund to be known as the Escrow Fund, to be held in the custody of the Escrow Agent, separate and apart from all other funds of the Issuer and the Escrow Agent. The deposit of securities and/or moneys in the Escrow Fund shall constitute an irrevocable deposit of such securities and/or moneys in trust for the Prior Bonds, and such securities and/or moneys, together with any income or interest earned thereon, shall be applied, except as otherwise provided herein, to the payment on the Redemption Date of the Redemption Price, all in accordance with paragraph 5 hereof.

2. Concurrently with the delivery of the Series 1994 Bonds, the sum of $26,081.95 on deposit in the sinking funds for the Prior Bonds, including the reserve account therein, shall be transferred by the Commission to the Escrow Agent and deposited by the Escrow Agent into the Escrow Fund.

3. Concurrently with the delivery of the Series 1994 Bonds, the Issuer and the Escrow Agent shall cause Series 1994 Bonds proceeds in the amount of $40,173.48, and the $26,081.95 described in paragraph 2 above (total amount of $66,255.43) to be deposited in the Escrow Fund, and thereupon $64,769.18 to be applied to the purchase of the Government Securities and the remaining $1,486.25 to be held as cash, uninvested, in the Escrow Fund. Maturing principal and interest of the Government Securities and the uninvested cash in the Escrow Fund shall be applied solely to the payment of the Prior Bonds. Smith, Cochran & Hicks has certified, in its Verification Report, attached hereto as EXHIBIT A, that the Government Securities, together with the income to be derived therefrom, and the uninvested cash in the Escrow Fund, will be sufficient to pay the Redemption Price on the Redemption Date. The Issuer hereby authorizes and directs the

Escrow Agent to subscribe to the purchase of the Government Securities described in SCHEDULE A attached hereto.

4. The Escrow Agent shall have no authority to reinvest funds or make substitutions of the Government Securities acquired under this Escrow Agreement except as follows:

If requested by the Issuer, and upon receipt of an opinion of nationally recognized bond counsel that such substitution will not affect the tax-exempt status of interest on the Prior Bonds or the Series 1994 Bonds under the Internal Revenue Code of 1986, as amended and then in effect (the "Code"), the Escrow Agent may substitute other United States Treasury Obligations for the Government Securities, provided that such United States Treasury Obligations being substituted must be non-callable obligations of the United States of America ("Direct Obligations"), must be sufficient to pay, on the Redemption Date, the Redemption Price, and provided further, that the Escrow Agent receives verification by a certified public accountant of the sufficiency of the escrowed securities to pay, on the Redemption Date, the Redemption Price.

5. The Escrow Agent shall transfer from the Escrow Fund and deposit directly with the paying agent for the Prior Bonds, in immediately available funds on July 1, 1994, being the Redemption Date, an amount sufficient to pay the Redemption Price. The Escrow Agent shall send written notification to the paying agent for the Prior Bonds, on or before June 1, 1994, that the Prior Bonds are to be redeemed in full on July 1, 1994, and shall mail and/or publish (or cause to be mailed and/or published) a notice of redemption of the Prior Bonds in accordance with the requirements of the Prior Ordinance and written instructions of the Issuer to the Escrow Agent delivered on the date hereof.

6. The holders of the Prior Bonds shall have an express lien on all moneys and assets in the Escrow Fund until paid out, used and applied in accordance with this Escrow Agreement.

7. Subject to the provisions of paragraph 17 hereof, 12 months after the payment of all amounts required to be paid pursuant to paragraph 5 of this Escrow Agreement, the amounts remaining in the Escrow Fund, if any, shall be deposited by the Escrow Agent in the Series 1994 Bonds Sinking Fund, and applied to payment of the Series 1994 Bonds.

8. The Escrow Agent shall be entitled to fees for services rendered under this Agreement and reasonable expenses as set forth in EXHIBIT B - ESCROW AGENT FEES, attached hereto. The Issuer shall pay from its own funds to the Escrow Agent the amounts at the times set forth in EXHIBIT B. In no event shall such fees or expenses be paid from the Escrow Fund, nor shall the Escrow Agent or the paying agent have any lien whatsoever upon any of the moneys or Government Securities in the Escrow Fund for the payment of such fees or expenses.

9. The Issuer and the Escrow Agent independently hereby covenant that no part of the moneys or funds at any time in the Escrow Fund shall be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause any of the Series 1994 Bonds to be an "arbitrage bond" as defined in Section 148 of the Code, or to be subject to treatment under Section 148 as an obligation not described in Section 103 of the Code.

10. The Escrow Agent shall have no responsibility with respect to the sufficiency of this Escrow Agreement to effect payment, redemption or defeasance of the Prior Bonds. The liability of the Escrow Agent for the payment of the Redemption Price of the Prior Bonds shall be limited to the payment of all amounts required to be paid, and delivery of the redemption notices pursuant to paragraph 5 hereof. The Escrow Agent shall not be liable or responsible because of the failure of the Issuer to perform any act required of it by this Escrow Agreement. The Escrow Agent shall have no responsibility to the Issuer or any other person in connection with this Escrow Agreement, except as specifically provided herein, and shall not be responsible for anything done or omitted to be done by it except for its own negligence or willful default in the performance of any obligation imposed on it hereunder.

11. By execution of this Escrow Agreement, the Escrow Agent accepts the duties and obligations as Escrow Agent hereunder. The Escrow Agent represents that it has all requisite power, and has taken all corporate action necessary to execute the trusts hereby created.

12. If the Escrow Agent is called upon by the terms of this Escrow Agreement to determine the occurrence of any event or contingency, the Escrow Agent may request from the Issuer or any other person such reasonable additional evidence as the Escrow Agent in its discretion may deem necessary to determine any fact relating to the occurrence of such event or contingency, and in this connection may inquire and consult with the Issuer, at any time. The Escrow Agent may request an opinion of counsel for a determination of any legal issue which might arise in the performance of its duties hereunder and may act in accordance with the advice given in such opinion.

13. The Escrow Agent shall not be liable for any loss resulting from any investment made pursuant to the terms and provisions of this Escrow Agreement.

14. The Escrow Agent may act upon any notice, request, waiver, consent, certificate, receipt, authorization, power of attorney or other instrument or document which the Escrow Agent in good faith believes to be genuine and correct and to have been signed or sent by the proper person or persons.

15. The Escrow Agent may resign or be removed by the Issuer, and thereby become discharged from the trusts hereby created, by notice given to the Issuer not less than thirty (30) days before such resignation or removal shall take effect. Such resignation or

removal shall take effect immediately, however, upon the earlier appointment of a new Escrow Agent hereunder and acceptance of the trusts hereby created. The Escrow Agent shall continue to serve as Escrow Agent until a successor is appointed and the funds held hereunder transferred. The Escrow Agent shall provide a proper accounting to the Issuer of all funds deposited pursuant to this Escrow Agreement within 30 days of the appointment of a successor Escrow Agent. If no such appointment has been made at the end of the 30 day period, the Escrow Agent may petition a court of competent jurisdiction for appointment of a successor or temporary Escrow Agent. In the event of the resignation or removal of the Escrow Agent, the Escrow Agent shall rebate to the Issuer any fees theretofore paid in advance by the Issuer to the Escrow Agent for its services under this Escrow Agreement.

16. This Escrow Agreement is made for the benefit of the Issuer, the Escrow Agent and the holders of the Outstanding Prior Bonds, except as otherwise expressly provided herein. This Escrow Agreement may be modified or amended at anytime, provided, however, that no such modification or amendment shall be made which would, materially adversely affect the interest of any of the holders of the Prior Bonds.

17. If any Outstanding Prior Bonds are not presented for payment on the Redemption Date, and moneys are held by the Escrow Agent for payment thereof, such moneys shall be held for such purposes for a period of 12 months from the date such payment was due, at which time such moneys shall be paid to the Issuer. Following such payment to the Issuer, the Issuer shall be responsible for payment to any holder of the Prior Bonds presenting such Prior Bonds to the Escrow Agent of the amount payable to such holder.

18. This Escrow Agreement shall terminate on the earlier of the date on which all the Outstanding Prior Bonds have been redeemed, paid in full and discharged, or, as described in paragraph 17 above, 6 years after the last date on which payment on the Prior Bonds is due. Upon termination of this Escrow Agreement, any remaining moneys and Government Securities in the Escrow Fund shall be transferred as provided in paragraph 7 hereof.

19. If any one or more of the covenants or agreements provided in this Escrow Agreement to be performed on the part of any of the parties hereto shall be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

20. This Escrow Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

21. This Escrow Agreement is made in the State of West Virginia under the Constitution and laws of such State and is to be so construed.

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement on the day and year first above written.

TOWN OF FRANKLIN

By _____
Mayor

WEST VIRGINIA MUNICIPAL BOND COMMISSION

By _____
Executive Director

05/18/94
FRANKC.CC3
307110/94001

EXHIBIT A - VERIFICATION REPORT

[Included as Transcript Document No. 32]

## EXHIBIT B - ESCROW AGENT FEES

NONE.

## SCHEDULE A

Description of Investments Acquired with Bond Proceeds:

$65,000 par amount United States Treasury Bills, maturing June 30, 1994

Smith, Cochran & Hicks
Certified Public Accountants

Charles S. Smith, CPA
Dennis R. Hicks, CPA
Jill E. Patterson, CPA
Todd F. Dingess, CPA

400 Capitol Street, Suite 200
Charleston, West Virginia 25301
Tel 304 345-1151 FAX 304 346-6731

Town of Franklin, West Virginia
Franklin, West Virginia

Steptoe & Johnson
Clarksburg, West Virginia

West Virginia Water Development Authority
Charleston, West Virginia

Jackson & Kelly
Charleston, West Virginia

West Virginia Municipal Bond Commission
Charleston, West Virginia

$309,000
Town of Franklin, West Virginia
Water Revenue Bonds
Series 1994

We have examined certain schedules relating to the issuance of the above captioned bond issue (the "1994 Bonds") and the defeasance of certain outstanding bonds described herein, prepared and provided to us on behalf of the Town of Franklin, West Virginia (the "Issuer") by the West Virginia Municipal Bond Commission (the "Commission"). The bonds to be defeased consist of $128,000 the Town of Franklin, West Virginia, Waterworks Revenue Bonds, Series A and Series B, dated July 1, 1968, of which $65,000 are currently outstanding (the "Prior Bonds").

The schedules provided to us represent the Commission's assertions that: (1) the anticipated receipts from $65,000 United States Treasury Bills (the "Government Obligations") together with an initial cash deposit, will be sufficient to pay the remaining principal of and interest on

400 Capitol Street, Charleston, WV 25301 • Tel. 304 345-1151 • FAX 304 346-6731
117 East Main Street, Bridgeport, WV 26330 • Tel. 304 842-4499 • FAX 304 842-4585
313 Ferry Street, Montgomery, WV 25136 • Tel. 304 442-4959 • FAX 304 442-4959
114 Main Street, Oak Hill, WV 25901 • Tel. 304 465-5683 • FAX 304 465-0174

the Prior Bonds on July 1, 1994; (2) the yield on the Government Obligations is less than the yield on the 1994 Bonds; and (3) other assertions and computations related to the issuance of the 1994 Bonds.

Our examination was made in accordance with standards for an examination of prospective financial information established by the American Institute of Certified Public Accountants and, accordingly, included such procedures as we considered necessary to evaluate both the assumptions used by the West Virginia Municipal Bond Commission and the preparation and presentation of the prospective information.

The scope of our engagement consisted of and was limited to the verification of the mathematical accuracy of: (1) the computations, contained in such schedules, to determine that the anticipated receipts from the Government Obligations, together with an initial cash deposit, will be sufficient to pay, when due, the remaining principal of and interest on the Prior Bonds; (2) the computations of yield, contained in such schedules on the 1994 Bonds and Government Obligations, which are considered by Counsel in their determination that the 1994 Bonds are not arbitrage bonds within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended; and (3) the savings, if any, resulting from refunding the Prior Bonds.

The term "yield", as used herein, means the yield which, when used in computing the present worth of all payments of principal and interest on an obligation, produces an amount equal to the purchase price. The purchase prices of the 1994 Bonds and the Government Obligations, as provided to us by the Commission, are $40,173.48 and $64,769.18, respectively. The yields were computed using semiannual compounding periods based on the 30 days per month/360 days per year convention.

In the course of our engagement, we were furnished with the following documents: (1) a copy of the Bond Ordinance enacted February 2, 1968, authorizing the issuance of the Prior Bonds from Steptoe & Johnson; (2) the calculation of Prior Bond redemption requirements by the West Virginia Municipal Bond Commission; (3) the debt service schedule for the 1994 Bonds from the West Virginia Water Development Authority; and (4) the purchase confirmation for the United States Treasury Bills.

We compared the information contained in the schedules provided to us by the Commission with certain information set forth in the above-mentioned documents with respect to principal payment dates and amounts, interest payment dates and rates. We found the information contained in such schedules in agreement with the above mentioned information set forth in said documents.

In the course of our examination of the schedules provided to us by the Commission, we prepared similar schedules (Schedules 1 through 5 of this report) based on the information provided to us. In the schedules provided to us and in the schedules we prepared, the closing date for the 1994 Bonds and the purchase date for the Government Obligations is assumed to be May 27, 1994. The 1994 Bonds are dated as of May 27, 1994.

In our opinion, the computations contained in the schedules provided to us are mathematically correct. The schedules provided to us and those prepared by us as a part of our engagement to

verify the mathematical accuracy of the computations contained in such schedules reflect that:

1. The anticipated receipts from the Government Obligations, together with an initial cash deposit of $1,486.25, will be sufficient to pay, when due, the remaining principal of and interest on the Prior Bonds, assuming all funds received from the Government Obligations, together with the initial cash deposit, are applied to pay the principal of and interest on the Prior Bonds.

2. The yield of 3.9186929% on the Government Obligations is less than the yield of 6.7509928% on the 1994 Bonds.

3. The present value of the interest cost for the Issuer as a result of refunding the Prior Bonds is not less than $ 20,941.16.

The scope of our engagement was limited to verifying the mathematical accuracy of the computations contained in the schedules provided to us, to the extent described herein. We express no opinion with regard to Counsel's determination that the 1994 Bonds are not arbitrage bonds within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended. The terms of our engagement are such that we have no obligation to update this report because of events occurring, or data or information coming to our attention subsequent to the date of this report.

Smith, Cochran & Hicks

May 27, 1994
Charleston, West Virginia

# SCHEDULES

Schedule 1 - Debt service and redemption requirements - Prior Bonds
Schedule 2 - Refunding sources and uses
Schedule 3 - Debt service requirements - 1994 Bonds
Schedule 4 - Escrow yield calculations
Schedule 5 - Calculation of debt service savings

$128,000
TOWN OF FRANKLIN, WEST VIRGINIA
WATERWORKS REVENUE BONDS
SERIES A AND B

DEBT SERVICE AND REDEMPTION REQUIREMENTS

| | SERIES A | SERIES B | INTEREST | TOTAL | |
|---|---|---|---|---|---|
| 7/1/94 | 5,000 | | 1,486.25 | 6,486.25 | |
| 1/1/95 | | | 1,380.00 | 1,380.00 | 7,866.25 |
| 7/1/95 | 5,000 | | 1,380.00 | 6,380.00 | |
| 1/1/96 | | | 1,273.75 | 1,273.75 | 7,653.75 |
| 7/1/96 | 5,000 | | 1,273.75 | 6,273.75 | |
| 1/1/97 | | | 1,167.50 | 1,167.50 | 7,441.25 |
| 7/1/97 | 6,000 | | 1,167.50 | 7,167.50 | |
| 1/1/98 | | | 1,040.00 | 1,040.00 | 8,207.50 |
| 7/1/98 | 6,000 | | 1,040.00 | 7,040.00 | |
| 1/1/99 | | | 912.50 | 912.50 | 7,952.50 |
| 7/1/99 | 10,000 | | 912.50 | 10,912.50 | |
| 1/1/00 | | | 700.00 | 700.00 | 11,612.50 |
| 7/1/00 | | 10,000 | 700.00 | 10,700.00 | |
| 1/1/01 | | | 450.00 | 450.00 | 11,150.00 |
| 7/1/01 | | 10,000 | 450.00 | 10,450.00 | |
| 1/1/02 | | | 200.00 | 200.00 | 10,650.00 |
| 7/1/02 | | 8,000 | 200.00 | 8,200.00 | 8,200.00 |
| | $37,000 | $28,000 | $ 15,733.75 | $ 80,733.75 | $ 80,733.75 |

PRIOR BOND REDEMPTION REQUIREMENTS

| | |
|---|---|
| Principal maturing | $ 5,000.00 |
| Principal redeemed | 60,000.00 |
| Interest | 1,486.25 |
| Total redemption requirements | 66,486.25 |
| Total available with MBC | 26,081.95 |
| Funds needed for redemption | $ 40,404.30 |

$128,000
TOWN OF FRANKLIN, WEST VIRGINIA
WATERWORKS REVENUE BONDS
SERIES A AND B

SOURCES AND USES

| | |
|---|---|
| **Sources:** | |
| Bond proceeds | $ 40,173.48 |
| Existing funds | 26,081.95 |
| Total sources | $ 66,255.43 |

| | |
|---|---|
| **Uses:** | |
| Cost of Treasury Bill for escrow | $ 64,769.18 |
| Uninvested cash | 1,486.25 |
| Total uses | $ 66,255.43 |

$309,000
TOWN OF FRANKLIN, WEST VIRGINIA
WATER REVENUE BONDS
SERIES 1994

DEBT SERVICE REQUIREMENTS

| | PRINCIPAL | INTEREST | TOTAL | PV FACTOR 6.75099928% | PRESENT VALUE |
|---|---|---|---|---|---|
| 5/27/94 | | | | | |
| 10/1/94 | | 7,184.25 | 7,184.25 | 0.977389952 | 7,021.81 |
| 4/1/95 | | 10,428.75 | 10,428.75 | 0.945475462 | 9,860.13 |
| 10/1/95 | 1,771.40 | 10,428.75 | 12,200.15 | 0.914603068 | 11,158.29 |
| 4/1/96 | | 10,368.97 | 10,368.97 | 0.884738744 | 9,173.83 |
| 10/1/96 | 1,890.97 | 10,368.97 | 12,259.94 | 0.855849573 | 10,492.66 |
| 4/1/97 | | 10,305.15 | 10,305.15 | 0.827903713 | 8,531.67 |
| 10/1/97 | 2,018.61 | 10,305.15 | 12,323.76 | 0.800870362 | 9,869.73 |
| 4/1/98 | | 10,237.02 | 10,237.02 | 0.774719726 | 7,930.82 |
| 10/1/98 | 2,154.86 | 10,237.02 | 12,391.88 | 0.749422980 | 9,286.76 |
| 4/1/99 | | 10,164.29 | 10,164.29 | 0.724952244 | 7,368.63 |
| 10/1/99 | 2,300.32 | 10,164.29 | 12,464.61 | 0.701280544 | 8,741.19 |
| 4/1/00 | | 10,086.65 | 10,086.65 | 0.678381791 | 6,842.60 |
| 10/1/00 | 2,455.59 | 10,086.65 | 12,542.24 | 0.656230746 | 8,230.61 |
| 4/1/01 | | 10,003.78 | 10,003.78 | 0.634802994 | 6,350.43 |
| 10/1/01 | 2,621.34 | 10,003.78 | 12,625.12 | 0.614074917 | 7,752.77 |
| 4/1/02 | | 9,915.31 | 9,915.31 | 0.594023670 | 5,889.93 |
| 10/1/02 | 2,798.28 | 9,915.31 | 12,713.59 | 0.574627151 | 7,305.57 |
| 4/1/03 | | 9,820.87 | 9,820.87 | 0.555863982 | 5,459.07 |
| 10/1/03 | 2,987.16 | 9,820.87 | 12,808.03 | 0.537713483 | 6,887.05 |
| 4/1/04 | | 9,720.05 | 9,720.05 | 0.520155648 | 5,055.94 |
| 10/1/04 | 3,188.80 | 9,720.05 | 12,908.85 | 0.503171125 | 6,495.36 |
| 4/1/05 | | 9,612.43 | 9,612.43 | 0.486741193 | 4,678.76 |
| 10/1/05 | 3,404.04 | 9,612.43 | 13,016.47 | 0.470847745 | 6,128.77 |
| 4/1/06 | | 9,497.54 | 9,497.54 | 0.455473261 | 4,325.88 |
| 10/1/06 | 3,633.81 | 9,497.54 | 13,131.35 | 0.440600797 | 5,785.68 |
| 4/1/07 | | 9,374.90 | 9,374.90 | 0.426213960 | 3,995.71 |
| 10/1/07 | 3,879.10 | 9,374.90 | 13,254.00 | 0.412296893 | 5,464.58 |
| 4/1/08 | | 9,243.98 | 9,243.98 | 0.398834257 | 3,686.82 |
| 10/1/08 | 4,140.93 | 9,243.98 | 13,384.91 | 0.385811214 | 5,164.05 |
| 4/1/09 | | 9,104.22 | 9,104.22 | 0.373213409 | 3,397.82 |
| 10/1/09 | 4,420.45 | 9,104.22 | 13,524.67 | 0.361026957 | 4,882.77 |
| 4/1/10 | | 8,955.03 | 8,955.03 | 0.349238426 | 3,127.44 |
| 10/1/10 | 4,718.83 | 8,955.03 | 13,673.86 | 0.337834824 | 4,619.51 |
| 4/1/11 | | 8,795.77 | 8,795.77 | 0.326803581 | 2,874.49 |
| 10/1/11 | 5,037.35 | 8,795.77 | 13,833.12 | 0.316132539 | 4,373.10 |
| 4/1/12 | | 8,625.76 | 8,625.76 | 0.305809935 | 2,637.84 |
| 10/1/12 | 5,377.37 | 8,625.76 | 14,003.13 | 0.295824393 | 4,142.47 |
| 4/1/13 | | 8,444.28 | 8,444.28 | 0.286164907 | 2,416.46 |
| 10/1/13 | 5,740.34 | 8,444.28 | 14,184.62 | 0.276820830 | 3,926.60 |
| 4/1/14 | | 8,250.54 | 8,250.54 | 0.267781863 | 2,209.35 |
| 10/1/14 | 6,127.82 | 8,250.54 | 14,378.36 | 0.259038043 | 3,724.54 |
| 4/1/15 | | 8,043.73 | 8,043.73 | 0.250579733 | 2,015.59 |
| 10/1/15 | 6,541.44 | 8,043.73 | 14,585.17 | 0.242397611 | 3,535.41 |
| 4/1/16 | | 7,822.95 | 7,822.95 | 0.234482657 | 1,834.35 |
| 10/1/16 | 6,982.99 | 7,822.95 | 14,805.94 | 0.226826149 | 3,358.37 |
| 4/1/17 | | 7,587.28 | 7,587.28 | 0.219419646 | 1,664.80 |
| 10/1/17 | 7,454.34 | 7,587.28 | 15,041.62 | 0.212254987 | 3,192.66 |

$309,000
TOWN OF FRANKLIN, WEST VIRGINIA
WATER REVENUE BONDS
SERIES 1994

DEBT SERVICE REQUIREMENTS

| | PRINCIPAL | INTEREST | TOTAL | PV FACTOR 6.75099928% | PRESENT VALUE |
|---|---|---|---|---|---|
| 4/1/18 | | 7,335.69 | 7,335.69 | 0.205324274 | 1,506.20 |
| 10/1/18 | 7,957.51 | 7,335.69 | 15,293.20 | 0.198619867 | 3,037.53 |
| 4/1/19 | | 7,067.13 | 7,067.13 | 0.192134378 | 1,357.84 |
| 10/1/19 | 8,494.64 | 7,067.13 | 15,561.77 | 0.185860658 | 2,892.32 |
| 4/1/20 | | 6,780.43 | 6,780.43 | 0.179791793 | 1,219.07 |
| 10/1/20 | 9,068.03 | 6,780.43 | 15,848.46 | 0.173921093 | 2,756.38 |
| 4/1/21 | | 6,474.39 | 6,474.39 | 0.168242087 | 1,089.26 |
| 10/1/21 | 9,680.12 | 6,474.39 | 16,154.51 | 0.162748517 | 2,629.12 |
| 4/1/22 | | 6,147.68 | 6,147.68 | 0.157434327 | 967.86 |
| 10/1/22 | 10,333.53 | 6,147.68 | 16,481.21 | 0.152293660 | 2,509.98 |
| 4/1/23 | | 5,798.93 | 5,798.93 | 0.147320850 | 854.30 |
| 10/1/23 | 11,031.05 | 5,798.93 | 16,829.98 | 0.142510416 | 2,398.45 |
| 4/1/24 | | 5,426.63 | 5,426.63 | 0.137857056 | 748.10 |
| 10/1/24 | 11,775.64 | 5,426.63 | 17,202.27 | 0.133355641 | 2,294.02 |
| 4/1/25 | | 5,029.20 | 5,029.20 | 0.129001210 | 648.77 |
| 10/1/25 | 12,570.50 | 5,029.20 | 17,599.70 | 0.124788963 | 2,196.25 |
| 4/1/26 | | 4,604.95 | 4,604.95 | 0.120714257 | 555.88 |
| 10/1/26 | 13,419.01 | 4,604.95 | 18,023.96 | 0.116772602 | 2,104.70 |
| 4/1/27 | | 4,152.05 | 4,152.05 | 0.112959653 | 469.01 |
| 10/1/27 | 14,324.79 | 4,152.05 | 18,476.84 | 0.109271208 | 2,018.99 |
| 4/1/28 | | 3,668.59 | 3,668.59 | 0.105703200 | 387.78 |
| 10/1/28 | 15,291.71 | 3,668.59 | 18,960.30 | 0.102251698 | 1,938.72 |
| 4/1/29 | | 3,152.50 | 3,152.50 | 0.098912896 | 311.82 |
| 10/1/29 | 16,323.90 | 3,152.50 | 19,476.40 | 0.095683116 | 1,863.56 |
| 4/1/30 | | 2,601.57 | 2,601.57 | 0.092558797 | 240.80 |
| 10/1/30 | 17,425.76 | 2,601.57 | 20,027.33 | 0.089536496 | 1,793.18 |
| 4/1/31 | | 2,013.45 | 2,013.45 | 0.086612882 | 174.39 |
| 10/1/31 | 18,602.00 | 2,013.45 | 20,615.45 | 0.083784731 | 1,727.26 |
| 4/1/32 | | 1,385.63 | 1,385.63 | 0.081048927 | 112.30 |
| 10/1/32 | 19,857.64 | 1,385.63 | 21,243.27 | 0.078402455 | 1,665.52 |
| 4/1/33 | | 715.43 | 715.43 | 0.075842398 | 54.26 |
| 10/1/33 | 21,198.03 | 715.43 | 21,913.46 | 0.073365933 | 1,607.70 |
| | $ 309,000.00 | $ 580,711.21 | $ 889,711.21 | | $ 309,000.00 |
| | | | Arbitrage target | | 309,000.00 |
| | | | | | $ (0.00) |

$128,000
TOWN OF FRANKLIN, WEST VIRGINIA
WATERWORKS REVENUE BONDS
SERIES A AND B

ESCROW YIELD CALCULATIONS

| | DEPOSITS | RECEIPTS | | PV FACTOR 3.9186929% | |
|---|---|---|---|---|---|
| 5/27/94 | (64,769.18) | | (64,769.18) | 1.00000000 | (64,769.18) |
| 6/30/94 | | 65,000.00 | 65,000.00 | 0.99644892 | 64,769.18 |
| | | | $ 230.82 | | $ (0.00) |

$128,000
TOWN OF FRANKLIN, WEST VIRGINIA
WATERWORKS REVENUE BONDS
SERIES A AND B

CALCULATION OF DEBT SERVICE SAVINGS

| | REFUNDING DEBT | REFUNDED DEBT | SAVINGS | PV FACTOR 6.7509928% | PRESENT VALUE |
|---|---|---|---|---|---|
| 5/27/94 | | | | | |
| 7/1/94 | | 6,486.25 | 6,486.25 | 0.993748930 | 6,445.70 |
| 10/1/94 | 934.03 | | (934.03) | 0.977389952 | (912.91) |
| 1/1/95 | | 1,380.00 | 1,380.00 | 0.961300274 | 1,326.59 |
| 4/1/95 | 1,355.85 | | (1,355.85) | 0.945475462 | (1,281.93) |
| 7/1/95 | | 6,380.00 | 6,380.00 | 0.929911156 | 5,932.83 |
| 10/1/95 | 1,586.16 | | (1,586.16) | 0.914603068 | (1,450.70) |
| 1/1/96 | | 1,273.75 | 1,273.75 | 0.899546980 | 1,145.80 |
| 4/1/96 | 1,348.08 | | (1,348.08) | 0.884738744 | (1,192.70) |
| 7/1/96 | | 6,273.75 | 6,273.75 | 0.870174279 | 5,459.26 |
| 10/1/96 | 1,593.93 | | (1,593.93) | 0.855849573 | (1,364.16) |
| 1/1/97 | | 1,167.50 | 1,167.50 | 0.841760678 | 982.76 |
| 4/1/97 | 1,339.78 | | (1,339.78) | 0.827903713 | (1,109.21) |
| 7/1/97 | | 7,167.50 | 7,167.50 | 0.814274859 | 5,836.32 |
| 10/1/97 | 1,602.23 | | (1,602.23) | 0.800870362 | (1,283.18) |
| 1/1/98 | | 1,040.00 | 1,040.00 | 0.787686529 | 819.19 |
| 4/1/98 | 1,330.93 | | (1,330.93) | 0.774719726 | (1,031.10) |
| 7/1/98 | | 7,040.00 | 7,040.00 | 0.761966381 | 5,364.24 |
| 10/1/98 | 1,611.08 | | (1,611.08) | 0.749422980 | (1,207.38) |
| 1/1/99 | | 912.50 | 912.50 | 0.737086068 | 672.59 |
| 4/1/99 | 1,321.47 | | (1,321.47) | 0.724952244 | (958.00) |
| 7/1/99 | | 10,912.50 | 10,912.50 | 0.713018165 | 7,780.81 |
| 10/1/99 | 1,620.54 | | (1,620.54) | 0.701280544 | (1,136.45) |
| 1/1/00 | | 700.00 | 700.00 | 0.689736146 | 482.82 |
| 4/1/00 | 1,311.38 | | (1,311.38) | 0.678381791 | (889.62) |
| 7/1/00 | | 10,700.00 | 10,700.00 | 0.667214350 | 7,139.19 |
| 10/1/00 | 1,630.63 | | (1,630.63) | 0.656230746 | (1,070.07) |
| 1/1/01 | | 450.00 | 450.00 | 0.645427953 | 290.44 |
| 4/1/01 | 1,300.60 | | (1,300.60) | 0.634802994 | (825.63) |
| 7/1/01 | | 10,450.00 | 10,450.00 | 0.624352942 | 6,524.49 |
| 10/1/01 | 1,641.41 | | (1,641.41) | 0.614074917 | (1,007.95) |
| 1/1/02 | | 200.00 | 200.00 | 0.603966088 | 120.79 |
| 4/1/02 | 1,289.10 | | (1,289.10) | 0.594023670 | (765.76) |
| 7/1/02 | | 8,200.00 | 8,200.00 | 0.584244922 | 4,790.81 |
| 10/1/02 | 1,652.91 | | (1,652.91) | 0.574627151 | (949.81) |
| 4/1/03 | 1,276.82 | | (1,276.82) | 0.555863982 | (709.74) |
| 10/1/03 | 1,665.19 | | (1,665.19) | 0.537713483 | (895.39) |
| 4/1/04 | 1,263.72 | | (1,263.72) | 0.520155648 | (657.33) |
| 10/1/04 | 1,678.30 | | (1,678.30) | 0.503171125 | (844.47) |
| 4/1/05 | 1,249.72 | | (1,249.72) | 0.486741193 | (608.29) |
| 10/1/05 | 1,692.29 | | (1,692.29) | 0.470847745 | (796.81) |
| 4/1/06 | 1,234.79 | | (1,234.79) | 0.455473261 | (562.41) |
| 10/1/06 | 1,707.22 | | (1,707.22) | 0.440600797 | (752.20) |
| 4/1/07 | 1,218.84 | | (1,218.84) | 0.426213960 | (519.49) |
| 10/1/07 | 1,723.17 | | (1,723.17) | 0.412296893 | (710.46) |
| 4/1/08 | 1,201.82 | | (1,201.82) | 0.398834257 | (479.33) |
| 10/1/08 | 1,740.19 | | (1,740.19) | 0.385811214 | (671.38) |
| 4/1/09 | 1,183.65 | | (1,183.65) | 0.373213409 | (441.75) |
| 10/1/09 | 1,758.36 | | (1,758.36) | 0.361026957 | (634.82) |
| 4/1/10 | 1,164.26 | | (1,164.26) | 0.349238426 | (406.60) |
| 10/1/10 | 1,777.76 | | (1,777.76) | 0.337834824 | (600.59) |
| 4/1/11 | 1,143.55 | | (1,143.55) | 0.326803581 | (373.72) |
| 10/1/11 | 1,798.46 | | (1,798.46) | 0.316132539 | (568.55) |

$128,000
TOWN OF FRANKLIN, WEST VIRGINIA
WATERWORKS REVENUE BONDS
SERIES A AND B

CALCULATION OF DEBT SERVICE SAVINGS

| | REFUNDING DEBT | REFUNDED DEBT | SAVINGS | PV FACTOR 6.7509928% | PRESENT VALUE |
|---|---|---|---|---|---|
| 4/1/12 | 1,121.45 | | (1,121.45) | 0.305809935 | (342.95) |
| 10/1/12 | 1,820.56 | | (1,820.56) | 0.295824393 | (538.57) |
| 4/1/13 | 1,097.85 | | (1,097.85) | 0.286164907 | (314.17) |
| 10/1/13 | 1,844.16 | | (1,844.16) | 0.276820830 | (510.50) |
| 4/1/14 | 1,072.66 | | (1,072.66) | 0.267781863 | (287.24) |
| 10/1/14 | 1,869.35 | | (1,869.35) | 0.259038043 | (484.23) |
| 4/1/15 | 1,045.78 | | (1,045.78) | 0.250579733 | (262.05) |
| 10/1/15 | 1,896.24 | | (1,896.24) | 0.242397611 | (459.64) |
| 4/1/16 | 1,017.07 | | (1,017.07) | 0.234482657 | (238.49) |
| 10/1/16 | 1,924.94 | | (1,924.94) | 0.226826149 | (436.63) |
| 4/1/17 | 986.43 | | (986.43) | 0.219419646 | (216.44) |
| 10/1/17 | 1,955.58 | | (1,955.58) | 0.212254987 | (415.08) |
| 4/1/18 | 953.72 | | (953.72) | 0.205324274 | (195.82) |
| 10/1/18 | 1,988.29 | | (1,988.29) | 0.198619867 | (394.91) |
| 4/1/19 | 918.81 | | (918.81) | 0.192134378 | (176.53) |
| 10/1/19 | 2,023.20 | | (2,023.20) | 0.185860658 | (376.03) |
| 4/1/20 | 881.53 | | (881.53) | 0.179791793 | (158.49) |
| 10/1/20 | 2,060.48 | | (2,060.48) | 0.173921093 | (358.36) |
| 4/1/21 | 841.74 | | (841.74) | 0.168242087 | (141.62) |
| 10/1/21 | 2,100.27 | | (2,100.27) | 0.162748517 | (341.82) |
| 4/1/22 | 799.27 | | (799.27) | 0.157434327 | (125.83) |
| 10/1/22 | 2,142.74 | | (2,142.74) | 0.152293660 | (326.33) |
| 4/1/23 | 753.93 | | (753.93) | 0.147320850 | (111.07) |
| 10/1/23 | 2,188.09 | | (2,188.09) | 0.142510416 | (311.83) |
| 4/1/24 | 705.52 | | (705.52) | 0.137857056 | (97.26) |
| 10/1/24 | 2,236.49 | | (2,236.49) | 0.133355641 | (298.25) |
| 4/1/25 | 653.85 | | (653.85) | 0.129001210 | (84.35) |
| 10/1/25 | 2,288.16 | | (2,288.16) | 0.124788963 | (285.54) |
| 4/1/26 | 598.69 | | (598.69) | 0.120714257 | (72.27) |
| 10/1/26 | 2,343.32 | | (2,343.32) | 0.116772602 | (273.64) |
| 4/1/27 | 539.81 | | (539.81) | 0.112959653 | (60.98) |
| 10/1/27 | 2,402.20 | | (2,402.20) | 0.109271208 | (262.49) |
| 4/1/28 | 476.96 | | (476.96) | 0.105703200 | (50.42) |
| 10/1/28 | 2,465.05 | | (2,465.05) | 0.102251698 | (252.06) |
| 4/1/29 | 409.86 | | (409.86) | 0.098912896 | (40.54) |
| 10/1/29 | 2,532.15 | | (2,532.15) | 0.095683116 | (242.28) |
| 4/1/30 | 338.23 | | (338.23) | 0.092558797 | (31.31) |
| 10/1/30 | 2,603.78 | | (2,603.78) | 0.089536496 | (233.13) |
| 4/1/31 | 261.77 | | (261.77) | 0.086612882 | (22.67) |
| 10/1/31 | 2,680.24 | | (2,680.24) | 0.083784731 | (224.56) |
| 4/1/32 | 180.15 | | (180.15) | 0.081048927 | (14.60) |
| 10/1/32 | 2,761.86 | | (2,761.86) | 0.078402455 | (216.54) |
| 4/1/33 | 93.01 | | (93.01) | 0.075842398 | (7.05) |
| 10/1/33 | 2,849.00 | | (2,849.00) | 0.073365933 | (209.02) |
| | $ 115,672.48 | $ 80,733.75 | $ (34,938.73) | | $ 20,941.16 |

# STEPTOE & JOHNSON

ATTORNEYS AT LAW

SIXTH FLOOR
BANK ONE CENTER
P. O. BOX 2190
CLARKSBURG, W. VA. 26302-2190
(304) 624-8000
FACSIMILE (304) 624-8183

SEVENTH FLOOR, BANK ONE CENTER
P. O. BOX 1588
CHARLESTON, W. VA. 25326-1588
(304) 353-8000
FACSIMILE (304) 353-8180

1000 HAMPTON CENTER
P. O. BOX 1616
MORGANTOWN, W. VA. 26507-1616
(304) 598-8000
FACSIMILE (304) 598-8116

126 EAST BURKE STREET
P. O. BOX 2629
MARTINSBURG, W. VA. 25401-5429
(304) 263-6991
FACSIMILE (304) 263-4785

104 WEST CONGRESS STREET
P. O. BOX 100
CHARLES TOWN, W. VA. 25414-0100
(304) 725-1414
FACSIMILE (304) 725-1913

THE BRYAN CENTRE
P. O. BOX 570
82 WEST WASHINGTON STREET, SUITE 301
HAGERSTOWN, MARYLAND 21740-0570
(301) 739-8600
FACSIMILE (301) 739-8742

WRITER'S DIRECT DIAL NUMBER

(304)624-8161


May 25, 1994

Town of Franklin
Water Revenue Bonds, Series 1994

**VIA FAX AND REGULAR MAIL**

Mr. R. Witter Hallan
Executive Director
West Virginia Municipal Bond
Commission
1800 Washington Street, East
Building 3, Suite 337
Charleston, West Virginia 25305

Dear Witter:

As bond counsel for the Town of Franklin (the "Issuer"), we wish to advise you that on May 27, 1994 (the "Closing Date"), the Issuer will deliver the above-captioned bonds (the "Series 1994 Bonds") to the purchaser thereof. A portion of the proceeds of the Series 1994 Bonds will be used to refund the Issuer's Waterworks Revenue Bonds, Series A and Series B, dated July 1, 1968 (the "Prior Bonds"). On the Closing Date, the Issuer will be required to fund an Escrow Fund, pursuant to an Escrow Agreement dated May 27, 1994, by and between the Issuer and the West Virginia Municipal Bond Commission, as Escrow Agent.

The Escrow Fund will be funded with $40,173.48 from a portion of the proceeds of the Series 1994 Bonds and $26,081.95 to be transferred by the West Virginia Municipal Bond Commission from the sinking funds and the reserve account created therein for the Prior Bonds. The sum of $40,173.48 from a portion of the proceeds of the Series 1994 Bonds will be delivered by check to the Escrow Agent on the Closing Date. The transfer from the sinking funds and reserve account therein created for the Prior Bonds should also be made on the Closing Date.

Pursuant to the Supplemental Resolution of the Issuer adopted May 24, 1994, the Issuer has directed the Escrow Agent to purchase United States Treasury Bills (collectively, the "T-bill") in the par

amount of $65,000, maturing June 30, 1994, for settlement on the Closing Date. The proceeds of the T-bill, together with interest to accrue thereon, and cash in the amount of $1,486.25 deposited in the Escrow Fund, are shown by the Exhibits to the Escrow Agreement to be in amounts sufficient to fully pay, on July 1, 1994, the redemption price of the Prior Bonds, such redemption price being $66,486.25.

If you have any questions regarding the foregoing, please feel free to call me.

Very truly yours,

Vince Collins

Vincent A. Collins

VAC/cab
Copy of letter to:
Mayor Warren Waggy
Mr. Daniel B. Yonkosky
Samme L. Gee, Esquire
Jeffrey Bowers, Esquire
Mr. Philip Liggett
Jill Patterson, CPA
05/24/94
FRANKC.Z3
307110/94001

TOWN OF FRANKLIN

$128,000 Waterworks Revenue Bonds,
Series A and B

BOND ORDINANCE

TABLE OF CONTENTS


| Subject | | Page |
|---|---|---|
| ARTICLE I - STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS | | |
| Section 1.01. | Authority for this Ordinance | 1 |
| Section 1.02. | Findings and Determinations | 1 |
| Section 1.03. | Ordinance to Constitute Contract | 2 |
| Section 1.04. | Definitions | 3 |
| ARTICLE II - AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND ISSUE OF BONDS | | |
| Section 2.01. | Authorization of Bonds | 7 |
| Section 2.02. | Description of Bonds | 7 |
| Section 2.03. | Execution of Bonds and Coupons | 9 |
| Section 2.04. | Negotiability and Registration | 9 |
| Section 2.05. | Bonds Mutilated, Destroyed, Stolen or Lost | 10 |
| Section 2.06. | Bonds Not to be Indebtedness of the Town | 11 |
| Section 2.07. | Security for Bonds | 11 |
| Section 2.08. | Form of Bonds and Coupons | 12 |
| | (Form of Bond) | 13 |
| | (Form of Coupon) | 17 |
| | (Provision for Registration) | 18 |
| ARTICLE III - BOND PROCEEDS; REVENUES AND APPLICATION THEREOF | | |
| Section 3.01. | Disposition of Bond Proceeds | 19 |
| Section 3.02. | Covenants of the Town as to Revenues and Funds | 20 |
| (A) | System Revenue Fund | 20 |
| (B) | Disposition of Revenues | 21 |
| ARTICLE IV - GENERAL COVENANTS OF THE TOWN | | |
| Section 4.01. | General Statement | 25 |
| Section 4.02. | Rates | 25 |
| Section 4.03. | Sale of the System | 25 |
| Section 4.04. | Covenant Against Encumbrances | 28 |

| | | |
|---|---|---|
| Section 4.05. | Issuance of Pari Passu Additional Bonds | 28 |
| Section 4.06. | Covenant to Proceed | 32 |
| Section 4.07. | Insurance | 32 |
| Section 4.08. | Books and Records | 33 |
| Section 4.09. | Maintenance of System | 34 |
| Section 4.10. | Statutory Mortgage Lien | 34 |
| Section 4.11. | Services Rendered to the Town | 34 |
| Section 4.12. | Operating Budget | 35 |
| Section 4.13. | Remedies and Appointment of Receiver | 36 |
| Section 4.14. | Enforcement of Collections | 36 |
| Section 4.15. | No Competing Franchise | 37 |
| Section 4.16. | Consulting Engineer | 37 |
| Section 4.17. | Financing and Continuation Statements | 38 |

ARTICLE V - RATES AND LIEN FOR CHARGES

| | | |
|---|---|---|
| Section 5.01. | Minimum Rates Established | 39 |
| Section 5.02. | All Service to be Metered | 40 |

ARTICLE VI - MISCELLANEOUS

| | | |
|---|---|---|
| Section 6.01. | Modification or Amendment | 41 |
| Section 6.02. | Refunding of Bonds Permitted | 41 |
| Section 6.03. | Covenant of Due Procedure, Etc. | 42 |
| Section 6.04. | Severability of Invalid Provision | 43 |
| Section 6.05. | Conflicting Provisions Repealed | 43 |
| Section 6.06. | Effective Time | 43 |
| Section 6.07. | Statutory Notice | 43 |
| Section 6.08. | Table of Contents and Headings | 44 |

TOWN OF FRANKLIN

ORDINANCE AUTHORIZING THE ISSUANCE OF $128,000 WATERWORKS REVENUE BONDS, SERIES A AND B, OF THE TOWN OF FRANKLIN, WEST VIRGINIA, TO FINANCE PART OF THE COST OF CONSTRUCTION OF ADDITIONS, EXTENSIONS AND IMPROVEMENTS FOR THE WATERWORKS OF SAID TOWN; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE REVENUE BONDS; PROVIDING FOR THE FIXING, ESTABLISHING AND COLLECTING OF RATES AND CHARGES FOR THE SERVICES AND FACILITIES OF THE WATERWORKS: PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES AND SECURITIES OF THE HOLDERS OF THE REVENUE BONDS; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FRANKLIN:

## ARTICLE I

## STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This ordinance is adopted pursuant to the provisions of Article 12, Chapter 8 of the West Virginia Code (herein called the "Act"), and other applicable provisions of law.

Section 1.02. Findings and Determinations. It is hereby found, determined and declared as follows:

(A) The Town of Franklin in Pendleton County, State of West Virginia, now owns a waterworks which is inadequate for the needs of the public.

(B) It is deemed essential, convenient and desirable for the health, welfare, safety, advantage and convenience of the inhabitants of the Town of Franklin that there be constructed or acquired additions and extensions to and im-

provements of the existing waterworks of the Town, generally described as the construction or acquisition of additional storage tanks, a filtration plant, replacement of water lines and additional water lines, all with necessary facilities and equipment (herein called the "Project").

(C) It is necessary for the Town to issue its revenue bonds in the principal amount of $128,000 to finance part of the cost of the construction of the Project as hereinafter provided.

(D) The estimated maximum cost of the construction hereinabove mentioned is the sum of $528,000, of which $128,000 will be obtained from the proceeds of the Bonds herein authorized and the balance from the proceeds of a Federal grant designated Project No. 03-1-00398 of Economic Development Administration in the amount of $400,000.

(E) The cost of such construction and acquisition shall be deemed to include, without being limited to, but subject to the provisions of the Loan and Grant Agreement, the construction or acquisition of the Project, the acquisition of any necessary property, real, personal, tangible or intangible or interest therein, and any other purposes necessary, incidental, desirable or appurtenant to the construction and acquisition of the Project; interest on the Bonds prior to, during and for six months after completion of such construction to the extent that the revenues of the System as hereinafter defined are not sufficient therefor; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; and such other expenses as may be necessary or incidental to the construction of the Project and the financing authorized by this ordinance.

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

(G) There are not outstanding any bonds or other obligations payable out of or secured by any lien on or pledge of the revenues of the System or any part of such revenues or of the System.

Section 1.03. Ordinance to Constitute Contract. In consideration of the acceptance of the Bonds authorized to be issued hereunder by those who shall hold the same from time to time, this ordinance shall be deemed to be and shall constitute a contract between the Town and such Bondholders, and the covenants and agreements herein set forth to be performed by the Town shall be for the equal benefit, protection and security of the legal holders of any and all such Bonds, and the coupons appertaining thereto, all which shall be of equal rank without preference, priority or distinction of any of the Bonds or coupons over any other thereof, except as expressly provided therein and herein.

Section 1.04. Definitions. The following terms shall have the following meanings in this ordinance unless the text otherwise expressly requires:

"Act" shall mean Article 12, Chapter 8 of the West Virginia Code as amended.

"Bonds" shall mean collectively the $128,000 Waterworks Revenue Bonds, Series A in the principal amount of $100,000 and Series B in the principal amount of $28,000, originally authorized to be issued pursuant to this ordinance and shall also be deemed to include, where appropriate, the interest coupons originally attached to said Bonds; and shall also include any pari passu additional Bonds hereafter issued within the terms, restrictions and conditions contained in this ordinance, and the interest coupons appertaining to said pari

passu additional Bonds.

"Consulting Engineer" shall mean John McNair & Associates, Consulting Engineers, of Waynesboro, Virginia, or any engineer or firm of engineers which shall at any time hereafter be retained by the Town as Consulting Engineer for the System.

"Facilities" shall mean all the facilities of the System and also any facilities which may hereafter be added to the System by any additions, betterments, extensions and improvements thereto and properties, furniture, fixtures or equipment therefor, hereafter at any time constructed or acquired.

"Fiscal Year" shall mean each year beginning on July 1 and ending on the succeeding June 30.

"Holder of the Bonds" or "Bondholder" or any similar term shall mean any person who shall be the bearer or owner of any outstanding Bond or Bonds registered to bearer or not registered, or the registered owner of any outstanding Bond or Bonds which shall at the time be registered other than to the bearer or of any coupon representing interest accrued or to accrue on said Bonds.

"Net Revenues" shall mean the balance of the gross revenues, as defined below, remaining after deduction only of operating expenses, as defined below.

"Operating Expenses" shall mean the current expenses, paid or accrued, of operation and maintenance of the System and its facilities, and shall include without limiting the generality of the foregoing, insurance premiums, salaries, wages and administrative expenses of the Town relating and chargeable solely to the System, the accumulation of appropriate reserves for charges not annually recurrent but

which are such as may reasonably be expected to be incurred, a sum not to exceed 1/6 of the amount estimated in the current annual budget for costs of operation and maintenance of the System, and such other reasonable operating costs as are normally and regularly included under recognized accounting practices.

"Project" shall mean the additions, extensions and improvements for the existing Waterworks of the Town to be constructed, acquired and financed in part with the proceeds of the Bonds as in this ordinance provided.

"Revenues" or "gross revenues" shall mean all rates, rents, fees, charges or other income received by the Town, or accrued to the Town, or any department, Board, agency or instrumentality thereof in control of the management and operation of the System, from the operation of the System, and all parts thereof, all as calculated in accordance with sound accounting practices.

"System" shall mean the complete waterworks of the Town, including the Project and all facilities and other property of every nature, real, personal, tangible or intangible, now or hereafter owned, held or used in connection with the waterworks and water facilities of the Town, and shall also include any and all additions, extensions, improvements, properties or other facilities hereafter at any time acquired or constructed for the waterworks.

"Town" shall mean the Town of Franklin, in Pendleton County, West Virginia, and, where appropriate, shall also mean the Town Council thereof.

"Loan and Grant Agreement" shall mean the Loan and Grant Agreement between the Town and the United States De-

partment of Commerce, Economic Development Administration, for Project No. 03-1-00398, the offer for which is dated July 28, 1967, and shall include all amendments and waivers thereof.

"Series A Bonds" shall mean the Series A Bonds hereby authorized.

"Series B Bonds" shall mean the Series B Bonds hereby authorized.

Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

## ARTICLE II

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

Section 2.01. Authorization of Bonds. Subject and pursuant to the provisions of this ordinance, Bonds of the Town, to be known as "Waterworks Revenue Bonds, Series A" in the aggregate principal amount of not exceeding One Hundred Thousand Dollars ($100,000), and Bonds to be known as "Waterworks Revenue Bonds, Series B" in the aggregate principal amount of $28,000 are hereby authorized to be issued for the purpose of financing part of the cost of construction of the Project as authorized by this ordinance. Pending issuance of the definitive Bonds, temporary or interim certificates in the form of fully registered bonds may be issued, exchangeable on ninety days' notice to the Town and at the expense of the Town, for definitive Bonds.

Section 2.02. Description of Bonds. The Bonds shall be dated the first day of July, 1968, shall be in the denomination of $1,000 each, the Series A Bonds to be numbered A1 to A100, inclusive, and the Series B Bonds to be numbered B1 to B28, inclusive, shall bear interest, payable semiannually on January 1 and July 1 of each year, at a rate or rates of not exceeding four and one-fourth per centum (4-1/4%) per annum for the Series A Bonds and not exceeding the rate of five per centum (5%) per annum for the Series B Bonds, and the minimum price therefor shall be as provided in the Act. Series A Bonds maturing in the years 1970 to 1979, both inclusive, shall not be redeemable prior to their respective stated dates of maturity. Series A Bonds maturing in the years 1980 to 1999, both inclusive, shall be redeemable prior to their respective stated dates of maturity, at the option of the Town,

in whole or in part, but in inverse numerical order if less than all, on January 1, 1979, or on any interest payment date thereafter, at the price of par value thereof and accrued interest to the date of redemption, plus a premium as follows, expressed as a percentage of the par value of the Series A Bonds called for redemption:

3% if redeemed January 1, 1979, through July 1, 1984;
2% if redeemed January 1, 1985, through July 1, 1989;
1% if redeemed January 1, 1990, through July 1, 1994;
0% if redeemed after July 1, 1994.

The Series B Bonds shall be redeemable on any interest payment date at the par value thereof plus interest accrued to the date of redemption, Series B Bonds to be redeemed to be selected by lot by the Mayor of the Town.

Redemption of Series A and Series B Bonds shall be on the basis of four Series A Bonds redeemed concurrently with one Series B Bond on and after January 1, 1979; and prior to January 1, 1979, Series B Bonds may be redeemed without concurrent redemption of Series A Bonds.

A notice of the redemption of any of the Bonds shall be published at least once not less than thirty nor more than sixty days prior to the date of redemption in a financial journal published in the City of New York, New York; or actual notice in writing shall be given by registered or certified mail not less than thirty days prior to the date fixed for redemption. Interest shall cease upon any of the Bonds so called for prior redemption on the date fixed for redemption, provided payment in full of the redemption price thereof has been duly made or provided for.

The Series A Bonds shall mature serially in numerical order, lowest numbers first, on the first day of July of each year, as follows:

| Year | Amount | Year | Amount | Year | Amount |
|---|---|---|---|---|---|
| 1970 | $ 1,000 | 1980 | $ 2,000 | 1990 | $ 4,000 |
| 1971 | 1,000 | 1981 | 2,000 | 1991 | 4,000 |
| 1972 | 1,000 | 1982 | 3,000 | 1992 | 4,000 |
| 1973 | 2,000 | 1983 | 3,000 | 1993 | 5,000 |
| 1974 | 2,000 | 1984 | 3,000 | 1994 | 5,000 |
| 1975 | 2,000 | 1985 | 3,000 | 1995 | 5,000 |
| 1976 | 2,000 | 1986 | 3,000 | 1996 | 5,000 |
| 1977 | 2,000 | 1987 | 3,000 | 1997 | 6,000 |
| 1978 | 2,000 | 1988 | 3,000 | 1998 | 6,000 |
| 1979 | 2,000 | 1989 | 4,000 | 1999 | 10,000 |

The Series B Bonds shall so mature serially on the first day of July, $10,000 in 2000, $10,000 in 2001 and $8,000 in 2002.

The Bonds shall be issued in coupon form, shall be payable with respect to both principal and interest in lawful money of the United States of America at the office of the State Sinking Fund Commission, Charleston, West Virginia, or at First National City Bank, City and State of New York, at the option of the holder, and shall bear interest from their date, payable in accordance with and upon the surrender

of the appurtenant interest coupons as they severally mature.

Section 2.03. Execution of Bonds and Coupons. The Bonds shall be executed in the name of the Town by its Mayor and its corporate seal shall be affixed thereto or imprinted thereon and attested by its Town Recorder, the signature of either of whom, but not both, may be by facsimile. 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 Town before the Bonds so signed and sealed shall have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bond may be signed and sealed on behalf of the Town by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Town, although at the date of such Bond such person may not have held such office or may not have been so authorized.

The coupons to be attached to the Bonds shall be authenticated with the facsimile signatures of the present or any future Mayor and Recorder of the Town, and the Town may adopt and use for that purpose the facsimile signature of any person who shall have been such Mayor or Recorder at any time on or after the date of the Bonds, notwithstanding that he may have ceased to be such Mayor or Recorder at the time when said Bonds shall be actually sold and delivered.

Section 2.04. Negotiability and Registration. The Bonds shall be and have all the qualities and incidents of negotiable instruments under the law merchant and the

Uniform Commercial Code of the State of West Virginia, and shall pass by delivery except when registered as hereinafter provided.

The Bonds may be registered at the option of the holder as to principal only in the Bond Register of the Treasurer of the State of West Virginia, Charleston, West Virginia, such registration to be noted on the Bonds in the space provided therefor and thereafter no transfer of any Bond so registered shall be valid unless made at said office by the registered owner, or by his duly authorized agent or representative, and similarly noted on such Bond, but any Bond may be discharged from registration by being in like manner transferred to bearer and thereupon transferability by delivery shall be restored. At the option of the holder any such Bond may thereafter again from time to time be registered or transferred to bearer as before. Such registration shall not affect the negotiability of the coupons which shall continue to pass by delivery.

Section 2.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Town may in its discretion issue and deliver a new Bond with all unmatured coupons attached of like tenor as the Bond and attached coupons, if any, so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond and attached coupons, if any, or in lieu of and substitution for the Bond and attached coupons, if any, destroyed, stolen or lost, and upon the holder's furnishing the Town proof of his ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Town may

prescribe and paying such expenses as the Town may incur. All Bonds and coupons so surrendered shall be canceled by the Recorder and held for the account of the Town. If any such Bond or coupon shall have matured or be about to mature, instead of issuing a substitute Bond or coupon, the Town may pay the same, upon being indemnified as aforesaid, and, if such Bond or coupon be lost, stolen or destroyed, without surrender thereof.

Any such duplicate Bonds and coupons issued pursuant to this Section 2.05 shall constitute original, additional contractual obligations on the part of the Town, whether or not the lost, stolen or destroyed Bonds or coupons be at any time found by anyone, and such duplicate Bonds and coupons shall be entitled to equal and proportionate benefits with all other Bonds and coupons issued hereunder as herein provided for each Series.

Section 2.06. Bonds Not to be Indebtedness of the Town. Neither the Bonds nor coupons shall, in any event, be or constitute an indebtedness of the Town, but shall be payable solely from the net revenues derived from the operation of the System as herein provided. No holder or holders of any of the Bonds shall ever have the right to compel the exercise of the taxing power of the Town to pay the Bonds or the interest thereon.

Section 2.07. Security for Bonds. The payment of the debt service of all the Series A Bonds shall be secured forthwith equally and ratably by a first lien on the net revenues derived from the System, and payment of the debt service of all the Series B Bonds shall be secured forthwith equally and ratably by a lien on such net revenues second only to the said first lien in favor of the Series A Bonds, such lien in favor of the Series B Bonds being junior and subordinate to the lien in favor of the Series A Bonds. The net revenues derived from the System in an amount sufficient to pay the principal of and interest on the Bonds, and to make the payments into the

Sinking Fund hereinafter provided for, are hereby irrevocably pledged to the payment of the principal of and interest on the Bonds as the same become due and for the making of such payments.

Section 2.08. Form of Bonds and Coupons. Subject to the provisions of this ordinance, the text of the interim certificates in the form of fully registered Bonds, the coupon Bonds, the provision for registration to be endorsed thereon and the coupons shall be of substantially the following tenor, with such omissions, insertions and variations as may be authorized or permitted by this ordinance or any subsequent ordinance or resolution adopted prior to the issuance thereof:

(FORM OF DEFINITIVE BONDS)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF PENDLETON
TOWN OF FRANKLIN
WATERWORKS REVENUE BOND, SERIES ___

No. ____ $1,000

THE TOWN OF FRANKLIN, in the County of Pendleton, State of West Virginia, a municipal corporation created and existing under the laws of the State of West Virginia, for value received, hereby promises to pay to the bearer, or, if this Bond be registered, to the registered holder as herein provided, on the first day of July, 19 , from the net revenues hereinafter mentioned, the principal sum of

ONE THOUSAND DOLLARS

with interest thereon at the rate of per centum ( %) per annum, payable semiannually on the first day of January and the first day of July of each year, upon the presentation and surrender of the annexed coupons as they severally fall due. Both principal of and interest on this Bond are payable in lawful money of the United States of America at the office of the State Sinking Fund Commission, Charleston, West Virginia, or, at the option of the holder, at First National City Bank, New York, New York.

The Bonds of the issue of which this Bond is one are subject to redemption prior to maturity upon the notice, terms and conditions provided in the ordinance hereinafter mentioned.

This Bond is one of an authorized issue of Bonds in the aggregate principal amount of One Hundred Twenty-Eight Thousand Dollars ($128,000) of like date, Series A in the principal amount of $100,000 and Series B in the principal amount of $28,000, Series B being junior and subordinate to Series A as to lien and source of and security for payment. The Series A and B Bonds are issued to finance part of the cost of the construction and acquisition of additions, extensions and improvements for the waterworks of the Town, under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Article 12, Chapter 8 of the West Virginia Code (herein called the "Act") and other applicable statutes, and an ordinance duly adopted by the Council of said Town.

This Bond and the coupons appertaining hereto are secured by a statutory mortgage as provided in the Act, and are payable solely from, and secured by a lien upon and pledge of, the net revenues derived from the operation of said Waterworks of the Town with monthly payments from such net revenues to be made into the Sinking Fund with the State Sinking Fund Commission for payment of the principal hereof and interest hereon, in the manner provided in said ordinance, and do not and shall not in any event constitute an indebted-

ness of the Town within the meaning of any constitutional, statutory or charter provisions or limitations, and the Town shall not be obligated to pay this Bond or the interest thereon except from the net revenues of said Waterworks as provided in said ordinance. Neither the credit nor the taxing power of the Town shall be deemed to be pledged to, nor shall a tax ever be levied for, the payment of the principal of or interest on this Bond. The Town covenants with the holders of the Bonds of the issue of which this Bond is one to establish and at all times maintain such rates and collect such charges for the services and facilities of said Waterworks and to revise the same from time to time, whenever necessary, as will always provide revenues in each fiscal year sufficient to pay at least one hundred twenty per centum (120%) of the amount of principal and interest on said Bonds maturing and becoming due in such fiscal year and one hundred per centum (100%) of the necessary expenses of operating and maintaining the said Waterworks during such fiscal year, and the Town has entered into certain other covenants with the holders of the Bonds of the issue of which this Bond is one, for the terms of which reference is made to said ordinance.

Pari passu additional Bonds of the Town may be issued under the provisions and restrictions contained in said ordinance.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Bond, exist, have happened and have been performed in regular and due form and time as required by the laws and Constitution of the State of West Virginia applicable thereto, and that the issuance of this Bond and of the issue of Bonds of which this Bond is one is not in violation of any constitutional, statutory or charter limitation of indebtedness.

This Bond, under the provisions of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

This Bond may be registered as to principal only in accordance with the provisions endorsed hereon.

This Bond and the interest hereon are exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

IN WITNESS WHEREOF, the Town of Franklin has caused this Bond to be signed by its Mayor and its corporate seal to be imprinted hereon and attested by its Recorder, and the annexed interest coupons to be executed with the facsimile signatures of said Mayor and said Recorder, all as of the first day of July, 1968.

TOWN OF FRANKLIN

By_____
Mayor

ATTEST:

(SEAL)

_____
Recorder

(Form of Coupon)

No.
$

On the first day of , 19 , unless the Bond to which this coupon was originally attached shall be redeemable prior to maturity and shall have been duly called for prior redemption and payment of the redemption price duly made or provided for, the Town of Franklin, West Virginia, will pay to the bearer at the office of the State Sinking Fund Commission, Charleston, West Virginia, or, at the option of the holder, at First National City Bank, New York, New York, solely from the net revenues described in the Bond to which this coupon is attached, the sum of

Dollars ($ ) in lawful money of the United States of America, upon presentation and surrender of this coupon, being six months' interest then due on its Waterworks Revenue Bond, Series ___, dated July 1, 1968, No. .

TOWN OF FRANKLIN

By (facsimile signature)
Mayor

ATTEST:

(facsimile signature)
Recorder

(Note to Printer: Line up numbers, dates and amounts in right column)

PROVISION FOR REGISTRATION

This Bond may be registered in the name of the holder as to principal only on books kept by the Treasurer of the State of West Virginia, such registration being noted hereon in the registration blank below, after which no transfer shall be valid unless made on said books by the registered holder or his agent or representative duly authorized, and similarly noted in said registration blank below, but it may be discharged from registration by being transferred to bearer, after which it shall be transferable by delivery. At the option of the holder, this Bond shall again be subject to successive registrations and transfers as before. The principal of this Bond, if registered, shall be payable only to the registered owner or his legal representative. Notwithstanding the registration of this Bond, the coupons shall remain payable to bearer and shall continue to be transferable by delivery merely.

(No writing on this Bond except by the Treasurer of the State of West Virginia as Registrar.)

| Date of Registration | In Whose Name Registered | Registrar |
|---|---|---|
| | | |
| | | |
| | | |

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
COUNTY OF PENDLETON
TOWN OF FRANKLIN
WATERWORKS REVENUE BOND, SERIES A

No. AR-1 $100,000

THE TOWN OF FRANKLIN, in the County of Pendleton, State of West Virginia, a municipal corporation created and existing under the laws of the State of West Virginia, for value received hereby promises to pay to the UNITED STATES OF AMERICA, SECRETARY OF COMMERCE, or his successor (herein sometimes called the "Payee"), or his registered assigns (herein sometimes called the "Alternate Payee"), the principal sum of

ONE HUNDRED THOUSAND DOLLARS ($100,000)

on the first day of July in years and installments as follows:

| Year | Amount | Year | Amount | Year | Amount |
|---|---|---|---|---|---|
| 1970 | $1,000 | 1980 | $2,000 | 1990 | $ 4,000 |
| 1971 | 1,000 | 1981 | 2,000 | 1991 | 4,000 |
| 1972 | 1,000 | 1982 | 3,000 | 1992 | 4,000 |
| 1973 | 2,000 | 1983 | 3,000 | 1993 | 5,000 |
| 1974 | 2,000 | 1984 | 3,000 | 1994 | 5,000 |
| 1975 | 2,000 | 1985 | 3,000 | 1995 | 5,000 |
| 1976 | 2,000 | 1986 | 3,000 | 1996 | 5,000 |
| 1977 | 2,000 | 1987 | 3,000 | 1997 | 6,000 |
| 1978 | 2,000 | 1988 | 3,000 | 1998 | 6,000 |
| 1979 | 2,000 | 1989 | 4,000 | 1999 | 10,000 |

in lawful money of the United States of America and to pay interest on the balance of said principal sum from time to time remaining unpaid, in like lawful money, at the rate of four and one-fourth per centum (4-1/4%) per annum semiannually on January 1 and July 1 of each year, commencing January 1, 1969, until the principal amount hereof has been paid. During the time the Payee is the registered owner of this Bond, payment of the principal installments and interest due shall be made at the Federal Reserve Bank of Richmond, Rich-

mond, Virginia, or such other Fiscal Agent as the Payee shall designate (herein called "Fiscal Agent"). During such time as an Alternate Payee is the registered owner hereof, said payments shall be made at the office of the State Sinking Fund Commission of West Virginia, Charleston, West Virginia, or at the option of the Alternate Payee at First National City Bank, New York, New York (herein called the "Alternate Paying Agent"). Payments of principal and interest, including prepayments of installments of principal as hereinafter provided, shall be noted on the Payment Record made a part of this Bond and such payment shall fully discharge the obligation of the Town herein to the extent of the payments so made. Upon final payment of the principal and interest, this Bond shall be surrendered to the Town for cancellation.

This Bond, designated as "Town of Franklin Waterworks Revenue Bond, Series A" (herein called the "Bond") constitutes the entire principal amount of Series A of such issue. Also constituting a part of such issue are the Series B Bonds in the aggregate principal amount of $28,000, such Series B Bonds being junior and subordinate to Series A as to lien and source of and security for payment. The Series A and Series B Bonds are issued to finance part of the cost of the construction and acquisition of additions, extensions and improvements for the waterworks of the Town under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Article 12, Chapter 8 of the West Virginia Code (herein called the "Act") and other applicable statutes and an ordinance duly adopted by the Council of said Town. This Bond is secured by a statutory mortgage as provided in the Act and is payable solely from and secured by a first lien upon and pledge of the net revenues derived from

the operation of the waterworks of the Town with monthly payments from such net revenues to be made into the Sinking Fund with the State Sinking Fund Commission for payment of the principal hereof and interest hereon, in the manner provided in said ordinance, and do not and shall not in any event constitute an indebtedness of the Town within the meaning of any constitutional, statutory or charter provisions or limitations, and the Town shall not be obligated to pay this Bond or the interest hereon except from the net revenues of said Waterworks as provided in said ordinance. Neither the credit nor the taxing power of the Town shall be deemed to be pledged to, nor shall a tax ever be levied for, the payment of the principal of or interest on this Bond. The Town covenants with the holders of the Bonds of the issue of which this Bond is one to establish and at all times maintain such rates and collect such charges for the services and facilities of said Waterworks and to revise the same from time to time, whenever necessary, as will always provide revenues in each fiscal year sufficient to pay at least one hundred twenty per centum (120%) of the amount of principal and interest on said Bonds maturing and becoming due in such fiscal year and one hundred per centum (100%) of the necessary expenses of operating and maintaining the said Waterworks during such fiscal year, and the Town has entered into certain other covenants with the holders of the Bonds of the issue of which this Bond is one, for the terms of which reference is made to said ordinance.

As provided in said ordinance, this Bond is exchangeable at the sole expense of the Town at any time upon ninety days' notice at the request of the registered owner hereof and upon surrender of this Bond to the Town for Series A negotiable coupon Bonds payable to bearer, registrable as to

principal only of the denomination of $1,000 each in an aggregate principal amount equal to the unpaid principal amount of this Bond.

In addition to the installments of principal required to be paid as hereinabove set forth, principal installments due on and after July 1, 1980, or any portion thereof, in multiples of $1,000, may be prepaid on any interest payment date commencing January 1, 1979, in inverse chronological order of installments, at the following prices (expressed in terms of a percentage of the principal amount of such prepayment), plus accrued interest to the date of prepayment: 103% if paid on or prior to July 1, 1984; 102% if paid thereafter and on and prior to July 1, 1989; 101% if paid thereafter and on or prior to July 1, 1994; 100% if paid after July 1, 1994. So long as the registered owner hereof shall be the Payee, the entire unpaid principal amount hereof, or from time to time in the inverse chronological order of installments, such lesser portions thereof in multiples of $1,000 as may be determined upon by the Town, may be prepaid on any interest payment date at the principal amount thereof, plus accrued interest to the date of such prepayment.

Notice of any such optional prepayment shall be given not more than sixty nor less than thirty days prior to the date of prepayment to the registered owner hereof by registered or certified mail stating such prepayment date, the amount of principal to be prepaid and the premium, if any.

This Bond may be assigned, and upon such assignment the assignor shall promptly notify the Treasurer of the State of West Virginia by registered mail and the Alternate

Payee shall surrender this Bond to said Treasurer for transfer on the Registration Records and verification of the endorsements made on the Payment Record hereto attached of the portion of the principal amount hereof and interest hereon paid or prepaid and every such assignee shall take this Bond subject to such condition.

Pari passu additional Bonds of the Town on a parity with the Series A Bonds represented by this Bond may be issued under the provisions and restrictions contained in said ordinance.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Bond, exist, have happened and have been performed in regular and due form and time as required by the laws and Constitution of the State of West Virginia applicable thereto, and that the issuance of this Bond and of the issue of Bonds of which this Bond is one is not in violation of any constitutional, statutory or charter limitation of indebtedness.

This Bond and the interest hereon are exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

IN WITNESS WHEREOF, the Town of Franklin has caused this Bond to be signed by its Mayor and its corporate seal to be affixed hereto and attested by its Recorder, all as of the first day of July, 1968.

TOWN OF FRANKLIN

By_____
Mayor

ATTEST:

(SEAL)

_____
Recorder

(FORM OF ASSIGNMENT)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ all the right, title and interest of the undersigned in and to this Bond.

_____

Date: _____

In the Presence of: _____

PAYMENT RECORD

| Due Date | Principal Payment | Principal Bal. Due | Interest Payment (4-1/4%) | Date Paid | Name of Paying Agent, Authorized Official and Title |
|---|---|---|---|---|---|
| January 1, 1969 | | | | | |
| July 1, 1969 | | | | | |

(Show all interest payment dates and all principal payments)

PRINCIPAL INSTALLMENTS ON WHICH PAYMENTS
HAVE BEEN MADE PRIOR TO MATURITY

| PRINCIPAL DUE | | | | | |
|---|---|---|---|---|---|
| Date | Amount | Principal Payment | Balance | Date Paid | Name of Paying Agent, Authorized Official and Title |
| | | | | | |
| | | | | | |
| | | | | | |

## ARTICLE III

## BOND PROCEEDS; REVENUES AND APPLICATION THEREOF

Section 3.01. Disposition of Bond Proceeds. Except as hereinafter in this section provided, all moneys received from the sale of any or all the Bonds and the proceeds of the aforesaid federal grant and the proceeds of any temporary construction financing shall be deposited by the Town in a special fund in a bank or trust company which is a member of the Federal Deposit Insurance Corporation, which fund is hereby created and designated as the "Town of Franklin - Construction Fund, EDA Project No. 03-1-00398" (herein called the Construction Fund"). The moneys in said fund shall be secured at all times by the deposit by said bank or trust company of direct obligations of the United States of America having a market value at least equal to the amount of moneys in said fund in excess of $15,000. Moneys in said fund shall be expended by the Town solely for the purposes provided in this ordinance. The moneys in the Construction Fund shall be used only for the purpose of paying the cost of the Project. Any moneys in the Construction Fund not immediately needed for said purpose may, with the approval of the Consulting Engineer, be invested in direct obligations of the United States of America having a maturity of not more than one year. Any balance in the Construction Fund after the completion of the Project shall be disposed of in accordance with the Loan and Grant Agreement.

All moneys received upon sale of the Bonds as accrued interest on the Bonds to the date of delivery thereof and such part of the Bond proceeds as represents capitalized interest shall be immediately deposited by the Town in the Sinking Fund.

Section 3.02. Covenants of the Town as to Revenues and Funds. So long as any of the Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Sinking Fund and Reserve Account therein, hereinafter established, a sum sufficient to pay, when due, the entire principal of the Bonds remaining unpaid together with interest accrued and to accrue thereon, the Town covenants with the holders of any and all Bonds issued pursuant to this ordinance as follows:

(A) System Revenue Fund. The entire gross revenues derived from the operation of the System, and all parts thereof, shall be deposited as collected by the Town in a special fund in a bank or trust company in the State of West Virginia which is a member of the Federal Deposit Insurance Corporation, which Fund (herein called the "Revenue Fund") is hereby established. The Revenue Fund shall constitute a trust fund for the purposes provided in this ordinance and shall be kept separate and distinct from all

other funds of the Town and used only for the purposes and in the manner provided in this ordinance.

(B) Disposition of Revenues. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order and priority:

(1) The Town shall first each month pay from the moneys in the Revenue Fund all current Operating Expenses of the System, as defined in Section 1.04 hereof.

(2) The Town shall next, before the end of each month, transfer from the Revenue Fund and remit to the State Sinking Fund Commission, for deposit into the "Sinking Fund," which is hereby established, one-sixth of the amount required to pay the interest which will mature and become due on the next interest payment date; and beginning with the month of July , 1969, the Town shall also monthly transfer from the Revenue Fund and remit to the State Sinking Fund Commission for deposit into the Sinking Fund, one-twelfth of the amount required to pay the principal which will mature and become due on the next succeeding July 1, which payments for principal and interest required to be remitted to the State Sinking Fund Commission in each June and December shall be so remitted not later than each June 15 and December 15.

The Town shall also, from the Revenue Fund, remit to the State Sinking Fund Commission, at such times as the State Sinking Fund Commission shall require, such additional sums as shall be necessary to pay the fiscal charges due for paying the Bonds and the interest thereon.

The State Sinking Fund Commission is hereby designated as the Fiscal Agent for the administration of the Sinking Fund created hereunder, and all amounts required for said

Sinking Fund shall be remitted to the State Sinking Fund Commission from said Revenue Fund by the Town at the times provided herein.

Moneys in the Sinking Fund shall be used first to pay maturing principal and interest on the Series A Bonds, and next maturing principal and interest on the Series B Bonds after principal and interest payments maturing on the Series A Bonds have been paid in full.

Moneys in the Sinking Fund shall be used only for the purpose of paying principal of and interest on the Bonds as the same shall become due.

The Town shall next, from the Revenue Fund, remit prior to the end of each fiscal year to the State Sinking Fund Commission, for deposit in a Reserve Account hereby established in the Sinking Fund, three-fourths of the balance in the Revenue Fund; provided, however, that no further payments need be made into the Reserve Account when there shall have been deposited therein, and so long as there shall remain on deposit therein, an amount equal to the largest amount of principal and interest which will mature and become due on the Bonds in any succeeding year.

Moneys in the Reserve Account shall be used only for the purposes of the payment of maturing principal of or interest on first the Series A Bonds, and next the Series B Bonds, when other moneys in the Sinking Fund are insufficient therefor, and for no other purpose. Any moneys withdrawn from the Reserve Account for the payment of principal of and interest on the Bonds shall be restored thereto from the first revenues available after the payment of all sums required for principal of and interest on the Bonds.

(3) After all the foregoing payments and provisions have been met, from the revenues remaining in said Revenue Fund the Town shall, prior to the end of each fiscal year, pay into a fund to be known as the "Depreciation Account," which is hereby established, the balance remaining in the Revenue Fund; provided, however, that no further

payments need be made into the Depreciation Account when there shall have been deposited therein, and so long as there shall remain on deposit therein, the sum of $65,000. The moneys in the Depreciation Account shall be used first to meet any deficiencies in the Sinking Fund and the Reserve Account therein, and next for payment of the costs of replacement, improvement or addition to the capital assets of the System.

The Depreciation Account shall be deposited in and maintained with a bank or trust company in the State of West Virginia which is a member of the Federal Deposit Insurance Corporation. The moneys in the Depreciation Account may, in the discretion of the Town, be invested and reinvested in direct obligations of, or obligations the payment of the principal of and interest on which is guaranteed by, the United States of America.

The Town may, in its discretion, use any surplus moneys in the Revenue Fund, after all the above payments and provisions have been met, for the redemption of Bonds then callable at prices not greater than the then redemption price thereof, or shall deposit such surplus moneys in the Depreciation Account.

The Town in its discretion may deposit all or any of the funds in the Depreciation Account into the Sinking Fund when such deposit will result in there being a sufficient sum in the Sinking Fund and the Reserve Account therein to purchase and redeem all Bonds outstanding.

All the funds provided for in this Section 3.02 shall constitute trust funds and shall be used only for the purposes and in the order provided herein. The moneys in excess of the sum of $15,000 in the Revenue Fund and the Depreciation Account shall at all times be secured, to the

full extent thereof in excess of the sum of $15,000, by direct obligations of the United States of America, or such other obligations as shall be eligible as security for deposits of State and municipal funds under the laws of the State of West Virginia.

If on any payment date the revenues are insufficient to place the required amount in any of the funds as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds on the subsequent payment dates.

## ARTICLE IV

## GENERAL COVENANTS OF THE TOWN

Section 4.01. General Statement. So long as any of the Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Sinking Fund a sum sufficient to pay when due, or redeem prior to maturity, the entire principal of the Bonds remaining unpaid, together with interest accrued and to accrue thereon and any redemption premiums applicable, the covenants and agreements contained in this Article IV, and in this ordinance, shall be and constitute valid and legally binding covenants between the Town and the holders from time to time of the Bonds and the interest coupons appertaining thereto.

Section 4.02. Rates. The Town will, in the manner provided in the Act, fix such rates and collect such rentals, fees or other charges for the services and facilities of the System, and revise the same from time to time whenever necessary, as will always provide revenues in each fiscal year sufficient to pay at least one hundred twenty per centum (120%) of the amount of the principal of and interest on the Bonds maturing and becoming due in such fiscal year, and one hundred per centum (100%) of the necessary expenses of operating and maintaining the System during such fiscal year, and such rates, fees, rentals and other charges shall not be reduced so as to be insufficient to provide adequate revenues for such purposes.

Section 4.03. Sale of the System. The System may be sold, mortgaged, leased, or otherwise disposed of only as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient fully to pay or

redeem at or prior to maturity all the Bonds. The proceeds from such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the State Sinking Fund Commission and the Town shall direct said Commission to apply such proceeds to the payment of principal and interest at maturity of Bonds then due, or the redemption prior to maturity, at the redemption price, of all outstanding Bonds. Any balance remaining after the redemption or payment of all the Bonds and interest thereon shall be remitted to the Town by said State Sinking Fund Commission unless necessary for the payment of other obligations issued by the Town and payable out of the revenues of the System.

The foregoing provision notwithstanding, the Town shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereafter 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 said property, if the amount to be received therefor is not in excess of Ten Thousand Dollars ($10,000), the Council or any duly authorized officer in charge of the System shall make a finding in writing determining that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and such proceeds shall be deposited in the Depreciation Account and used only as provided herein for such fund.

If the amount to be received from such sale, lease or other disposition of said property shall be in excess of Ten Thousand Dollars ($10,000) but not in excess of Fifty Thousand Dollars ($50,000), the Mayor or any duly

authorized officer in charge of the System shall first make a finding in writing, which shall be approved by the Consulting Engineer, determining that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the governing body of the Town shall, by resolution duly adopted, approve and concur in the finding of the Mayor or any duly authorized officer, and authorize such sale, lease or other disposition of said property. The proceeds derived from any such sale, lease or other disposition of said property under the provisions of this paragraph shall be remitted by the Town to the State Sinking Fund Commission for deposit in the Sinking Fund and shall be applied only to the redemption of Bonds of the last maturities then outstanding or to the purchase of Bonds of the last maturities then outstanding at prices not greater than the redemption price of such Bonds.

Payments of such proceeds into the Sinking Fund or the Depreciation Account 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 Town if the proceeds to be derived therefrom shall be in excess of Fifty Thousand Dollars ($50,000) and insufficient to pay or redeem prior to maturity all the principal of Bonds then outstanding and all interest thereon to their respective dates of redemption or maturity, without the prior approval and consent in writing of the holders or their duly authorized representatives of at least two-thirds in amount of Bonds then outstanding. The Town shall prepare the form of such approval and consent for execution by the Bondholders, or

their duly authorized representatives, which form shall provide for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Notwithstanding the foregoing, so long as any of the Bonds are held by the Federal Government, the Town will not dispose of its title to the System or any useful part thereof without the written consent of the Federal Government.

Section 4.04. Covenant Against Encumbrances. The Town has not heretofore issued and there are not now outstanding any obligations whatsoever payable from the revenues of the System which rank prior to or equally as to lien on and source and security for payment from such revenues with the Bonds; and all obligations hereafter issued by the Town payable from the revenues of the System, except pari passu additional Bonds as herein authorized, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source and security for payment from such revenues and in all other respects, to the Bonds.

The Town shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge, having priority to or being on a parity with the lien of the Bonds and any such pari passu additional Bonds, and the interest thereon, upon any of the income and revenues of the System pledged as security therefor in this ordinance, or upon the System, or any part thereof.

Section 4.05. Issuance of Pari Passu Additional Bonds. No pari passu additional Bonds, as in this Section defined, payable out of the revenues of the System, shall be issued after the issuance of any Bonds pursuant to this ordinance, except under the conditions and in the manner herein provided.

(A) No such pari passu additional Bonds shall be issued except for the purpose of financing the costs of the construction or acquisition of extentions, additions and improvements to the System.

(B) No such pari passu additional Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Recorder a written certification by a certified public accountant not in the regular employ of the Town, based upon the necessary investigation, reciting the conclusion that the net revenues, as defined herein and adjusted as provided below, actually derived from the System during the twelve consecutive months immediately preceding the date of the issuance of such pari passu additional Bonds, shall have been not less than one hundred twenty per centum (120%) of the largest aggregate amount which will mature and become due in any succeeding fiscal year for principal of and interest on the Bonds originally issued pursuant to this ordinance then outstanding, and on any pari passu additional Bonds theretofore issued pursuant to the provisions contained in this ordinance then outstanding, and on the pari passu additional Bonds then proposed to be issued.

(C) The net revenues actually derived from the System during the twelve consecutive months immediately preceding the date of the issuance of such pari passu additional Bonds may, for the purposes of this Section 4.05, be adjusted by adding to such net revenues any additional net revenues estimated in writing by the Consulting Engineer and such certified public accountant to have been derivable during such twelve months from the additional facilities to be financed by the pari passu additional Bonds proposed to be issued or, if the rates, fees or other charges for the services of the System or any part thereof were increased during such twelve months, such addition may be in the amount that such actual net revenues would have been increased if such increased rates, fees or other charges had been in effect during all

such twelve months.

(D) Prior to the issuance of any such pari passu additional Bonds, the Town shall have entered into written contracts for the immediate acquisition or construction of such additions, extensions or improvements to the System which are to be financed by such pari passu additional Bonds.

(E) The term "pari passu additional Bonds", as used in this Section, shall be deemed to mean additional Bonds issued under the provisions and within the limitations of this Section, payable from the revenues of the System pari passu with Bonds originally authorized and issued pursuant to this ordinance, and all the covenants and other provisions of this ordinance (except as to details of such pari passu additional Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the holders of any Bonds originally authorized and issued pursuant to this ordinance and the holders of any pari passu additional Bonds subsequently issued within the limitations of and in compliance with this Section. All such Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System, and their source and security for payment from said revenues, without preference of any Bond or coupon over any other. The Town shall comply fully with all the increased payments into the various funds created in this ordinance required for such pari passu additional Bonds, in addition to the payments required for Bonds originally issued pursuant to this ordinance.

(F) All pari passu additional Bonds issued pursuant to this Section shall mature serially on July 1 of each year of maturity, and the semiannual interest thereon shall be payable January 1 and July 1 of each year.

(G) The term "pari passu additional Bonds" as used in this Section 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 lien on such revenues of the Bonds issued pursuant to this ordinance, and the Town shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank equally as to lien on and source and security for payment from such revenues with Bonds issued pursuant to this ordinance, except in the manner and under the conditions provided in this Section.

(H) No pari passu additional Bonds, as in this Section defined, shall be created at any time, however, unless all the payments into the respective Funds provided for in this ordinance on Bonds then outstanding and all other payments provided for in this ordinance shall have been made in full to the date of issuance of pari passu additional Bonds and the Town shall have fully complied with all the covenants, agreements and terms of this ordinance.

(I) With the written consent in advance of the original purchaser of the Bonds originally authorized by this ordinance and anything to the contrary in subsections (A), (B), (C) and (D) of this Section 4.05 notwithstanding, pari passu additional Bonds may be authorized and issued by the Town pursuant to supplemental ordinance in the event that the Bonds hereby originally authorized and issued hereunder should be insufficient, together with the grant hereinabove mentioned, to pay all costs of construction of the Project. Any such additional pari passu Bonds authorized

and issued under the provisions of this subsection (I) shall be limited to the aggregate principal amount required to make up any deficiency in funds for payment of such construction costs as defined in this ordinance, and the maturities of any such additional pari passu Bonds shall be in years and amounts suggested by such original purchaser. All provisions of subsections (E), (F), (G) and (H) of this Section 4.05 shall be fully complied with in the authorization and issuance of pari passu additional Bonds under this subsection (I) and, if necessary for such compliance, the rates, fees and charges provided in Section 5.01 of this ordinance shall be increased by such supplemental ordinance and approved according to law.

(J) Pari passu additional Bonds issued under the provisions hereof shall be on a parity with the Series A Bonds, ranking superior to the Series B Bonds, and no pari passu additional Bonds on a parity with the Series B Bonds shall be issued.

Section 4.06. Covenant to Proceed. The Town covenants and agrees to proceed promptly with the construction of the Project in accordance with the Loan and Grant Agreement.

Section 4.07. Insurance. The Town will carry fire and extended coverage insurance on the insurable property of the System with a reputable insurance carrier or carriers approved by the Federal Government in writing in advance, prior to issuance of the Bonds and so long as the Federal Government holds any of the Bonds. Such insurance shall at all times be in an amount or amounts equal to the fair appraisal value of the insurable portions of the buildings, properties, furniture, fixtures and equipment of the System. In time of war, the Town shall also carry in said amount, or such lesser amount

if coverage in said full amount be not available, such insurance as may be available against loss or damage by the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Depreciation Account and used only for the repair and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Depreciation Account.

The Town shall also carry liability insurance with limits of not less than $100,000 for injury to or death of one person, $300,000 for injury to or death of more than one person in one accident, and $50,000 for damage to the property of others, such liability insurance to cover all liability of the Town in connection with the System and with any motor vehicle owned or operated by the Town or operated for the benefit of the Town in connection with the System.

Section 4.08. Books and Records. The Town will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Town, in which complete and correct entries shall be made of all transactions relating to the System, and any holder of a Bond or Bonds, his agents and representatives, shall have the right at all reasonable times to inspect the System and all records, accounts and data of the Town relating thereto.

The Town shall, at least once a year, cause said books, records and accounts of the System to be properly audited by an independent competent firm of public accountants,

and shall make available the report of said accountants at all reasonable times to any holder or holders of the Bonds, any taxpayer or inhabitant of the Town, or any person receiving services from the System, or anyone acting for and in behalf of said taxpayer, citizen or Bondholder or Bondholders, and shall promptly send a copy of each such report to the original purchaser of the Bonds by registered or certified mail.

Section 4.09. Maintenance of System. The Town will maintain the System in good condition and repair and continuously operate the same in an efficient manner and at a reasonable cost.

Section 4.10. Statutory Mortgage Lien. The statutory mortgage lien created by the Act in favor of the Bondholders is hereby recognized, and the System shall remain subject thereto until the Bonds and the interest thereon have been paid in full. The lien shall be a first and superior lien as to the Series A Bonds and any pari passu additional Bonds issued hereunder, and a second lien as to the Series B Bonds.

Section 4.11. Services Rendered to the Town. The Town 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 Town or any department, agency, instrumentality, officer or employee thereof 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 cir-

cumstances shall be charged the Town, and any such department, agency, instrumentality, officer or employee thereof. Such charges shall be paid as they accrue, and the Town shall transfer from its general funds sufficient sums to pay such charges incurred by it. 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 4.12. Operating Budget. The Town shall annually, at least forty-five days preceding the beginning of each fiscal year, prepare and adopt by resolution of its governing body a detailed budget of the estimated 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 Mayor or any duly authorized officer in charge of the System, 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 governing body of the Town shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of ten per centum (10%) of the amount of such budget shall be made except upon the further certificate of the Consulting Engineer that such increased expenditures are necessary for the continued operation of the System. The Town shall mail copies of such annual budget and all resolutions authorizing increased expenditures for

operation and maintenance to the original purchaser of the Bonds and to any holder or holders of Bonds who shall file his address with the Town and request in writing that copies of all such budgets and resolutions be furnished him or them, and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any holder or holders of Bonds or anyone acting for and in behalf of such Bondholder or Bondholders.

Section 4.13. Remedies and Appointment of Receiver. Any holder or holders of the Bonds or the coupons appertaining thereto may, by proper action, either at law or in equity, compel the performance of the duties of the Town under this ordinance and the Act. If there be default in the payment of principal or interest upon any of the Bonds or coupons appertaining thereto or in the performance of any covenant contained in this ordinance and such default shall continue for a period of sixty days, any holder or holders of the Bonds or such coupons shall, in addition to all other remedies or rights, have the right by appropriate proceedings at law or in equity, to obtain the appointment of a receiver to administer the System on behalf of the Town, with power to charge rates, rentals, fees or other charges sufficient to provide for the payment of the Bonds and the interest thereon and for the payment of operating expenses, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this ordinance and the Act.

Section 4.14. Enforcement of Collections. The Town will diligently enforce and collect all fees, rentals

or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the Charter of the Town, ordinances of the Town, and other laws of the State of West Virginia.

The Town further covenants and agrees that it will, to the full extent possible and permitted by law, under reasonable rules and regulations, discontinue and shut off the services and facilities of the System, and all parts thereof, for nonpayment of the fees, rentals or other charges for the services and facilities of the System, or any part thereof, and will not restore any of the services and facilities of the System, or any part thereof, until all delinquent charges for the services and facilities of all parts of the System, plus reasonable penalties and charges for the restoration of service, have been dully paid.

Section 4.15. No Competing Franchise. The Town 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 services provided by the System to or within the Town.

Section 4.16. Consulting Engineer. The Town will retain the Consulting Engineer hereinabove designated, or

other qualified and recognized independent engineers, on an annual basis to inspect generally the operation, maintenance and renewal of the System.

Section 4.17. Financing and Continuation Statements. The Town, by its Mayor or the Recorder, either of whom is hereby authorized and directed to act hereunder, will execute Financing Statements meeting the requirements of the Uniform Commercial Code of West Virginia and will file the same with the Secretary of State of the State of West Virginia and with the Clerk of the County Court of each county in which any part of the System is situated. Continuation Statements will be filed to maintain the security interest arising from this ordinance and the Bonds, and shall be executed either by the Mayor or by the Executive Secretary of the State Sinking Fund Commission on behalf of the Bondholders.

## ARTICLE V

## RATES AND LIEN FOR CHARGES

Section 5.01. Minimum Rates Established. The following minimum schedule of fees, rentals and rates to be charged for the services and facilities of the System are hereby fixed and determined, as follows:

### AVAILABILITY OF SERVICE

Available for general domestic, commercial and industrial service.

### RATE

Rates shall be based upon monthly consumption, and shall be as follows:

| | | |
|---|---|---|
| First 2,000 gallons | - | $1.50 per 1,000 gallons |
| Next 3,000 gallons | - | 1.00 per 1,000 gallons |
| Next 10,000 gallons | - | .70 per 1,000 gallons |
| Next 10,000 gallons | - | .60 per 1,000 gallons |
| Next 10,000 gallons | - | .50 per 1,000 gallons |
| All Over 35,000 gallons | - | .40 per 1,000 gallons |

### MINIMUM CHARGE

No bill will be rendered for less than $3.00 per month per customer or family unit. Billing for water service will be made monthly.

### CONNECTION CHARGE

A charge of $150 will be made for each connection of a customer within the corporate limits of the Town, and $200 for each connection outside the corporate limits.

### DELAYED PAYMENT PENALTY AND CHARGE TO RESTORE SERVICE

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

If service is discontinued for nonpayment of bill or any other reason, a charge of $5 will be made for restoring service.

### DISCONTINUANCE OF SERVICE

If an account is not paid within twenty (20) days, water service will be discontinued immediately and will not be restored until the account in full, including penalty and restoration charge, has been paid.

The schedules of rates and charges set out above shall be and constitute the minimum fees, rentals and rates to be charged for the services and facilities of the System as therein provided, shall take effect not later than the effective date of this ordinance, and shall not be reduced as long as any of the Bonds or interest thereon are outstanding and unpaid; provided, however, that such minimum rates shall be increased by the Town whenever such increase is necessary in order to comply fully with all the provisions of this ordinance, and the Town shall always be obligated to and shall fix, establish and collect fees, rentals, rates and other charges for the services and facilities of the System which shall at all times be sufficient to pay at least 120% of the principal of and interest on Bonds issued pursuant to this ordinance maturing and becoming due in any fiscal year and 100% of all operating expenses, and as otherwise provided herein.

Section 5.02. All Service to be Metered. All service provided by the System except for fire hydrants shall be furnished through meters provided and installed by the Town with the right of the Town at all reasonable times to read, inspect, maintain and replace meters located on private property.

## ARTICLE VI

## MISCELLANEOUS

Section 6.01. Modification or Amendment. No material modification or amendment of this ordinance, or of any ordinance or resolution amendatory hereof or supplemental hereto, may be made without the consent in writing of the holders of two-thirds or more in principal amount of each Series of Bonds then outstanding; provided, however, that no modification or amendment shall permit a change in the maturity of such Bonds or a reduction in the rate of interest thereon, or in the amount of the principal obligation, or affecting the unconditional promise of the Town to pay the principal of and interest on the Bonds as the same shall become due from the net revenues of the System, without the consent of the holders of such Bonds. Notwithstanding the above, no amendment or modification shall be made which would reduce the percentage of the principal amount of Bonds required for consent to the above-permitted amendments or modifications.

Section 6.02. Refunding of Bonds Permitted. The Town reserves the right to refund the Bonds when in its judgment it would be to the best interests of the Town and of its inhabitants so to do. Upon payment of all the Bonds outstanding, prior to or simultaneously with the issuance of any refunding bonds or of an issue of bonds for the purposes of refunding the Bonds then outstanding and providing funds for additions, extensions and improvements to the System, or upon provision for such payment by deposit in trust,

with the Fiscal Agent herein designated, of a sum equal to the principal amount of the Bonds outstanding, plus an amount equal to all interest accrued and to accrue to the date of payment or redemption of such Bonds, and plus an amount equal to the redemption premiums required to call and redeem all callable Bonds at the earliest date hereby authorized, the security, pledge and any lien applicable to the Bonds then outstanding shall, upon such deposit, immediately cease and determine. The sum so deposited in trust shall be used solely to pay at maturity, as to noncallable Bonds, and at the earliest redemption date, as to callable Bonds, the principal amount of the Bonds and all interest thereon to the date of payment or redemption and the applicable redemption premiums. The moneys so deposited may be invested by the Fiscal Agent in direct obligations of the United States of America having maturities not later than the dates on which the moneys shall be required to be used for such payment or redemption.

Section 6.03. Covenant of Due Procedure, Etc. The Town covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the final enactment and passage of this ordinance exist, have happened, have been performed and have been taken in regular and due form and time as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; that no event, occurrence or act has taken place which would or might have any adverse effect upon the construction and acquisition of the Project herein ordered or the authorization and issuance of the Bonds hereby authorized; and that the Mayor, the Recorder and the Members of the Council of the Town were at all times when any actions in connection with this ordinance or when such construction and acquisition occurred, and are,

duly in office and duly qualified for such office. In the event that the Town obtains temporary construction financing pending issuance of the Bonds, the Town hereby covenants with any person, firm, corporation or governmental body or agency which supplies such temporary financing that the Town will issue and deliver the Bonds hereby authorized not later than December 31, 1968, in any event and intends that this covenant be relied upon by such supplier of any such temporary financing.

Section 6.04. Severability of Invalid Provision. If any one or more of the covenants, agreements or provisions of this ordinance 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, to the extent of such invalidity, be null and void and shall be deemed separable from the remaining covenants, agreements or provisions, and shall in no way affect the validity of all the other provisions of this ordinance or the Bonds or coupons appertaining thereto.

Section 6.05. Conflicting Provisions Repealed. All ordinances, resolutions and orders, or parts thereof, in conflict with the provisions of this ordinance, are, to the extent of such conflicts, hereby repealed.

Section 6.06. Effective Time. This ordinance shall take effect at the time and in the manner provided in the Act.

Section 6.07. Statutory Notice. Upon adoption and approval of this ordinance, the Recorder is hereby authorized and directed to cause the same to be published once a week for two successive weeks in a newspaper published

in the Town, together with a notice to all persons concerned stating that this ordinance has been adopted and that the Town contemplates the issuance of the Bonds described in the ordinance and that any person interested may appear before the Council upon a certain date stated in the notice which shall not be less than ten days subsequent to the second publication hereof and present protests, whereupon the Council shall take such action as it deems proper in the premises.

Section 6.08. Table of Contents and Headings. The Table of Contents and headings of the Articles, Sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Passed and approved: Jan 2, 1968.

Ratified and reapproved following public hearing on: Feb 2, 1968.

Mayor

Attest:

Recorder